



SSBCI Capital Program National Compliance Standards
November 17, 2022

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Section 1. Introduction and Purpose

The American Rescue Plan Act of 2021 reauthorized and amended the Small Business Jobs Act of 2010 (as amended, the SSBCI statute) (12 U.S.C. §§ 5701 *et seq.*) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program, administered by the U.S. Department of the Treasury (Treasury), that was created to support programs that provide capital to small businesses. SSBCI allows U.S. states, the District of Columbia, territories, and Tribal governments (collectively, “participating jurisdictions”) the opportunity to build upon or create successful models of small business programs.

The purpose of these SSBCI Capital Program National Compliance Standards (Compliance Standards) is to set forth recommended practices to support participating jurisdictions in implementing their SSBCI capital programs.¹ These Compliance Standards are a complement to, but not a substitute for, the requirements set forth in the SSBCI statute, the Allocation Agreement, the SSBCI Capital Program Policy Guidelines (Guidelines), and other SSBCI rules and guidance, including SSBCI Frequently Asked Questions (SSBCI FAQs) and the SSBCI Capital Program Reporting Guidance (Reporting Guidance). Each participating jurisdiction is responsible for ensuring compliance with all applicable program requirements. These Compliance Standards are based on existing requirements set out in the SSBCI statute or in program rules or guidance, but they do not create new requirements, nor do they repeal or modify any requirements in the SSBCI statute, rules, or guidance.² Participating jurisdictions must comply with all applicable SSBCI rules and guidance Treasury may issue.

Section 2 contains a recommended framework for identifying, mitigating, managing, and monitoring compliance and oversight risks and provides an approach for designing and implementing a comprehensive compliance and oversight system. Section 3 discusses recommended practices regarding key compliance and oversight risks and provides further guidance on the mitigation of specific risks. These risks were identified based on an assessment of the relative impact and likelihood of each risk, as well as a review of questions from participating jurisdictions.

Treasury’s Office of the Inspector General (OIG) is authorized to conduct, supervise, and coordinate audits and investigations of the use of SSBCI funds, which includes reviewing participating jurisdictions’ compliance with SSBCI program requirements.

¹ Depending on the structure of a participating jurisdiction’s SSBCI capital program, certain recommendations in these Compliance Standards may be more directly applicable to the jurisdiction’s implementing entity or contracted entities, as such terms are defined in Section 1.1 of the SSBCI Allocation Agreement. For example, a jurisdiction’s level of oversight of an implementing entity may vary depending on whether the implementing entity is a department of the jurisdiction or if the implementing entity is a corporation or other entity authorized or supervised by a jurisdiction.

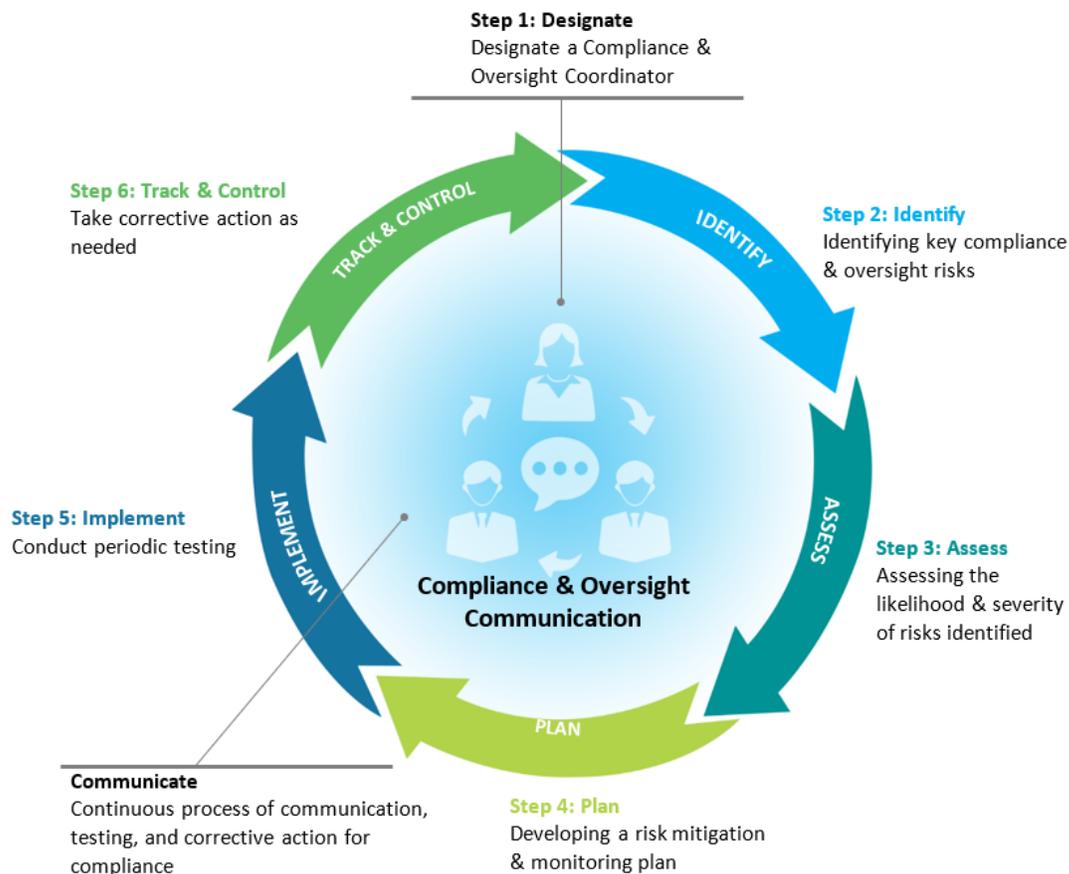
² Section 3.1 of the Allocation Agreement, providing that a participating jurisdiction is responsible for compliance with “Treasury’s SSBCI regulations, guidance, and other requirements,” should not be interpreted to mandate compliance with any provision in these Compliance Standards except to the extent that they re-state requirements that are set out in the SSBCI statute or in other SSBCI regulations or guidance.



Please note this document may be updated periodically to reflect newly available guidance or information. Therefore, this document should not be relied upon to comprehensively describe all requirements of the SSBCI Capital Program. Participating jurisdictions should regularly consult the most recent SSBCI rules and guidance. Compliance with these Compliance Standards may not satisfy all applicable SSBCI program requirements. When these Compliance Standards are updated, Treasury intends to promptly notify the participating jurisdictions' points of contact via e-mail. Participating jurisdictions may also visit Treasury's SSBCI website (<http://www.treasury.gov/ssbci>) to review and download the latest version.

Section 2. Recommended Compliance and Oversight Risk Management Framework

The recommended Compliance and Oversight Risk Management Framework is intended to help participating jurisdictions identify, mitigate, monitor, and manage compliance and oversight risks. The recommended approach for designing and implementing a comprehensive compliance and oversight system is built upon the six key steps depicted in the graphic below:





2.1 Designate – Designate a Compliance and Oversight Coordinator

Participating jurisdictions should designate a compliance and oversight coordinator. One way a jurisdiction may wish to coordinate compliance and oversight is through a centralized risk management and compliance function that includes experienced and knowledgeable staff with core competencies to manage the day-to-day risk management and compliance activities for the jurisdiction's approved programs. The centralized risk management and compliance function should span all SSBCI program activities and coordinate all risk management and compliance activities.³ Depending on the size and scope of a participating jurisdiction's approved programs, the centralized risk management and compliance function may be performed by staff on a less than full-time basis – it is up to the jurisdiction to determine how to appropriately staff this function.

