**U.S. Department of the Treasury**

**State Small Business Credit Initiative (SSBCI)**

**Frequently Asked Questions**

**Updated July 25, 2022**

## Table of Contents


**GENERAL** .......... 4

1. What are the upcoming SSBCI Capital Program and Technical Assistance (TA) Grant Program deadlines? [3/2/2022, updated 6/22/2022] .......... 4
2. What is the process for application approval, and when will applications be reviewed? [12/15/2021, updated 6/22/2022] .......... 4
3. Removed on 3/2/2022 .......... 4
4. How may a jurisdiction amend its programs after Treasury's approval of its application? [12/15/2021, updated .......... 4
5. When will the SSBCI Technical Assistance Program guidance be published? [12/15/2021, updated 6/22/2022] .......... 5

**CAPITAL PROGRAM** .......... 5

**Section IV, SEDI-Owned Business Allocations** .......... 5

1. Must eligible jurisdictions establish separate programs for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)? [3/2/2022] ....... 5
2. How did Treasury identify Community Development Financial Institution (CDFI) Investment Areas, defined in 12 C.F.R. § 1805.201(b)(3)(ii), for purposes of determining the preliminary allocation amounts for the $1.5 billion SEDI allocation and the initial ligible amounts for the $1.0 billion SEDI incentive allocation? [3/2/2022] .......... 5
3. How does Treasury identify CDFI Investment Areas for purposes of the "expended for" requirement for the $1.5 billion SEDI allocation and for purposes of qualifying for the initial eligible amounts under the $1.0 billion SEDI incentive allocation? [3/2/2022] .......... 6
4. What point in time is used for the determination of whether the ownership and control of a business qualifies the business as a SEDI-owned business? [3/2/2022] .......... 6
5. What type of documentation is required to demonstrate that the SSBCI funds have been expended for SEDI-owned businesses? [3/2/2022] .......... 6
6. How was an eligible jurisdiction's initial eligible amount of SEDI incentive funding calculated? [3/2/2022] .......... 7
7. How is an eligible jurisdiction's SEDI Objective calculated? [3/2/2022] .......... 7
8. Why is the SEDI Objective important for eligible jurisdictions? [3/2/2022] .......... 7
9. How can an eligible jurisdiction receive some or all of its initial eligible amount of SEDI incentive funding, and how is this related to an eligible jurisdiction's SEDI Objective? [3/2/2022] .......... 8

**Section VI.d, Approving States for Participation – Tribal Governments....................................9**

1. For a group of Tribal governments that submit a joint application for SSBCI funding for a capital program to be implemented by a non-Tribal entity, can the non-Tribal entity sign and implement the Allocation Agreement on behalf of the group of Tribal governments? [6/22/2022] .... 9

**Section VIII.a, Approving State OCSPs – In General...............................................................10**

1. The SSBCI Capital Program Policy Guidelines treat OCSPs involving credit/debt differently from equity/venture capital OCSPs, in certain circumstances. How will SSBCI evaluate proposed OCSPs where the investment structure has characteristics of both types of OCSPs? [6/22/2022]................10
2. Can a jurisdiction make SSBCI-supported investments using a "side car" fund? [6/22/2022] ..........11

**Section VIII.c, Approving State OCSPs – 1:1 Financing...........................................................12**

1. As a part of the application, eligible jurisdictions must describe how their Other Credit Support Programs (OCSPs) will in fact "cause and result in" private financing. How can an eligible jurisdiction meet this requirement when it plans to work with venure capital funds? [12/15/2021]...12
2. For OCSPs in which the jurisdiction invests in venture capital funds, how is the 1:1 financing requirement measured? [12/15/2021] ..........................................................................12

**Section VIII.d, Approving State OCSPs – Lender or Investor Capital at Risk.............................12**

1. What is the difference between a "lender" and a "debt investor" in SSBCI? [12/15/2021] ..............12
2. Do lenders need to comply with the capital-at-risk requirement if they subsequently transfer the ownership or risk of the loan to another entity? [12/15/2021]....................................................14
3. If a lender hires one or more entities to provide services related to SSBCI-supported small business loans on the lender's behalf, do these entities need to comply with the capital-at-risk requirement? [12/15/2021] ...........................................................................................................14

**Section VIII.f, Approving State OCSPs – Loan/Investment Purpose Requirements and Prohibitions ...........................................................................................................14**

1. Can Tribal governments use SSBCI Capital Program funds to provide investments, loans, or other credit or equity support to Tribal enterprises? [12/15/2021] .......................................................14

**Section VIII.i, Approving State OCSPs – Additional Guidance Regarding Equity/Venture Capital Programs ..........................................................................................................15**

1. How can jurisdictions that contract with venture capital funds use the federal contribution to cover services to portfolio companies? [12/15/2021].........................................................................15
2. What is the definition of a venture capital fund? [12/15/2021]...................................................15
3. How is the "annual average" calculated for purposes of the limit of 1.71 percent of the federal contribution to a venture capital fund that is allowed to cover services to portfolio companies? [3/2/2022]...........................................................................................................15
4. In addition to the 1.71 percent allowance for services to portfolio companies, can a jurisdiction also use administrative cost funds for its equity/venture capital programs? [3/2/2022]..........................16
5. What are the benefits of the "Incubation Funding" and "Early-Stage Investment Models"? [3/2/2022]...........................................................................................................16
6. How is the Early-Stage Investment Model different than the Incubation Funding Model? [3/2/2022]17

7. Under the Early-Stage Investment Model and the Incubation Funding Model, the fund or co-investor must have a history of providing "incubator-like services." What are "incubator-like services"? [3/2/2022]....17

8. Is the fund or co-investor under the Incubation Funding or Early-Stage Investment Model, respectively, required to provide incubator-like services to startups? [3/2/2022]....18

