

U.S. Department of the Treasury
State Small Business Credit Initiative
Capital Program Sample Certifications

June 2022

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.¹ 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 Certification² | ✓ | ✓ | ✓ |
| 2. Lender/Investor Use of Proceeds and Conflict of Interest Certification³ | ✓ | ✓ | ✓ |
| 3. Sex Offender Lender/Borrower Certification (Loan/Credit Program) | ✓ | ✓ | |

¹ 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.

² SSBCI intends to publish a separate sample certification for loans or investments that are part of a Tribal OCSP and involve a Tribal enterprise lending to or investing in another Tribal enterprise.

³ SSBCI intends to publish a separate sample certification for loans or investments that are part of a Tribal OCSP and involve a Tribal enterprise lending to or investing in another Tribal enterprise.

| 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) ⁴ | ✓ | ✓ | ✓ |
| 6. Certification Regarding Venture Capital Fund Services to Portfolio Companies | | | ✓ |

⁴ 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).

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.

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.

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 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: _____