2.2 Identify – Identifying Key Compliance and Oversight Risks

Risk identification is essential for each participating jurisdiction's successful management of its approved programs. The following key compliance and oversight risks have been identified by Treasury. Additional considerations and recommendations for these risks are included in Section 3 below.

Program Operations Risks:

- Inadequate oversight of implementing entities and contracted entities.
- Inadequate lender/investor adherence to requirements.
- Inadequate control and retention of program records.
- Inadequate certifications.
- Conflicts of interest in general.

Financial Management Risks:

- Fraud, waste, and abuse of SSBCI funds.
- Improper use of and accounting for SSBCI funds.

Reporting Risks:

- Failure to submit complete, timely, and accurate quarterly and annual reports.
- Failure to submit complete and accurate data to support a participating jurisdiction's incentive allocation for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses).⁴

³ Participating jurisdictions should evaluate their overall risk management and compliance functions to verify that risk assessments and risk management are adequate, risk monitoring and responses are sufficient, and risk reporting is timely.

⁴ The term "SEDI-owned business" and how funds may be expended to benefit these businesses are set out in greater detail in the SSBCI Capital Program Policy Guidelines.



Participating jurisdictions should actively identify any other risks that are unique to the design of their particular approved programs. Identified risks can be inventoried into a risk register for tracking purposes.⁵

2.3 Assess – Assessing the Likelihood and Severity of Identified Risks

Each participating jurisdiction should assess the *likelihood* and *impact* of all identified risks. A three-tiered risk rating of “high,” “medium,” or “low,” as shown in Figure 1, is recommended, though more granular scoring may be applied for more mature risk and compliance functions. To determine the risk rating, the participating jurisdiction should make an informed judgment about both the likelihood and impact of risks that may result in instances of non-compliance with SSBCI requirements. Participating jurisdictions should also consider how risks might arise more holistically throughout the chain of authorizations, certifications, and approvals among the jurisdiction’s implementing entity as defined in the Allocation Agreement (including the implementing entity’s employees and board members, if applicable), any contracted entities as defined in the Allocation Agreement, lenders and investors, and small business borrowers and investees.

		RISK ASSESSMENT RATING		
		Low	Medium	High
LIKELIHOOD	High	Medium 3	High 6	High 9
	Medium	Low 2	Medium 4	High 6
	Low	Low 1	Low 2	Medium 3
		Low	Medium	High

Figure 1: Sample Risk Rating

A participating jurisdiction’s risk assessment should be ongoing throughout the SSBCI program and include regular assessments of the following:

- The implementing entity and all contracted entities identified in the Allocation Agreement;
- All available internal and external testing results; and
- Approved program descriptions and their respective eligibility/participation requirements.

If the participating jurisdiction’s risk assessment identifies findings, material weaknesses, or significant deficiencies, the applicable risk rating should be adjusted. This is especially true if the finding, material weakness, or significant deficiency pertains to an identified risk category. Participating jurisdictions should also promptly develop and implement a corrective action plan to mitigate risk. Participating jurisdictions are encouraged to provide Treasury with testing, examinations, and/or reviews that contain findings, material weaknesses, or significant deficiencies, as well as the proposed response.

⁵ There are several resources available to help jurisdictions identify and inventory risks, including the Association for Federal Enterprise Risk Management’s (AFERM) *Federal ERM Areas of Practice Guidance* (<https://www.aferm.org/areas-of-guidance/>).



2.4 Plan - Developing a Risk Mitigation and Monitoring Plan

Each participating jurisdiction should develop a risk mitigation and monitoring plan that includes procedures for mitigating and monitoring compliance and oversight risks. One effective way for participating jurisdictions to organize this plan is through a risk matrix. However, other approaches that trace the relationship between each risk and associated control objectives, control activities, and testing protocols may be equally effective. The risk matrix (or equivalent document) should include the risks that the participating jurisdiction identified as generally applicable to all approved programs and any additional risks that the participating jurisdiction believes are jurisdiction- or program-specific. Participating jurisdictions should capture and monitor all identified risks in the risk matrix since many risks (and related control mechanisms) are interrelated.

Participating jurisdictions should document a specific plan to mitigate and monitor each risk by:

- 1) *Defining control objectives.* A control objective is the specific target used to determine whether a control is operating effectively. It can also be thought of as a management goal focused on mitigating a specific compliance and oversight risk. For example, a control objective regarding reporting might be: “SSBCI quarterly or annual reports are submitted on time and are complete, accurate, and consistent with the jurisdiction’s general ledger entries and documentation.”
- 2) *Specifying control activities for each control objective.* Control activities should be designed to help a participating jurisdiction manage control objectives. As stated by the U.S. Government Accountability Office (GAO) in the Standards for Internal Control in the Federal Government (the “Green Book”), “[c]ontrol activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.”⁶
- 3) *Developing a testing plan with planned test methodologies, sample sizes, and testing frequencies for each control activity.* Controls testing should be conducted at least annually. Active and continuous monitoring of the risks ranked high or medium is encouraged.

For risks rated high or medium, participating jurisdictions should consider expanding the sample size and/or conducting more frequent testing to mitigate compliance risk and to ensure a robust control environment.

Participating jurisdictions should conduct testing for each control activity using a sampling technique that is consistent, justifiable, and documented.⁷ The sample size should be based on

⁶ See Principle 10, section 10.02 of the Green Book (GAO-14-704G), which is available on GAO’s website at <https://www.gao.gov/products/gao-14-704g>. While GAO’s explanation of control activities is directed at federal executive branch agencies, rather than participating jurisdictions, this section may be helpful to participating jurisdictions.

⁷ For most control activities, the universe of records to test will be the SSBCI-supported loans or investments themselves. However, for some control activities, the universe of records may be other types of documents. For example, to test compliance with the mandatory control activity for the “Inadequate oversight of implementing or contracted entities” risk, a participating jurisdiction could evaluate the written agreement with the applicable entities against minimum requirements. See section 3 for further details on mitigating this risk.



relevant factors, including the size of the population, acceptable margin of error, and desired confidence level.⁸ Participating jurisdictions should document the sampling technique, methodology, and rationale for the sample size and sample frequency of each test conducted.

Figure 2: Sample Risk Matrix

Risk #	RISK IDENTIFICATION				RISK MANAGEMENT				
	Risk Category	Program Risk	Risk Impact (High, Medium, Low)	Risk Likelihood (Likely, Possible, Unlikely)	Risk Ranking	Risk Mitigation Strategy	Steps Taken to Mitigate and Monitor Identified Risk	Risk Status (Open, Closed)	Risk Owner
1.1									
1.2									
1.3									

Figure 2 is a sample risk matrix that includes:

- Risk category – groups used to categorize program risks (e.g., inadequate documentation of administrative costs, improper accounting).
- Program risks – risks to be mitigated (e.g., SSBCI administrative costs claimed are inaccurate, unallowable, or not allocable to SSBCI).
- Risk impact – an assessment of the impact/consequences of a program risk occurring (e.g., high, medium, low).
- Risk likelihood – an assessment of the likelihood/probability of a program risk occurring (e.g., likely, possible, unlikely).
- Risk ranking/rating – risk ranking based upon a risk’s likelihood of occurrence and risk impact.
- Risk mitigation strategy – strategy to address identified risks.
- Steps taken to mitigate and monitor the risk – specific steps to implement the risk mitigation strategy.
- Risk status – current implementation status of the risk mitigation strategy.
- Risk owner – individual or organizational function (e.g., division, office, or similar subdivision) responsible for overseeing the risk.