9. What should jurisdictions consider in structuring the call option's price and duration under the Incubation Funding and Early-Stage Investment Models? [3/2/2022]....18

**Section IX.c, Other SSBCI Program Requirements – In-State and Out-of-State Loans and Investments....19**

1. Treasury requires each jurisdiction to use at least 90 percent of its SSBCI Capital Program funding for loans, investments, and other credit or equity support for small businesses headquartered in the jurisdiction. What types of transactions would qualif in this 90-percent funding category for Tribal governments? [12/15/2021]....19

**Section IX.f, Other SSBCI Program Requirements – Minimum National Customer Protection Standards....20**

1. The Capital Program Policy Guidelines state that the interest rate for each SSBCI-supported loan, at the time of obligation, may not exceed the National Credit Union Administration's (NCUA's) interest rate ceiling for loans made by federal credit unions. As of what date is the interest rate cap determined? That is, what does "at the time of obligation" mean? [3/2/2022]....20

**TECHNCAL ASSISTANCE (TA) GRANT PROGRAM**....21

**Section VIII. Award Administration Information....21**

1. How will Treasury disburse TA Grant Program funds? Will fixed amount award procedures apply to TA Grant Program awards? [7/25/2022]....21

**Note: The date listed after each question indicates the date such frequently asked question (FAQ) was added or most recently amended.**

## GENERAL

**1. What are the upcoming SSBCI Capital Program and Technical Assistance (TA) Grant Program deadlines? [3/2/2022, updated 6/22/2022]**

- September 1, 2022 at 11:59 pm Eastern Time: Deadline for Tribal governments to initiate and submit their complete SSBCI capital application. To participate in the SSBCI program, Tribal governments were required to submit a Notice of Intent (NOI) to Treasury by December 11, 2021. A list of Tribal governments that submitted an NOI by this deadline can be found at https://home.treasury.gov/system/files/136/Tribal-Government-NOI-Submissions.pdf.
- September 1, 2022 at 11:59 pm Eastern Time: Deadline for all jurisdictions to submit their TA Grant Program applications. The TA Grant Program application template can be found at https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci.

**2. What is the process for application approval, and when will applications be reviewed? [12/15/2021, updated 6/22/2022]**

An application for SSBCI Capital Program funding is not a competitive award process. Treasury will approve applications that satisfy the requirements under the SSBCI statute, Capital Program Policy Guidelines, and all other SSBCI regulations and guidance, including FAQs. To expedite processing, applicants should make every effort to ensure that their applications include all applicable supporting documentation. Treasury will review complete applications in the order in which they are received.

**3. Removed on 3/2/2022.**

**4. How may a jurisdiction amend its programs after Treasury's approval of its application? [12/15/2021, updated 6/22/2022]**

For the SSBCI Capital Program, after a jurisdiction's application is approved, the jurisdiction is permitted to submit a request to modify its programming due to a change in the condition (financial or otherwise) or operations of the jurisdiction or a desire to create new programming (modification request). Approval from Treasury in the form of a written amendment to the Allocation Agreement will be required before any such modification may be implemented. A modification request is not considered to be approved until both the jurisdiction's authorized representative and Treasury have executed an amendment to the Allocation Agreement (which will be prepared by Treasury).

**5. When will the SSBCI Technical Assistance Program guidance be published? [12/15/2021, updated 6/22/2022]**

The SSBCI TA Grant Program Guidelines for the portion of technical assistance funding that will be available directly to eligible jurisdictions were published on April 28, 2022.
The TA Grant Program Guidelines are available on the SSBCI website at https://home.treasury.gov/system/files/136/SSBCI-Technical-Assistance-Guidelines-April-2022.pdf. Treasury intends to publish FAQs for the TA Grant Program.

## CAPITAL PROGRAM

The following FAQs provide additional guidance regarding the SSBCI Capital Program Policy Guidelines published on November 10, 2021. The questions are categorized by the relevant section of the Capital Program Policy Guidelines.

### Section IV, SEDI-Owned Business Allocations

**1. Must eligible jurisdictions establish separate programs for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)? [3/2/2022]**

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

**2. How did Treasury identify Community Development Financial Institution (CDFI) Investment Areas, defined in 12 C.F.R. § 1805.201(b)(3)(ii), for purposes of determining the preliminary allocation amounts for the $1.5 billion SEDI allocation and the initial eligible amounts for the $1.0 billion SEDI incentive allocation? [3/2/2022]**

To determine the amounts in the table with preliminary allocation amounts and initial eligible amounts that Treasury published on its website,[1] Treasury generally used the CDFI Fund's list of Investment Areas that was available in November 2021.[2] With respect to American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, Treasury has determined that these territories in their entirety constitute CDFI Investment Areas.

[1] The table can be found at https://home.treasury.gov/system/files/256/Updated-Preliminary-Allocations-Table-Nov-2021.pdf.
[2] The CDFI Fund's list of investment areas can be found at https://www.cdfifund.gov/documents/geographic-reports.

3. **How does Treasury identify CDFI Investment Areas for purposes of the "expended for" requirement for the $1.5 billion SEDI allocation and for purposes of qualifying for the initial eligible amounts under the $1.0 billion SEDI incentive allocation? [3/2/2022]**

For purposes of the "expended for" requirement for the $1.5 billion SEDI allocation and for purposes of qualifying for the initial eligible amounts under the $1.0 billion SEDI incentive allocation, 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. For example, if the CDFI list is updated during calendar year 2022, the previously issued list will be used until December 31, 2022. Treasury will use the updated list beginning on January 1, 2023. 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.

For each transaction, whether the relevant location is in a CDFI Investment Area must be determined immediately before the consummation of the relevant loan, investment, or other credit or equity support-related transaction, at the same time that ownership and control is assessed. A map of CDFI Investment Areas for purposes of SSBCI is available at [https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas](https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas).