Other approaches that trace the relationship between each risk and associated control objectives, control activities, and testing protocols may be equally effective. Controls identified to address related risks can be organized into a corresponding control matrix (Figure 2.1), which could include, but is not limited to, control objectives, control type, control activity, control frequency, control owner, and control test strategy. Tests of controls identified to mitigate risks typically include, but are not limited to, test step(s), sample size, testing frequency, test results, and resolution of any corrective actions, if required. Controls relating to the risks identified and corresponding tests performed could subsequently be added to the risk matrix.

⁸ Participating jurisdictions may find it useful to use a statistical sample calculator to help to determine the appropriate sample size – there are several available on the internet. In addition, the U.S. Department of Health and Human Services Office of Inspector General has published a Statistical Sampling Toolkit for State Medicaid Fraud Control Units (MFCUs), which is available at <https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/files/MFCU%20Sampling%20Guidance%20Final.pdf>.



Figure 2.1 Sample Control Matrix

CONTROL IDENTIFICATION						CONTROL TESTING					
Control #	Control Objective	Control Type	Control Activity	Control Frequency	Control Owner	Test Methodology	Test Step(s)	Sample Size	Testing Frequency	Test Results	Corrective Action Resolution
1.1											
1.2											
1.3											

2.5 Implement – Conduct Periodic Testing

Participating jurisdictions should conduct periodic testing of a justifiable sample of their records to determine whether the participating jurisdiction is adhering to the control activities listed in their risk matrix (or equivalent document). Controls testing should be conducted at least annually, though active and continuous monitoring of the risks ranked as high impact is encouraged. Participating jurisdictions should make risk-based determinations as to whether more frequent controls testing is warranted.

To ensure objectivity, controls testing should be conducted by an individual or organizational function that:

- is not responsible for performing any of the control activities established by the participating jurisdiction; and
- does not report to any individual responsible for performing or overseeing any of the participating jurisdiction’s risk mitigation activities.

Typically, the individual or organizational function designated as responsible for overseeing risk management and compliance should also review test results.

Where a contracted entity operates an approved program, the participating jurisdiction should consider obtaining attestation reports (e.g., Statement on Standards for Attestation Engagements or SSAE Type II) as part of the internal controls.

The participating jurisdiction should establish preventative controls to help ensure that ineligible loans or investments are not enrolled in an approved program. If a participating jurisdiction becomes aware that an ineligible loan or investment has been enrolled in an approved program, the participating jurisdiction should contact Treasury as soon as practicable and follow the process outlined in Section XII of the Guidelines to determine the appropriate corrective action.

If employees of a participating jurisdiction, implementing entity, or contracted entity identify any instances of fraud, waste, or abuse, they should contact OIG immediately. See <https://oig.treasury.gov> for information on how to contact OIG.



2.6 Track and Control – Take Corrective Action As Needed

If compliance and internal controls testing results indicate isolated and non-repeating instances of non-compliance, the participating jurisdiction should notify Treasury as soon as practicable and take all necessary steps to bring the program into compliance.

If test results indicate systematic non-compliance with a particular control activity, the participating jurisdiction should notify Treasury as soon as practicable, assess the results to determine the cause, and take corrective actions. Corrective actions may include:

- Deep-dive analyses to determine the cause of non-compliance;
- Temporary work-arounds while improved procedures are implemented;
- Enhanced staff training;
- Enhanced training and technical assistance for lenders/investors, implementing entities, and contracted entities, as appropriate;
- Development of checklists to help remedy non-compliance;
- Development or enhancement of information technology systems to identify non-compliant records; and/or
- Updates to policies and procedures.

Participating jurisdictions should document test results and assess the need for increasing the frequency and/or scope of compliance and internal controls testing.

Section 3. Key Compliance and Oversight Risks

This section is organized around key compliance and oversight risks for most approved programs.

3.1 Program Operations Risks

a. Risk: Inadequate Oversight of Implementing and Contracted Entities

A participating jurisdiction designates an implementing entity to accept its SSBCI allocation and a participating jurisdiction or its implementing entity may contract with one or more contracted entities to implement or administer its approved programs. Depending on how a participating jurisdiction sets up its approved programs, an implementing entity or contracted entities may be responsible for:

- Overseeing the day-to-day financial management activities of the approved program, ensuring the accuracy of the accounting records, and ensuring internal controls are in place.
- Reviewing required certifications and records retention.
- Taking prompt action to correct identified instances of non-compliance.

Each participating jurisdiction should provide appropriate oversight over its implementing entity and any contracted entities.



In accordance with Section 3.1 of the Allocation Agreement, each participating jurisdiction shall, and shall cause any entities with which it designates or contracts to implement Approved Programs, including the jurisdiction's Implementing Entity and Contracted Entities, to comply with the SSBCI statute, as amended or replaced from time to time, and Treasury's SSBCI regulations, guidance, and other requirements, as in effect from time to time. Participating jurisdictions should impose these requirements through a written agreement.

Further, each participating jurisdiction should execute a written agreement applying the following provisions of Article III of the Allocation Agreement to its implementing entity (if they are not already bound by these provisions under the Allocation Agreement) and its contracted entities, as applicable:

- Section 3.1 "Compliance with Laws,"
- Section 3.2 "Nondiscrimination,"
- Section 3.3 "Use of SSBCI Funds, Returned Funds, and Program Income,"
- Section 3.5 "Internal Control and Financial Management System Requirements,"
- Section 3.6 "Reported Data Usage,"
- Section 3.7 "Notices of Certain Material Events," and
- Section 3.8 "Publication of Approved Program Contact Information."

In addition, Treasury calls special attention the following additional requirements from the Guidelines and Reporting Guidance that should be incorporated into the agreement with the implementing entity (if they are not already bound by these provisions under the Allocation Agreement) or contracted entities, as applicable:

- In accordance with Section VI "Record Retention and Increase of Frequency and Scope of Reporting" of the Reporting **Guidance, before providing funding to a private entity using SSBCI funds, each participating jurisdiction must obtain the following:**
 - The written agreement of the private entity, including any financial institution, to make available to the Treasury Inspector General and the Government Accountability Office all books and records related to the use of the SSBCI funds, subject to applicable privacy laws, including but not limited to 12 U.S.C. § 3401 et seq., including detailed loan and investment records, as applicable;
 - **A certification from the private entity, if it is a financial institution, that the private entity is in compliance with the requirements of 31 C.F.R. § 1020.220, regarding customer identification programs; and**
 - A certification from the private entity, including any financial institution, that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).
- In accordance with Section VIII.i "Services to Portfolio Companies" of the Guidelines, if a contracted entity is a venture capital fund that will use the 1.71 percent allowance for services to portfolio companies, the agreement between the participating jurisdiction and the venture capital fund must require the venture capital fund to identify the services to be provided to portfolio companies and annually certify that these services were



provided. In addition, the agreements between the venture capital fund and portfolio companies should include disclosure of these services offered by the fund manager.

Depending on how the participating jurisdiction has set up its approved programs, recommended practices include:

- **Inserting provisions into agreements** with the implementing entity or contracted entities that:
 - Specify requirements applicable to administrative costs in accordance with Section IX “Administrative Costs” of the Guidelines, including that administrative costs are defined and governed by the **Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E** and that the entity must maintain appropriate substantiating documentation for administrative costs.
 - Specify responsibilities regarding certifications;
 - Specify all eligibility requirements for loans/investments for each applicable approved program;
 - Incorporate the appropriate conflicts of interest applicable to lending programs (*see* Section VII.f “Borrower Restrictions” of the Guidelines, which are applicable to CAPs and Section VIII.f of the Guidelines, which are applicable to loan OCSPs) and equity/venture capital programs (*see* Section VIII.f “Equity/Venture Capital Programs: Conflict-of-Interest Standards of the Guidelines), and prohibit, or require disclosure of, underwriting or approving a loan to, or an investment in, any business in which the implementing or contracted entity or any of its principals or affiliates has a direct or indirect financial interest;
 - Specify responsibilities with respect to data collection and reporting (the agreement should specify the respective roles of the implementing or contracted entity and the participating jurisdiction in meeting all data collection and reporting responsibilities, and include the participating jurisdiction’s transaction enrollment form, if applicable);
 - Specify consequences for non-compliance with the terms and conditions of the agreement;
 - Identify remedies to be performed in the event of a default as specified under Article V of the Allocation Agreement; and
 - Specify the process and/or responsibilities for un-enrolling and replenishing transactions identified as non-compliant use of funds.
- Reviewing the implementing entity or contracted entities for findings, material weaknesses, or significant deficiencies, and requiring the implementing or contracted entity to take corrective actions.
- Performing site visits, requiring periodic status update reports, and/or conducting regular conference calls with the implementing entity or contracted entities to monitor progress and provide early warning of any implementation challenges.

The above recommendations are not exhaustive. Participating jurisdictions should consider incorporating any additional activities or practices that can provide additional mitigating controls associated with this risk.



b. Risk: Inadequate Lender/Investor Adherence to Requirements

Prior to enrolling any loan originated by a private lender, and prior to enrolling any investment, the participating jurisdiction (or its implementing entity or contracted entity, as appropriate) should execute a signed lender/investor participation agreement to clarify lender/investor responsibilities and reduce the likelihood of non-compliance. **This agreement should specify:**

- Eligibility requirements for loans/investments for each applicable approved program and prohibit the lender or investor from enrolling a transaction that violates SSBCI’s restrictions on the use of proceeds;
- Restrictions on use of proceeds and requirements regarding conflicts of interest, including required certifications;
- Responsibilities regarding sex offender certifications;
- Responsibilities for data collection and reporting;
- Responsibilities for making all books and records related to the use of SSBCI funds available to the OIG, and/or the GAO; and
- Consequences for non-compliance with the terms of the agreement.

In addition, in accordance with Section VIII.i “Services to Portfolio Companies” of the Guidelines, if a venture capital fund will use the 1.71 percent allowance for services to portfolio companies, as required by the Guidelines, the agreement between the participating jurisdiction (or implementing or contracted entity, as appropriate) and the venture capital fund must require the venture capital fund to identify the services to be provided to portfolio companies and annually certify that these services were provided.

In addition, the agreements between the venture capital fund and portfolio companies should include disclosure of these services offered by the fund manager.

Recommended **additional** provisions may include:

- Use of a transaction enrollment form that includes the lender’s or investor’s review of the transaction purpose before enrolling the transaction in an approved program;
- Acquiring, logging, and maintaining relevant detail for each transaction; and
- Specifying any required data reporting elements from the lender or investor to the participating jurisdiction, implementing entity, or contracted entity.

The above recommendations are designed to assist in tracking the use of SSBCI funds and gathering data required for SSBCI quarterly and annual reports. Participating jurisdictions, implementing entities, and contracted entities, as appropriate, should consider incorporating any additional activities or practices that can help provide additional mitigating controls associated with this risk.

c. Risk: Inadequate Control and Retention of Records

As set forth in Section VI “Reporting Retention and Increase of Frequency and Scope of Reporting” of the Reporting Guidance, participating jurisdictions must retain all financial



records, supporting documents, statistical records, and all other records pertinent to its SSBCI allocation for a period of three years from the date of submission of the final quarterly report under Section II.a, except as otherwise provided in 2 C.F.R. § 200.334.

This should include, but is not necessarily limited to: any transaction enrollment forms; all loan and investment agreements; loan or investment commitment letters; all sex offender and use of proceeds/conflict-of-interest certifications retained by the participating jurisdiction; any SEDI-owned business certifications retained by the participating jurisdiction; any 1.71 percent allowance certifications of venture capital funds regarding services to portfolio companies retained by the participating jurisdiction; all general ledger entries pertaining to SSBCI funds; all statements for accounts containing SSBCI funds, including bank statements if applicable; any contracts or memoranda of agreement (MOA) with implementing or contracted entities; records of all transfers of funds to implementing or contracted entities; all invoices and receipts for administrative expenses; and documentation of private leverage and subsequent private financing.

If implementing or contracted entities, lenders, or investors are required to retain records on behalf of the participating jurisdiction, rather than submitting these records to the participating jurisdiction or implementing or contracted entity, the participating jurisdiction should have a written agreement in place requiring the retention of these records until at least January 30, 2031 and the participating jurisdiction should exercise oversight to verify compliance with this requirement. One means of exercising oversight would be to conduct periodic testing, examinations, and/or reviews of a random sample of each entity's records.⁹ Participating jurisdictions should consider adding any additional activities that may be useful to provide additional controls associated with records retention.

d. Risk: Inadequate Certifications

The Guidelines require certifications from lenders, investors, borrowers, and investees for each SSBCI-supported transaction. Appendix A summarizes the applicable certifications required in various circumstances and provides sample certifications that may be used by participating jurisdictions. Participating jurisdictions (or, as applicable, implementing or contracted entities, lenders, or investors) may design their own certification forms but the requirements established in the Guidelines must be met. Certifications may be combined into one form where applicable.

While Treasury does not require participating jurisdictions (or implementing or contracted entities, lenders, and investors, if so designated) to independently verify the representations made by the authorized representative of the small business borrower or investee, participating jurisdictions should, as part of their compliance monitoring procedures and as appropriate to the requirements of a specific certification, establish a process to determine whether these required certifications have been properly documented.

⁹ As noted in Section 2.5, participating jurisdictions should make risk-based determinations as to the frequency of testing (e.g., annual, semi-annual, quarterly, as needed, etc.).



Participating jurisdictions could meet this expectation by:

- Obtaining, reviewing, and maintaining a copy of each borrower's and investee's certification¹⁰ or
- Executing an agreement that permits the implementing or contracted entity, or each lender or investor (as applicable), to obtain, review, and maintain a copy of each borrower's or investee's certification.

Participating jurisdictions should exercise appropriate oversight of the implementing or contracted entity, lender, or investor tasked with this responsibility. **One means of exercising this oversight is to conduct periodic testing, examinations, and/or reviews of each relevant entity's transaction files to verify the required certifications are on file and properly executed.**

It is the participating jurisdiction's responsibility to ensure that required certifications are collected, either electronically or in paper copy. Certifications should be collected prior to the closing of a loan or investment.