4. **What point in time is used for the determination of whether the ownership and control of a business qualifies the business as a SEDI-owned business? [3/2/2022]**

For each business that receives a loan, investment, or other credit or equity support under the SSBCI, the determination of whether a business is a SEDI-owned business must be based on the ownership and control of the business immediately before the consummation of such transaction.

5. **What type of documentation is required to demonstrate that the SSBCI funds have been expended for SEDI-owned businesses? [3/2/2022]**

SSBCI funds count toward fulfilling the "expended for" requirement for the $1.5 billion SEDI allocation and qualifying for funding 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.

Certification is required with regard to groups (1) to (3). In the Capital Program Policy Guidelines, Treasury stated that group (3) is intended to cover a business taking out a loan or investment to build a location in a CDFI Investment Area in the future and that a jurisdiction may reasonably identify businesses located in CDFI Investment Areas in group (4) based on businesses' addresses from the relevant loan, investment, and credit or equity support applications without additional certification. For group (3), Treasury now expands that group to include businesses that take out a loan or make an investment to open or operate a location in a CDFI Investment Area in the future.

For groups (1) to (3), eligible jurisdictions must provide businesses with a form of certification intended to determine the SEDI-owned business status. The certification should be signed by an authorized representative of the business. Businesses must be permitted to identify all the categories in groups (1) to (3) that apply, including all of the subcategories in group (1) that apply. For groups (2) and (3), the certification form must include the address(es) of the residence(s) or location(s) located in CDFI Investment Areas. Treasury will provide a sample certification form that jurisdictions may use for this purpose. For group (1), Treasury will not require verification or documentation other than the self-certification.

**6. How was an eligible jurisdiction's initial eligible amount of SEDI incentive funding calculated? [3/2/2022]**

As described in Section IV.b of the Capital Program Policy Guidelines, the total of all initial eligible amounts is $800 million. Of this amount, $59 million is available to Tribal governments, in proportion to Tribal governments' main capital allocation as a percentage of the main capital allocation for states, the District of Columbia, territories, and Tribal governments. Each Tribal government's initial eligible amount was calculated as described in the Allocation to Tribal Governments, available at https://home.treasury.gov/system/files/256/Updated-Tribal-Methodology-document-Nov-2021.pdf.

For other eligible jurisdictions, each jurisdiction's initial eligible amount was calculated as the remaining $741 million multiplied by the sum of the jurisdiction's population residing in CDFI Investment Areas[3] divided by the total population residing in CDFI Investment Areas in all eligible jurisdictions, excluding Tribal governments. These initial eligible amounts are available at https://home.treasury.gov/system/files/256/Updated-Preliminary-Allocations-Table-Nov-2021.pdf.

**7. How is an eligible jurisdiction's SEDI Objective calculated? [3/2/2022]**

For states, the District of Columbia, and territories, the SEDI Objective equals the percentage of the population of the eligible jurisdiction that are residents in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), divided by the total population of the jurisdiction. These jurisdictions' SEDI Objectives are posted on Treasury's website at https://home.treasury.gov/system/files/256/SEDI-Objectives-03-02-22.pdf. For Tribal governments, the SEDI Objective is 100 percent.

**8. Why is the SEDI Objective important for eligible jurisdictions? [3/2/2022]**

The SEDI Objective establishes a target percentage of the capital allocations under 12 U.S.C. § 5702 that an eligible jurisdiction should strive to deploy to meet the needs of SEDI-owned businesses in the jurisdiction. It provides a benchmark for achieving robust support for deploying capital to meet the needs of SEDI-owned businesses.

[3] For an explanation of how Treasury identifies CDFI Investment Areas, see FAQ 2 above in this section.

**9. How can an eligible jurisdiction receive some or all of its initial eligible amount of SEDI incentive funding, and how is this related to an eligible jurisdiction's SEDI Objective? [3/2/2022]**

As described in Section IV.b of the Capital Program Policy Guidelines, for an eligible jurisdiction to receive part or all of its initial eligible amount of SEDI incentive funding for each of the second and third tranches of main capital, the jurisdiction must certify to Treasury that it has deployed 80 percent of its prior tranche of SSBCI funds. Treasury will then determine the eligible jurisdiction's success in meeting its SEDI Objective with a multi-step calculation.

First, Treasury will calculate the percentage of funds the jurisdiction has expended (not transferred or obligated) for SEDI-owned businesses since the jurisdiction's previous disbursement of capital. We refer to this percentage as the "percentage of funds expended for SEDI-owned businesses."

Treasury will then measure the percentage of the jurisdiction's SEDI Objective that the jurisdiction has achieved. That calculation is as follows:

$\boldsymbol{SEDI\ Objective\ Achieved} =$

$$\frac{(Percentage\ of\ funds\ expended\ for\ SEDI\text{-}owned\ businesses)}{(SEDI\ Objective\ )}$$

Finally, Treasury will use the calculated SEDI Objective Achieved to calculate the jurisdiction's "SEDI Incentive Disbursement Amount" as follows:

$\boldsymbol{SEDI\ Incentive\ Disbursement\ Amount} =$

$$SEDI\ Objective\ Achieved * \left(\frac{initial\ eligible\ amount}{2}\right)$$

Following is an example of how the second tranche of an eligible jurisdiction's SEDI Incentive Disbursement Amount would be calculated. Assume the eligible jurisdiction has an initial eligible amount of SEDI incentive funding of $22 million and a SEDI Objective of 40 percent. At the time of the second disbursement, $11 million of the initial eligible amount (half of $22 million) is available if the jurisdiction meets its target by expending 40 percent of its funds for SEDI-owned businesses. Assume the jurisdiction expended $10 million of its first tranche of its total capital allocation, of which $3 million (30 percent) was expended for SEDI-owned businesses. Thus, the SEDI Objective Achieved is equal to 30 percent divided by 40 percent, or 75 percent. The jurisdiction would then receive a SEDI Incentive Disbursement Amount of $8.25 million (75 percent of $11,000,000).

Combining all these steps, the calculation is as follows:

$$\boldsymbol{SEDI\ Incentive\ Disbursement\ Amount} =$$

$$\left(\frac{30\%}{40\%}\right) * \left(\frac{\$22{,}000{,}000.00}{2}\right) = .75 * \$11{,}000{,}000 = \mathbf{\$8{,}250{,}000}$$

**Section VI.d, Approving States for Participation – Tribal Governments**

1. **For a group of Tribal governments that submit a joint application for SSBCI funding for a capital program to be implemented by a non-Tribal entity, can the non-Tribal entity sign and implement the Allocation Agreement on behalf of the group of Tribal governments? [6/22/2022]**

The SSBCI statute provides that a "State" may participate in the SSBCI. The statute defines "State" to include "a Tribal government, or a group of Tribal governments that jointly apply for an allocation" (12 U.S.C. § 5701(10)) and permits Tribal governments to apply jointly (12 U.S.C. § 5702(b)(2)(C)). Section VI.d of the Capital Program Policy Guidelines provides general instructions on how Tribal governments may apply jointly.

As described in the Guidelines, Tribal governments may apply jointly through an organization or other Tribal government representative if each Tribal government applying jointly authorizes the organization or other Tribal government representative to represent the Tribal government for purposes of SSBCI. The Guidelines and Section 5.1 of the capital program application provide additional information on requirements for joint applications.

If a joint application is approved, a non-Tribal entity that has authority to act on behalf of each of the Tribal governments that are jointly applying may sign an Allocation Agreement on behalf of that group of Tribal governments. However, consistent with the statutory requirement that the participating entity is the "group of Tribal governments" – and not a third party –the group of Tribal governments is considered the "Participating Jurisdiction" as that term is used in the Allocation Agreement.

Article V of the Allocation Agreement sets out Treasury's remedies for events of default under the Allocation Agreement. Section 5.6 of the Allocation Agreement and Section XII of the Guidelines describe the process for un-enrollment of transactions for noncompliant use of funds. Treasury encourages Tribal governments to consider these potential remedies and circumstances as they establish terms under agreements with a non-Tribal entity responsible for implementing an SSBCI capital program. Tribal governments may wish to clearly specify in their agreements with the non-Tribal entity what happens in the event of any of the situations contemplated by Article V of the Allocation Agreement or Section XII of the Guidelines.

If Tribal governments apply jointly using a structure other than designating a non-Tribal entity as their joint implementing entity, Treasury will evaluate those applications based on their structure and may issue additional guidance. Tribal governments considering other structures are encouraged to contact Treasury before submitting an application to discuss their proposed models.

**Section VIII.a, Approving State OCSPs – In General**

1. **The SSBCI Capital Program Policy Guidelines treat OCSPs involving credit/debt differently from equity/venture capital OCSPs, in certain circumstances. How will SSBCI evaluate proposed OCSPs where the investment structure has characteristics of both types of OCSPs? [6/22/2022]**

Following is a description of how Treasury will apply the SSBCI Capital Program Policy Guidelines to two types of investments that have characteristics of OCSPs involving credit/debt and equity/venture capital OCSPs. If jurisdictions propose programs with other characteristics, Treasury intends to evaluate those programs based on their structure and may provide further guidance.

OCSPs Using Certain Convertible Debt Instruments

Certain proposed SSBCI programs may seek to use SSBCI funds to make investments in businesses using convertible debt instruments that automatically convert into the issuer's capital stock upon the occurrence of the issuer's next priced financing. Consistent with footnote 34 of the Capital Program Policy Guidelines, Treasury intends to evaluate programs that use these instruments under the equity/venture capital OCSP standards in the Guidelines. For reporting purposes, these investments should be treated as equity instruments (see the "convertible debt" and "convertible note" data elements in Table 9 of the SSBCI Capital Program Reporting Guidance).

Debt/Equity Hybrid OCSPs

Certain proposed SSBCI programs may seek to use SSBCI funds to provide debt financing to a small business or venture capital fund in a manner that satisfies two characteristics:

- The SSBCI-supported investment is made by a jurisdiction or jurisdiction-affiliated entity, which is an entity governed by the jurisdiction, and occurs alongside new private capital in the form of an equity investment.
- The SSBCI-supported investment is structured as a debt instrument that has equity-like characteristics (e.g., profit sharing, interest contingent on revenues).

Treasury refers to programs that meet all of the above characteristics as "debt/equity hybrid OCSPs." Treasury intends to evaluate these programs under the equity/venture capital OCSP standards in the Capital Program Policy Guidelines, with the exception of the standard for lender or investor capital at risk (Section VIII.d of the Guidelines). The structure of debt/equity hybrid OCSPs is meaningfully different from the traditional case where an SSBCI investment takes the form of an equity investment and therefore lacks the protections generally associated with a debt instrument, such as rights to scheduled payments and seniority in cash flow rights. Thus, with respect to the lender or investor capital at risk requirement, the standard applicable to debt investors that originate loans will be applicable to a debt/equity hybrid OCSP. For debt/equity hybrid OCSPs, the 1:1 financing requirement described in the Capital Program Policy Guidelines is met at the transaction level if the loan is made directly to a small business, or is met at the fund level if the loan is made to a venture capital fund.

For reporting purposes, debt/equity hybrid OCSPs should be treated as equity programs and should be classified as "Hybrid – other support programs" in Table 3 of the Capital Program Reporting Guidance.