- **For use of proceeds/conflict-of-interest certifications:** Participating jurisdictions should ensure that use of proceeds/conflict-of-interest certifications are collected for each transaction from the borrower or investee and from the lender or investor, as appropriate. It is not sufficient for borrowers or investees and lenders or investors to provide a one-time use of proceeds/conflict-of-interest certification. **Use of proceeds/conflict-of-interest certifications are not required from lenders and co-investors that do not provide, administer, or receive direct support through SSBCI funds.** *See also* SSBCI Sample Certifications 1 and 2.
- **For sex offender certifications:** Participating jurisdictions should ensure that borrower or investee sex offender certifications covering all principals of a borrower or investee and all principals of a lender or investor are collected prior to enrolling a loan or investment. **Certification can be made by single authorized representative of the small business and authorized representative of the lender or investor originating the loan or investment.**

In accordance with section 3011(c)(2) of the SSBCI statute (12 U.S.C. § 5710(c)(2)) and Section VII.f "Lender Assurances" (applicable to CAPs) and Section VIII.f "Lender Assurances" (applicable to OSCPs) of the Guidelines, participating jurisdictions must obtain 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)). These certifications should cover all lenders or investors enrolling a loan or investment in an SSBCI approved program, as well as for-profit or non-profit implementing or contracted entities that make loans or investments directly to borrower/investees through an approved direct lending program, loan participation

¹⁰ Certifications, whether in paper or electronic (e.g., PDF) form, should contain a wet ink or electronic signature.



program, or jurisdiction-run venture capital program, and private lenders and investors that provide SSBCI funds to a borrower or investee or that receive direct SSBCI support through a loan participation, loan guarantee, collateral support, or CAP reserve fund. This means that when a contracted entity operates an approved direct loan or loan participation program on behalf of a participating jurisdiction, two certifications generally are required: one from the borrower and one from the relevant contracted entity that is administering the program as the lender. Similarly, if a contracted entity operates an approved direct equity/venture capital program on behalf of a participating jurisdiction, two certifications generally are required: **one from the investee and one from the relevant contracted entity as the investor.**

Participating jurisdictions should:

- Require newly executed sex offender certifications covering all principals of a lender or investor prior to enrolling each loan or investment in an approved program; or,
- **Require sex offender certifications covering all principals of a lender or investor prior to enrolling any loans or investments originated by that lender or investor in the approved programs and require a written agreement with the lender or investor (which may be part of a larger lender or investor participation agreement) that clearly specifies that the lender or investor must notify the participating jurisdiction if and when an event occurs that renders the prior certifications obsolete. Such event could be a change in principals or a conviction of an existing principal for a sex offense against a minor. The participating jurisdiction may also consider adding a requirement to this written agreement for a periodic resubmission of the certifications, perhaps on an annual basis, even absent a material event.**

While Treasury does not require participating jurisdictions (or implementing or contracted entities, as appropriate) to independently verify the certified sex offender status of covered principals, participating jurisdictions should ensure the certification is collected, either electronically or in paper copy and documented before funds are transferred to a lender, investor, borrower, or investee, as appropriate. *See also* SSBCI Sample Certifications 3 and 4.

- **For SEDI-owned business certifications:** Participating jurisdictions should ensure that SEDI-owned business information is requested for each transaction and that SEDI-owned business certifications are retained for any transactions where the participating jurisdiction states that funds are expended for SEDI-owned businesses. *See also* SSBCI Sample Certification 5.
- **For the required certification where a venture capital fund provides services to portfolio companies:** Participating jurisdictions should ensure that when a venture capital fund uses the 1.71 percent allowance to provide services to portfolio companies, that the venture capital fund certifies annually that the services identified in the



agreement between the jurisdiction and the venture capital fund were provided.
See also SSBCI Sample Certification 6.

- **For OCSP transactions where a Tribal enterprise lends to or invests in another Tribal enterprise:** Participating jurisdictions should ensure that the lender or investor and borrower and investee certify that the transaction is in accordance with the Tribal conflict-of-interest policy. *See also* Sample Certifications 7 and 8.

In accordance with Section 3.1 of the Allocation Agreement, each participating jurisdiction shall, and shall cause any entities with which it designates or contracts to implement Approved Programs, including the jurisdiction's implementing entity and contracted entities, to comply with the SSBCI statute and Treasury's SSBCI regulations, guidance, and other requirements, as in effect from time to time. If the participating jurisdiction delegates any SSBCI responsibilities to an implementing or contracted entity, therefore, the participating jurisdiction should exercise appropriate oversight to verify compliance. One means of exercising this oversight would be to conduct periodic testing, examinations and/or reviews of the certifications to verify that the documents exist and are being maintained pursuant to the records retention requirements (discussed under Records Management Risk and Program Operations Risk).

e. Risk: Conflicts of Interest in General

Preventing conflicts of interest **in underwriting, enrollment, contracting, and lender/investor participation decisions** is important to prevent the misuse of funds as well as any appearance of impropriety. The Guidelines address certain conflicts-of-interest issues.¹¹ However, additional conflicts of interest could arise, and participating jurisdictions should carefully assess whether other conflicts of interest should be identified, mitigated, monitored, and managed.

Participating jurisdictions should consider developing the following conflict-of-interest controls:

- For all approved programs:
 - Require all individuals involved in **the participating jurisdiction's procurement process to disclose any potential or actual conflicts of interest, in accordance with the participating jurisdiction's written conflict of interest policy, and to recuse him or herself if a conflict of interest occurs.**
 - Require all individuals involved in **the transaction underwriting or approval process in an approved program to disclose any potential or actual conflicts of interest, in accordance with the participating jurisdiction's written conflict of interest policy, and to recuse him or herself if a conflict of interest occurs.**
- For equity/venture capital OCSPs:
 - **Develop a list of "SSBCI insiders" and reviewing quarterly for completeness.**

¹¹ *See* Section VII.f "Borrower Restrictions" of the Guidelines applicable to CAPs and Section VIII.f of the Guidelines applicable to loan OCSPs). *See* Section VIII.f "Equity/Venture Capital Programs: Conflict-of-Interest Standard" of the Guidelines applicable to equity/venture capital OCSPs. *See* section VIII.f "Tribal Programs: Conflict-of-Interest Standards" of the Guidelines applicable in the context of a Tribal OCSP program if a Tribal enterprise lends to or invests in another Tribal enterprise.



- Require disclosure and review of lists of current and potential equity owners (e.g., stock options or warrants recipients) on a small businesses' capitalization table and cross-checking with list of SSBCI insiders.

The above recommendations are not exhaustive. Participating jurisdictions and implementing or contracted entities, as appropriate, should consider incorporating any additional activities or practices that may serve as mitigating controls associated with this risk.