**2. Can a jurisdiction make SSBCI-supported investments using a "side car" fund? [6/22/2022]**

A side car fund is a fund organized to allow a jurisdiction to participate in the investments of a venture capital fund (the "main fund"), while enabling the jurisdiction not to participate in certain investments of the main fund that may be prohibited by applicable law or SSBCI program requirements. A side car fund may qualify for SSBCI-supported investment under the Capital Program Policy Guidelines to the same extent as an investment in a main fund if it satisfies the conditions described below, which are intended to ensure that the structure of the investment in the side car is consistent with the main fund in material respects relevant to the SSBCI program requirements.

The side car fund terms should be governed by a written agreement between the SSBCI investor and the general partner of the main fund. The investment must be on substantially similar economic and governance terms as the investments by limited partners in the main fund, except for deviations that are required to address SSBCI program requirements or other legal requirements (but not to achieve a more advantageous economic arrangement for the general partner, a limited partner, or the SSBCI investor).

Except for deviations required to address SSBCI program requirements or other legal requirements, the main fund and the side car fund must jointly participate in each portfolio company investment and on substantially similar terms in proportion to their respective amounts of committed capital. The side car fund must not sell distribute, or otherwise transfer portfolio company securities unless the main fund is engaging or has engaged in a proportionate sale, distribution, or transfer of corresponding securities on substantially similar terms.

If a side car fund complies with these terms, the capital commitments made by the investors in the side car should be treated the same as if they were made in the main fund, and the OCSP 1:1 financing ratio described in Section VIII.c of the Capital Program Policy Guidelines will be calculated as if the commitments were made in the main fund.

**<u>Section VIII.c, Approving State OCSPs – 1:1 Financing</u>**

1. **As a part of the application, eligible jurisdictions must describe how their Other Credit Support Programs (OCSPs) will in fact "cause and result in" private financing. How can an eligible jurisdiction meet this requirement when it plans to work with venture capital funds? [12/15/2021]**

As required by 12 U.S.C. § 5705(c)(1), each OCSP must "demonstrate that, at a minimum, $1 of public investment by the [jurisdiction's] program will cause and result in $1 of new private credit." Each eligible jurisdiction must describe how their OCSPs will "cause and result in" private financing in the SSBCI Capital Program application. For an eligible jurisdiction that plans to work with a venture capital fund, the jurisdiction might, for example, specify that the OCSP meets the requirement because the jurisdiction's participation in the fund serves as an anchor investment and thus sends a strong signal regarding the merits and risk profile of the fund that encourages other investors to invest in the fund. The jurisdiction might also specify, for instance, that the OCSP has a policy that any contract with a venture capital fund will ensure that the SSBCI investment is catalytic to private financing, based on the fund's age, size, or experience. An example of a situation where the SSBCI investment might not be catalytic is if it occurs after the venture capital fund's initial close; if this is the case, then the jurisdiction's explanation for "cause and result" in the application may address this circumstance.

2. **For OCSPs in which the jurisdiction invests in venture capital funds, how is the 1:1 financing requirement measured? [12/15/2021]**

The OCSP 1:1 financing requirement must be met at the venture capital fund level. Specifically, private investment in the specific fund must be equal to or greater than the SSBCI investment in that fund. The private investment should constitute "private financing," as defined in the Capital Program Policy Guidelines in Section VIII.c on 1:1 financing.

**<u>Section VIII.d, Approving State OCSPs – Lender or Investor Capital at Risk</u>**

1. **What is the difference between a "lender" and a "debt investor" in SSBCI? [12/15/2021]**

An entity can be a lender or debt investor depending on whether the risk of the loan transactions is borne on a transaction-by-transaction basis or in a pooled manner.

Lenders are entities that bear the risk of loan transactions on a transaction-by-transaction basis. Under SSBCI capital-at-risk guidelines, lenders must bear 20 percent or more of the risk of loss in any loan transaction and must retain at least 5 percent of the risk of loss of the transaction if they transfer the ownership or risk of the lending transactions.

Examples of lenders include, but are not limited to:

- An entity, such as a financial institution, that originates a loan that is:
  - supported by an SSBCI guarantee fund,

- supported by SSBCI participation in the loan, or
- supported by SSBCI collateral support or other credit enhancement,

  for which the entity bears 20 percent or more of the risk of loss of that transaction. For instance, consider a financial institution that makes a $100 loan, of which the SSBCI program purchases a $20 participation with no seniority rights. After several years, the loan defaults, and total losses on the loan are $30, after accounting for amounts already repaid and any recoveries. In this scenario, the SSBCI funds would absorb $6 in losses, and the financial institution would absorb $24. This financial institution would be a lender under SSBCI capital-at-risk guidelines because the financial institution bore at least 20 percent of the risk of loss. As another example, consider a financial institution that makes a $100 loan, of which the SSBCI program purchases a $20 participation that is subordinate to the financial institution's interest. After several years, the loan defaults, and total losses on the loan are $30. In this case, the SSBCI funds would absorb the first $20 in losses, because it is subordinate, and the lender would absorb the remaining $10. This financial institution would also be a lender under SSBCI capital-at-risk guidelines because the financial institution bore at least 20 percent of the risk of loss; if the loan was a total loss (i.e., a loss of $100), then the financial institution would have absorbed more than 20 percent ($20) in losses.

- An entity that pools capital from the SSBCI investor and capital from private investors (e.g., loan funds) to make loans, but only if the pooling of capital does not result in the pooling of the risk of the loan transactions. Rather, the contract governing payments to the SSBCI investor and private investors must specify that loss is borne on a transaction-by-transaction basis. For instance, consider a venture debt fund that makes 12 loans of $100 each. Rather than specifying terms for payment to the fund's private investors based on the pool of losses, the contract specifies that each private investor bears the private investor's pro rata share of the 20 percent of the loss for each of the 12 loans and prohibits compensation for losses from future repayments. Assume that there are losses on 3 of the 12 loans, with losses of $100, $50, and $80, respectively. In this case, each private investor would bear its pro rata share of 20 percent of the first loss (i.e., $20), 20 percent of the second loss (i.e., $10), and 20 percent of the third loss (i.e., $16).

In contrast, debt investors are entities that bear the risk of loan transactions in a pooled manner. Under the SSBCI capital-at-risk guidelines, for debt investors that originate loans, the capital from private investors must be *pari passu* with, or junior to, the SSBCI capital in cash flow rights up to the repayment of the SSBCI investment. For debt investors that do not originate loans, the capital from private investors in the same risk layer as the SSBCI capital must be *pari passu* with, or junior to, the SSBCI investment in cash flow rights.

One example of a debt investor that originates loans is a loan fund originating loans, where the SSBCI investor and private investors participate in the fund and bear the risk of loan transactions on a pooled basis rather than on a transaction-by-transaction basis. In this case, the loan fund may distribute cash flow to its investors in a manner that is not based on losses related to each individual loan.

One example of a debt investor that does not originate loans is a special purpose vehicle (SPV) that securitizes loans obtained from an originating lender, where the SPV packages the loans into asset-backed securities in which an SSBCI investor and private investors invest. In this scenario, the investors bear the risk of loan transactions on a pooled basis, not based on losses related to individual loans held by the SPV.

**2. Do lenders need to comply with the capital-at-risk requirement if they subsequently transfer the ownership or risk of the loan to another entity? [12/15/2021]**

Lenders may transfer the ownership or risk of a loan to another entity, such as a debt investor. However, lenders must bear 20 percent or more of the risk of loss in each loan at origination and retain at least 5 percent of the risk of loss of each loan after any transfer. If a lender transfers the ownership or risk of a loan, the subsequent entity must comply with the capital-at-risk requirement.

For example, consider a community development financial institution (CDFI) that makes 120 loans and sells the loans to a special purpose vehicle (SPV) while maintaining 5 percent of the risk of loss of each of the 120 loans. The SPV issues two tranches of interests: a junior tranche held by both an SSBCI investor and private-capital investors in equal amounts and on a *pari passu* basis within this tranche, and a senior tranche held only by private-capital investors. In this example, both the CDFI and the SPV are complying with the capital-at-risk requirement.

**3. If a lender hires one or more entities to provide services related to SSBCI-supported small business loans on the lender's behalf, do these entities need to comply with the capital-at-risk requirement? [12/15/2021]**

A lender may hire or contract with one or more entities, such as a community development financial institution (CDFI), to provide services, such as assisting a small business in applying for SSBCI-supported loans or servicing such loans, on behalf of the lender. In this scenario, if the hired entity acts on the lender's behalf and the lender approves the loan and abides by the capital-at-risk requirement, then the hired entity is not considered a lender for purposes of this capital-at-risk requirement. However, if an entity (e.g., a CDFI) is acting separately and making and approving loans, then it must abide by the capital-at-risk requirements.

## Section VIII.f, Approving State OCSPs – Loan/Investment Purpose Requirements and Prohibitions

**1. Can Tribal governments use SSBCI Capital Program funds to provide investments, loans, or other credit or equity support to Tribal enterprises? [12/15/2021]**

For purposes of the SSBCI, a "Tribal enterprise" is an entity: (1) that is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or (2) that is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns.

Tribal enterprises may use SSBCI Capital Program funds to provide investments, loans, or other credit or equity support to other Tribal enterprises if these transactions comply with the SSBCI statute, the Capital Program Policy Guidelines, all other SSBCI regulations and guidance, and the Tribe's own conflict of interest policy.

**Section VIII.i, Approving State OCSPs – Additional Guidance Regarding Equity/Venture Capital Programs**

1. **How can jurisdictions that contract with venture capital funds use the federal contribution to cover services to portfolio companies? [12/15/2021]**

Venture capital funds offer a variety of services to their portfolio companies (i.e., the potential SSBCI investees). These services can include, for example, financial management, operational guidance, IT consulting, transaction consulting, and connecting portfolio companies to potential customers, investors, board members, and officers. These are services that the portfolio companies need to grow their businesses and vary depending on the portfolio company's stage in the venture capital ecosystem. As these services to portfolio companies are a type of equity support, SSBCI funds, out of the federal contribution, may be used to pay for such support up to an annual average of 1.71 percent of the federal contribution to a venture capital fund over the life of the jurisdiction's venture capital program.

In the agreement between a jurisdiction and a venture capital fund, the fund must be required to identify the services to be provided to portfolio companies and annually certify that these services were provided. The agreement between the fund and the portfolio companies should include disclosure of these services offered by the fund manager. Consistent with industry standards on payments of fees to cover these services to portfolio companies, the fund should reimburse the jurisdiction for payments of such services covered by SSBCI funds before returns on investment are paid to the general or limited partners.

2. **What is the definition of a venture capital fund? [12/15/2021]**

For purposes of the SSBCI program, a venture capital fund is an entity that meets the venture capital fund definition in 17 C.F.R. § 275.203(l)-1.

3. **How is the "annual average" calculated for purposes of the limit of 1.71 percent of the federal contribution to a venture capital fund that is allowed to cover services to portfolio companies? [3/2/2022]**

Funds from the federal contribution may be used to pay for such support services up to an annual average of 1.71 percent of the federal contribution to a venture capital fund over the life of the jurisdiction's venture capital program (referred to as the "1.71 percent allowance"). The "annual average" is calculated based on the average amount of the federal contribution that is used to cover services to portfolio companies over each year of the life of the venture capital fund, up to a maximum of ten years. Because the 1.71 percent allowance is an average, the fund may in some years use an amount of the federal contribution greater than 1.71 percent to cover services to portfolio companies, so long as in other years the amount used is less than 1.71 percent. Because the annual average is calculated over a period of up to ten years, the maximum expenditure on services to portfolio companies is 17.1 percent of the federal contribution (i.e., 1.71 percent x 10 years). If, however, a fund's life is less than ten years, the annual average for such fund must be calculated based only on the life of that fund. For example, if the life of a fund is only five years, the maximum allowance for such fund is 8.55 percent (i.e., 1.71 percent x 5 years). The percent of the federal contribution that may be used to cover the services to portfolio companies must be set forth in the contract between the SSBCI investor (i.e., the eligible jurisdiction or its contracted entity) and the venture capital fund. The contractual terms should not allow the expenditure to exceed the maximum allowance calculated based on the life of the venture capital fund.