3.2. Financial Management Risks

a. Risk: Fraud, Waste, and Abuse

Preventing fraud, waste, and abuse is an important part of preventing the misuse of SSBCI funds. Participating jurisdictions, implementing entities, and contracted entities should consider the following controls:

- Requiring loans or investments to be approved by a board or committee, with meeting minutes documenting the basis for the underwriting/enrollment decision.
- Requiring contracts to be awarded pursuant to an open, competitive, and fair procurement process.
- Maintaining strict controls over access to bank accounts.
- Maintaining strict controls over access to documents, reports, records, and assets.
- Maintaining strict information technology (IT) security protocols to prevent unauthorized access to IT systems and unauthorized manipulation of data.
- Requiring staff to complete anti-fraud and ethics training.
- Requiring staff overseeing implementing and contracted entities to verify that work was performed before paying any invoice from an implementing or contracted entity.
- Maintaining segregation of duties (e.g., employees who perform cash functions should not reconcile bank account statements).
- Reconciling invoices to purchase orders and contracts.
- In the event of cash transactions, comparing cash receipt transactions to a cash receipt log and bank deposit records to minimize the possibility of theft, fraud or abuse.

The above recommendations are not exhaustive. Participating jurisdictions and implementing or contracted entities, as appropriate, should consider incorporating any additional activities or practices that may serve as mitigating controls associated with this risk.

b. Risk: Improper Use of and Accounting for SSBCI Funds, including Administrative Costs

Section 3.3 of the Allocation Agreement establishes that the participating jurisdiction shall only use SSBCI Funds, Returned Funds, or Program Income, as those terms are defined in the Allocation Agreement, to carry out approved programs and specifies certain other limitations. Section XI of the Guidelines specifies requirements applicable to administrative costs, including that the Cost Principles set out as Subpart E to 2 C.F.R. part 200 apply to administrative costs.



Administrative costs must be allowable, allocable, reasonable, and all indirect costs be in accordance with the negotiated indirect cost rate agreement with the participating jurisdiction's cognizant agency for indirect costs.

The Allocation Agreement includes Schedule A, which specifies implementing and contracted entities and the approved programs authorized by Treasury, and Section XI of the Guidelines specifies maximum percentages available to the participating jurisdiction to pay for administrative costs (for the first tranche, 5 percent of allocated funds; for the second and third tranches, 3 percent of allocated funds).

Therefore, participating jurisdictions should not expend, obligate, or transfer these funds for purposes other than carrying out the approved programs specified in Schedule A of the participating jurisdiction's Allocation Agreement, as well as the approved application.

Furthermore, Section 3.5 of the Allocation Agreement requires participating jurisdictions to comply with the standards of financial management systems including internal controls specified at 2 C.F.R. §§ 200.302 and 200.303. Treasury draws participating jurisdictions' attention to the accounting requirements set forth in 2 C.F.R. § 200.302, which would generally require jurisdictions to keep detailed records of the receipt of SSBCI funds and be able to trace the use of these funds to specific expenditures, obligations, or transfers for the purposes of carrying out an approved program.

SSBCI funds that have been disbursed to the participating jurisdiction, but not yet expended, obligated, or transferred for allowable program purposes, should be maintained as cash or cash equivalents as specified in the SSBCI FAQs. The movement of SSBCI funds in and out of the implementing entity's account must be tracked separately from the remainder of the funds in this account.

Participating jurisdictions should consider developing the following controls:

- Segregating SSBCI funds in a separate account.
- Requiring dual control for the approval of all expenditures, obligations, or transfers of SSBCI funds. For example, one individual may prepare and track these expenditures, transfers, or obligations, and a second individual may approve them. These employees should not be in each other's supervisory chain of command.
- Conducting a monthly reconciliation of all invoices, receipts, loan and investment agreements, and other documentation of SSBCI expenditures, obligations, and transfers; general ledger entries; and bank account statements. Verify that all deposits and withdrawals of SSBCI funds match general ledger entries, and that these general ledger entries are supported with substantiating documentation. To ensure segregation of duties, this reconciliation should be performed by an employee that is neither the individual responsible for cash transactions, nor in the supervisory chain of the individual responsible for cash transactions.



- Requiring that payments for services to portfolio companies charged by venture capital funds are verified for accuracy, reconciled against agreements, and do not exceed the maximum percentage permitted by the Guidelines.¹²
- Requiring an employee other than the employee recording and tracking administrative expenses to verify that each direct expense is accompanied by an invoice or receipt, that the amount shown on the invoice or receipt matches the expense recorded, and that the service or item purchased is directly related to an approved program.
- Requiring all employees to maintain time records showing the number of hours spent on approved programs each pay period.
- Requiring that purchase requests and contracts be approved only after staff verify that the purchase or contract will not cause total administrative expenses to exceed the maximum percentages as set forth in Section XI of the Guidelines.¹³

The above recommendations are not exhaustive. Participating jurisdictions and implementing or contracted entities, as appropriate, should consider incorporating any additional activities or practices that may serve as mitigating controls associated with this risk.

3.3. Reporting Risks

a. Risk: Failure to Submit Timely and Accurate Quarterly and Annual Reports

Sections IV and V of the Reporting Guidance and Section VIII of the Guidelines set forth SSBCI's reporting requirements. Failure to submit complete and timely reports is an event of default, as described in Section 5.1 of the Allocation Agreement.

In order to improve the accuracy of the underlying data reported in these reports, before enrolling a loan or investment in an approved program, the participating jurisdiction, implementing entity, or contracted entity, as appropriate, should collect relevant transaction detail for each loan or investment from the lender or investor (or directly from the small business borrower or investee, if the participating jurisdiction, implementing entity, or contracted entity makes direct loans or investments). The participating jurisdiction should verify that all required data fields outlined in the Reporting Guidance have been provided, including funds expended for SEDI-owned businesses, and small business borrower-provided estimates of job creation and retention.

Participating jurisdictions should consider developing the following controls to mitigate the potential for inaccurate reporting:

¹² In accordance with Section VIII.i "Services to Portfolio Companies" of the Guidelines, up to an annual average of 1.71 percent of the federal contribution to a venture capital funds over the life of the jurisdiction's venture capital program may be used to pay for services to portfolio companies. In addition, a participating jurisdiction may elect to use its administrative cost funds for equity/venture capital programs, including venture capital fund operating expenses, subject to the Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E.

¹³ Administrative costs are capped by statute (*see* 12 U.S.C. §§ 5702(c)(3)(C)-(D)). Specifically, for the first tranche, administrative costs are not to exceed 5 percent of allocated funds, and for the second or third tranches, administrative costs are not to exceed 3 percent of allocated funds.



- Review the accuracy of transaction enrollment forms by conducting **periodic testing**, examinations and/or reviews of an appropriately sized sample and confirming that the data on the form matches the data on the underlying loan or investment documents.
- Perform a **quality control check** in which an employee not responsible for the participating jurisdiction's reporting function compares individual transactions listed on the annual report to the transaction enrollment forms and/or underlying loan or investment documents.

The above recommendations are not exhaustive. Participating jurisdictions and implementing or contracted entities, as appropriate, should consider incorporating any additional activities or practices that may serve as mitigating controls associated with this risk.

*b. **Risk:** Failure to Document and Accurately Report Funds Expended for SEDI-Owned Businesses and Very Small Businesses (VSBs)*

Participating jurisdictions must submit data on the total amount of their SSBCI funds expended for SEDI-owned businesses and VSBs. There are two separate allocations related to SEDI-owned businesses: the first is the SEDI-owned business allocation that must be expended on SEDI-owned businesses and the second is the SEDI-owned business incentive allocation that a participating jurisdiction can access if Treasury determines the jurisdiction has demonstrated “robust support” for SEDI owned businesses. In addition, there is a VSB allocation that must be expended for businesses with fewer than 10 employees.