**4. In addition to the 1.71 percent allowance for services to portfolio companies, can a jurisdiction also use administrative cost funds for its equity/venture capital programs? [3/2/2022]**

As described in Section XI of the Capital Program Policy Guidelines, administrative costs for the main capital allocation are capped at 5 percent of SSBCI funds for the first tranche and 3 percent for each of the second and third tranches. The 1.71 percent allowance applies to the federal contribution, not the administrative cost funds. Jurisdictions may use their 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.

**5. What are the benefits of the "Incubation Funding" and "Early-Stage Investment Models"? [3/2/2022]**

Under these models described in Section VIII.i of the Capital Program Policy Guidelines, jurisdictions may choose to offer private investors a call option. The call option allows private investors to buy the SSBCI shares or other securities, such as convertible notes, at cost or at a predetermined higher-than-cost multiple. This is possible because under the capital-at-risk standard for these models, the private capital must be *pari passu* with, or junior to, the SSBCI investment in cash flow rights only up to the repayment of the SSBCI investment. A call option that offers an at-cost buyout does so by offering a 1.0X call option for the private investor to acquire the SSBCI shares or other securities at a price per share equal to the amount of the investment. A jurisdiction may also benefit from investment gains by offering a higher-than-cost option (such as 1.5X or 2X).

Jurisdictions can use a call option to incentivize private investors that have experience and a track record in early-stage investing to provide capital alongside jurisdictions to reach underserved entrepreneurs or undertake high-risk opportunities. Furthermore, employing these models can help increase the provision of incubator-like services to early-stage businesses in that jurisdiction to accelerate their growth and decrease their likelihood of failure, fostering job creation and economic development in the jurisdiction.

6. **How is the Early-Stage Investment Model different than the Incubation Funding Model? [3/2/2022]**

These models are described in Section VIII.i of the Capital Program Policy Guidelines.

The Incubation Funding Model involves an investment program in which the jurisdiction contributes SSBCI capital to a fund. Any fund that provides investment capital to portfolio companies and meets all applicable SSBCI requirements (including the investment size limit, requirement to directly or indirectly provide incubator-like services to all companies in the fund's portfolio, and the necessary experience and track record in early-stage investing) can qualify under the Incubation Funding Model. Examples of funds that may qualify include seed funds, venture capital funds, accelerators acting as funds, university technology investor office funds, impact investors, or angel structures raising fund-like structures such as angel groups, syndicates, or super-angel funds.

In contrast, the Early-Stage Investment Model involves a direct equity investment program where a jurisdiction's SSBCI funds are co-invested alongside private capital in each qualifying investment.

Under either model, the jurisdiction may offer a call option to the fund (in the Incubation Funding Model) or the private investors (in the Early-Stage Investment Model) to buy the SSBCI shares or other securities, such as convertible notes, at a predetermined price or multiple (greater than or equal to 1).

7. **Under the Early-Stage Investment Model and the Incubation Funding Model, the fund or co-investor must have a history of providing "incubator-like services." What are "incubator-like services"? [3/2/2022]**

Incubator-like services are services that are provided to entrepreneurs in the very early stages of business development and are not typical services provided to portfolio companies by most venture capital funds. For example, incubator-like services might include a package of activities such as providing workspaces, networks, and feedback forums, potentially in shared spaces with other entrepreneurs; offering business training programs on accounting, financial statements, use of option pools, and financial projections; giving pre-product feedback on pitch construction, platform choice, engineering, and revenue model types; and providing training to early-stage companies on business formation and employment laws. Incubator-like services may include program-based services typically offered by accelerator programs that are fixed-term or cohort-based to capitalize on economies of scale and build entrepreneurial ecosystems. Incubator-like services may be provided by any entity qualified to perform such services and must be provided consistent with all applicable SSBCI requirements to satisfy the requirement under the Incubation Funding Model or Early-Stage Investment Model.

**8. Is the fund or co-investor under the Incubation Funding or Early-Stage Investment Model, respectively, required to provide incubator-like services to startups? [3/2/2022]**

A venture capital fund (in the Incubation Fund Model) or a co-investor (in the Early-Stage Investor Model) must provide incubator-like services to investee companies. However, these services may be provided either directly, by the venture capital fund or co-investor, or indirectly, through an incubator or another organization. Under the Incubation Funding Model, the available incubator-like services must be equally accessible to all portfolio companies.

**9. What should jurisdictions consider in structuring the call option's price and duration under the Incubation Funding and Early-Stage Investment Models? [3/2/2022]**

Under the Incubation Funding and Early-Stage Investment Models, the purpose of the call option to buy the SSBCI shares or other securities, such as convertible notes, is to incentivize private investors that are considering contributing capital to a fund with SSBCI capital, or to co-invest with SSBCI capital, to bear the economic risk of investing in early-stage companies, including start-ups that may need a longer horizon for realizing market or revenue opportunities. Treasury encourages jurisdictions to consider how to use the option exercise price and duration (i.e., the time period during which the option may be exercised) to effectively create such incentives.

For example, an option duration of three to five years is, in many cases, sufficient to create an incentive for these private investors because the portfolio companies that are most likely to achieve success will have likely raised follow-on rounds of capital at higher valuations by that time, thereby providing the necessary information for the private investors to act, if desired, on the option. However, jurisdictions may also want to consider the sector focus of the fund in determining the option duration, as some sectors require more time for market realization.

Treasury also encourages jurisdictions to consider the incentives created when determining the call option's exercise price. Jurisdictions are not limited to offering the call option to buy the SSBCI shares or other securities, such as convertible notes, at cost. A call option that offers an at-cost buyout does so by offering a 1.0X call option, where 1.0X means that the price for exercising the option (i.e., purchasing the SSBCI shares) is 1.0 times the amount of the initial SSBCI investment. A jurisdiction may want to set a call option exercise price that would imply a return for the jurisdiction if the option is exercised; for example, a 1.5X call option or even higher option exercise price allows the jurisdiction to partake in the upside gains from the investment.

The various ways in which a jurisdiction can choose to structure the call option exercise price and duration can be combined to reflect the jurisdiction's sustainability objectives, the willingness of private investors to take risk, and the expected trigger events. For example, a jurisdiction could offer a 1.0X call option on the jurisdiction's SSBCI investment if the call option is exercised within three years, after which the option increases to 1.5X, and to 2.0X after the fifth anniversary.

**<u>Section IX.c, Other SSBCI Program Requirements – In-State and Out-of-State Loans and Investments</u>**

1. **Treasury requires each jurisdiction to use at least 90 percent of its SSBCI Capital Program funding for loans, investments, and other credit or equity support for small businesses headquartered in the jurisdiction. What types of transactions would qualify in this 90-percent funding category for Tribal governments? [12/15/2021]**

For Tribal governments, the following types of transactions qualify for purposes of this 90 percent requirement (i.e., qualify as "in-jurisdiction transactions"):

- Transactions with businesses on Tribal lands, which include lands defined in 18 U.S.C. § 1151; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*); and any land owned by a Tribal government in trust, fee, or restricted fee status.
- Transactions with businesses in states of the United States where the Tribe is physically located or within which the Tribe exercises jurisdiction.
- Transactions with Tribal enterprise-operated businesses, businesses owned by Tribal members, and businesses in states of the United States in which Tribal members reside. For example, a Tribe that is headquartered in Arizona may have most of its members in a town on the border of Nevada and Arizona. Because the Tribe exercises jurisdiction over its members in both states, it may invest in both states.

Tribal SSBCI program transactions that do not fall into the above categories do not qualify as in-jurisdiction transactions and thus are "out-of-jurisdiction transactions." Up to 10 percent of a Tribal government's SSBCI funding can be used for out-of-jurisdiction transactions, and for each out-of-jurisdiction transaction, a Tribal government must reasonably explain how the transaction benefits the Tribe's economy. For example, the Tribal government may explain that the out-of-jurisdiction transaction may create or increase demand for products and services of businesses within the Tribe's jurisdiction.

Additionally, regardless of whether the Tribal government's OCSP will involve transactions in or out of the 90-percent funding category, the Tribal government should describe, as part of its SSBCI application, the expected benefits to the Tribe, Tribal businesses, and Tribal members from the OCSP. In the description, the Tribal government should focus on, but not limit its discussion to, the projected number and amount of SSBCI loans or investments closed through the OCSP; the number, types, and quality of jobs created; projected increases in tax revenues resulting through the OCSP; long-term economic benefits of the OCSP's investments; and other expected benefits from the economic development objectives of the Tribal government. In accordance with 12 U.S.C. § 5705(d)(1), in determining whether an OCSP is eligible for SSBCI, Treasury must consider this information. In recognition of the differential tax status of Tribal enterprises and member businesses, a Tribe may describe how the tax revenue category is applicable or inapplicable for its respective jurisdiction. See Section VIII.g, Approving State OCSPs – Considerations for Approving OCSPs.

## Section IX.f, Other SSBCI Program Requirements – Minimum National Customer Protection Standards

1. **The Capital Program Policy Guidelines state that the interest rate for each SSBCI-supported loan, at the time of obligation, may not exceed the National Credit Union Administration's (NCUA's) interest rate ceiling for loans made by federal credit unions. As of what date is the interest rate cap determined? That is, what does "at the time of obligation" mean? [3/2/2022]**

"At the time of obligation" means at the time the loan is made. For example, if the SSBCI-supported loan has a variable interest rate, the interest rate at any point during the life of the loan cannot exceed the NCUA's interest rate ceiling in effect at the time the loan was made. Any change in the NCUA's interest rate ceiling after a SSBCI-supported loan is made does not impact the loan. That is, the interest rate on any loan made before a change in the NCUA's interest rate ceiling would continue to be capped by the rate ceiling at the time the loan was made, as opposed to being capped by the new rate ceiling. The interest rate on any loan made after the change, however, would be capped by the new rate ceiling rather than the prior rate ceiling.

## TECHNCAL ASSISTANCE (TA) GRANT PROGRAM

### Section VIII. Award Administration Information

**1. How will Treasury disburse TA Grant Program funds? Will fixed amount award procedures apply to TA Grant Program awards? [7/25/2022]**

Funds for TA Grant Program awards that are $250,000 or less will be disbursed in full at the time of award issuance. Fixed amount award procedures will apply to awards of $250,000 or less. Fixed amount awards are defined at 2 C.F.R. § 200.1 and are designed to reduce some of the administrative burden applicable to federal awards while providing for accountability in the form of performance and results. TA Grant Program recipients with awards of $250,000 or less will not be required to submit a budget and narrative justification with their application or request any post-award budget amendments. TA Grant Program recipients still will be required to submit all other application documents, including a TA plan describing performance goals and benchmarks, and all required reports.

Funds for TA Grant Program awards that exceed $250,000 will be disbursed in thirds (33 percent, 33 percent, and 34 percent). Fixed amount award procedures will not apply to awards that exceed $250,000.