Section IV of the Guidelines sets out requirements applicable to the SEDI-owned business allocations:

- Section IV.a addresses the allocation that must be expended for SEDI-owned businesses, including how Treasury interprets the requirement that SSBCI funds be “expended for” SEDI-owned businesses; and
- Section IV.b specifies how the SEDI-owned business incentive allocation will be calculated.

Section V of the Guidelines sets out requirements applicable to the VSB allocation. In addition, the SSBCI FAQs relevant to Sections IV and V further clarify the requirements for these allocations. These allocations are new to SSBCI.

As specified in the Guidelines and SSBCI FAQs, participating jurisdictions are not required to establish a separate program for these allocations but must maintain records of the total amounts of its SSBCI funds expended for these businesses. Participating jurisdictions should ensure that implementing entities and contracted entities understand how to document funds expended for SEDI-owned businesses:

- For purposes of documenting funds expended for SEDI-owned businesses, if the business falls into the **SEDI-owned business categories (1) – (3) as set out in the Guidelines, documentation is through a certification from the borrower or investee.** Treasury has provided a sample certification that may be used by participating jurisdictions to obtain these certifications from a SEDI-owned business.



- For SEDI-owned business category (4) set out in the Guidelines, participating jurisdictions may reasonably rely on the business’s address from the relevant transaction application, which should be reported to Treasury in the jurisdiction’s annual report through the “business street address” data element in Table 7 of the Reporting Guidance.

See also 3.1.e “Inadequate Certifications” above.

To document expenditures for VSBs, participating jurisdictions should require that implementing entities, contracted entities, lenders, and investors, as appropriate, document that a business has fewer than 10 employees at the time of the transaction. The number of employees of a business should be reported to Treasury in the annual report through the “full time equivalent employees” data element set out in Table 7 of the Reporting Guidance.

Appendix A - Capital Program Sample Certifications

U.S. Department of the Treasury

State Small Business Credit Initiative

Capital Program Sample Certifications

July 2022¹

The State Small Business Credit Initiative (SSBCI) Capital Program Policy Guidelines (as they may be amended from time to time, the Guidelines) require certifications in various circumstances from lenders, investors, and small business borrowers and investees participating in SSBCI capital programs of participating jurisdictions.² Treasury is providing sample certifications that may be used by participating jurisdictions for their capital programs. These sample certifications are provided for illustrative purposes only and are not intended to replace or supersede any internal controls participating jurisdictions have in place. Participating jurisdictions (or, as applicable, implementing entities, contracted entities, lenders, or investors) may design their own certification forms to meet the assurance and certification requirements in the Guidelines. The table lists the sample certifications and how they apply to different types of SSBCI capital programs, which include Capital Access Programs (CAPs), loan/credit Other Credit Support Programs (OCSPs), and venture capital/equity OCSPs.

Sample Certification	CAPs	Loan/Credit OCSPs	Venture Capital/Equity OCSPs
1. Borrower/Investee Use of Proceeds and Conflict of Interest Certification	✓	✓	✓
2. Lender/Investor Use of Proceeds and Conflict of Interest Certification	✓	✓	✓
3. Sex Offender Lender/Borrower Certification (Loan/Credit Program)	✓	✓	

¹ Capital Program Sample Certifications were initially released on June 2, 2022. The document was updated on July 27, 2022 to include Sample Certifications 7 and 8.

² The record retention requirements of Section VI of the SSBCI Capital Program Reporting Guidance apply to all records pertinent to a participating jurisdiction's SSBCI capital allocation, including certifications of compliance with SSBCI requirements.

Sample Certification	CAPs	Loan/Credit OCSPs	Venture Capital/Equity OCSPs
4. Sex Offender Investor/Investee Certification (Venture Capital/Equity Program)			✓
5. Borrower/Investee Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses)³	✓	✓	✓
6. Certification Regarding Venture Capital Fund Services to Portfolio Companies			✓
7. Certification Borrower/Investee Use of Proceeds and Conflict of Interest Certification for a Tribal Enterprise Lending to or Investing in Another Tribal Enterprise⁴		✓	✓
8. Certification Lender/Investor Use of Proceeds and Conflict of Interest Certification for a Tribal Enterprise Lending to or Investing in Another Tribal Enterprise⁵		✓	✓

³ SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

⁴ This certification can be used to obtain the borrower/investee use of proceeds and conflict of interest certification for a loan or investment that is part of a Tribal government OCSP and involves a Tribal enterprise lending to or investing in another Tribal enterprise. For transactions where a Tribal enterprise is not lending to or investing in another Tribal enterprise, use Sample Certification 1.

⁵ This certification can be used to obtain the lender/investor use of proceeds and conflict of interest certification for a loan or investment that is part of a Tribal government OCSP and involves a Tribal enterprise lending to or investing in another Tribal enterprise. For transactions where a Tribal enterprise is not lending to or investing in another Tribal enterprise, use Sample Certification 2.

Sample Certification 1. Borrower/Investee Use of Proceeds and Conflict of Interest Certification

This sample certification may be used by a participating jurisdiction to obtain the applicable borrower or investee use of proceeds and conflict of interest certifications. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of borrower or investee : _____

The borrower or investee hereby certifies the following to the lender or investor:

1. The loan or investment proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).
2. The loan or investment proceeds will not be used to:
 - a. repay delinquent federal or jurisdiction income taxes unless the borrower or investee has a payment plan in place with the relevant taxing authority;
 - b. repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - c. reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
 - d. purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The borrower or investee is not:
 - a. a business engaged in speculative activities that profit from fluctuations in price, such as

wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;¹

- b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
- c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
- d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;² or
- e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.³ For purposes of Tribal SSBCI programs, "gaming activities" includes only "class II gaming" and "class III gaming" as these terms are defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

For a borrower participating in a loan/credit program:

4. The borrower is not:
 - a. an executive officer, director, or principal shareholder of the lender;
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the lender; or
 - c. a related interest or immediate family member of such an executive officer, director, or principal shareholder of the lender.

¹ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

² See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: "Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance."

³ Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for a new gas station, for example, even if the Tribal enterprise's revenues from gaming were greater than 33 percent.

For the purposes of the above conflict of interest certification, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to the lender as the relationships described in 12 C.F.R. part 215.

For an investee participating in a venture capital/equity program:

5. The investee is compliant with the venture capital program conflict of interest standards set forth in Section VIII.f of the SSBCI Capital Program Policy Guidelines. Briefly, these standards provide that no SSBCI insider, or a family member or business partner of an SSBCI insider, has a personal financial interest in the investee unless an exception specified in Section VIII.f of the SSBCI Capital Program Policy Guidelines applies. The terms “SSBCI insider,” “family member,” “business partner,” and “personal financial interest” have the meanings set forth in Section VIII.f of the SSBCI Capital Program Policy Guidelines.

If an exception applies, it must be specified here:

The undersigned is an authorized representative of the borrower or investee.

Signature: _____

Name: _____

Title: _____

Date: _____

Sample Certification 2. Lender/Investor Use of Proceeds and Conflict of Interest Certification

This sample certification may be used by a participating jurisdiction to obtain the applicable lender or investor use of proceeds and conflict of interest certifications. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of lender or investor : _____

The lender or investor hereby certifies the following to the participating jurisdiction:

1. The SSBCI-supported loan or investment is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower/investee to the lender/investor or to an affiliate of the lender/investor.
2. If the SSBCI-supported loan is a refinancing, it complies with all applicable SSBCI restrictions and requirements in Sections VII.f and VIII.f of the SSBCI Capital Program Policy Guidelines regarding refinancing and new extensions of credit, including that the SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender.
3. The lender or investor is not attempting to enroll any portion of an SBA-guaranteed loan.
4. For an SSBCI-supported venture capital or equity investment, the investment complies with the venture capital program conflict of interest standards as set forth in Section VIII.f of the SSBCI Capital Program Policy Guidelines.

The undersigned is an authorized representative of the lender or investor.

Signature: _____

Name: _____

Title: _____

Date: _____

**Sample Certification 3. Sex Offender Lender/Borrower Certification
(Loan/Credit Program)**

This sample certification may be used by a participating jurisdiction to obtain the applicable lender or borrower sex offender certification. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

Under the State Small Business Credit Initiative (SSBCI), lenders and borrowers must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of lender or borrower : _____

The lender or borrower hereby certifies the following to the participating jurisdiction:

No principal of the entity listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, “principal” means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

The undersigned is an authorized representative of the lender or borrower.

Signature: _____

Name: _____

Title: _____

Date: _____

**Sample Certification 4. Sex Offender Investor/Investee Certification
(Venture Capital/Equity Program)**

This sample certification may be used by a participating jurisdiction to obtain the applicable investor or investee sex offender certification. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

Under the State Small Business Credit Initiative (SSBCI), investors and investees must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of investor or investee : _____

The investor or investee hereby certifies the following to the participating jurisdiction:

No principal of the entity listed above, has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 50 percent or more ownership interest of any class of the partnership interests; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 50 percent or more of any class of equity interest in the entity; and if a partnership where the managing partner is a corporation, limited liability company, association, development company, or other entity, each director and each of the five most highly compensated executives or officers of the entity.

The undersigned is an authorized representative of the investor or investee.

Signature: _____

Name: _____

Title: _____

Date: _____

**Sample Certification 5. Borrower/Investee Certification Related to Business Enterprises
Owned and Controlled by Socially and Economically Disadvantaged Individuals
(SEDI-Owned Businesses)**

This sample certification may be used by a participating jurisdiction to obtain the applicable SEDI-owned business certification. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses).¹ This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The borrower or investee is not required to provide this certification. The borrower or investee may identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

Legal name of borrower or investee : _____

The borrower or investee hereby certifies to the lender or investor that it is a:

1. Business enterprise that is owned and controlled² by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
 - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

¹ SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

² The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

- gender;
 - veteran status;
 - limited English proficiency;
 - disability;
 - long-term residence in an environment isolated from the mainstream of American society;
 - membership of a federally or state-recognized Indian Tribe;
 - long-term residence in a rural community;
 - residence in a U.S. territory;
 - residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
 - membership of another underserved community.³
2. Business enterprise that is owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).⁴

Individual(s)' Address(es) in CDFI Investment Areas:

3. Business enterprise that will build, open, or operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

Business Address in CDFI Investment Area:

³ “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

⁴ Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>. For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent.

The undersigned is an authorized representative of the borrower or investee.

Signature: _____

Name: _____

Title: _____

Date: _____

**Sample Certification 6. Certification Regarding Venture Capital Fund Services to
Portfolio Companies**

This sample certification may be used by a participating jurisdiction to obtain the applicable certification regarding venture capital fund services to portfolio companies. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a participating jurisdiction has in place.

Under the State Small Business Credit Initiative (SSBCI), if the participating jurisdiction uses up to an annual average of 1.71 percent of the federal contribution to pay for services to portfolio companies over the life of the jurisdiction’s venture capital program, then the venture capital fund must annually certify that such services were provided.

Legal name of venture capital fund:

The venture capital fund hereby certifies that services to portfolio companies as identified in the agreement between the above venture capital fund and the participating jurisdiction were provided in _____ (year).

The undersigned is an authorized representative of the venture capital fund.

Signature: _____

Name: _____

Title: _____

Date: _____

Sample Certification 7. Borrower/Investee Use of Proceeds and Conflict of Interest Certification for a Tribal Enterprise Lending to or Investing in Another Tribal Enterprise

This sample certification may be used by Tribal governments to obtain the applicable borrower or investee use of proceeds and conflict of interest certifications for a loan or investment that is part of a Tribal OCSP and involves a Tribal enterprise lending to or investing in another Tribal enterprise. For Tribal government OCSP transactions where a Tribal enterprise is not lending to or investing in another Tribal enterprise, refer to Sample Certification 1. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a Tribal government has in place.

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of Tribal enterprise borrower or investee : _____

The Tribal enterprise borrower or investee hereby certifies the following to the Tribal enterprise lender or investor:

1. The loan or investment proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).
2. The loan or investment proceeds will not be used to:
 - a. repay delinquent federal or jurisdiction income taxes unless the borrower or investee has a payment plan in place with the relevant taxing authority;
 - b. repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - c. reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
 - d. purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The borrower or investee is not:
 - a. a business engaged in speculative activities that profit from fluctuations in price, such as

wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;¹

- b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
 - c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
 - d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;² or
 - e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.³ For purposes of Tribal SSBCI programs, "gaming activities" includes only "class II gaming" and "class III gaming" as these terms are defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.
4. The loan or investment is in accordance with the Tribal conflict-of-interest policy, which was provided to and reviewed by the borrower or investee.
 5. The borrower or investee understands that the lender or investor will publicly disclose this loan or investment.

¹ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

² See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: "Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance."

³ Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for a new gas station, for example, even if the Tribal enterprise's revenues from gaming were greater than 33 percent.

The undersigned is an authorized representative of the borrower or investee.

Signature: _____

Name: _____

Title: _____

Date: _____

**Sample Certification 8. Lender/Investor Use of Proceeds and Conflict of Interest
Certification for a Tribal Enterprise Lending to or Investing in Another Tribal Enterprise**

This sample certification may be used by Tribal governments to obtain the applicable lender or investor use of proceeds and conflict of interest certifications for a loan or investment that is part of a Tribal government OCSP and involves a Tribal enterprise lending to or investing in another Tribal enterprise. For Tribal government OCSP transactions where a Tribal enterprise is not lending to or investing in another Tribal enterprise, refer to Sample Certification 2. This sample certification is provided for illustrative purposes only and is not intended to replace or supersede any internal controls a Tribal government has in place.

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of Tribal enterprise lender or investor : _____

The lender or investor hereby certifies the following:

1. The SSBCI-supported loan or investment is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower/investee to the lender/investor or to an affiliate of the lender/investor.
2. If the SSBCI-supported loan is a refinancing, it complies with all applicable SSBCI restrictions and requirements in Sections VII.f and VIII.f of the SSBCI Capital Program Policy Guidelines regarding refinancing and new extensions of credit, including that the SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender.
3. The lender or investor is not attempting to enroll any portion of an SBA-guaranteed loan.
4. The loan or investment is in accordance with the Tribal conflict-of-interest policy which addresses conflicts arising from immediate family and self-dealing and has enforcement mechanisms for violations of the policy.
5. The lender or investor will publicly disclose this loan or investment.

The undersigned is an authorized representative of the lender or investor.

Signature: _____

Name: _____

Title: _____

Date: