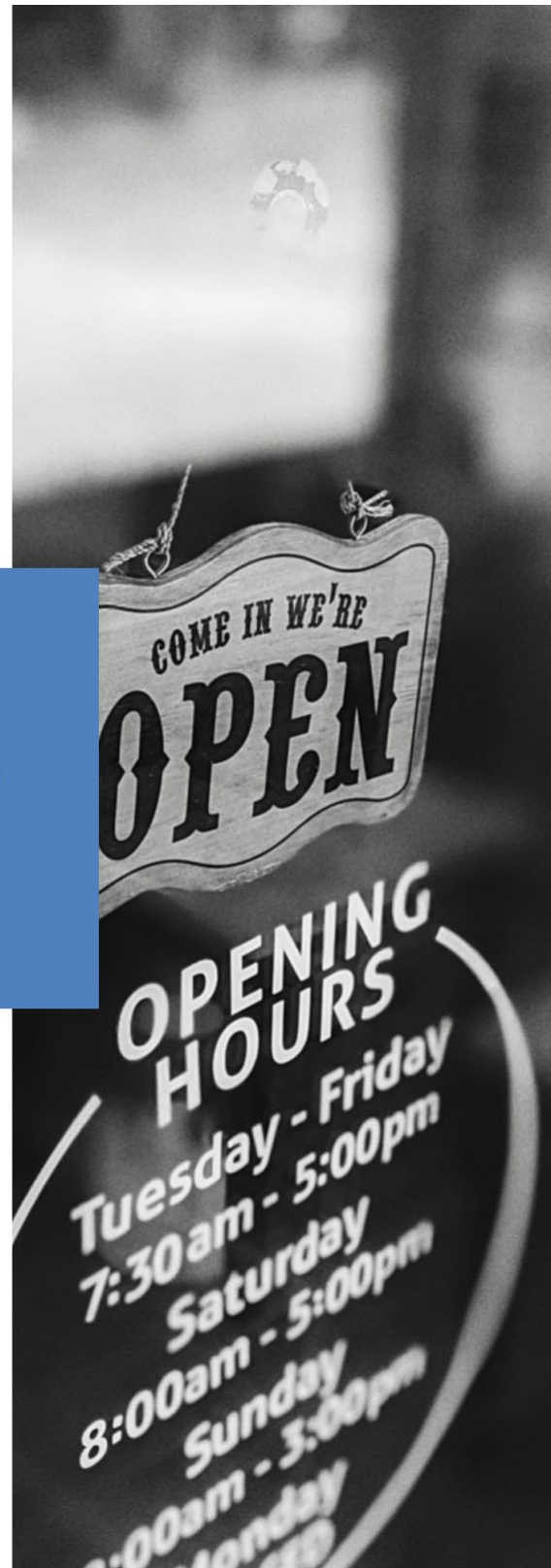




**Small Business
Finance Center**

SBFC GUIDANCE MANUAL

Revised July 27, 2022



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I. Small Business Finance Center Directives and Requirements

CURRENT TEXT OF IBANK SMALL BUSINESS FINANCE CENTER DIRECTIVES & REQUIREMENTS (Revised July 27, 2022)

§ 5000 DEFINITIONS AND RULES OF CONSTRUCTION

The following Directives and Requirements are adopted as of July 27, 2022 pursuant to the Small Business Financial Assistance Act of 2013 (California Government Code 63088 and following), and California Small Business Financial Development Corporation Law (California Corporations Code Sections 14000 and following) (Law) to amend and restate the Directives and Requirements adopted by the California Infrastructure and Economic Development Bank (IBank) Board of Directors (IBank Board) on August 26, 2020. These Directives and Requirements may apply to future programs or financing products, that may be recommended by the Small Business Finance Center and adopted by the IBank Board.

In the event of any inconsistency between these Directives and Requirements and the Law, the provisions of the Law shall govern. To the extent that the Law is changed subsequent to the date of the adoption of these Directives and Requirements, these Directives and Requirements shall be deemed amended to bring them into conformity with the Law.

These definitions are subject to the following rules of construction: (i) all references to Sections shall be to these Directives and Requirements unless otherwise specified, (ii) the use of examples or the words “including” or “includes” are deemed to be followed by “without limitation” whether or not such is in fact written, (iii) except where context requires otherwise, the word “or” is used in the inclusive sense and (iv) words defined in the singular include the plural versions of such words.

The following definitions supplement those provided by the Law and shall govern the construction of these Directives and Requirements:

“Administrative Cost Policy Manual” means IBank’s Small Business Finance Center’s Administrative Cost Policy Manual, as it may be amended from time to time.

“Agriculture-Related Enterprise” means a business which is dedicated primarily to providing goods and services to a Farm Enterprise.

“Application” means all of the information required by a Lender or Surety to determine whether to offer a Borrower a Loan, a Disaster Relief Borrower a Loan, or a Principal a Bond.

“Authorized Farm Costs” means the costs incurred by a Farm, including:

Operating and production expenses, including the purchase, construction or repair of buildings, machinery, equipment and storage and drying facilities, the

purchase of animals, seed and fertilizer, the purchase of real estate and the costs of improvement or repairs thereto.

Costs associated with the purchase of real estate, including easements and rights-of-way to establish or enlarge a Farm.

Costs associated with water development, soil conservation, forestation, drainage, pollution abatement and related measures.

Disaster losses including actual losses incurred in connection with disaster damaged or destroyed Farm property or production enterprises, or both, including annual operating and production expenses, construction and improvement of buildings and facilities, and land and water development.

Refinancing debt including the costs associated with the issuance of such debt and Lender fees and charges, where the debt to be refinanced was incurred for Authorized Farm Costs. No costs set forth in this clause shall be authorized unless the Farm Lender shall certify that, in the Farm Lender's opinion, sufficient Collateral or cash flow exists to reasonably preclude the chance of Loan losses.

“Authorized Jump Start Costs” means the business-related costs incurred by a Jump Start Borrower, including, but not limited to, business start-up costs, specific operating and production expenses, including the purchase, leasing, construction or repair of land, buildings, machinery and equipment, tenant improvements and the Jump Start Loan fees authorized by Section 5028. Working capital is not an Authorized Jump Start Cost.

“Bond” means an obligation in writing concerning the construction or service work of Principal, binding the Surety to pay certain sums upon the occurrence of specified events connected to the payment of sums due by the Principal pursuant to a payment bond, and the obligation to complete the construction or service work, pursuant to a performance bond.

“Bond Guarantee” means a Guarantee which promises the payment of all or a portion of a Claim.

“Bond Line” means a specified amount and term of Bond Guarantee authority which Principal is authorized to apply against any Bond with a specified Surety during the term of the Bond Line.

“Borrower” means an eligible business which has received a commitment for a Loan or has prepared an Application. To be an eligible business, the business must be either:

A small business with 750 or fewer employees;

A Farm Enterprise; or

A non-profit public benefit organization or social welfare organization that has received and maintains tax exempt status under the IRS code 501(c)3 or 501(c)4.

“CDFI Investment Area” means an investment area defined in the Code of Federal Regulations at 12 C.F.R. §1805.201(b)(3)(ii), as amended. A CDFI Investment Area is currently defined as a geographic unit (or contiguous geographic units), such as a census tract, located within the United States, that meets at least one of the following criteria:

Has a population poverty rate of at least 20 percent;

Has an unemployment rate 1.5 times the national average;

For a metropolitan area has a median family income (MFI) at or below 80 percent of the greater of either the metropolitan or national metropolitan MFI;

For a non-metropolitan area that has an MFI at or below 80 percent of the greater of either the statewide or national non-metropolitan MFI;

Is wholly located within an Empowerment Zone or Enterprise Community; or

Has a county population loss greater than or equal to 10 percent between the two most recent census periods for Metro areas or five percent over last five years for non-Metro areas.

“Claim” means a request for payment by a Surety made to a Corporation because of Surety's Loss under a Bond or ILOC secured by a Guarantee, pursuant to Section 5009 or 5012.

“Collateral” means those personal and business assets of the Borrower, Disaster Relief Borrower or Principal and guarantor subject to a lien under the Loan or Bond.

“Community Development Financial Institution (CDFI)” means a financial institution that has a primary mission of promoting community development, and which seeks to empower economically distressed communities. CDFIs include regulated depository institutions such as community development banks and credit unions, as well as non-depository institutions like loan and venture capital funds. CDFIs are certified by the CDFI Fund within the U.S. Department of the Treasury.

“Corporation” means any nonprofit California small business financial development corporation created pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or pursuant to Chapter 1 (commencing with Section 32000) of Division 15.5 of the Financial Code.

“Corporate Contract” means a contract executed exclusively between IBank and any individual Corporation.

“Default” means either a Delinquency which has not been cured within ninety (90) calendar days, or that the Borrower or Disaster Relief Borrower is in bankruptcy.

“Delinquency” means the failure of the Borrower or Disaster Relief Borrower to make any payment when due, pursuant to the terms of the Loan, except for any principal payment due at the maturity of the Loan.

“Demand” means a request for payment by a Lender to a Corporation pursuant to Section 5003 or by a Surety to a Corporation pursuant to Section 5012.

“Disaster Area” means an area within California affected by a state of emergency and declared a disaster by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture, or declared to be in a State of Emergency by the Governor of the State of California.

“Disaster Relief Borrower” means an eligible Borrower located in a Disaster Area that has received a commitment for a Loan or has prepared an Application. To be an eligible Disaster Relief Borrower, the Borrower must (a) have suffered Significant Actual Physical Damage to real or personal property and/or have suffered Significant Economic Injury, as a result of a disaster in a Disaster Area, and (b) be a small business with 750 or fewer employees; a Farm Enterprise; or a non-profit public benefit organization or social welfare organization that has received and maintains tax exempt status under the IRS code 501(c)3 or 501(c)4.

“Disaster Relief Program” has the meaning assigned to such term in Section 5030(a).

“Executive Director” means the Executive Director, or their designee, of the California Infrastructure and Economic Development Bank.

“Encumbrance” means the total SBLGP outstanding Loan Guarantee balance. The effective date of the Encumbrance is the date of the executed Loan Guarantee agreement or the date of the promissory note, whichever is last, provided that the Loan Guarantee is approved by IBank before both the date of the Loan Guarantee and the promissory note.

The Loan Guarantee balance is calculated as follows:

For a Term Loan, the Loan Guarantee balance initially is calculated as the original Loan amount times the Loan Guarantee percentage, until fully disbursed, then the calculation is the outstanding Loan balance at the time of calculation times the Loan Guarantee percentage.

For a Line of Credit Loan, the Loan Guarantee balance is calculated as the full amount of the Loan times the Loan Guarantee percentage for the duration of the Loan Guarantee and remains unchanged regardless of the actual outstanding Loan balance.

“Farm” means a business which is primarily engaged in producing crops, livestock products or aquatic organisms through the utilization and management of land, water, labor, capital, and basic materials including seed, feed, fertilizer, and fuel.

“Farm Borrower” means a Farm which has applied for, or which has entered into, a Farm Borrower Agreement.

“Farm Borrower Agreement” means a written Loan agreement whereby the Farm Lender agrees to lend funds to the Farm Borrower to finance Authorized Farm Costs, and which includes at a minimum: a note, security agreement and Loan agreement each consistent with commercial practices and containing the following:

A list of Farm Borrower security for the Farm Borrower Loan and plans for at least an annual accounting for security.

The Authorized Farm Costs for which Loan funds shall be used.

The interest rate, which shall not exceed five percent (5%) above the prime rate listed for the United States in the Wall Street Journal on the date of the Loan commitment.

The term, which shall not exceed seven years, except for a Guaranteed Farm Borrower Loan. The term of a Guaranteed Farm Borrower Loan shall not exceed that authorized by USDA. The aggregate outstanding balance of Loans with a remaining term to maturity in excess of eighty-four (84) months shall not comprise more than twenty-five percent (25%) of the Farm Lender's trust fund account assets.

The Loan amount which shall not exceed the maximum amount allowed by the USDA Farm Service Agency Guaranteed Farm Loan Program.

Default and Liquidation provisions which shall comply with Sections 5016 and 5017, respectively.

Fee provisions pursuant to Section 5020.

“Farm Borrower Loan” means a Term Loan or Line of Credit Loan from a Farm Lender to a Farm Borrower pursuant to a Farm Borrower Agreement. At least ninety percent (90%) of the outstanding dollar amount of Farm Borrower Loans funded from the trust fund account must be guaranteed by the USDA. In determining the percentage, the numerator is the Loan amount for outstanding Guaranteed Farm Borrower Loans, and the denominator is the Loan amount of all outstanding Farm Borrower Loans.

“Farm Enterprise” means a business which produces crops, livestock products and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials including seed, feed, fertilizer, and fuel.

“Farm Lender” means a Corporation that has been approved by the USDA as a lender.

“Farm Lender Credit Agreement” means a written agreement whereby IBank agrees to lend funds to a Farm Lender, for the purpose of funding Farm Borrower Loan(s). The Farm Lender Credit Agreement may be a Master Agreement and will include provisions

that require the Farm Lender to request disbursement of Loan proceeds from IBank only after the Farm Borrower Loan(s) and respective Farm Borrower Agreement(s) have been fully executed and are in effect. The Farm Lender Credit Agreement will also include provisions covering the following:

Security. No funds shall be disbursed except to fund an executed Farm Borrower Agreement assigned as security for purposes of the Farm Lender Credit Agreement. As used in this Section 5000 “assigned as security” means:

For a Guaranteed Farm Borrower Loan, that IBank is the Holder, or the Guaranteed portion has been sold at par value and the proceeds have been deposited into the trust fund account from which the funds originated.

For a Nonguaranteed Farm Borrower Loan, the Farm Lender Credit Agreement is secured by assignment of all notes, security agreements and similar instruments contained in the Farm Borrower Agreement.

The Loan amount, which shall not exceed the total amount of Farm Borrower Loans authorized for the Farm Lender by the Executive Director.

The interest rate, which shall be two percent (2%) below the prime rate listed for the United States in the Wall Street Journal for each respective day for which funds are owed to IBank.

Repayment terms, which shall be based upon the repayment terms of the respective Farm Borrower Agreement(s) funded with proceeds from the Farm Lender Credit Agreement.

“Farm Lender Disbursement Request” means a signed request for disbursement of trust funds under an existing Farm Lender Credit Agreement, made in writing to IBank by a Farm Lender in compliance with Section 5013.

“Farm Loan Guarantee” means a signed commitment, issued by the USDA, to guarantee payment of all or part of a Farm Borrower Loan.

“FDC Policy Manual” means IBank’s Small Business Finance Center’s Small Business Loan Guarantee Program Policy Manual and the Jump Start Loan Program Policy Manual, as they may be amended from time to time.

“Full Time Equivalent (FTE)” means the number of full time, part time or other basis employees of a business and its affiliates, in which the employee wages are paid directly from the business, as determined by IRS Federal hourly calculation criteria.

“Guarantee” means a written agreement to warrant the repayment of a specified percentage of the sum of the outstanding Loan principal plus any specified accrued and unpaid interest.

“Guaranteed Farm Borrower Loan” means a Farm Borrower Loan which is in whole or part subject to a Guarantee.

“Holder” means the person or entity purchasing or assigned a percentage of a Loan, other than the Lender who purchases all or part of the Loan.

“IBank” means the California Infrastructure and Economic Development Bank.

“ILOC” means an irrevocable letter of credit issued by a Corporation as Collateral for a Bond and which complies with the requirements set forth in Section 5011.

“Jump Start Allocation” means the funds provided in Section 5022(c)(1) pursuant to a Jump Start Allocation Agreement.

“Jump Start Allocation Agreement” means a written Allocation, Grant and Servicing Agreement entered into by and between IBank and a Jump Start Corporation in connection with the Jump Start Loan Program in accordance with Section 5022.

“Jump Start Borrower” means a Low-Wealth Borrower, or a borrower located in a Community Development Financial Institution (CDFI) Investment Area or a Disaster Area, which has applied to a Jump Start Corporation for a Jump Start Loan, or which has entered into a Jump Start Borrower Agreement.

“Jump Start Borrower Agreement” means written Loan documentation whereby funds allocated to a Jump Start Corporation pursuant to a Jump Start Allocation Agreement shall be loaned to the Jump Start Borrower to finance Authorized Jump Start Costs.

“Jump Start Corporation” means any Corporation that (a) is licensed by and in good standing with the California Department of Financial Protection and Innovation as an Business and Industrial Development Corporation or is a Community Development Financial Institution or community development entity certified by and in good standing with the Community Development Financial Institutions Fund of the United States Department of the Treasury and (b) has entered into a Jump Start Allocation Agreement with IBank that is in full force and affect.

“Jump Start Grant” has the meaning assigned to such term in Section 5023.

“Jump Start Loan” means a Term Loan to a Jump Start Borrower pursuant to a Jump Start Borrower Agreement.

“Jump Start Program” has the meaning assigned to such term in Section 5022(a).

“Law” means the Small Business Financial Assistance Act of 2013 (California Government Code Section 63088 and following) and California Small Business Financial Development Corporation Law (California Corporations Code Sections 14000 and following) or other applicable laws.

“Lender” means a banking organization, including national banks and trust companies and state chartered commercial banks, savings and loan associations, credit unions, state insurance companies, mutual insurance companies, certified Community Development Financial Institutions, microbusiness lenders and other banking, lending, retirement, and insurance organizations, conducting business with Borrowers in California.

“Leverage” means the calculation where the numerator is the Encumbrance, and the denominator is the trust fund account balance.

“Line of Credit Loan” means a Loan, usually structured as interest-only, for a term not to exceed seven years, except for a Farm Enterprise Loan which shall have a term not to exceed the term of the current Farm Borrower Agreement, where the minimum repayment is usually structured as interest-only during the term of the Loan.

“Liquidation” means the exercise of Lender’s rights provided for in the event of any Default under the Loan Guarantee, a Farm Borrower Agreement or the related Farm Lender Credit Agreement, or a Jump Start Borrower Agreement, including the right to foreclose and take possession in accordance with the terms of any financing statement, security interest or similar instrument obtained or entered into in relation to such Loan Guarantee, Farm Borrower Agreement, Farm Lender Credit Agreement or Jump Start Borrower Agreement.

“Loan” means a loan extended by a Lender to a Borrower or a Disaster Relief Borrower, which is Guaranteed pursuant to Section 5002, and which is a Term Loan, a Micro Loan, or a Line of Credit Loan.

“Loan Guarantee” means a written Guarantee of a specified percentage of the outstanding Loan principal and ninety (90) calendar days of accrued and unpaid interest, reduced by any proceeds of the Lender’s Liquidation of Collateral as required under Section 5004. A Loan Guarantee will be paid to the Lender only after the Lender has liquidated or made all reasonable efforts in good faith to liquidate all Collateral as required under Section 5004. The total payment made to a Lender under a Loan Guarantee will be the specified percentage of the difference between the sum of outstanding Loan principal and ninety (90) calendar days accrued and unpaid interest, less all cash proceeds generated by the Lender in connection with its Liquidation activities required under Section 5004.

“Loss” means any net monetary damages incurred by a Surety arising out of a Claim, or in pursuing the Surety’s rights under the indemnity agreement. As used in this Section 5000, “net monetary damages” means loss payments, completion costs, reasonable attorney’s fees, and reasonable out of pocket consultant fees, costs, and expenses, minus amounts recovered by the Surety from any source, including Collateral. The determination of such loss will consider amounts recovered but exclude reinsurance. As used herein, “indemnity agreement” means the written agreement whereby Principal agrees to reimburse Surety for any Loss.

“Low-Wealth Borrower” means an individual Borrower with a per capita personal income equal to or less than the statewide average per capita income at the time of approval of the subject Jump Start Loan, as determined by the State of California’s Employment Development Department (EDD).

“Low-Wealth Community” means a community located in a designated Community Financial Development Institution (CDFI) Investment Area.

“Master Agreement” means a contract executed between IBank and one or more Corporations to implement the operating provisions of any of the programs established under the Law.

“Micro Loan” means a Loan in which the principal amount does not exceed One Hundred Thousand dollars (\$100,000).

“Nonguaranteed Farm Borrower Loan” means a Farm Borrower Loan not subject to a Guarantee.

“Nursery Enterprise” means the business of producing root stock, seedlings, or juvenile or immature non-animal agricultural, horticultural, and landscaping products for the purposes of sale to a third party for use in the production of crops, including both feed crops and table crops, environmental horticulture, ornamental horticulture, or landscaping.

“Principal” means an eligible business which has received a commitment for a Bond. To be an eligible business, the business must be a small business with 750 or fewer employees.

“Program Manager” means the manager of the California Small Business Finance Center as designated to this title by the Executive Director.

“SBLGP” refers to the IBank’s Small Business Loan Guarantee Program.

“Significant Actual Physical Damage” means damage to a Disaster Relief Borrower’s real or personal property caused by a disaster in a Disaster Area resulting in a fair market value replacement or repair cost which cannot be funded by the Disaster Relief Borrower’s unencumbered, and readily available financial resources without the Disaster Relief Borrower incurring further significant economic hardship.

“Significant Economic Injury” means a monetary loss to a Disaster Relief Borrower caused as a direct result of a disaster in a Disaster Area which the Disaster Relief Borrower cannot remedy using unencumbered, and readily available financial resources without incurring further significant economic hardship.

“Special Purpose Entity” means a business organization, including, but not limited to a corporation, limited liability company, or partnership, created for the purpose of making, purchasing, managing, owning, securitizing, holding, or facilitating small business loans to companies operating in California.



“State Small Business Credit Initiative (SSBCI)” means the allocation of federal funds to from U.S. Treasury to capitalize state small business support programs. SSBCI was reauthorized and enhanced by the American Rescue Plan Act of 2021.

“Surety” means an insurance company licensed by the California Department of Insurance and authorized to conduct business in California.

“Suspension” means that a Corporation is suspended, terminated, or no longer registered with the Secretary of State as a Corporation and shall not enjoy any of the benefits of a Corporation.

“Term Loan” means a Loan that usually has regularly scheduled interest payments and reductions in principal balance.

“USDA” means the United States Department of Agriculture.

§ 5001 LOAN GUARANTEE PROCEDURES

(a) The Lender applying for a Loan Guarantee shall provide a completed Borrower Application to the Corporation for review and processing in accordance with the following procedures:

(1) No Loan Guarantee shall be executed by a Corporation until the proposed Loan Guarantee has been reviewed by the Corporation's loan committee and approved by its Board of Directors, unless the Corporation's Board of Directors has delegated the authority to approve a proposed Loan Guarantee to the Corporation's loan committee, and such delegation is in accordance with IBank policy referenced in the Corporate Contract. No Loan Guarantee shall be approved or executed by a Corporation if the Lender is the same entity as the Corporation or an affiliate of the Corporation.

(2) Upon completion of the review and approval by the Corporation's loan committee and/or Board of Directors, the Corporation shall issue a commitment to Guarantee and execute a Loan Guarantee to the Lender.

(3) In the event that a Loan Guarantee is issued to a Lender without first complying with the requirements of Section 5001(a), and the Lender relies upon the Loan Guarantee in making the Loan, the failure by the Corporation to so comply shall not constitute a defense on the part of either IBank or the Corporation to paying a Demand for payment made pursuant to Section 5003.

(4) In any case where funds are disbursed to a Lender pursuant to a Demand and the Corporation has failed to comply with Section 5001(a), IBank may immediately exercise all available legal remedies to recover from the Corporation the funds disbursed pursuant to the Demand.

§ 5002 LOAN GUARANTEE TERMS

(a) Following adoption of a resolution by its board of directors, a Corporation shall be authorized to issue a commitment specifying the conditions under which it will issue a Loan Guarantee to a Lender for a specified Loan.

(b) The terms and conditions of a Loan Guarantee shall be consistent with the resolution of the Corporation approving the Loan Guarantee and shall include all of the following:

(1) The Corporation's promise to pay up to eighty percent (80%) of the outstanding principal, and accrued yet unpaid interest up to 90 calendar days at the same specified percentage, on a Loan for which the Loan Guarantee is approved in accordance with IBank policy referenced in the Corporate Contract, subject to the following restrictions:

(i) The Lender has complied with all material conditions contained in the Loan Guarantee, including perfecting Collateral; and

(ii) The Lender has not engaged, and will not engage, in fraudulent or negligent practices in connection with the Borrower, Loan Guarantee, the Loan or the related loan agreement.

(2) The duration of a Loan Guarantee shall not exceed seven (7) years, except for a Line of Credit Loan to a Farm Enterprise, where the duration of a Loan Guarantee shall not exceed the term of the current Farm Borrower Agreement and in no event seven (7) years.

(3) A Corporation shall not waive a fee or charge more or less than the amount determined by the Corporate Contract. The Corporation shall not charge an annual servicing fee on Loan Guarantees. The Corporation shall be authorized to charge the following Loan Guarantee fees in accordance with the Corporate Contract:

(i) A Loan Guarantee documentation fee of \$250.00.

(ii) A Loan Guarantee fee not to exceed three percent (3%) of the principal amount Guaranteed. The Executive Director will set the fee percentage at the time of the Corporate Contract execution and may not change the fee percentage more than twice in each fiscal year.

(4) A description of the procedures and the responsibilities of the Lender and Corporation subsequent to Default.

(5) Section 5003 Demand procedures.

(6) Agreement to abide by binding arbitration by the American Arbitration Association in the event that either the Corporation or IBank denies the requested Demand pursuant to Section 5003(d)(2) or (e)(2), or the amount paid to the Lender is less than the amount contained in the Demand Letter.

(7) Acknowledgment by the Lender that in the event of a Demand, the Lender will allow a bank examiner at the California Department of Financial Protection and Innovation, or other independent auditor selected by the Corporation, to examine the Lender's Loan files.

(8) A statement that the maximum amount of interest to be paid will be the Loan Guarantee percentage of accrued and unpaid interest for a period not to exceed ninety (90) calendar days.

(9) The maximum Loan Guarantee amount for any business (including all outstanding Loan Guarantees) is \$5,000,000. The maximum Loan amount for any business is \$20,000,000.00, unless specific written approval is obtained from the Executive Director for a larger loan amount.

(10) The small business receiving the Loan Guarantee under the SBLGP, a direct loan, or a Bond Guarantee, must create or retain at least one Full Time Equivalent (FTE) employee as a result of the Loan. This minimal Directive and Requirement is in lieu of a preferred ratio guideline since IBank encourages program participation of single owner-operator businesses.

(11) The owner(s) of the business receiving a Loan Guarantee under the SBLGP, a direct loan, or a Bond Guarantee, shall have at least \$1.00 of equity interest in the business at the time of the Loan. This minimal Directive and Requirement is intended to promote those businesses that may be under-capitalized yet have been deemed credit worthy by the Lender due to other attributes.

§ 5003 LOAN GUARANTEE DEMAND PROCEDURES

(a) The Lender shall be authorized to make a Demand upon the Corporation executing the Loan Guarantee for repayment of the unpaid Loan principal and interest pursuant to the terms of the Loan Guarantee, upon compliance with the following:

(1) The Lender shall provide proof to the Corporation that the Borrower is in Default under the applicable loan agreement and Lender has delivered to both the Borrower and the Corporation a minimum of two letters subsequent to the Delinquency, at least thirty (30) calendar days apart, explaining the consequences for failure to remedy the Delinquency in a manner consistent with the applicable loan agreement. This requirement shall not apply if the Borrower is in bankruptcy.

(2) Providing proof to the Corporation that the Lender has complied with the Liquidation requirements of Section 5004.

(3) The Lender shall deliver to the Corporation executing the Loan Guarantee a Demand Letter requesting immediate payment of the Guaranteed portion of the allowable accrued and unpaid Loan interest and outstanding principal, and documenting compliance with Section 5003(a) and the applicable loan agreement.

(4) Within ten (10) business days of receipt of the Demand letter, the Corporation shall contract with the California Department of Financial Protection and Innovation or an independent auditor to conduct an investigation to determine whether the Lender has complied with the terms of the Loan Guarantee, and to issue a report to the Corporation. The report shall describe the findings of the investigation for each of the following issues:

(i) Whether the Loan agreement between the Borrower and Lender is consistent with the terms and conditions in the Loan Guarantee.

(ii) Whether all Collateral for the Loan and Loan Guarantee have been perfected and maintained.

(iii) Whether all Collateral is available for assignment to the Corporation in the event that payment is made upon the Demand.

(iv) Whether any Collateral is not available as a result of Lender's negligence, breach of contract, foreclosure, or other cause.

(v) Whether the Lender has complied with the Liquidation procedures of Section 5004.

(vi) Calculation on the outstanding principal and interest owed.

(vii) Whether the Lender complied with the procedures for making a Demand under Section 5003(a)(3).

(viii) In a section entitled "Loan Information" the report shall include the following information obtained solely from the auditor's review of Lender files: a description of the Borrower's business, a description of the Collateral for the Loan, and a discussion as to whether the Lender files contain any reference to matters material to Borrower's compliance with any environmental laws or regulations. The description of Collateral shall identify all real property Collateral as one or more of the following: industrial, commercial, agricultural, single-family residence, multi-unit residential, vacant lot, unknown.

(ix) A history of loan payments and collection efforts.

(5) Within ten (10) business days of receiving the California Department of Financial Protection and Innovation's or independent auditor's report, the Corporation shall do one of the following:

(i) Deliver to IBank a request for payment on the Demand, along with a copy of the report described in Section 5003(a)(4), information regarding Delinquency notification and Liquidation efforts described in Section 5003(a), the Demand, and a calculation of the amount owed pursuant to the Loan Guarantee; or

(ii) Deliver to the Lender, with a copy simultaneously delivered to IBank, a refusal to make payment pursuant to the Demand, and detailing the reasons for refusal.

(6) Within ten (10) business days from the date IBank receives the request for payment on the Demand and a copy of the report described in Section 5003(a)(4) IBank shall do one of the following and inform the Corporation of such action:

(i) Deliver or cause to be delivered to the Corporation a check or electronic funds transfer in an amount not to exceed the amount contained in the Demand Letter, made payable to the Lender; or

(ii) Deliver or cause to be delivered to the Corporation a denial of the request for payment to the Corporation based upon noncompliance with the requirements of applicable Law, regulations, rules or guidelines, these Directives and Requirements or fraud or negligence on the part of the Lender.

(iii) Deliver or cause to be delivered to the Corporation a statement that the investigation or report was incomplete and requiring the Corporation to complete the investigation and report and resubmit the request for payment to IBank within ten (10) business days from the date the statement is received by the Corporation.

(7) The amount paid to the Lender pursuant to a Demand Letter shall be less than the amount contained in the Demand Letter only under the following circumstances:

(i) The Demand contains an incorrect calculation of the amount owing;

(ii) The amount owing on the Loan has been reduced by subsequent payments from the Borrower to the Lender;

(iii) The Lender has engaged in fraudulent activities pertaining to the Loan; or

(iv) The Loan and/or the Loan Guarantee is not in compliance with the requirements of applicable Law, regulations, rules or guidelines or these Directives and Requirements; or

(v) The report identifies fraud or negligence on the part of the Lender.

(8) Within five (5) business days of receiving the check or electronic funds transfer from or on behalf of IBank, the Corporation shall contact the Lender and arrange to deliver the check or schedule electronic funds transfer to the Lender. The Corporation shall deliver the check or transfer the funds and simultaneously collect an assignment from the Lender of the Lender's interest in the Loan. The

assignment shall include the Loan Note and all Collateral, except as provided in Section 5004.

(9) The Loan Guarantee shall include a provision for binding arbitration in the event that either the Corporation or IBank denies the requested Demand pursuant to Section 5003(a)(5)(ii) or (a)(6)(ii) or the amount paid to the Lender is less than the amount contained in the Demand Letter.

(10) Demand must be made upon the Corporation no later than noon on the ninetieth (90th) calendar day following the date on which the Loan Guarantee terminates; provided, however, that if the ninetieth day is not a day upon which the Corporation is open for business, the last day for making a Demand shall occur on the next succeeding day upon which the Corporation is open for business.

§ 5004 GUARANTEE COLLECTION REQUIREMENTS FOR LOAN GUARANTEES

(a) A Lender shall not be authorized to file a Demand for a Loan Guarantee unless it has complied with this Section. The requirements contained in this Section are in addition to the requirements contained in Section 5003.

(1) The Lender must liquidate all Collateral but shall not be required to file a lawsuit against any Borrower or guarantor. "Liquidate" as used in this paragraph means that the Lender has pursued and managed all Collateral by one of the following methods:

- (i) converted the Collateral into cash;
- (ii) demonstrated, to the satisfaction of the Corporation, that the Collateral is without sufficient value to convert to cash; or
- (iii) demonstrated that the Borrower has filed for bankruptcy.

§ 5005 CORPORATION REQUIREMENTS

(a) The following Directives and Requirements are in addition to Corporation requirements of Corporations Code Section 14000 et seq., and the Small Business Financial Assistance Act of 2013:

(1) A Corporation in existence less than 5 years shall adhere to the same Laws and Directives and Requirements as Corporations in existence for more than 5 years, except for a probationary period as indicated in Corporations Code Section 14012.

(2) A Corporation is to maintain a Default rate of less than 5% of all of its outstanding Loan Guarantees.

(3) A Corporation must enroll at least one federally supported Loan Guarantee, or in the absence of federal funds under the program, one state fund supported Loan Guarantee per fiscal year.

(4) A Corporation must provide all documents related to the Small Business Finance Center programs that are requested from time to time by the Executive Director or Program Manager by the deadline specified by the Executive Director or Program Manager.

§ 5006 ADDITIONAL CLARIFICATIONS

(a) The return on funds from investments may be used for program purposes, including administrative expenses of IBank and/or the Corporations, at the Executive Director's discretion.

(b) The Executive Director or Program Manager may create a trust fund account to be shared by multiple Corporations (pooled account) for program uses. The designation of an individual trust fund or a shared trust fund account will be determined by the Executive Director or Program Manager in their sole discretion.

(c) Corporations shall adhere to the SSBCI rules and guidance when a Loan Guarantee is supported by SSBCI federal funds. The rules and guidance include, but are not limited to the following resources; the American Rescue Plan Act of 2021, the SSBCI Allocation Agreement for Participating States dated September 15, 2022 between the United States Department of the Treasury and the State of California, SSBCI Policy Guidance, National Standards for Compliance and Oversight, the SSBCI F.A.Q's, and the FDC Small Business Loan Guarantee Policy Manual, all as amended from time to time.

§ 5007 SURETY BONDS GUARANTEE

(a) A Principal shall be authorized to apply to a Corporation for either a Bond Guarantee, or a Bond Line.

(b) A Principal applying for a Bond Guarantee, or a Bond Line shall provide a complete Application to the Corporation for review and processing in accordance with the following procedures:

(1) The proposed Guarantee has been reviewed by the Corporation's Bond loan committee and approved by its board of directors.

(2) Upon compliance with Section 5007(b)(1), the Corporation shall issue a commitment to provide a Bond Guarantee or Bond Line and an executed Bond Guarantee or Bond Line to the Surety.

(3) In the event that a Guarantee is issued to a Surety without first complying with the requirements of Section 5007(b)(1) and/or (c), and the Surety relies upon the Guarantee in issuing the Bond, the failure by the Corporation to so comply shall

not constitute a defense on the part of either IBank or the Corporation to paying a Claim.

(4) In any case where funds are disbursed to a Surety pursuant to a Claim and the Corporation has failed to comply with Section 5007(b)(1) and/or (c), IBank may immediately exercise all available legal remedies to recover from the Corporation the funds disbursed pursuant to the Claim.

(c) Any change to a Bond Guarantee or Bond Line that amends the terms contained in the resolution by the Corporation's board of directors approving the Guarantee must be approved by the Corporation board of directors.

§ 5008 SURETY BOND TERMS

(a) The terms and conditions of a Bond Guarantee or Bond Line shall be consistent with the resolution of the Corporation approving the Bond Guarantee or Bond Line and shall include all of the following:

(1) The Corporation's promise to pay Losses up to ninety percent (90%) of the Bond, not to exceed five hundred thousand dollars (\$500,000), subject only to the restriction that the Surety has not engaged in negligence, misrepresentation, fraud, or material breach of the terms of the Guarantee in writing, issuing, or servicing the Bond.

(2) The Guarantee shall expire two hundred and ten (210) calendar days following final payment by the party requiring the Bond (Obligee) of all amounts owed to Principal pursuant to the contract bonded, so long as no notice of Claims has been received by Surety and is pending as of that expiration date. In the event that a notice of Claim is pending as of that expiration date, the Guarantee shall remain in effect until resolution of that Claim.

(3) A Corporation Bond Guarantee fee not to exceed three percent (3%) of the Guarantee amount. In the case of a Bond Line, the fee shall be charged for each Guarantee.

(4) The terms and conditions of the Bond subject to a Guarantee which shall be in accord with those generally established and accepted by the Surety for the type of contract for which the Bond is required.

(5) A statement that Surety would not provide the Bond without the Guarantee.

(6) Consistent with Surety's underwriting and Claims handling procedures, Surety shall take all reasonable action necessary to minimize risk of Loss, including but not limited to the taking of Collateral and obtaining personal guarantees, and Surety will pursue all possible sources of recovery.

(7) If any suit is filed against Surety upon the Bond, Surety shall immediately inform Corporation of receipt of notice thereof and shall take charge of all suits or Claims arising under the Bond and compromise, settle or defend such suit or Claim. Surety shall take all steps necessary to mitigate the Loss resulting from Principal's Default. Surety shall not join Corporation in any lawsuit to which Surety is a party unless Corporation has denied a Claim.

(8) Liability of the Corporation under the Guarantee shall be reduced if the Guarantee requires Surety to take Collateral, and Surety fails to obtain and perfect the Collateral. In the event that the Surety fails to take or perfect Collateral required by the terms of the Guarantee, the liability of the Corporation pursuant to the Guarantee shall be reduced by the Guarantee percentage of the amount which could reasonably have been recovered by liquidating the Collateral.

(9) The terms of the Guarantee shall not be waived, changed, or altered unless both Corporation and Surety's authorized representative have signed and dated assent thereto.

(10) Corporation shall have access to and the right to audit and inspect any and all documents maintained by the Surety related to the Bond. The audit shall be conducted in a reasonable manner during business hours or as otherwise agreed upon between Corporation and Surety.

(11) The Guarantee is made exclusively for the benefit of Corporation and Surety and does not confer any rights or benefits to any other party. In the event of the Surety's insolvency, Corporation shall not be liable to the receiver or trustee of the insolvent estate except for any Loss.

(12) In the case of a Bond Line, the document shall also specify the following:

(i) The Bond Line shall only apply to Bonds issued by the identified Surety, to the specified Principal.

(ii) No Bond shall be Guaranteed under the Bond Line if that Bond is dated either before the effective date of the Bond Line, or later than three hundred sixty-five (365) calendar days following the effective date of the Bond Line.

(iii) The Bond Line shall specify the Guarantee percentage for the Guarantees issued under the Bond Line.

(iv) The Bond Line shall specify the maximum Guarantee authority, which shall not exceed \$500,000. The combined Guarantee liability of all Bonds outstanding for a specific Principal shall not exceed \$1,000,000. A Principal with a Bond Line shall obtain a Guarantee under the Line by

sending a copy of the Bond to the Corporation, which shall sign and attach to the Bond a statement that the Bond is Guaranteed by the Corporation pursuant to the terms of the Bond Line. This statement shall be signed so long as the Principal and Bond comply with the terms of the Bond Line.

(v) It shall be the responsibility of the Surety to notify the Corporation when a Guarantee under a Bond Line has expired.

§ 5009 SURETY BOND PROCEDURES

(a) Surety shall be entitled to reimbursement for the percentage of its Loss covered by the Guarantee, adjusted pro rata for payments received by Surety from any other source, excluding reinsurance, upon compliance with the following:

(1) Surety shall notify Corporation in writing within forty-five (45) calendar days after the end of each calendar quarter after the Surety has established a Claim reserve on the Claim.

(2) Ninety (90) calendar days after notice to Corporation that the Claim reserve has been established and every thirty (30) calendar days thereafter, unless mutually agreed upon otherwise, Surety shall provide Corporation with the current status of the Claim, including salvage prospects, and proof of payment by Surety of the Claim. Claim reporting can be on Corporation's Current Status Report form or Surety's equivalent.

(3) Surety shall invoice the Corporation quarterly for any Loss, except that Surety shall be authorized to invoice the Corporation monthly for a Loss in excess of five thousand dollars (\$5,000). Corporation shall submit for payment to IBank within twenty (20) calendar days of receipt, any invoice received from a Surety for a Loss that complies with the requirements of this article.

(b) After payment has been made by Corporation to Surety pursuant to Section 5009(a), if any net amount is recovered by Surety from any other source, excluding reinsurance, Corporation is entitled to the Guarantee percentage of said net amount upon actual receipt by the Surety. Subrogation efforts shall be discontinued by Surety only after providing Corporation with written documentation substantiating insolvency or the inability to pay on the part of Principal or others who agreed to indemnify the Surety, unless otherwise mutually agreed by the Surety and Corporation. In the event of discontinuation of subrogation efforts by Surety, the Surety will assign all of its right, title and interest to recovery to the Corporation.

§ 5010 ILOC AS BOND COLLATERAL PROCEDURES

(a) A Principal shall be authorized to apply to a Corporation for an ILOC. A Principal applying for an ILOC shall provide a completed Application to the Corporation for review and processing in accordance with the following procedures:

(1) The proposed ILOC has been reviewed by the Corporation's Bond loan committee and approved by its board of directors.

(2) Upon compliance with Section 5010(a)(1), the Corporation shall issue an ILOC commitment and an executed ILOC to the Surety.

(3) In the event that an ILOC is issued to a Surety without first complying with the requirements of Section 5010(a)(1) and/or (a)(5), and the Surety relies upon the ILOC in issuing the Bond, the failure by the Corporation to so comply shall not constitute a defense on the part of either IBank or the Corporation to paying a Demand.

(4) In any case where funds are disbursed to a Surety pursuant to a Demand and the Corporation has failed to comply with Section 5010(a)(1) and/or (a)(5), IBank may immediately exercise all available legal remedies to recover from the Corporation the funds disbursed pursuant to the Demand.

(5) Any change to a Bond Guarantee or Bond Line must be approved by the Corporation board of directors if the change amends the terms contained in the resolution by the Corporation board of directors approving the Guarantee.

§ 5011 ILOC AS BOND COLLATERAL TERMS

(a) The terms and conditions of an ILOC shall be consistent with the resolution of the Corporation approving the ILOC and shall include all of the following:

(1) Provision that the Corporation promises to pay a specified amount to Surety upon Surety establishing a Claim reserve.

(2) The maximum amount of the ILOC shall be 15% of the contract amount, not to exceed \$350,000.

(3) Where the Bond is for a public works project, a statement that the ILOC shall expire one hundred and twenty (120) calendar days following receipt by Surety of a statement from the party requiring the Bond ("Obligee") that the work has been completed and fully accepted and that Obligee has made payment of all amounts owed the Principal pursuant to the Bond. The ILOC shall expire only if no notice of Claim is pending with the Surety. If the Bond is for other than a public works project, then the Corporation and Surety shall include in the ILOC what events and timing trigger expiration of the Guarantee.

(4) The Corporation fee not to exceed three percent of the ILOC amount.

(5) The terms and conditions of the Bond Collateralized by the ILOC shall be in accord with those generally established and accepted by the Surety for the type of contract for which the Bond is required.

- (6) A statement that Surety would not provide the Bond without the ILOC.
- (7) Surety shall not join Corporation in any lawsuit to which Surety is a party unless Corporation has denied a Demand.
- (8) The terms of the ILOC shall not be waived, changed, or altered unless both Corporation and Surety's authorized representative have signed and dated assent thereto.
- (9) Corporation shall have access to and the right to audit and inspect any and all documents related to the Bond. The audit shall be conducted in a reasonable manner during business hours or as otherwise agreed upon between Corporation and Surety.
- (10) The ILOC is made exclusively for the benefit of Corporation and Surety and does not confer any rights or benefits to any other party. In the event of the Surety's insolvency, Corporation shall not be liable to the receiver or trustee of the insolvent estate except for any Loss.

§ 5012 ILOC AS BOND COLLATERAL DEMAND PROCEDURES

- (a) Upon the establishment of a Claim reserve connected to the Bond, Surety shall be authorized to make Demand upon the Corporation for an amount equal to the Loss incurred, and reasonably expected to be incurred within the next sixty (60) calendar days by the Surety.
- (b) Demand shall be made in writing and shall include a statement that a Claim reserve has been established, shall explain why the Claim reserve has been established, and shall specify the amount of the Demand.
- (c) Corporation shall mail to Surety, not later than ten (10) calendar days from receipt of Demand, either the amount included in the Demand or an explanation of why the amount requested in the Demand will not be paid by the Corporation. The only reasons for refusing to pay the amount included in the Demand are:
 - (1) No Claim reserve has been established for the Bond covered by the ILOC.
 - (2) The amount requested in the Demand lacks reasonable supporting documentation.
- (d) After payment has been made by a Corporation, if any net amount is recovered by Surety from any other source, excluding reinsurance, Corporation is entitled, upon actual receipt by the Surety, to the percentage of said net amount which equals the ILOC funds paid as a percentage of Loss paid by the Corporation. Subrogation efforts shall be discontinued by Surety only after providing Corporation with written documentation substantiating insolvency or the inability to pay on the part of Principal or

others who agreed to indemnify the Surety, unless otherwise mutually agreed by the Surety and Corporation. In the event of discontinuation of subrogation efforts by Surety, the Surety will assign all of its right, title, and interest to recovery to the Corporation.

§ 5013 DISBURSEMENT OF FARM LENDER LOAN FUNDS

(a) No Farm Borrower Agreement shall be executed by a Corporation until the proposed Farm Borrower Loan has been reviewed by the Corporation's loan committee and approved by its board of directors, unless the Corporation's board of directors has delegated the authority to approve a proposed Farm Borrower Loan to the Corporation's loan committee. Approval of the Farm Borrower Loan shall be evidenced by adoption of a corporate resolution approving the loan. The Corporation shall retain the resolution and the minutes of loan committee and board of directors' meetings at which the loan was discussed and approved, including any conditions placed on the loan.

(b) Disbursement of loan proceeds to the Farm Lender for Farm Borrower Loans will be made only if the Farm Lender is a party in good standing to an existing Farm Lender Credit Agreement.

(c) Within ten (10) business days of receiving a Farm Lender Disbursement Request for a previously approved Farm Borrower Loan, IBank shall notify the Farm Lender of disbursement approval, provided:

(1) Funds are available in a trust fund account to meet the request contained in the Farm Lender Disbursement Request. The available funds for direct loans can be no more than twenty percent (20%) of the aggregate trust funds available for State lending programs in the Small Business Guarantee Loan Program.

(2) The disbursement is in connection with an executed Farm Borrower Agreement.

(3) The disbursement request is consistent with the funding requirements of the related Farm Borrower Agreement. Evidence of the consistency consists of a budget showing amounts previously disbursed to the Farm Lender in connection with such Farm Borrower Loan, amount of loan proceeds lent by the Farm Lender to the Farm Borrower, and the date upon which it is projected that the money to be disbursed pursuant to this Section shall be lent by the Farm Lender to the Farm Borrower.

(d) IBank will set aside the original principal amount of the loan request, minus any disbursements, in the trust fund as its commitment to future disbursements. Funds will be released back to the trust fund as the loan is repaid.

(e) In any case where funds are disbursed to a Corporation pursuant to a Farm Lender Disbursement Request and the Corporation has failed to comply with Section 5013(a),

IBank may immediately exercise all available legal remedies to recover from the Corporation the funds disbursed pursuant to the Farmer Lender Disbursement Request.

§ 5014 RELEASE OF FARM LOAN FUNDS

(a) Farm Lender shall lend funds received pursuant to a Farm Lender Credit Agreement to a Farm Borrower only upon compliance with the following conditions precedent:

(1) For a Nonguaranteed Farm Borrower Loan, or for a Guaranteed Farm Borrower Loan that cannot be legally assigned or sold, assignment to IBank of the Farm Borrower Agreement note, together with an assignment of any financing statement, security interest or similar instrument obtained or entered into pursuant to the related Farm Borrower Agreement, perfected by a UCC-1 public notice.

(2) For a Guaranteed Farm Borrower Loan:

A Guarantee has been executed, and either assigned to IBank or sold pursuant to Section 5018, and

A certification by the Farm Lender that it has complied with or has taken all actions which are in its opinion necessary to comply with any conditions precedent to the issuance of such Guarantee required by USDA; provided, however, that for the purposes of this Section, payment of funds to the Farm Borrower shall not be deemed to be such a condition.

(b) Farm Lender shall provide evidence of compliance with Section 5014(a) to IBank within seven (7) calendar days of disbursement of funds to a Farm Borrower.

§ 5015 FARM LOAN ACCOUNTING AND REPORTING

(a) Lender shall establish an account which shall be used solely to record disbursements and repayments for Farm Borrower Loans. The account shall have separate sub-ledgers which shall correspond to each specific Farm Lender Credit Agreement and Farm Borrower Agreement. Funds shall only be withdrawn from Farm Lender Credit Agreement sub-ledgers for subsequent disbursement to a Farm Borrower, for payments to the trust fund account or upon written authorization of IBank. Funds shall only be withdrawn from Farm Borrower Agreement sub-ledgers for payments to the trust fund account, to the Holder or upon written authorization of IBank.

(b) The Farm Lender shall reconcile the two sets of sub-ledgers monthly. One set shall consist of all activities for each Farm Borrower Loan, including payment and repayment information. Farm Lender shall maintain these reconciliations at its principal place of business. The second reconciliation shall consist of all Farm Lender Loan activity. Farm Lender shall submit these reconciliations to IBank monthly.

(c) All records established and maintained in connection with the account and its sub-ledgers shall be available upon reasonable notice for audit by IBank or its designee and shall be maintained for a three (3) year period following the expiration of the related Farm Lender Credit Agreement or Farm Borrower Agreement.

§ 5016 FARM LOAN DEFAULTS

(a) A Default of a Farm Borrower Agreement shall be a Default of outstanding trust fund account funds under the related Farm Lender Credit Agreement. Farm Lender shall provide IBank with written notice that a Default has occurred within fourteen (14) calendar days of either failure by the Farm Borrower to make payment at loan maturity or filing for bankruptcy by Farm Borrower.

(b) With respect to a Default on a Guaranteed Farm Borrower Loans, the procedures to be followed by a Farm Lender shall be those specified by USDA. If no such procedures exist, the procedures specified in Section 5016(c) shall apply.

(c) With respect to a Default on a Nonguaranteed Farm Borrower Loans, the procedures to be followed by a Farm Lender shall be set forth in the Farm Borrower Agreement and the related Farm Lender Credit Agreement, and shall include the following:

Upon occurrence of a Default a meeting shall be arranged by the Farm Lender with the Farm Borrower to remedy the Default. Actions taken by the Farm Lender may include, (but are not limited to), the following:

Deferment of principal payments.

An additional temporary loan by the Farm Lender to bring the account current;

Re-amortization of or rescheduling the payments on the loan.

Reorganization

Subsequent loan Guarantees;

Changes in the interest rate, upon approval of IBank.

(d) The Farm Lender shall negotiate in good faith to permit the Farm Borrower to cure a Default; provided that, in the opinion of the Farm Lender, the proposed resolution is economically feasible.

(e) If, within ninety (90) calendar days following receipt by IBank of the notice provided for in Section 5016(a), the Farm Lender is unable to resolve to its satisfaction any Default, then Farm Lender shall institute Liquidation proceedings.

§ 5017 FARM LOAN LIQUIDATION

(a) With respect to Guaranteed Farm Borrower Loans, Liquidation shall follow the procedures required by USDA; provided, however, that any reports made to USDA in connection with such Liquidation shall also be given to IBank by the Farm Lender. If no such procedures exist or apply, the procedures specified in Section 5017(b) shall apply.

(b) With respect to Liquidation of a Nonguaranteed Farm Borrower Loan, a Liquidation plan shall be prepared by the Farm Lender and delivered to IBank. The Liquidation plan shall specify the steps the Farm Lender intends to take for Liquidation of the Farm Borrower Loan, including proposed costs. Unless the Farm Borrower receives written objections to the Liquidation plan from IBank within fourteen (14) calendar days of submitting the plan to IBank, the plan shall be deemed approved by IBank. In the event Farm Lender receives a written objection to the plan from IBank within the fourteen (14) calendar days, IBank and Farm Lender shall negotiate a mutually acceptable Liquidation plan.

(c) Liquidation recoveries made in connection with Nonguaranteed Farm Borrower Loans shall be applied in the following order of priority.

- (1) To pay Liquidation costs approved by IBank.
- (2) To pay accrued interest and late fees.
- (3) To pay principal.
- (4) To pay fees owed to the Farm Lender, pursuant to Section 5020.

(d) With respect to Liquidation in connection with either Guaranteed or Nonguaranteed Farm Borrower Loans, the Farm Lender shall not initiate any judicial remedy without the prior written approval of IBank.

§ 5018 SALE OF THE GUARANTEED PORTION OF THE FARM BORROWER LOAN

Farm Lender is authorized to negotiate the sale of the Guaranteed portion of the Farm Borrower Loan, if allowed by law, together with the Guarantee, to third parties. The sale shall result in the receipt by the Farm Lender of a sum no less than the outstanding balance owed on the Guaranteed portion of the Farm Borrower Loan being sold. The Farm Lender shall deposit the funds received into the trust fund account from which the loan funds were disbursed.

§ 5019 FARM LOAN PAYMENTS

(a) Payments received from repayment of a Farm Borrower Loan shall be allocated to Farm Lender, trust fund account and, if applicable, Holder, based upon the percentage ownership of the Farm Borrower Loan. As an example, if the Holder owns ninety

percent (90%) and the trust fund account owns the remaining ten percent (10%), then the principal and interest payments are divided 90/10, except that the portion of the interest owed the trust fund account shall be based upon the Farm Lender Credit Agreement interest rate (two points below prime) and not the Farm Borrower Agreement (five points above prime). Payment shall be received by the trust fund account and, if applicable, the Holder, within forty-five (45) calendar days of the Farm Lender receiving the funds from Farm Borrower.

(b) IBank shall periodically audit Farm Lender's calculation of interest and principal owed under Farm Lender Credit Agreement and send written notice to Farm Lender specifying any error in the calculation, and the amount of the discrepancy. If the letter specifies that Farm Lender owes additional funds, Farm Lender shall pay funds to the appropriate trust fund account within seven (7) calendar days of receiving the letter from IBank. If the letter specifies that Farm Lender paid more than was owed, Farm Lender shall apply the overpayment to the next payment due to IBank.

(c) Any sum disbursed to the Farm Lender pursuant to Section 5013 and not lent to the Farm Borrower within six (6) months from the date of such disbursement shall be repaid by Farm Lender within five (5) business days of notification by IBank, and the Farm Lender shall have no further rights with respect to such funds.

§ 5020 FARM LOAN FEES

(a) The Farm Lender shall be authorized to charge the Farm Borrower a fee of three percent (3%) of the amount of the Farm Borrower Loan, in addition to the current fee required to be paid to USDA on any Guaranteed Farm Borrower Loan. In the event of a loan to a Nonguaranteed Farm Loan Borrower, the fee shall not exceed that specified in Government Code Section 63089.67.

§ 5021 SECONDARY MARKET FOR GUARANTEED LOANS

(a) The Lender shall have the option of retaining all of the Loan. If the Lender desires to assign or participate all or a portion of the Guaranteed portion of the Loan at or subsequent to Loan closing, the Loan must not be in Default. The Lender is not permitted to assign or participate any amount of the Guaranteed or unguaranteed portions of the Loan to any of the following:

(1) the Borrower, or member of the immediate family of the Borrower, the Borrower's officers, directors, stockholders, other owners or any parent, subsidiary or affiliate.

(2) a Corporation or any employee or a member of the Board of Directors of a Corporation, or

(3) any employee of IBank.

(b) The Lender may assign all or part of the Guaranteed portion of the Loan to one or more Holders, except that the Lender is required to retain a minimum of ten percent (10%) of the Loan amount, and the Lender shall retain the responsibility for servicing the Loan.

(c) The Lender shall notify the Corporation of the assignment no later than forty-five (45) calendar days following the assignment. No later than fifteen (15) calendar days following the notification provided by the Lender, the Corporation shall submit information to IBank regarding the assignment. No later than thirty (30) calendar days following the submission of the assignment information, IBank shall notify the Lender and Holder of the registration.

(d) The information submitted to IBank regarding the assignment shall consist of the items listed below:

- (1) The date of assignment or participation.
- (2) The Loan number.
- (3) A description of the Loan including the date the Loan was executed, and the name of the Borrower.
- (4) The outstanding balance of the Loan.
- (5) The percent of Loan Guarantee assigned to the Holder.
- (6) A certification that the Loan is not in Default and no Default is pending.
- (7) A certification that Holder complies with the requirements described in Section 5021(a)(1) through (a)(3).
- (8) The Holder's contact person, mailing address, telephone number, and if available facsimile number and e-mail address.
- (9) The Lender's contact person, mailing address, telephone number, and if available facsimile number and e-mail address.
- (10) The titles and dated signatures of the Lender, the Holder, and the Corporation.

(e) When a Guaranteed portion of a Loan is sold by the Lender to a Holder, the Holder shall succeed to all rights of Lender under the Loan Guarantee in proportion to the amount of the Loan purchased. The Lender shall remain bound to all the obligations under the Loan Guarantee.

(f) The Lender shall be responsible for servicing the entire Loan and shall remain the secured party of record. The entire Loan shall be secured by the same security with equal lien priority for the Guaranteed and unguaranteed portions of the Loan.

(g) The Loan Guarantee and right to issue a Demand will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of the Loan Guarantee by Lender, unless Holder has actual knowledge of said fraud, misrepresentation, or unenforceability of the Loan Guarantee prior to purchase. Notwithstanding the provisions of Section 5003(a), the Holder shall be authorized to make Demand upon the Lender, with a copy sent to the Corporation, when any payment owed pursuant to the Loan is sixty (60) calendar days in arrears, and the Holder shall be under no obligation to delay Demand pending Liquidation of Collateral. If Holder has not received a response from the Lender within thirty (30) calendar days agreeing to purchase the Guaranteed portion of the Loan, the Holder shall be authorized to send a Demand to the Corporation. It shall be the responsibility of the Corporation to verify the Demand figures provided by the Holder to the Lender. In any dispute the Lender Demand figures shall be used. The Holder shall be entitled to receive interest on the unpaid portion of the Guaranteed portion of the Loan until the Demand payoff is mailed to the Holder.

(h) Nothing contained herein shall constitute any waiver by IBank or the Corporation of any rights they possess against the Lender, and the Lender agrees that it will be liable and will promptly reimburse the trust fund for any payment made by IBank to Holder which, if such Lender had held the Guaranteed portion of the Loan, IBank would not be required to make.

§ 5022 JUMP START LOAN PROGRAM

(a) The purpose of the Jump Start Loan Program (Jump Start Program) is to provide Loans from five hundred dollars (\$500) to ten thousand dollars (\$10,000) and financial literacy and technical assistance to start-ups and established small businesses owned by Low-Wealth Borrowers or located in Low-Wealth Communities or Disaster Areas.

(b) IBank may enter into a Jump Start Allocation Agreement with a Jump Start Corporation that is in furtherance of the purposes of the Jump Start Program pursuant to Section 5022(a).

(c) The Jump Start Allocation Agreement shall include, without limitation, all of the following provisions:

(1) an allocation of funds by IBank to the Jump Start Corporation in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000) (Jump Start Allocation) to be used to make Jump Start Loans to Jump Start Borrowers pursuant to the terms and requirements of the Jump Start Allocation Agreement;

(2) IBank's agreement to provide the Jump Start Grant pursuant to Section 5023;

- (3) standard credit underwriting criteria;
- (4) standard Loan disbursement processes;
- (5) standard servicing policies and procedures; and
- (6) the financial literacy training and technical assistance the Jump Start Corporation will provide to the Jump Start Borrowers.

(d) The Jump Start Allocation shall not be used by the Jump Start Corporation for any administrative, training, or technical assistance costs or expenses.

(e) Investment income earned on the Jump Start Allocation shall be used only to make Jump Start Loans pursuant to the Jump Start Allocation Agreement.

(f) Interest earned on Jump Start Loans may be used to pay the administrative costs of IBank and the Jump Start Corporation in accordance with the Jump Start Allocation Agreement, the FDC Policy Manual and the Administrative Cost Policy Manual.

§ 5023 JUMP START GRANT

IBank shall provide each Jump Start Corporation with a Jump Start Grant in an aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000) to be used to compensate the Jump Start Corporation for its allowable administrative, financial literacy training and technical assistance costs and expenses in accordance with the terms and requirements of the Administrative Cost Policy Manual.

§ 5024 APPROVAL OF JUMP START LOAN

(a) No Jump Start Borrower Agreement shall be executed by a Jump Start Corporation nor any Jump Start Allocation disbursed to a proposed Jump Start Borrower until the proposed Jump Start Loan has been reviewed and approved by the Jump Start Corporation's Board of Directors, unless the Jump Start Corporation's board of directors has delegated the authority to approve a proposed Jump Start Loan to the Corporation's loan committee, executive director and/or chief credit officer, and such loan committee, executive director and/or chief credit officer has approved the proposed Jump Start Loan.

(b) In any case where a Jump Start Corporation has failed to comply with Section 5024(a), IBank may immediately exercise all available legal remedies to recover from the Jump Start Corporation the funds disbursed.

§ 5025 RELEASE OF JUMP START FUNDS

(a) A Jump Start Corporation shall not approve the disbursement of any Jump Start Allocation funds to a Jump Start Borrower until the proposed Jump Start Borrower has executed and delivered to the Jump Start Corporation the following documents:

(1) a Jump Start Borrower Agreement, which includes at a minimum: a note, Loan agreement and security instrument, each consistent with commercial practices and containing the following:

The Jump Start Loan amount, which shall not exceed Ten Thousand Dollars (\$10,000) or be less than Five Hundred Dollars (\$500.00).

A description of the Authorized Jump Start Costs for which Loan funds shall be used.

The interest rate, which shall not exceed five percent (5%) above the prime rate for the United States listed in the Wall Street Journal on the date of the Jump Start Loan commitment.

The term, which shall not exceed five (5) years.

The amortization schedule; no balloon payments will be permissible.

Default and Liquidation provisions which shall comply with Sections 5026 and 5027, respectively.

Fees pursuant to Section 5028.

(2) a note payable to the order of IBank in a principal amount not to exceed Ten Thousand Dollars (\$10,000.00) and not less than Five Hundred Dollars (\$500.00), and

(3) a security or Collateral agreement or similar instrument, if any, as required by the Jump Start Borrower Agreement.

(b) The Jump Start Corporation shall provide, pursuant to the FDC Policy Manual, evidence of compliance with Section 5025(a) to IBank within seven (7) business days of disbursement of Jump Start Allocation funds to a Jump Start Borrower.

§ 5026 JUMP START LOAN DEFAULTS

(a) The Jump Start Corporation shall provide IBank with written notice that a Default under the Jump Start Loan Agreement has occurred within fourteen (14) calendar days after the occurrence of any such Default.

(b) The Default procedures to be followed by a Jump Start Corporation shall be set forth in the Jump Start Borrower Agreement and the Jump Start Allocation Agreement and shall include the following:

(1) Upon occurrence of a Default a meeting shall be arranged by the Jump Start Corporation with the Jump Start Borrower to remedy the Default. Actions taken by the Jump Start Corporation may include, but are not limited to, with the written approval of IBank, the following:

Deferment of principal payments

Re-amortization of or rescheduling the payments on the Loan

Reorganization

Additional Collateral

Changes in the interest rate

(2) The Jump Start Corporation shall negotiate in good faith to permit the Jump Start Borrower to cure a Default; provided that, in the opinion of the Jump Start Corporation, the proposed resolution is economically feasible.

(3) If, within thirty (30) calendar days following receipt by IBank of the notice provided for in Section 5026 (a), the Jump Start Corporation is unable to resolve to IBank's satisfaction any Default, then the Jump Start Corporation shall institute Liquidation proceedings as set forth in Section 5027 and the FDC Policy Manual.

§ 5027 JUMP START LOAN LIQUIDATION

(a) A Liquidation plan shall be prepared by the Jump Start Corporation and delivered to IBank upon the inability of the Jump Start Borrower to cure the Default. The Liquidation plan shall specify the steps the Jump Start Corporation intends to take for Liquidation of the Jump Start Loan, including proposed costs. Unless the Jump Start Corporation receives written objections to the Liquidation plan from IBank within fourteen (14) calendar days of submitting the plan to IBank, the plan shall be deemed approved by IBank. In the event the Jump Start Corporation receives a written objection to the plan from IBank within the fourteen (14) calendar days, IBank and the Jump Start Corporation shall negotiate a mutually acceptable Liquidation plan.

(b) Liquidation recoveries made in connection with the Jump Start Loans shall be applied in the following order of priority:

(1) To pay Liquidation costs approved by IBank

(2) To pay principal

(3) To pay accrued interest

(c) With respect to Liquidation in connection with Jump Start Loans, the Jump Start Corporation shall not initiate any judicial remedy without the prior written approval of IBank.

§ 5028 JUMP START LOAN FEES

(a) The Jump Start Corporation shall be authorized to charge the Jump Start Borrower a fee of three percent (3%) of the principal amount of the Jump Start Loan. The fee shall not exceed that specified in Government Code Section 63089.67.

§ 5029 [Reserved]

§ 5030 DISASTER RELIEF LOAN GUARANTEE PROGRAM

(a) The Disaster Relief Loan Guarantee Program (Disaster Relief Program) exists as a sub-program of IBank's California Small Business Loan Guarantee Program. The purpose of the Disaster Relief Program is to provide Loan Guarantees for Loans to Disaster Relief Borrowers. Except as expressly provided in this Section 5030 to the contrary, Guarantees of Loans under the Disaster Relief Program shall be governed by Sections 5001 through 5006.

(b) For purposes of the Disaster Relief Program and this Section 5030 only:

(1) Every occurrence of the word "Borrower" in Sections 5001 through 5006 shall be replaced with the words "Disaster Relief Borrower."

(2) Section 5002(b)(1) shall be deleted in its entirety and replaced with the following: "The Corporation's promise to pay (1) (i) up to ninety-five percent (95%) of the outstanding principal of a Loan, if the interest rate of which does not exceed one percent (1%) above the prime rate for the United States listed in the Wall Street Journal on the date of the Loan commitment, (ii) up to ninety percent (90%) of the outstanding principal of a Loan, if the interest rate of which exceeds one percent (1%), but is not greater than two percent (2%) above the prime rate for the United States listed in the Wall Street Journal on the date of the Loan commitment, or (iii) up to eighty-five percent (85%) of the outstanding principal of a Loan, if the interest rate of which exceeds two percent (2%) above the prime rate for the United States listed in the Wall Street Journal on the date of the Loan commitment; and (2) accrued yet unpaid interest up to 90 calendar days at the same Loan Guarantee percentage, all on a Loan in which the Loan Guarantee is approved in accordance with IBank policy referenced in the Corporate Contract, subject to the following restrictions:

(i) The Lender has complied with all material conditions contained in the Loan Guarantee; and

(ii) The Lender has not engaged, and will not engage, in fraudulent or negligent practices in connection with the Disaster Relief Borrower, the Loan Guarantee, the Loan or the related Loan agreement.”

(3) Section 5002(b)(10) shall be deleted in its entirety and replaced with the following: “The maximum Loan Guarantee amount under the Disaster Relief Program for any business is \$1,000,000. The maximum Loan amount for any business is \$1,250,000, unless specific written approval is obtained from the Executive Director for a larger Loan amount.”

(c) A Loan Guarantee under the Disaster Relief Program shall be for a Loan to a Disaster Relief Borrower, the sole purpose of which is to provide financing to enable the Disaster Relief Borrower to recover from (1) Significant Actual Physical Damage to real or personal property, and/or (2) Significant Economic Injury.

(d) A Loan to a Disaster Relief Borrower shall not exceed the aggregate sum of (1) the estimated fair market value replacement or repair cost of any Significant Actual Physical Damage, and (2) the estimated monetary loss suffered by a Disaster Relief Borrower as a result of Significant Economic Injury.

(e) Prior to issuing any Loan Guarantee in connection with a Loan to a Disaster Relief Borrower, the Corporation shall confirm that, in its reasonable opinion, the Loan does not exceed the amount set forth in Section 5030(d).

(f) A Corporation shall not issue a Loan Guarantee of a Loan to a Disaster Relief Borrower unless it determines each of the following conditions are satisfied:

(1) The Disaster Relief Borrower cannot obtain a Loan without some form of credit enhancement.

(2) The Disaster Relief Borrower has demonstrated a reasonable prospect of repayment.

(3) The Loan to the Disaster Relief Borrower will be used exclusively in California.

(4) The Loan to the Disaster Relief Borrower qualifies as a Loan to a small business as defined with 750 or less employees.

§ 5031 SMALL BUSINESS LOAN CATALYST PROGRAM

(a) The purpose of the Small Business Loan Catalyst Program (SBLCP) is to enable IBank’s direct or indirect participation with Lenders and/or Special Purpose Entities to catalyze Small Business lending in California.

(b) The Executive Director or his or her designee may, subject to IBank Board approval, enter into one or more contracts and related documents with one or more Special

Purpose Entities, or any entity that owns or controls any such Special Purpose Entity, the purpose of which is to directly or indirectly provide capital to one or more Special Purpose Entities to increase the number and/or volume of loans made to Small Businesses operating in California.

(c) The Executive Director or his or her designee may, subject to IBank Board approval, enter into one or more contracts and related documents with one or more Lenders to purchase, in whole or part, one or more Small Business Loans or to obtain a participation share in, one or more Small Business Loans. IBank may purchase any such Small Business Loans, or interests therein, either directly or indirectly through an intermediary.

(e) The Executive Director or his or her designee may, subject to IBank Board approval, directly or indirectly enter into one or more agreements to loan money to one or more Lenders for the purpose of providing a source of funds for such Lender(s) to make Small Business Loans. Any such agreement to loan money may be made directly between IBank and a Lender, an affiliate of a Lender under an agreement to provide funds to such Lender, or to a Special Purpose Entity or other entity that will in turn loan the funds to a Lender.

(f) The Executive Director or his or her designee may, subject to any limitations set forth in the Government Code Section 63000 and following, enter into any agreements with attorneys, financial advisors, or other consultants necessary or desirable to assist IBank's entry into any of the contracts or agreements referenced in Section 5031(b) and (c), above.

II. Corporations Code

CORPORATIONS CODE - CORP

TITLE 1. CORPORATIONS [100 - 14631]

DIVISION 3. CORPORATIONS FOR SPECIFIC PURPOSES [12000 - 14631]

PART 5. SMALL BUSINESSES [14000 - 14024]

CHAPTER 1. California Small Business Financial Development Corporations [14000 - 14024]

ARTICLE 1. Introduction [14000 - 14002]

14000.

This chapter shall be known and may be cited as the California Small Business Financial Development Corporation Law.

14001.

(a) It is the intent of the Legislature in enacting this chapter to promote the economic development of small businesses through the California Small Business Finance Center by making available capital, general management assistance, and other resources, including financial services, personnel, and business education to small business entrepreneurs, including women, veteran, and minority-owned businesses, for the purpose of promoting the health, safety, and social welfare of the citizens of California, to eliminate unemployment of the economically disadvantaged of the state, and to stimulate economic development and entrepreneurship.

(b) It is the further intent of the Legislature to provide a flexible means to mobilize and commit all available and potential resources in the various regions of the state to fulfill these objectives, including federal, state, and local public resources, and private debt and equity investment.

(c) It is the further intent of the Legislature that corporations operating pursuant to this law shall, to the maximum extent feasible, coordinate with other job and business development efforts within their region directed toward implementing the purpose of this chapter.

(d) It is the further intent of the Legislature to provide expanded resources allowing participation by small and emerging contractors in state public works contracts. Increased access to surety bonding resources will assist in supporting participation by those firms in public works contracts, and by stimulating increased participation by small firms, the state will benefit from increased competition and lower bid costs.

14002.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

ARTICLE 2. Definitions [14003- 14003.]

14003.

Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter.

(a) “Bank” means the California Infrastructure and Economic Development Bank.

(b) “Bank board” means the board of directors of the California Infrastructure and Economic Development Bank.

(c) “Board of directors” means the board of directors of the corporation.

(d) “California Small Business Board” means the advisory board established pursuant to Section 14004.1 for the purpose of advising on issues and programs affecting small business.

(e) “California Small Business Finance Center” means the governmental unit within the bank, which is located within the Governor’s Office of Business and Economic Development, with the administrative responsibility for the programs and activities authorized pursuant to Section 8684.2 of the Government Code, the Small Business Financial Assistance Act of 2013 (Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code), and this chapter.

(f) “Corporation” means any nonprofit California small business financial development corporation created pursuant to this chapter, or pursuant to Chapter 1 (commencing with Section 32000) of Division 15.5 of the Financial Code.

(g) “Directives and requirements” means a document adopted by the bank board setting forth policy direction as well as key rules governing a particular subject area.

(h) “Executive director” means the executive director of the California Infrastructure and Economic Development Bank.

(i) “Expansion fund” means the California Small Business Expansion Fund authorized pursuant to Section 63089.5 of the Government Code.

(j) “Financial company” means banking organizations, including national banks and trust companies, savings and loan associations, certified community development financial institutions, microbusiness lenders, state insurance companies, mutual insurance companies, and other public and private banking, lending, retirement, and insurance organizations.

(k) “Financial institution” means regulated banking organizations, including national banks and trust companies authorized to conduct business in the state and state-chartered commercial banks, trust companies, credit unions, and savings and loan associations.

(l) “Financial product” means the type of financial assistance described in Section 63088.5 of the Government Code or that the California Small Business Finance Center or a small business financial development corporation is otherwise authorized to provide.

(m) “Loan committee” means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.

(n) “Microbusiness lender” means a microbusiness lender as defined in Section 13997.2 of the Government Code.

(o) “Program manager” means the manager of the California Small Business Finance Center as designated to this title by the executive director of the bank.

(p) "Trust fund" means the money from the expansion fund that is held in trust by a financial institution or financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of Section 16506 of the Government Code.

(q) "Trust fund account" means an account within the trust fund that is either allocated to a particular corporation or shared by multiple corporations for the purpose of paying loan defaults and claims on bond guarantees or other financial products and program uses provided in this chapter.

ARTICLE 3. Program Manager [14004 - 14004.2]

14004.

(a) The program manager shall do all of the following:

(1) Administer this chapter.

(2) Make recommendations to the executive director and the bank board on the approval or disapproval of the articles of incorporation. This determination shall be based upon the following:

(A) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the directives and requirements adopted by the bank board pursuant to this chapter.

(B) A determination as to whether the legislative intent expressed in Section 14001 shall be served by the proposed corporation.

(C) A determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation are such as to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(D) A determination by the program manager that there is significant need for a new corporation.

(3) Have the accounts of each corporation formed under this chapter examined and audited as of the close of business on June 30 of each year. Material examination exceptions that are not corrected by the corporation within a reasonable period of time may result in the suspension or termination of the corporation pursuant to Section 63089.3 of the Government Code.

(4) Have the portfolio of each corporation examined a minimum of once a year. Material examination exceptions that are not corrected by the corporation within a reasonable period of time may result in the suspension or termination of the corporation pursuant to Section 63089.3 of the Government Code.

(5) Review reports from the Department of Business Oversight and inform corporations as to what corrective action is required.

(6) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

(b) The program manager may attend and participate at corporation meetings. The program manager, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation. The

program manager shall meet through telecommunication or in person with the board of directors of each corporation at least once each fiscal year, commencing January 1, 2014.

14004.1.

(a) The California Small Business Board is hereby continued and created as an advisory board to the California Infrastructure and Economic Development Bank Board, the executive director, and the program manager. The California Small Business Board may also advise the Governor and the Small Business Advocate regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export finance, state procurement, management and technical assistance, venture capital, and financial assistance.

(b) The California Small Business Board consists of the following membership:

(1) The Director of Finance or his or her designee.

(2) The Director of the Office of the Small Business Advocate or his or her designee.

(3) The Treasurer or his or her designee.

(4) A representative from two different corporations selected by the corporations.

(5) Four members appointed by the Governor, one of whom will serve as chair of the California Small Business Board, who are actively involved in the California small business community.

(6) Two persons actively involved in the business or agricultural communities, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules.

(7) Two Members of the Legislature, or their designees, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules, so long as it does not conflict with their duties as legislators.

(c) The California Small Business Board shall advise the program manager on matters regarding this chapter and Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.

(d) The public members of the California Small Business Board, at the discretion of the bank board, may be reimbursed per diem and travel expenses pursuant to state law.

14004.2.

The bank board shall approve new corporations recommended by the program manager, based on an examination of each of the following:

(a) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the directives and requirements adopted by the bank board pursuant to this chapter.

(b) Determination as to whether the legislative intent expressed in Section 14001 will be served by the proposed corporation.

(c) Determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation are able to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(d) Determination of the program manager that there is significant need for a new corporation.

ARTICLE 4. New Corporations [14005 - 14012]

14005.

Upon approval by the bank board to become a corporation, an entity shall adopt or amend its articles of incorporation to comply with the following:

(a) The name of the corporation shall include the words “small business financial development corporation,” except for those corporations formed pursuant to this chapter prior to 2002, which may also be called “small business development corporations,” or those formed prior to 1985, which may also be called “rural or urban development corporations.”

(b) The purposes for which the corporation is formed, which shall be those specified in Section 14001. This requirement shall not be deemed to preclude a statement of powers.

(c) A geographical description of the corporation’s primary service area.

(d) The name and addresses of seven or more persons who are to act in the capacity of directors until the selection of their successors.

(e) That the corporation is organized pursuant to the California Small Business Financial Development Corporation Law.

14006.

If the bank board concurs with the findings of the program manager pursuant to Section 14004, the bank board shall direct the program manager to approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the program manager shall review all amendments to the articles of incorporation to ensure consistency with the purposes of this chapter.

14007.

(a) The corporation’s existence as a small business financial development corporation begins upon the filing of the articles with the Secretary of State and continues perpetually, unless otherwise expressly provided for by law.

(b) If a corporation is terminated from participation in all programs, in order to continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code), the corporation shall amend its articles of incorporation in accordance with Chapter 8 (commencing with Section 5180) of Part 2 of Division 2 of Title 1 to remove the provisions required by Section 14005, including an amendment to remove the words “small business financial development corporation,” “small business development corporation,” or “rural or urban development corporation,” as applicable, from the corporate name, and shall no longer be registered with the Secretary of State as a small business financial development corporation. A corporation shall not enjoy any of the benefits of a small business financial development corporation following termination.

14009.

(a) Each corporation shall have provisions establishing a grievance procedure for employees, clients, or potential clients, to appeal a decision or obtain redress of an action done by the staff or loan committee of the corporation. The procedures shall be established in writing during the probationary period of a new corporation.

(b) The bylaws of the corporation shall authorize the removal of officers only by a two-thirds vote of the directors of the corporation.

14011.

The Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of this title) applies to corporations formed under this chapter, except as to matters otherwise provided for in this chapter.

14012.

For six months following the establishment of a corporation, commencing upon filing of the articles of incorporation with the Secretary of State, a corporation shall be on probation. While on probation, a corporation may be suspended if suspension is recommended by the program manager and affirmed by the executive director. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

ARTICLE 5. Corporation Board [14013 - 14017]

14013.

The corporate powers of a corporation shall be exercised by its board of directors.

14014.

The bank shall enter into a contract with each corporation that shall require that:

(a) A person may not serve on a corporation's board of directors who is not a resident of, or person conducting business in, the primary service area described in the articles of incorporation.

(b) A corporation's board of directors shall include representatives from all of the following:

- (1) The financial community.
- (2) The business community.
- (3) The economically disadvantaged.

(c) The chief executive officer of a corporation, or his or her designee, is the only employee of the corporation who may serve on its board of directors.

(d) A person who has a financial interest related to a matter over which the board of directors has authority may not make, participate in making, or in any way attempt to influence that matter.

14015.

If any director ceases to meet the qualifications established in Section 14014, he or she shall immediately vacate his or her position as a director and the position shall be deemed vacant.

14016.

If any vacancy occurs in the elective membership of the board of directors through death, resignation, or otherwise, the remaining directors shall elect a person representing the appropriate category to fill the vacancy for the unexpired term.

14017.

The bank board shall direct the program manager to establish new small business financial development corporations pursuant to the directives and requirements. The directives and requirements shall include steps to achieve a goal of ensuring that small businesses in all areas of the state would have reasonable access to the financial products authorized by Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code for which they are eligible.

ARTICLE 6. Corporations, Miscellaneous [14018 - 14021]

14018.

Every corporation shall provide for, and maintain a central staff to perform, all administrative requirements of the corporation, including all those functions required of a corporation by the contract and this chapter.

14019.

Reasonable costs incurred by a corporation in the creation and maintenance of a central staff shall be paid to the corporation from state funds, including a portion of the interest earned on the expansion fund and the corporation's trust fund account, if the corporation has a trust fund account, otherwise, on the expansion fund.

14020.

A corporation shall report to the program manager, or his or her designated representative, all statistical and other reports required by this chapter and Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code, including responses to audit reports, budget requirements, and other information relating to the establishment, monitoring, and suspension or termination of a corporation.

14021.

A corporation shall make a report to the program manager, as required by Chapter 6 (commencing with Section 63088) of Division 1 of Title 6.7 of the Government Code.

ARTICLE 7. Conflict of Interest [14022 - 14024]

14022.

It shall be unlawful for a member of the bank board or for the executive director, program manager, or any person who is an officer, director, contractor, or employee of a corporation, or who is a member of a loan committee, or who is an employee of the California Infrastructure and Economic Development Bank to do any of the following: (a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture,

association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving the deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this chapter.

14023.

It shall be unlawful for a member of the bank board or for the executive director, program manager, or any person who is an officer or director of a corporation, or who is an employee of the California Infrastructure and Economic Development Bank to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

14024.

Violation of any provision of this article shall constitute a felony.

**III. California Small Business Financial Assistance Act of 2013
GOVERNMENT CODE - GOV**

TITLE 6.7. INFRASTRUCTURE FINANCE [63000 - 64132]

**DIVISION 1. THE BERGESON-PEACE INFRASTRUCTURE AND ECONOMIC
DEVELOPMENT BANK ACT [63000 - 63089.99]**

**CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 -
63089.99]**

ARTICLE 1. Introduction [63088 - 63088.1]

63088.

(a) This chapter shall be known, and may be cited, as the Small Business Financial Assistance Act of 2013.

(b) Notwithstanding any other provision of this division, this chapter shall not apply to any other activities, powers, and duties of the bank under any of the other chapters of this division.

63088.1.

The Legislature finds all of the following:

(a) Small businesses form the core of the California economy and that it is in the interest of the state to increase opportunities for entrepreneurs, the self-employed, and microbusiness and small business owners to have better access to capital and other technical resources.

(b) Unemployment in California is a matter of statewide concern requiring concerted public and private action to develop employment opportunities for the disadvantaged, unemployed persons, veterans, and youth.

(c) It is necessary to direct additional capital, general management assistance, business education, and other resources to encourage the development of small business opportunities, particularly for minorities, women, and disabled persons, to alleviate unemployment.

ARTICLE 2. Definitions [63088.3- 63088.3.]

63088.3.

Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter. The definitions provided in this section shall only apply to this chapter and not to any other chapter of this division.

(a) "Bank" means the California Infrastructure and Economic Development Bank.

(b) "Bank board" means the board of directors of the California Infrastructure and Economic Development Bank.

(c) "Board of directors" means the board of directors of a corporation.

(d) "California Small Business Board" means the advisory board established pursuant to Section 14004.1 of the Corporations Code for the purpose of advising on issues and programs affecting small business.

(e) “California Small Business Finance Center” means the governmental unit within the bank, which is located within the Governor’s Office of Business and Economic Development, with the administrative responsibility for programs and activities authorized pursuant to Section 8684.2 of this code, Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, and this chapter.

(f) “Corporation” means any nonprofit California small business financial development corporation created pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or pursuant to Chapter 1 (commencing with Section 32000) of Division 15.5 of the Financial Code.

(g) “Directives and requirements” means a document adopted by the bank board setting forth policy direction as well as key rules governing a particular subject area.

(h) “Executive director” means the executive director of the California Infrastructure and Economic Development Bank.

(i) “Expansion fund” means the California Small Business Expansion Fund authorized pursuant to Section 63089.5.

(j) “Financial company” means banking organizations, including national banks and trust companies, savings and loan associations, certified community development financial institutions, microbusiness lenders, state insurance companies, mutual insurance companies, and other public and private banking, lending, retirement, and insurance organizations.

(k) “Financial institution” means regulated banking organizations, including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, credit unions, and savings and loan associations.

(l) “Financial product” means the type of financial assistance described in Section 63088.5, authorized by this chapter, or that the California Small Business Finance Center or a small business financial development corporation is otherwise authorized to provide.

(m) “Loan committee” means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to this chapter.

(n) “Microbusiness lender” means a microbusiness lender as defined in Section 13997.2.

(o) “Program manager” means the manager of the California Small Business Finance Center as designated to this title by the executive director of the California Infrastructure and Economic Development Bank.

(p) “Small business loan” means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan unless otherwise defined by the directives and requirements. Directives and requirements shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(q) “Trust fund” means the moneys from the expansion fund that is held in trust by a financial institution or financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of Section 16506.

(r) “Trustee” means the lending institution or financial company selected by the bank board to hold and invest the trust funds, or selected by a predecessor agency to the bank, if applicable. An agreement made pursuant to this chapter and the trustee shall not be construed to be a deposit of state funds.

(s) “Trust fund account” means an account within the trust fund that is either allocated to a particular corporation or shared by multiple corporations for the purpose of paying loan defaults and claims on bond guarantees or other financial products and program uses provided in this chapter.

ARTICLE 3. Purpose [63088.5 - 63088.6]

63088.5.

(a) There is within the Governor’s Office of Business and Economic Development the California Infrastructure and Economic Development Bank, which shall, among other things, administer the California Small Business Finance Center that administers programs to assist businesses seeking new capital resources, including, but not limited to, the Small Business Loan Guarantee Program.

(b) The bank board may continue programs funded by the Small Business Expansion Fund or establish one or more programs administered by the bank directly, in conjunction with financial companies or financial institutions, in direct or indirect participation with special purpose entities established for small business finance, or under contract with small business financial development corporations. The bank board may establish any and all programs pursuant to this chapter or Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code that it determines are necessary or desirable to directly or indirectly assist small businesses obtain capital. Programs established pursuant to this chapter or Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code may include the following types of financial products:

- (1) Loan guarantees and other credit enhancements.
- (2) Direct loans and other debt instruments.
- (3) Disaster loan guarantees.
- (4) Surety bond guarantees.

(c) In all of their state-funded programs, the corporations shall, to the extent practicable, be complementary to, and not competitive with, commercial lenders and other state and federal programs.

(d) In carrying out this chapter the program manager, the executive director, and the bank board may call on the California Small Business Board for advice and recommendations. All actions by the California Small Business Board are advisory.

(e) The California Small Business Board may also advise the Governor and the Small Business Advocate regarding issues and programs affecting California’s small business community, including, but not limited to, business innovation and expansion, export finance, state procurement, management and technical assistance, venture capital, and financial assistance.

63088.6.

To implement its responsibilities, a corporation shall undertake program activities that shall include, but not be limited to, the following:

(a) Outreach to low-resource small businesses and microbusinesses. The corporations located in rural areas shall give priority to low-resource farmers and rural and agriculturally related businesses.

(b) Collaboration with other organizations and lenders to identify and assist those businesses that are creditworthy but face impediments to accessing conventional sources because of reasons, such as low equity, inadequate collateral, unacceptable legal structure (such as a co-op or nonprofit organization), management inadequacies, and language problems.

(c) To the extent possible, bringing all possible financial resources to bear on the borrower's problems, including, but not limited to, low-interest lenders, business and industrial development corporations (BIDCOs), minority enterprise small business investment companies (MESBICs), and other financial institutions, financial companies, and grantors.

(d) Technical assistance to businesses receiving loans or guarantees that will maximize the probability of loan repayment.

(e) Ongoing strategies for increasing program resources through private sector involvement and nonstate funds.

(f) A program for collecting and liquidating defaulted loans so that the corporations can qualify to become full-service lenders under the Small Business Administration. Corporations located in rural areas shall, in addition, try to qualify for lender status under the United States Department of Agriculture's Rural Development and Farm Services Agency.

(g) Become an agent for other financial institutions and financial companies.

(h) Become an agent for other state or federal governmental agencies that need a qualified financial service provider, including, but not limited to, the State Energy Resources Conservation and Development Commission.

ARTICLE 4. Administrative Structure [63089 - 63089.4]

63089.

The bank board shall adopt directives and requirements concerning the implementation of this chapter and pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code. Any regulations adopted pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, as that chapter read on January 1, 2013, shall remain in effect until the bank board adopts directives and requirements relating to the specific policy or activity, but in no case beyond June 1, 2015.

63089.1.

(a) The program manager acting under the guidance of the executive director shall do all of the following:

(1) Administer this chapter.

(2) Enter into a contract between the bank and each corporation for services to be provided by the corporations for one or more programs or financial products under

this chapter and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

(3) In accordance with available resources, allow the use of branch offices for the purposes of making these programs under this chapter accessible to all areas of the state.

(4) Require each corporation to submit an annual written plan of operation.

(5) Authorize the distribution, transfer, leverage, and withholding of moneys in the expansion fund and trust funds.

(6) Authorize the investment of expansion and trust fund moneys.

(7) Oversee the operations of one or more programs authorized pursuant to this chapter and by Section 8684.2.

(8) Act as liaison between corporations, other state and federal agencies, lenders, and the Legislature.

(9) Act as secretary to the California Small Business Board, and attend meetings of the California Small Business Board and the bank board.

(b) The program manager may attend and participate at corporation meetings. The program manager or his or her designee shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation. The program manager shall confer with the board of directors of each corporation as appropriate and necessary to carry out his or her duties, but in no case shall the program manager confer less than once each fiscal year.

(c) In accordance with available resources, assist corporations in applying for public and private funding opportunities, and in obtaining program support from the business community.

63089.2.

(a) The use of state funds paid out to the trust fund and the return on those funds from investment pursuant to Section 63089.56 is conditional pursuant to Sections 63089.3 and 63089.57. Each corporation shall enter into a written signed agreement with the bank to provide program management services for one or more programs or activities of the California Small Business Finance Center authorized under Section 8684.2, this chapter, and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) Agreements with the corporations entered into pursuant to this chapter are exempt from the requirements of Section 10295, and Sections 10335 to 10381, inclusive, of the Public Contract Code. The agreement shall, at a minimum, govern the activities in which the corporation engages, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur.

(c) In the event the program manager and corporation do not reach an agreement, the corporation may appeal one or more conditions of the contract to the executive director or the bank board by providing written notice to the executive director within 10 days of the final written contract proposal from the program manager. The executive director or the bank board shall make a determination within 30 days of receiving written notice.

(d) In the event that the program manager finds the corporation has violated the terms of an active agreement, the program manager may take any action under Section 63089.3 or 63089.57, or any other action as appropriate. In the event the program manager finds the corporation has substantively violated the terms of an active

agreement, the corporation shall have no authority to withdraw or encumber the moneys in the trust fund or the return of those funds by the issuance of guarantees, commitments for other financial products, or by incurring expenses against the fund and its return in any manner whatsoever, and the program manager may take any action under Section 63089.3 or 63089.57, or any other action as appropriate. Any guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and the state, the bank, the expansion fund, or the trust fund will not be liable therefor.

63089.3.

(a) The program manager may temporarily suspend the guarantee authority or other financial product authority of a corporation if in the determination of the program manager a corporation has substantially failed to comply with any of the requirements in subdivision (b), causing irreparable harm to the program, the corporation's guarantee, or any other financial products authority. The notice of temporary suspension sent to the corporation shall specify the reasons for the action.

(1) As used in this section, "guarantee or any other financial products authority" means the authority to make or guarantee or administer any other financial products that encumber funds in a trust fund account, any account or subaccount under the direct control of the bank or other state entity, or the expansion fund.

(2) The program manager shall make one of the determinations specified in subdivision (b) within 30 days of the effective date of the temporary suspension, unless the corporation and the program manager mutually agree to an extension. The corporation shall have the opportunity to submit written material to the program manager addressing the items stated in the temporary suspension notice. If the program manager does not make any determinations within 30 days, the temporary suspension shall be reversed. The corporation's yearly contract shall remain in effect during the period of temporary suspension, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(b) Failure of a corporation to substantially comply with the following may result in the suspension or termination of a corporation:

(1) Directives and requirements adopted by the bank board, for implementing the California Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code) and this chapter.

(2) Failure to meet any fiscal, audit, examination, or portfolio requirement, as contained in the directives and requirements and examination reports.

(3) Failure to significantly meet any milestones or scope of work as contained in the performance contract between the corporation and the bank.

(4) Any other action in the opinion of the program manager that causes irreparable harm to the corporation, the expansion fund, or the trust fund.

(c) Pursuant to subdivisions (a) and (b), the program manager may take any of the following actions:

(1) Terminate the temporary suspension.

(2) Terminate the temporary suspension subject to the corporation's adoption of a specified remedial action plan approved by the program manager.

- (3) Continue the temporary suspension of guarantee and other financial product authority until a specified time.
- (4) Terminate the corporation's authority to administer specified loan guarantees or other financial products.
- (5) Terminate the corporation's authority to remain a corporation authorized pursuant to the California Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code) and this chapter.
- (d) The program manager shall make one of the determinations specified in subdivision (c) within 30 days of the effective date of the temporary suspension notice, unless the corporation and the program manager mutually agree to an extension. If the program manager does not make any determinations within 30 days, the temporary suspension shall be negated. The corporation's yearly contract shall remain in effect during the period of temporary suspension, and the corporation shall continue to receive reimbursement of necessary operating expenses.
- (e) The actions contained in paragraphs (3) to (5), inclusive, of subdivision (c) require a finding that irreparable harm will occur unless the action is taken, and a finding that the corporation has failed to comply with the California Small Business Development Corporation Law (Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code) and this chapter.
- (f) In considering any action specified in subdivision (c), the program manager shall consider, along with other criteria as specified in subdivision (b), the corporation's history and past performance.
- (g) If the program manager decides to take any action pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the program manager shall transfer all funds subject to the action, whether encumbered or not, in the trust fund account of the suspended or terminated corporation into either the expansion fund, or either permanently or temporarily transfer the funds to the trust fund account of another corporation or a holding account in the expansion fund or trust fund established for this purpose, unless an appeal is received from the corporation pursuant to subdivision (h).
- (h) If the program manager intends to transfer funds as specified in paragraph (g), the corporation shall be notified of the funds transfer 10 days before the effective date of the transfer. The corporation shall have the right to appeal the program manager's decision to the executive director within that 10-day period by sending written notice to the executive director. Once the executive director receives notice that the action is being appealed, the program manager's funds transfer shall be stayed.
- (i) The corporation shall have the opportunity to submit written material to the executive director addressing the actions and findings stated in the program manager's determination. The executive director shall consider and make a final determination on the appeal within 30 days of receiving the appeal notice from the corporation, or such longer time as agreed to by the executive director and the corporation. The executive director may elect to take any of the actions listed in subdivision (j). The action of the program manager shall remain in effect until the executive director issues a decision. The corporation's performance contract shall remain in effect during the appeal period, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(j) Pursuant to subdivision (i), the executive director may independently take action or seek the advice and recommendation of the California Small Business Board prior to taking any of the following actions:

- (1) Rescind the action taken by the program manager.
- (2) Modify the action taken by the program manager subject to the adoption by the corporation of a specified remedial action plan approved by the executive director.
- (3) Affirm the action taken by the program manager.

(k) Following the executive director's concurrence any action pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the program manager shall transfer all funds subject to the action, whether encumbered or not, in the trust fund account of the suspended or terminated corporation into either the expansion fund, or either permanently or temporarily transfer the funds to the trust fund account of another corporation or a holding account in the expansion fund or trust fund established for this purpose. The corporation shall be notified of the funds transfer 10 days before the effective date of the transfer. The corporation shall have the right to appeal the executive director's decision to the bank board within that 10-day period by sending written notice to the chair of the bank board. Once the chair of the bank board receives notice that the executive director's determination is being appealed, the program manager's funds transfer shall be stayed.

(l) The corporation shall have the opportunity to submit written material to the bank board addressing the actions and findings stated in the executive director's determination. The bank board shall consider and make a final determination on the appeal within 30 days of receiving the appeal notice from the corporation, or such longer time as agreed to by the chair of the bank board and the corporation. The action of the executive director shall remain in effect until the bank board issues a decision. The corporation's performance contract shall remain in effect during the appeal period, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(m) Pursuant to subdivision (l), the bank board may independently take action or seek the advice and recommendation of the California Small Business Board prior to taking any of the following actions:

- (1) Rescind the action taken by the executive director.
- (2) Modify the action taken by the executive director subject to the adoption by the corporation of a specified remedial action plan acceptable to the executive director.
- (3) Affirm the action taken by the executive director.

(n) Following the bank board's concurrence with the executive director's determination consistent with any action pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the program manager shall transfer all funds subject to the action, whether encumbered or not, in the trust fund account of the suspended or terminated corporation into either the expansion fund, or either permanently or temporarily transfer the funds to the trust fund account of another corporation or a holding account in the expansion fund or trust fund established for this purpose. The corporation shall be notified of the funds transfer 10 days before the effective date of the transfer.

(o) Notwithstanding Section 63089.56, in the event a final determination was made by the program manager, the executive director or the bank board, whichever is applicable, to temporarily transfer the funds of the corporation to the expansion fund or to the trust

fund account of another corporation or a holding account in the expansion fund or trust fund established for this purpose, upon compliance with all requirements of that final determination as determined by the executive director, the transferred funds shall be returned to the corporation's trust fund account. While the funds of a corporation's trust fund account reside in the expansion fund, use of the principal on the funds shall be governed by the implementing directives and requirements specifying use of funds in the expansion fund. Interest on the funds moved from a corporation's trust fund account upon temporary withdrawal shall be limited to payment of the corporation's administrative expenses, as contained in the contract between the corporation and the bank pursuant to this chapter.

(p) Following a final determination of termination of all activities of an active corporation, in order to continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code), the corporation must amend its articles of incorporation in accordance with Chapter 8 of Part 2 of Division 2 of the Corporations Code to remove the provisions required by Section 14005 of the Corporations Code, including an amendment to remove the words "small business financial development corporation," "small business development corporation," or "rural or urban development corporation," as applicable, from the corporate name and shall no longer be registered with the Secretary of State as a small business financial development corporation. A corporation shall not enjoy any of the benefits of a small business financial development corporation following suspension.

63089.4.

The bank is authorized to:

- (a) Approve new corporations recommended by the program manager.
- (b) Enter into contracts with corporations for program management and other financial product-related services.
- (c) Select a financial institution or financial company to act as trustee of the trust fund as specified in this chapter.
- (d) Invest expansion fund and trust fund moneys as specified in this chapter.
- (e) Affirm, modify, or rescind the determinations of the program manager and the executive director as specified in this chapter.
- (f) Adopt directives and requirements as specified in this chapter.
- (g) Authorize new financial product programs and activities pursuant to this chapter.

ARTICLE 5. Expansion Fund and Trust Fund [63089.5 - 63089.62]

63089.5.

- (a) There is hereby continued in existence in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a financial institution or financial company that will establish a trust fund and act as trustee of the funds.
- (b) The expansion fund and the trust fund shall be used for the following purposes:
 - (1) To pay defaulted loan guarantee or surety bond losses, or other financial product defaults or losses.
 - (2) To fund direct loans and other debt instruments.

- (3) To pay administrative costs of corporations.
- (4) To pay state support and administrative costs.
- (5) To pay those costs necessary to protect a real property interest in a financial product default.

(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government moneys, and other public or private moneys to make loans, guarantees, and other financial products that the California Small Business Finance Center or a financial development corporation is authorized to provide or that may be provided pursuant to Article 12 (commencing with Section 63089.99). The program manager shall provide written notice to the Joint Legislative Budget Committee and to the Chief Clerk of the Assembly and the Secretary of the Senate who shall provide a copy of the notice to the relevant policy committees within 10 days of any nonstate funds being deposited in the expansion fund. The notice shall include the source, purpose, timeliness, and other relevant information as determined by the bank board.

(d) (1) One or more accounts in the expansion fund and the trust fund may be created by the program manager for corporations participating in one or more programs authorized under this chapter and Section 8684.2. Each account is a legally separate account, and shall not be used to satisfy loan guarantees or other financial product obligations of another corporation except when the expansion fund or trust fund is shared by multiple corporations.

(2) The program manager may create one or more holding accounts in the expansion fund or the trust fund, or in both, to accommodate the temporary or permanent transfers of funds pursuant to Section 63089.3.

(e) The amount of guarantee liability outstanding at any one time shall not exceed 10 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

63089.51.

(a) All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years, for the purposes of this chapter.

(b) Except as specified in subdivision (b) of Section 63089.54, the state or the bank shall not be liable or obligated in any way beyond the state money that is allocated in the expansion fund from moneys from the General Fund appropriated for those purposes.

63089.52.

(a) The program manager, at his or her discretion, with the approval of the executive director, may request the trustee to invest those moneys in the trust fund in any of the securities described in Section 16430. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this chapter.

(b) Any investments made in securities described in Section 16430 shall be governed by the investment policy approved by the bank board.

63089.53.

Except as specified in subdivision (b) of Section 63089.54, the state or the bank shall not be liable or obligated in any way beyond the money that is allocated and deposited in the trust fund accounts.

63089.54.

(a) There is hereby created in the State Treasury the Small Business Disaster Recovery Loan Loss Reserve Account, as part of the expansion fund. This account shall be used to pay for losses resulting from loan guarantees issued pursuant to subdivision (a) of Section 63089.90 or subdivision (b) of this section, and disaster loan guarantees and other credit enhancement defaults issued prior to the effective date of this section that are in default.

(b) Any lending institution that issues a loan that is guaranteed by resources in this account shall be fully reimbursed for the guaranteed portion of principal and interest that result from a loan or loans that are in default. If there are insufficient funds in this account to fully satisfy all claimants, the full faith of the resources in the General Fund are pledged to satisfy the obligations of this account. This account may only guarantee as much loan dollar value as is specifically authorized by the Director of Finance with the concurrence of the Governor. This account shall receive all moneys transferred pursuant to Section 63089.55, and any unencumbered balances transferred to the California Small Business Expansion Fund pursuant to Chapters 11 and 12 of the First Extraordinary Session of the Statutes of 1989, and Chapter 1525 of the Statutes of 1990, as of July 1, 1992.

(c) The Governor may utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, by the Administrator of the United States Small Business Administration, or by the United States Secretary of Agriculture, or declared to be in a state of emergency by the Governor of California.

63089.55.

The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the California Small Business Expansion Fund for use as authorized by the bank board, in an amount necessary to make loan guarantees pursuant to Section 8684.2 and this chapter.

63089.56.

(a) The funds in the expansion fund shall be paid out to trust fund accounts by the Treasurer on funds drawn by the Controller and requisitioned by the program manager, pursuant to the purposes of this chapter. The program manager may transfer funds allocated from the expansion fund to accounts, established solely to receive the funds, in financial institutions or financial companies designated by the bank to act as trustee. The financial institutions or financial companies so designated shall be approved by the state for the receipt of state deposits. Interest earned on the trust fund accounts in financial institutions or financial companies may be utilized by the corporations or the bank pursuant to the purposes of this chapter.

(b) The program manager may reallocate funds held within a corporation's trust fund account.

- (1) The program manager may reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the program manager shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall occur no more frequently than once per fiscal year. Any decision made by the program manager pursuant to this subdivision may be appealed to the executive director unless otherwise specified. The executive director has the authority to repeal or modify any decision to reallocate funds.
- (2) The program manager may authorize a corporation to exceed the leverage ratio specified in Section 63089.5 or subdivision (a) of Section 63089.62, pending the annual reallocation of funds pursuant to this section. However, no corporation shall be permitted to exceed an outstanding guarantee liability of more than specified in subdivision (a) of Section 63089.62 after a reallocation is made.
- (c) Except as specified in subdivision (e), the program manager shall allocate and transfer money to trust fund accounts based on performance-based criteria. The criteria shall include, but not be limited to, the following:
- (1) The default record of the corporation.
 - (2) The number and amount of loans guaranteed by a corporation.
 - (3) The number and amount of loans made by a corporation if state funds were used to make those loans.
 - (4) The number and amount of surety bonds guaranteed by a corporation.
 - (5) The number and amount of other financial product activity.
 - (6) The number of jobs created or retained due to the financial product activity.
- (d) The criteria specified in subdivision (c) shall not apply to a corporation that has been in existence for five years or less. If not already adopted, the bank board shall develop directives and requirements specifying the basis for transferring account funds to those corporations that have been in existence for five years or less.
- (e) Any decision made by the program manager pursuant to this section may be appealed to the executive director within 15 days of notice of the proposed action. The executive director may repeal or modify any reallocation and transfer decisions made by the program manager. The appealing corporation shall submit, in writing, the specific area or areas of appeal and set forth any recommendation to the executive director for consideration. The executive director shall render a final decision within five business days of receiving the written appeal.
- (f) Any decision made by the executive director shall be appealable in writing to the bank board within 15 days of the executive director's decision, or such longer period as agreed to between the executive director and the corporation. The bank board shall make a final reallocation or transfer decision within 30 days of receiving the appeal, or such longer period agreed to between the executive director and the corporation.
- (g) In the event of an appeal under this section, all allocations or transfers of money to trust fund accounts shall be on hold pending resolution by the executive director or bank board, as applicable.

63089.57.

Pursuant to this chapter and any directives and requirements adopted pursuant to this chapter, the state has residual interest in the funds deposited by the state to a trust fund

account and to the return on these funds from investments. On dissolution, suspension, or termination of the corporation, these funds shall be withdrawn by the program manager from the trust fund account and returned to the expansion fund or temporarily transferred to another trust fund account. This provision shall be contained in the trust instructions to the trustee.

63089.58.

Each trust fund account shall consist of a loan guarantee account, and, upon recommendation by the program manager, a bond guarantee account or other financial product account, each of which is a legally separate account, and the assets of one account shall not be used to satisfy loan guarantees or other financial product obligations of another corporation, except when a trust fund account is designated by the program manager to be shared by multiple corporations. The amount of funds allocated to a bond guarantee account shall be pursuant to the directives and requirements. A corporation shall not use trust fund accounts to secure a corporate indebtedness. State funds deposited in the trust fund accounts, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

63089.59.

(a) The financial institution or financial company that is to act as trustee of the trust fund shall be designated by the bank. The corporation shall not receive money on deposit to support guarantees or other financial products issued under this chapter without the approval of the program manager.

(b) State funds may not be used to finance an expense incurred by a corporation in a location not approved pursuant to the contract between the bank and the corporation. The prohibition against use of state funds also applies to the location of satellite offices, and the area served from a corporation office.

(c) Except as otherwise provided in this chapter, the trust fund account shall be used solely to make loans, guarantee bonds and loans, and provide other financial products approved by the corporation that meet the financial product criteria of the directives and requirements. Except as provided in subdivision (b) of Section 63089.54, the state or the bank shall not be liable or obligated in any way as a result of the allocation of state moneys to a trust fund account beyond the state moneys that are allocated and deposited in the fund pursuant to this chapter, and that are not otherwise withdrawn by the state pursuant to this chapter.

63089.60.

(a) The program manager shall recommend whether the expansion fund and trust fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the program manager's decision may be repealed or modified by the executive director or the bank board.

(b) The amount of guarantee liability outstanding at any one time shall not exceed 10 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

63089.61.

(a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government, as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 10 percent to be determined by the program manager unless a higher leverage ratio for an individual corporation has been approved pursuant to subdivision (b) of Section 63089.56.

(c) The expansion fund and trust fund accounts shall be used to guarantee obligations and other financial product obligations, to pay the administrative costs of the corporations, and for other uses pursuant to this chapter and Section 8684.2.

63089.62.

(a) It is the intent of the Legislature that the corporations make maximum use of their statutory authority to guarantee loans and surety bonds, and administer other financial products, including the authority to secure loans with a minimum loan loss reserve of only 10 percent, unless the program manager authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 63089.56, so that the financing needs of small business may be met as fully as possible within the limits of corporations' trust fund account balance.

(b) Any corporation that serves an area declared to be in a state of emergency by the Governor or a disaster area by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars (\$100,000), so that at least 15 percent of the dollar value of loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the emergency or disaster is declared. Upon application of a corporation, the executive director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

ARTICLE 6. Corporations, Miscellaneous [63089.65 - 63089.67]

63089.65.

(a) A corporation shall establish one or more loan committees, each of which shall be composed of five or more persons, a majority of whom shall be experienced in banking and lending operations.

(b) A loan committee shall review applications to the corporation for a loan or guarantee and shall do each of the following:

(1) Determine the feasibility of the proposed transaction. The loan committee shall recommend approval of the application only upon a determination that there is a reasonable chance that the loan will be repaid.

(2) On the basis of that determination, recommend to the board of directors any action that the loan committee deems appropriate under the circumstances, or, in the

event that approval authority has been delegated to the loan committee by the board of directors, approve or disapprove the loan application.

(c) A loan committee shall expeditiously act to accept or reject loan applications.

(d) A person who has a financial interest related to a matter over which the loan committee has authority may not make, participate in making, or in any way attempt to influence that matter.

63089.66.

Unless delegated to its loan committee, the corporation's board of directors, upon a recommendation from its loan committee, shall do all of the following:

(a) Emphasize consideration to applications that will increase employment of disadvantaged, disabled, or unemployed persons, or increase employment of youth residing in areas of high youth unemployment and high youth delinquency.

(b) Give consideration to applications from traditional and safety-net providers of Medi-Cal services that will promote access to quality medical care for individuals enrolled in Medi-Cal managed health care networks that are contracting with or owned or operated by a county board of supervisors, a county health commission, or a county health authority organized pursuant to Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or 14087.9605 of the Welfare and Institutions Code.

63089.67.

A corporation may charge the borrower or financial institution a loan fee or credit enhancement fee on all loans made or guaranteed by the corporation to defray the operating expenses of the corporation. The amount of the fee shall be determined by the directives and requirements.

ARTICLE 7. Loan Guarantees [63089.70 - 63089.71]

63089.70.

(a) The Small Business Expansion Fund, which is hereby continued in existence, shall, among other things, provide guarantees to loans offered by financial institutions and financial companies to small businesses.

(b) The Legislature finds and declares that the Small Business Loan Guarantee Program has enabled participating small businesses that do not qualify for conventional business loans or Small Business Administration loans to secure funds to expand their businesses. These small businesses would not have been able to expand their businesses in the absence of the program. The program has also provided valuable technical assistance to small businesses to ensure growth and stability. The study commissioned by former Section 14069.6 of the Corporations Code, as added by Chapter 919 of the Statutes of 1997, documented the return on investment of the program and the need for its services. The value of the program has also been recognized by the Governor through proposals contained in the May Revision to the Budget Act of 2000 for the 2000–01 fiscal year.

(c) A corporation shall not issue a guarantee under this section unless it determines that the following conditions are satisfied:

- (1) There is a low probability that the loan being guaranteed would be granted by a financial company or financial institution under reasonable terms and conditions and the borrower has demonstrated a reasonable prospect of repayment.
- (2) The loan proceeds will be used exclusively in this state.
- (3) The loan qualifies as a small business loan or an employment incentive loan.
- (4) The borrower has a minimum equity interest in the business as determined by the directives and requirements.
- (5) As a result of the loan being guaranteed, the jobs generated or retained demonstrate reasonable conformance to any directives and requirements specifying employment criteria.

63089.71.

(a) Among other priorities, corporations shall give high priority to the issuance of loan guarantees to small business incubators and to businesses that lease space in incubators.

(b) For the purposes of this section, “incubator” means a facility that allows new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities, which may include, but are not limited to, the following:

- (1) Reception and meeting area.
- (2) Secretarial services, such as collating, telephone answering, or mailhandling.
- (3) Accounting and bookkeeping services.
- (4) Research libraries.
- (5) Onsite financial and management counseling.
- (6) Parking.
- (7) Flexible lease arrangements for flexible space.
- (8) Computer or word processing facilities.
- (9) Day care facilities.
- (10) Office furniture rentals.
- (11) A graduation policy sometimes requiring firms to leave after three to five years in a subsidized, nurturing environment.
- (12) Employee training and placement services.

(c) Among other priorities, corporations shall give high priority to marketing their services to Phase 1 or Phase 2 Small Business Innovation Research (SBIR) recipients and providing loan guarantees, whenever possible.

ARTICLE 8. Direct Lending and Other Debt Instruments [63089.80- 63089.80.]

63089.80.

(a) A corporation may utilize funds for direct lending or other debt instruments pursuant to the directives and requirements.

(b) The amount of funds available for direct lending and other debt instruments shall be determined by the directives and requirements. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan, if guaranteed, so as to raise additional funds for direct lending.

(c) To execute the direct loan and other debt instruments authorized pursuant to this chapter, including, but not limited to, those authorized pursuant to Section 63088.5, the

bank may loan trust funds to a corporation for the express purpose of lending those funds to an identified borrower. The loan authorized by the bank to the corporation shall be on terms similar to the loan between the corporation and the borrower.

(d) The amount of the loan, made to the corporation by the bank, may be in excess of the amount of a loan to any individual borrower, but actual disbursements pursuant to the bank loan agreement shall be required to be supported by a loan agreement between the borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the bank and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the bank. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower.

(e) In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the bank is limited to the repayment received by the corporation from the borrower, except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the bank if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the bank from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the program manager, a corporation shall be authorized to borrow trust funds from the bank for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the program manager that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. The percentage of any trust fund account to be used for the direct lending pursuant to this subdivision shall be established in the directives and requirements.

(g) A corporation shall not issue a direct loan or other debt instrument unless and until it determines that all of the following conditions are satisfied:

(1) The direct loan or other debt instrument assistance would not be granted by a financial company or financial institution under reasonable terms and conditions and the borrower has demonstrated a reasonable prospect of repayment.

(2) The direct loan or debt instrument proceeds will be used exclusively in this state.

(3) The direct loan or debt instrument qualifies as a small business loan or employment incentive loan.

(4) The borrower has a minimum equity interest in the business as determined by the directives and requirements.

(5) As a result of the direct loan or other debt instrument, the jobs generated or retained demonstrate reasonable conformance to any directives and requirements specifying employment criteria.

(h) The maximum direct loan or other debt instrument amount to a small business shall be set by the directives and requirements. In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan or other debt instrument to

the corporation shall be limited to the amount of funds received by the corporation for the direct loan or other debt instrument to the small business and any other funds received from the bank that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined pursuant to the directives and requirements. The programs and debt instruments provided for in this article shall be available in all geographic areas of the state.

ARTICLE 9. Disaster Loan Guarantees [63089.90- 63089.90.]

63089.90.

(a) Pursuant to Section 8684.2 and the contract between a corporation and the bank, a corporation may, in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture, or declared to be in a state of emergency by the Governor of California, provide loan guarantees from funds allocated in Section 63089.55 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The bank board may adopt directives and requirements to implement the disaster loan guarantee program authorized by this section. Any regulations adopted under Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code shall remain in effect until the bank adopts directives and requirements, however, these regulations shall have no effect after June 1, 2015.

(c) A corporation shall not issue a disaster loan guarantee unless and until it determines that the following conditions are satisfied:

(1) The borrower cannot reasonably obtain a disaster loan without some form of credit enhancement.

(2) The borrower has demonstrated a reasonable prospect of repayment.

(3) The guaranteed loan will be used exclusively in this state.

(4) The disaster loan qualifies as a small business loan or employment incentive loan.

(d) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the issuance of disaster loan guarantees.

ARTICLE 10. Surety Bond Guarantees [63089.95 - 63089.96]

63089.95.

In furtherance of the purposes set forth in Section 63088.1 of this code and Section 14001 of the Corporations Code, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the bank and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such guarantees or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan, unless and until it determines:

- (a) There is a low probability that the surety bond would be granted by a financial institution or financial company under reasonable terms or conditions, and the beneficiary has demonstrated a reasonable prospect of successful completion of the project.
- (b) The surety bond project coverage will be used exclusively in this state.
- (c) The beneficiary has a minimum equity interest in the business as determined by the directives and requirements.
- (d) As a result of the surety bond, the jobs generated or retained demonstrate reasonable conformance to the directives and requirements specifying employment criteria.

63089.96.

- (a) In addition to the authority granted by Section 63089.95, pursuant to the directives and requirements a corporation may act as guarantor on a surety bond for any small business contractor, including, but not limited to, women, minority, and disabled veteran contractors.
- (b) The provisions of subdivision (a) allowing a corporation to act as a guarantor on surety bonds may be funded through appropriate state or federal funding sources. Federal funds shall be deposited in the Federal Trust Fund in the State Treasury in accordance with Section 16360, for transfer to the expansion fund.

ARTICLE 11. Reporting [63089.97 - 63089.98]

63089.97.

Each corporation shall provide to the program manager, in a format prescribed by him or her, the following data and reports:

- (a) A summary of all outstanding loans, bonds, and other credit enhancements to which a corporation guarantee, as authorized by this chapter, is attached, on a schedule determined by the program manager.
- (b) A summary of all outstanding direct loans and other debt instruments made by a corporation, as authorized by this chapter, on a schedule determined by the program manager.
- (c) A summary of all outstanding other financial project obligations made by a corporation, as authorized by this chapter, on a schedule determined by the program manager.
- (d) Statement of economic interests from each designated person pursuant to Section 87302.
- (e) No later than July 31 of each fiscal year, commencing January 1, 2014, each of the following documents:
 - (1) A copy of the corporation board approved budget for the current fiscal year.
 - (2) Projected fiscal year summary of authorized program activities including direct loans, loan guarantees, bond guarantees, and other financial product activity supported by the expansion fund.
 - (3) A copy of the written plan of operation or strategic plan for the current fiscal year as approved by the corporations board of directors.
 - (4) A copy of the current and valid articles of incorporation and bylaws of the corporation with noted amendments from the prior fiscal year.

- (f) No later than October 31 of each year commencing January 1, 2014, a copy of the corporation's prior fiscal year audit, auditor findings, if any, and finding responses.
- (g) A list by city and county of the number and dollar value of all credit enhancements and debt instruments the corporation entered into, pursuant to this chapter, during the report year, and that are outstanding at the close of the fiscal year.
- (h) Any other statistical and other data, reports, or other information required by the directives and requirements or the program manager.

63089.98.

(a) Annually, not later than January 1 of each year commencing January 1, 2014, and notwithstanding Section 10231.5, the program manager shall prepare and submit to the Governor and the Legislature, pursuant to Section 9795, a report for the preceding fiscal year ending June 30, containing the expansion fund and trust fund financial product activity of each corporation, including all of the following:

- (1) Direct loans, guarantees, and other financial products awarded and outstanding balances.
- (2) Default and loss statistics.
- (3) Employment data.
- (4) Ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program.
- (5) Geographic distribution by city and county of the direct loans, guarantees, and other financial products awarded and outstanding at the close of the fiscal year.
- (6) Significant events.

(b) The program manager shall post the report on the bank's Internet Web site.

ARTICLE 12. Venture Capital Program [63089.99- 63089.99.]

63089.99.

(a) A venture capital program is hereby established within the bank.

(b) The Governor shall appoint a deputy director who shall have direct authority over the venture capital program and serve at the pleasure of the Governor. Notwithstanding any law in this chapter, the deputy director shall act under the guidance and authority of the executive director.

(c) The venture capital program shall operate pursuant to directives and requirements developed and approved by the bank board.

(d) Pursuant to the venture capital program and to the extent permissible, the bank may do both of the following:

- (1) Acquire contract rights, or enter into contracts involving loans or bonds (including without limitation, loans and bonds with shared appreciation rights or contingent interest payments) with respect to investment funds, investment fund management companies, special purpose investment vehicles, trusts, nonprofit entities, small businesses, and other private business entities.
- (2) Reinvest the proceeds received by the bank from any loans or contract rights, as described in paragraph (1).

(e) Any loans or contract rights made by the bank pursuant to this section shall be exempt from the usury provisions of Section 1 of Article XV of the California

Constitution. This subdivision creates and authorizes exempt classes of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(f) An action to determine the validity of any resolution, agreement, or other method of financing authorized or undertaken pursuant to this section may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

IV. U.S. Department of Treasury SSBCI Capital Program Guidelines

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

November 10, 2021

Section I. Overview

The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the Department of the Treasury (Treasury) that was created to strengthen state programs that support private financing to small businesses.¹ SSBCI is expected to, in conjunction with new small business financing, create billions of dollars in lending and investments to small businesses that are not getting the support they need to expand and create jobs. SSBCI allows states of the United States, the District of Columbia, territories, eligible municipalities, and Tribal governments (collectively, “states”²) the opportunity to build upon or create successful models of small business programs. ARPA provided for a \$6.5 billion main capital allocation, \$1.5 billion allocation for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses), \$1.0 billion incentive allocation for SEDI-owned businesses, \$500 million allocation for very small businesses (VSBs), and \$500 million allocation for technical assistance funding.

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

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

² Hereinafter, unless indicated otherwise, a “state” means (A) one of the fifty states of the United States; (B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands; (C) when designated by one of the fifty states of the United States, a political subdivision of that state that Treasury determines has the capacity to participate in the SSBCI; (D) under the circumstances described in 12 U.S.C. § 5703(d), a municipality of one of the fifty states of the United States to which Treasury has given a special permission under section 5703(d); and (E) a Tribal government, or a group of Tribal governments that jointly apply for an allocation. See 12 U.S.C. § 5701(10).

deindustrialization; communities surrounding Minority-Serving Institutions³; or other underserved communities.

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

Section II. Eligible Programs

SSBCI provides funding for state small business lending and investment programs. There are two state program categories: Capital Access Programs (CAPs) and Other Credit Support Programs (OCSPs).

CAPs provide portfolio insurance to lenders that make small business loans. Portfolio insurance is provided in the form of a separate loan loss reserve fund for each participating financial institution. To enroll a loan in the CAP, both the lender and the borrower must make insurance premium payments to the reserve fund. The state must make a matching insurance premium payment to the reserve fund. The state's matching payment to the reserve fund may be made with the state's allocated SSBCI funds.

OCSPs include other programs that provide support for small business lending and investment that are not CAPs. These programs include collateral support programs, loan participation programs, state-sponsored venture capital programs, loan guarantee programs, and other similar programs.⁴ OCSPs also include qualifying loan or swap funding facilities, which are contractual arrangements between a state and a private financial entity. Under such facilities, the state delivers funds to the private financial entity as collateral; that entity, in turn, provides funding to the state. The full amount resulting from the arrangement, less any fees or other costs of the arrangement, is contributed to, or for the account of, an approved state program.

Section III. Main Capital Allocation – 12 U.S.C. § 5702(b) and (c)

a. Allocation Formula – 12 U.S.C. § 5702(b)

The SSBCI statute, 12 U.S.C. § 5702(b), sets out a formula for the amount of main capital funds available to states, the District of Columbia, territories, Tribal governments, and eligible municipalities.⁵ Pursuant to the statute, Treasury allocated funds to all fifty states along with the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands according to the formula, which takes into account a state's job losses in proportion to the aggregate job losses of all states. Each state of the United States, the District of Columbia, and territory was guaranteed a minimum allocation of 0.9 percent of the \$6 billion allocation for states (not including Tribal governments). Treasury made a separate allocation to Tribal governments

³ Minority-serving institutions are institutions of higher education that serve minority populations and include, but are not limited to, Historically Black Colleges and Universities (as defined in 20 U.S.C. § 1061(2)), Hispanic-Serving Institutions (as defined in 20 U.S.C. § 1101a(a)(5)), Tribal Colleges and Universities (as defined in 20 U.S.C. § 1059c(b)(3)), and Asian American and Pacific Islander Serving Institutions (as defined in 20 U.S.C. § 1059g(b)(2)).

⁴ Collateral support programs help viable businesses that are struggling to get credit because the value of the collateral they hold has fallen and provide banks greater confidence in extending credit to these borrowers. Loan participation programs entail risk sharing among financial institution lenders and the participating state. State-sponsored venture capital programs typically entail joint public-private investment programs focused on "seeding" small businesses with high-growth-potential.

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

based on Tribal enrollment, with a preliminary minimum allocation of approximately 0.09 percent of the total \$500 million Tribal allocation.⁶

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

Pursuant to 12 U.S.C. § 5702(c)(1), each state that is approved for participation in the SSBCI will receive its allocation of main capital funds in three disbursements as follows: 33 percent, 33 percent, and 34 percent. The transfer of the first 33 percent will occur promptly following the receipt of the fully signed Allocation Agreement.⁷ As a precondition to receipt of the second and third disbursements, the state must, among other things, certify to Treasury that the state has expended, transferred, or obligated 80 percent or more of the prior disbursement of allocated funds to or for the account of one or more approved state programs that have delivered loans or investments to eligible businesses (i.e., it has deployed such funds).⁸ The certification must be signed by an official of the state with oversight responsibility for the approved state program(s). The following is a description of these requirements.

Funds Expended, Transferred, or Obligated

For purposes of determining whether a state has “expended” a prior disbursement of SSBCI funds, Treasury will generally consider funds expended if the expenses have been paid by or are for an approved state program. Examples of expended funds include: SSBCI funds that have been disbursed to a lender to cover the federal contribution to a CAP reserve fund; SSBCI funds that have been disbursed to a specific borrower (or disbursed to a specific lender as part of a commitment to a specific transaction) as part of a loan participation, collateral support, or direct lending program; SSBCI funds that have been invested in specific small businesses pursuant to a venture capital investment; and SSBCI funds that have been spent for allowable administrative expenses.

For purposes of determining whether a state has “transferred” a prior disbursement of SSBCI funds, Treasury will generally consider funds transferred if they have been transferred by the state receiving SSBCI funds to the implementing entity, or the contracted entity, that is charged with administering the day-to-day operations of the SSBCI program, as a reimbursement for actual expenses or when there is a clearly documented actual and immediate cash need to fund a loan or investment to an eligible small business or to pay for allowable administrative expenses. The implementing entity is the specific department, agency, or political subdivision of the state that has been designated to implement a state program under 12 U.S.C. § 5703(b)(1). The term “agency” includes state government corporations and other entities authorized or supervised by the state. The contracted entity is the entity (i.e., an entity of another state, for-profit third-party, or nonprofit third-party) that contracts with the state for the implementation and administration of the state SSBCI program under 12 U.S.C. § 5703(c).

For purposes of determining whether a state has “obligated” a prior disbursement of SSBCI funds, Treasury will generally consider funds obligated if they have been committed to pay for

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

⁷ If the state plans to use SSBCI funds as collateral for a qualifying loan or swap funding facility, the entire allocation is available to be transferred in a single lump sum.

⁸ As part of this certification, the authorizing official for the participating state will be required to certify to Treasury that the participating state is in compliance with all terms of the Allocation Agreement, SSBCI Capital Program Policy Guidelines, and the representations and warranties made in both the Allocation Agreement and the SF-424B (Assurances Non-Construction). Upon receipt, Treasury will review the request and accompanying certification for completeness. Treasury may ask for records or further information that substantiates any aspect of the participating state’s certification.

the amounts of orders placed, contracts awarded, goods and services received, and similar transactions during a given period that will require payment by the approved state program during the same or a future period. Examples of obligated funds include: SSBCI funds that have been committed, pledged, or otherwise promised, in writing, to a specific borrower as part of a loan participation, collateral support, or direct lending program; SSBCI funds that have been set aside to cover obligations arising from loan guarantees; SSBCI funds that have been committed, pledged, or otherwise promised, in writing, as part of a venture capital investment transaction; and SSBCI funds that have been committed, pledged, or promised, in writing, for allowable administrative expenses (e.g., an executed contract for services).

Delivered Loans or Investments to Eligible Businesses

As noted above, for a state to receive a subsequent disbursement, at least 80 percent of its prior disbursement of allocated funds must have been expended, transferred, or obligated *to or for the account of one or more approved state programs that have delivered loans or investments to eligible businesses*. Treasury will consider the latter requirement for the prior disbursement to be used for approved state programs that have delivered loans or investments to eligible businesses to be satisfied if at least two transactions with eligible small businesses are completed during every 12-month period from such programs' inception. This latter requirement to receive a subsequent disbursement must be fulfilled in addition to the requirement that funds are expended, transferred, or obligated.

c. Termination of Amounts Not Transferred; Reallocations – 12 U.S.C. § 5702(c)(4)

Any portion of a state's allocation that has not been transferred to the state under this section may be deemed to be no longer allocated to the state and no longer available to the state if:

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

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

Section IV. SEDI-Owned Business Allocations

a. \$1.5 billion Allocation for SEDI-Owned Businesses – 12 U.S.C. § 5702(d) ***Allocation Methodology and Disbursement Schedule***

The SSBCI statute, 12 U.S.C. § 5702(d), provides that the Secretary shall allocate \$1.5 billion among the states based on the needs of SEDI-owned businesses. Treasury will divide the \$1.5 billion into a portion for states of the United States, the District of Columbia, and territories and a portion for Tribal governments in a manner that is consistent with the division of funds under the main capital allocation, referenced in 12 U.S.C. § 5702(b). Treasury has determined that these portions reasonably reflect the needs of SEDI-owned businesses in the respective jurisdictions, because these portions, determined by statute for the main capital allocation, generally reflect small business financing needs in these jurisdictions.

Each state of the United States, the District of Columbia, or territory's share of these jurisdictions' portion of the \$1.5 billion SEDI allocation will be based on the percentage of the

jurisdiction's total population residing in Community Development Financial Institution (CDFI) Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), relative to the total population residing in all CDFI Investment Areas.⁹ The population in CDFI Investment Areas serves as a proxy for the needs of SEDI-owned businesses because these areas are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses. Each Tribal government's share of the Tribal government portion of the \$1.5 billion SEDI allocation will be determined using the same formula as the main capital allocation, based on enrollment data, except without the minimums.¹⁰ Treasury has determined that the use of enrollment data reflects the needs of Tribal SEDI-owned businesses, as Tribal members and communities have faced widespread and long-standing lack of access to capital and investment, such that a population-based approach provides a reasonable proxy for the extent of the needs of these businesses. The allocations are posted on Treasury's website.

Each state's SEDI allocation will be transferred in three approximately equal tranches, with 33 percent for the first and second tranche and 34 percent for the third tranche. The first allocation will be disbursed when the state is approved for participation in the SSBCI. The second and third disbursements will occur when the state certifies that it has deployed 80 percent of its prior tranche of SSBCI funds under the deployment standards set forth in Section III.b above.

“Expended For” Requirement

A state's SEDI allocation must be expended for SEDI-owned businesses. A state is not required to establish a separate program for SEDI-owned businesses but must maintain records of the total amount of its SSBCI funds that are expended for SEDI-owned businesses. In light of the fungibility of SSBCI funds, Treasury will deem this “expended for” requirement to be satisfied if an amount of the state's SSBCI funds equivalent to its SEDI allocation is expended for SEDI-owned businesses. For this purpose, SSBCI funds means all SSBCI funds disbursed to the state—including the main capital allocation funds, VSB allocation funds, SEDI allocation funds, and SEDI incentive allocation funds—other than technical assistance funds.

Treasury will consider SSBCI funds to have been expended for SEDI-owned businesses if the states expend (as defined in Section III.b above) the funds for meeting the needs of SEDI-owned businesses. “Meeting the needs of SEDI-owned businesses” means that the SSBCI funds are expended for loans, investments, or other credit or equity support to:

- (1) business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (1) membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society; (2) gender; (3) veteran status; (4) limited English proficiency; (5) physical handicap; (6) long-term residence in an environment isolated from the mainstream of American society; (7) membership of a federally or state-recognized Indian Tribe; (8) long-term residence in a rural community; (9) residence in a U.S. territory; (10) residence in a community undergoing economic transitions (including communities impacted by the

⁹ The CDFI Fund evaluates Puerto Rico, but not other territories, in identifying CDFI Investment Areas. For purposes of the SSBCI, Treasury has also evaluated American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands and has determined that these territories in their entirety constitute CDFI Investment Areas, because each of these territories has a poverty rate of at least 20 percent. See 12 C.F.R. § 1805.201(b)(3)(ii)(D)(1).

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

shift towards a net-zero economy or deindustrialization); or (11) membership of another “underserved community” as defined in Executive Order 13985;

- (2) business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii);
- (3) business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii); or
- (4) business enterprises that are located in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).¹¹

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

Certification will be required with regard to items (1) to (3) above. Item (3) is intended to cover a business taking out a loan or investment to build a location in a CDFI Investment Area that the business will operate in the future. With regard to item (4), a state may reasonably identify businesses located in CDFI Investment Areas based on the businesses’ addresses from the relevant loan, investment, and credit/equity support applications without additional certification.

States must use their SSBCI funds only for the purposes and activities specified in these guidelines and other SSBCI guidance issued by Treasury, which will be incorporated by reference into the Allocation Agreement. If the amount of a state’s SEDI allocation is not expended for SEDI-owned businesses, Treasury may find that the state is non-compliant with the Allocation Agreement, in which case Treasury may, in its sole discretion, withhold or reduce the amount of future SSBCI disbursements to the state or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

b. \$1.0 billion Incentive Allocation for SEDI-Owned Businesses – 12 U.S.C. § 5702(e)

Under 12 U.S.C. § 5702(e), Treasury must set aside \$1 billion to increase the amount of SSBCI funds that states can obtain, beyond states’ allocated amounts for the second and third tranches of main capital, for states that demonstrate “robust support” for SEDI-owned businesses in the deployment of prior allocation amounts. Of this amount, Treasury will use \$500 million to provide states additional funds for each of the second and third tranches of main capital.

States demonstrate “robust support” for SEDI-owned businesses by expending their previously disbursed SSBCI funds for meeting the needs of SEDI-owned businesses. For this purpose, the terms “SSBCI funds,” “expend,” and “meeting the needs of SEDI-owned businesses” have the same definitions as in Section IV.a above.

For each of the second and third tranches of main capital, Treasury will increase the amount of SSBCI funds that a state can obtain using a two-step process:

Step 1:

Each state should aspire to expend a certain percentage (the SEDI Objective) of its SSBCI funds that have been expended since the state’s prior disbursement of main capital allocation, SEDI allocation, and VSB allocation funds for meeting the needs of the SEDI- owned

¹¹ See footnote 9.

businesses within its state. For states of the United States, the District of Columbia, and territories, the SEDI Objective equals the population of the jurisdiction that are residents in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), divided by the total population of the jurisdiction.¹² For Tribal governments, the SEDI Objective is 100 percent. These SEDI Objectives have been established to reflect the needs of SEDI-owned businesses within each type of jurisdiction in a manner that is consistent with the reasons described above regarding these needs with respect to the SEDI allocation.

For each of the second and third tranches of main capital, \$400 million of the \$500 million of additional funds will be available as initial eligible amounts. Each state's initial eligible amount will be determined in the same manner as the \$1.5 billion SEDI allocation methodology described above, as that methodology reflects the needs of SEDI- owned businesses. The initial eligible amounts are available on Treasury's website.

When a state certifies that it has deployed 80 percent of its prior tranche of disbursed SSBCI funds under Section III.b above, Treasury will calculate the percentage of the state's SEDI Objective that the state has achieved. The state will receive an additional disbursement in an amount equal to such achieved percentage (subject to a limit of 100 percent) multiplied by the state's initial eligible amount.

Step 2:

For each of the second and third tranches of main capital, Treasury will make a second disbursement from these additional funds, totaling \$100 million in the aggregate plus any other residual funds, to states that have requested their Step 1 disbursement by the date that Treasury sets for the second disbursement. For the second tranche of main capital, the residual funds will include only initial eligible amounts unachieved by the states that have requested their Step 1 disbursement. For the third tranche of main capital, the residual funds will include any remaining (unachieved and un-drawn) amount of the \$400 million for the second tranche of main capital and any remaining (unachieved and un-drawn) amount of the \$400 million for the third tranche of main capital.

Treasury will disburse these funds based on the aforementioned states' relative performance in Step 1. Treasury will provide additional details regarding the methodology and timing for allocating the second disbursements from these additional funds at a later date. The second disbursements within each tranche are not expected to occur before most states have requested their first disbursement for such tranche.

Section V. Allocation for VSBs – 12 U.S.C. § 5702(f)

The SSBCI statute requires Treasury to allocate \$500 million to states to be expended for VSBs. The allocations for VSBs will be determined according to the same formula as the state's main capital allocation, except without the minimums for the Tribal government portion. Each state's VSB allocation will be transferred in three approximately equal tranches, with 33 percent for the first and second tranche and 34 percent for the third tranche. The first tranche will be disbursed when the state is approved for participation in the SSBCI. The second and third tranches will be disbursed when the state certifies that it has deployed 80 percent of its prior tranche of disbursed SSBCI funds under Section III.b above.

A state's VSB allocation must be expended for VSBs. A VSB means a business with fewer than 10 employees at the time of the loan, investment, or other credit/equity support and includes independent contractors and sole proprietors. A business that has 10 or more employees

¹² See footnote 9.

following an SSBCI transaction will not be considered a VSB for purposes of subsequent loans or investments.

A state is not required to establish a separate program for VSBs but must maintain records of the total amounts of its SSBCI funds expended for VSBs. In light of the fungibility of SSBCI funds, Treasury will deem this “expended for” requirement to be satisfied if an amount of the state’s SSBCI funds equivalent to its VSB allocation is expended for VSBs. The term “expended” has the same definition as in Section III.b above. For this purpose, SSBCI funds means all SSBCI funds disbursed to the state—including the main capital allocation funds, VSB allocation funds, SEDI allocation funds, and SEDI incentive allocation funds—other than technical assistance funds.

States must use their SSBCI funds only for the purposes and activities specified in these guidelines and other SSBCI guidance issued by Treasury, which will be incorporated by reference into the Allocation Agreement. If a state’s VSB allocation is not expended for VSBs, Treasury may find that the state is non-compliant with the Allocation Agreement, in which case Treasury may, in its sole discretion, withhold or reduce the amount of future SSBCI disbursements to the state, or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

Section VI. Approving States for Participation

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

Before Treasury approves a state applicant’s program for participation in the SSBCI, the applicant must demonstrate that all actions required under state law have been taken to delegate administrative responsibility for the program to a specific department, agency, or political subdivision of the state (i.e., the implementing entity). The term “agency” includes government corporations and other entities authorized or supervised by the state. The applicant will be required to submit a short narrative statement from the governor of the state of the United States or governing official of the District of Columbia, territory, or Tribal government describing the actions that have been taken to delegate responsibility for the program and attaching any relevant documentation in support of that statement. The narrative should describe the authority upon which the designated implementing entity is able to enter into binding agreements on behalf of the state with Treasury. This will typically involve discussion of the entity’s charter and express authorizations from the state to act on its behalf through a state resolution or other instrument. The narrative should also discuss the state’s budget process and any necessary steps for SSBCI funds to be deployed for the uses in the application. In some states, this requires the passage of a budget resolution by the state legislature. An application will not be approved until all legal actions necessary to enable the designated implementing entity to implement a state program and participate in the program have been accomplished and the state has provided Treasury with a description of such actions.

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

Any state that establishes a new, or has an existing, CAP or OCSP that meets the SSBCI eligibility criteria may apply for SSBCI funds by accessing the application portal from the SSBCI website at <http://www.treasury.gov/ssbci>. Treasury is available to provide technical assistance to applicants that are in the process of creating or starting programs. The SSBCI statute requires that a CAP or OCSP be fully positioned, within 90 days of the execution of the Allocation Agreement, to act on providing the kind of credit support that the CAP or OCSP was established to provide. Complete applications from states, the District of Columbia, territories, and Tribal governments must be submitted to Treasury by 11:59 PM ET on February 11, 2022. If any state of the United States does not submit a complete application by February 11, 2022,

municipalities within that state may apply. Applications from eligible municipalities must be completed by 11:59 PM ET on March 11, 2022. Municipalities interested in applying should look for further information on the SSBCI website by early February.

An application for SSBCI funding is not a competitive award process. Treasury will approve applications that satisfy the requirements under the SSBCI statute and applicable program requirements. To expedite processing, applicants should make every effort to ensure that their applications include all applicable supporting documentation.

c. Contractual Arrangements – 12 U.S.C. § 5703(c)

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

The SSBCI application will ask states to explain the steps they will take to promote a fair, competitive, and open selection and contracting process. These steps could include application and enforcement of existing state procurement and ethics policies and new measures the state chooses to implement specifically for the SSBCI program. Examples of such policies include limitations on or disclosure of political contributions to state officials with authority to select SSBCI contractors; reporting requirements regarding lobbying activity, including lobbying related to the SSBCI contractor selection process or program implementation; and request-for-proposal policies to govern the process for evaluating bids for SSBCI-related contracts.

d. Tribal Governments – 12 U.S.C. §§ 5701(10)(E), 5702(b)(2)(C), 5703(b)-(c)

Under 12 U.S.C. § 5702(b)(2)(C), Tribal governments may apply jointly for funding under the SSBCI. Tribal governments may apply jointly through an organization or other Tribal government representative if each Tribal government applying jointly authorizes the organization or other Tribal government representative to represent the Tribal government for purposes of SSBCI. Any joint application by a third party or Tribal government representative must include documentation that the applicant has been authorized to represent each of the participating Tribal governments. Such documentation must include Tribal resolutions or other actions taken by each participating Tribal government to delegate authority to the applicant. The same approval criteria and program requirements that are applicable to Tribal governments will apply to each joint application by Tribal governments.

A Tribal enterprise may implement and administer SSBCI programs as long as it is an authorized agent of, or entity supervised by, the Tribal government. A “Tribal enterprise” is an entity: (1) that is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or (2) that is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns. This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a “small business concern” relating to Tribal governments in 15 U.S.C. § 657a(b)(2)(C).

e. Municipalities – 12 U.S.C. § 5703(d)

As noted above, the SSBCI statute allows municipalities to apply directly for SSBCI funding in certain circumstances if the state of the United States does not apply directly. Specifically, the Act provides that Treasury may grant municipalities of a state special permission to apply directly for funding under the SSBCI if: (1) that state did not submit an SSBCI notice of intent to Treasury by May 10, 2021; or (2) that state filed a notice of intent by May 10, 2021 but does not

submit a complete application for approval of a state program by 11:59 PM ET on February 11, 2022. Municipalities in states that do not submit a timely application must submit their applications no later than 11:59 PM ET on March 11, 2022, pursuant to the statute. The approval criteria and program requirements applicable to states apply to eligible municipalities.

Section VII. Approving State CAPs

a. In General

CAPs provide portfolio insurance to lenders that are financial institutions as defined in 12 U.S.C. § 5701(5)¹³ and that make small business loans. Portfolio insurance is provided in the form of a separate loan loss reserve fund for each participating financial institution. CAPs are established and administered by each state, individually.

States may work together and standardize several program characteristics, consistent with applicable SSBCI program requirements, which would increase uniformity across states. For example, states could use similar enrollment forms for financial institutions to participate in the program; use similar enrollment forms for each loan; set the same rules for eligible borrowers and uses of loan proceeds; standardize the amount of borrower and lender payments to the CAP reserve fund; establish a uniform form and frequency of reporting from lenders; and use similar forms to document the recovery of any loan losses from the CAP reserve fund. Such standardization could result in savings for financial institutions on staff training, loan operations, recordkeeping, and management expenses. If the programs are standardized across large and small states, financial institutions could offer CAPs in all locations with relatively little extra administrative cost.

b. Federal Contribution – 12 U.S.C. § 5704(d)

Under the SSBCI statute, approved CAPs are eligible for federal contributions in an amount equal to the premiums paid by the borrower and the financial institution lender to the reserve fund. This amount is calculated on a loan-by-loan basis. A participating state may use the federal contribution to make its contribution to the reserve fund. Accordingly, the federal contribution may be used to match the aggregate borrower/lender contribution at a level of 1:1. The state may supplement the federal contribution with state or private funds, but the federal contribution cannot be used to match any amount in excess of the sum of the borrower and financial institution lender contributions. Federal contributions to state CAPs may only be used to pay losses on loans originated and enrolled after the effective date of the state's Allocation Agreement. The state may allow lenders to use premiums from loans subsequently enrolled in the state's SSBCI CAP portfolio to pay prior losses on loans enrolled in the SSBCI CAP portfolio.

c. CAP Experience and Capacity Program Requirement – 12 U.S.C. § 5704(e)(1)

Each state should exercise due care to determine that financial institutions participating in the SSBCI possess sufficient commercial lending experience, financial and managerial capacity, and operational skills to meet the objectives of the SSBCI statute. To ensure the federal funds are made broadly available to small businesses, including VSBs and SEDI-owned businesses, each state must apply the same standards for participation in its SSBCI programs to all classes of lenders and not restrict any class of financial institutions from participating in the program. In addition, if a state CAP allows financial institution lenders to partner with third-party providers (e.g., non-depository CDFIs), the state must apply the same standards applicable to the financial institutions to third-party providers. In all cases, loans should comply with the minimum

¹³ The statutory definition of "financial institution" is any insured depository institution, insured credit union, or CDFI, as each of those terms is defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. § 4702.

national customer protection standards under Section IX.f below and be offered in a manner that ensures fair access to financial services, fair treatment of customers, and compliance with applicable laws and regulations, including fair lending and consumer protection laws. As required by the SSBCI statute, states must consult with the appropriate federal banking agency or, as appropriate, the CDFI Fund, to determine for each financial institution that participates in a CAP that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the CAP. States may also consult with state regulatory or supervisory authorities regarding participating community development financial institutions, if applicable. The following table lists documents and certifications states may use to determine adequacy of a financial institution’s lending experience and financial and managerial capacity.

TYPE OF INSTITUTION	RATINGS	PERFORMANCE REPORTS	CERTIFICATIONS
Insured depository institutions (including depository CDFIs)		<ul style="list-style-type: none"> Uniform Banking Performance Report (UBPR) showing that commercial loans and leases comprise a significant part of the institution’s assets. 	Self-certification that the institution is not operating under any supervisory enforcement action.
		<ul style="list-style-type: none"> A UBPR peer group analysis showing that the institution’s percentage of non-current loans and leases does not exceed its peer group average (UBPR reports may be obtained at www.ffiec.gov/UBPR.htm.) 	
Federally-insured credit unions (including CDFI credit unions)		Financial Performance Reports (FPRs) from the NCUA.	Self-certification that the institution is not operating under any supervisory enforcement action.
CDFIs (excluding insured depositories and credit unions)	CARS rating	<ul style="list-style-type: none"> Annual report with audited financial statements. State supervisory or regulatory information. 	

d. Lender Capital at Risk – 12 U.S.C. § 5704(e)(4)

The SSBCI statute, 12 U.S.C. § 5704(e), requires that for any loan enrolled in a CAP, the financial institution lender must have a meaningful amount of its own capital at risk in the loan. Treasury has determined that because of how CAPs operate, each lender has a meaningful amount of its own capital resources at risk. As required by 12 U.S.C. § 5704(e)(5), the borrower and lender together can only contribute up to 7 percent of the loan amount to a reserve fund, and the state matches that same contribution with SSBCI funds. At maximum contribution, the reserve fund only has 14 percent of each loan (7 percent from the borrower and lender together, and 7 percent from SSBCI funds), leaving the lender at risk for 86 percent of the loan.

e. Borrower and Loan Size Requirements – 12 U.S.C. § 5704(c)(4)

For a loan to be eligible for enrollment in the CAP, the borrower must have 500 employees or less at the time that the loan is enrolled in the program, and the loan cannot exceed \$5 million.

For purposes of determining a borrower's eligibility for CAPs, Treasury's calculation of borrower size is consistent with the SBA's methodology for calculating the number of employees under 13 C.F.R. § 121.106. In determining a borrower's number of employees, Treasury counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization, or leasing concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. A borrower's number of employees includes the employees of its affiliates, as defined in 13 C.F.R. § 121.103. In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 C.F.R. § 121.103(b)(2).

f. Loan Purpose Requirements and Prohibitions – 12 U.S.C. § 5704(e)(7)

As required by 12 U.S.C. § 5704(e)(7), for each loan enrolled in a state CAP, the participating state must require the financial institution lender to obtain an assurance from each borrower stating that the loan proceeds will not be used for an impermissible loan purpose under the SSBCI program.

Business Purpose Generally – 12 U.S.C. § 5704(e)(7)(A)(i)(I)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will be used for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate, the purchase of securities, and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended).¹⁴

Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will be used for a business purpose, which excludes acquiring or holding passive investments in real estate. Loan proceeds are used for passive real estate investment purposes when the proceeds of the loan are used to invest in real estate acquired and held primarily for sale, lease, or investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property.

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

¹⁴ The Act defines "lobbying activities" as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others."

an existing building, the borrower may permanently lease up to 49 percent of the rentable property to one or more tenants, if the small business occupies and uses at least 51 percent of the total rentable property within 12 months following the acquisition, renovation, or reconstruction. If a small business chooses to lease an allowable portion of the rentable square footage to a tenant, the state may rely on lease agreements, blueprints, or similar documentation in assuring the lease of an allowable portion of the rentable square footage is consistent with these guidelines. SSBCI-supported loan proceeds may not be used to improve or renovate any portion of a rentable property that is leased to a third party. "Rentable property" means the total square footage of all buildings or facilities used for business operations, which (1) excludes vertical penetrations (e.g., stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors) and all outside areas and (2) includes common areas (e.g., lobbies, passageways, vestibules, and bathrooms).

There are two exceptions to the general prohibition on the use of SSBCI-supported loan proceeds for passive real estate investment. An eligible business purpose may include the financing of real estate investments in the following limited circumstances.

First, a passive company such as a holding company that acquires real property using an SSBCI-supported loan may have an eligible business purpose where 100 percent of the rentable property is leased to the passive company's affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:

- The passive company must be an eligible small business using the affiliate and employee definitions described above;
- The operating company must be subject to the same sublease restrictions as the owner affiliate;
- The operating company must be a guarantor or co-borrower on the SSBCI-supported loan to the eligible passive company;
- Both the passive company and the operating company must execute SSBCI borrower use-of-proceeds certifications and sex-offender certifications covering all principals;
- Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
- The passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).

Second, a construction loan with an original principal amount of \$500,000 or less may have an eligible business purpose if (1) the building will not serve as a residence for the owner, their relatives, or affiliates; (2) the building will be put into service immediately; (3) the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and (4) the building has not been and will not be financed by another SSBCI-supported loan. Excluded from eligible business purpose are loans that automatically convert into permanent financing, except if the converted loans would no longer rely on SSBCI support. The term "construction loan" means a loan secured by real estate made to finance (1) land development (e.g., the process of

improving land, such as laying sewers or water pipes) preparatory to erecting new structures or (2) the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, “construction” includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

Prohibited Loan Purposes – 12 U.S.C. § 5704(e)(7)(A)(i)(II)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will not be used to:

- Repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
- Repay taxes held in trust or escrow (e.g., payroll or sales taxes);
- Reimburse funds owed to any owner, including any equity investment or investment of capital for the business’s continuance; or
- Purchase any portion of the ownership interest of any owner of the business,¹⁵ except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.

Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(i)(III)

Each financial institution lender must obtain an assurance from the borrower affirming that the borrower is not:

- An executive officer, director, or principal shareholder of the financial institution lender;
- A member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or
- A related interest or immediate family member of such an executive officer, director, or principal shareholder of the financial institution lender.

For purposes of these three borrower restrictions, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to a financial institution lender as the relationships described in 12 C.F.R. part 215.

Permissible borrowers may include state-designated charitable, religious, or other non-profit or philanthropic institutions; government-owned corporations; consumer and marketing cooperatives; and faith-based organizations, provided the loan is for a “business purpose” as defined above. Permissible borrowers may also include sole proprietors, independent contractors, worker cooperatives, and other employee-owned entities, as well as Tribal enterprises, provided that all applicable program requirements are satisfied.

¹⁵ This prohibition applies to the acquisition of shares of a company or the partnership interest of a partner when the proceeds of the loan directly supported by SSBCI funds will go to any existing owner or partner.

Additional Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(iv)

Each financial institution lender must obtain an assurance from the borrower affirming that the borrower is not:

- A business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;¹⁶
- A business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;¹⁷
- A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
- A business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6;¹⁸ or
- 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 business¹⁹; "gaming activities" for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

¹⁶ A construction loan permitted under Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I) will not be considered a speculative business for purposes of SSBCI..

¹⁷ When a participating state makes a loan to an eligible CDFI, the CDFI may re-lend the funds to other entities. If a CDFI re-lending transaction is eligible and meets all SSBCI program requirements, including obtaining all required assurances and certifications, the participating state may include private financing caused by and resulting from the re-lending transaction in the state's private leverage ratio. Similarly, Tribal enterprise lenders may also be permissible borrowers for the purpose of relending, if the re-lending transactions are eligible and meet all SSBCI program requirements, including obtaining all required assurances and certifications.

¹⁸ SBA Standard Operating Procedure 50 10 6, Lender and Development Company Loan Programs (effective October 1, 2020) ("Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.").

¹⁹ Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for its new gas station, for example, even if the Tribal enterprise's revenues from gaming were greater than 33 percent.

Each financial institution lender must also obtain an assurance from the borrower affirming that no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Lender Assurances – 12 U.S.C. § 5704(e)(7)(A)(ii) and (iii)

Each participating state must obtain an assurance from the financial institution lender affirming:

- The SSBCI-supported loan is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender.
- The SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the financial institution lender or an affiliate of the financial institution lender and complies with all applicable SSBCI requirements related to refinancing, described forth below.
- No principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Lender Assurances: Refinancing and New Extensions of Credit – 12 U.S.C. § 5704(e)(7)(A)(ii)

New Lenders. Under the SSBCI statute, a lender is not prohibited from enrolling or refinancing loans previously made by another, non-affiliated financial institution. However, the purpose of SSBCI is to support small businesses, including by providing new capital. Accordingly, a lender may refinance a borrower’s existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

- The amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance,²⁰
- The transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is

²⁰ Requiring a 50 percent increase in the obligation requires lenders to increase their capital at risk by an amount that will generally exceed the value of the SSBCI subsidy, given the 1:1 and 10:1 financing requirements. This promotes the goal that the benefits of SSBCI funding primarily accrue to small businesses rather than to lenders.

used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

When a participating state uses SSBCI funds to support the purchase of a loan from another, non-affiliated financial institution, the state must make a determination that the transaction is beneficial to the small business borrower.

- *New Extensions of Credit by Existing Lenders.* Financial institution lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit, or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into the SSBCI-supported program. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured²¹ loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:
 - The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;
 - The new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender;
 - The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and
 - Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

If a participating state enrolls a loan that is used to repay principal under a loan previously made by the same financial institution or its affiliate, the participating state or the financial institution lender must maintain records showing that these criteria were met. The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an SSBCI approved program and subsequently refinancing the same loan under any approved program.

g. Monitoring the Annual Claims Rate

The claims rate for a CAP reflects the compensation a lender may seek for borrower defaults and, accordingly, the amount of SSBCI subsidy the lender may receive. CAPs are intended to support responsible lending that is beneficial to small businesses and are not intended to subsidize high default rate business models. To ensure CAPs continue to be used consistent with these objectives, states must monitor annual CAP claims rates and review lenders whose annual claims rates exceed 6 percent. The claims rate may be measured by either total capital or number of loans in a 12-month period. The state may determine to disallow a lender from enrolling any additional CAP loans if the state determines the lender's practices do not meet

²¹ A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity. Transferring an accelerated loan into an SSBCI program does not promote the purpose of expanding small business access to capital and would primarily benefit lenders rather than small businesses.

program standards or is using the CAP to offset the costs of high default rate lending.²² Treasury will monitor CAP annual claims rates annually.

Section VIII. Approving State OCSPs

a. In General

Under 12 U.S.C. § 5701(12), an OCSP is a program that is not a CAP, that uses public resources to promote private access to credit, and that meets certain eligibility criteria. OCSPs may include loan programs, investment programs, or other credit or equity support programs. OCSPs may include programs that provide support for small business lending and investment such as collateral support programs, loan participation programs, state-sponsored venture capital programs, loan guarantee programs, or other similar programs. Unlike CAP lenders, OCSP lenders and investors need not be financial institutions as defined above.

In a SSBCI venture capital program, the “investor” can be an entity of the state; any private venture capital, seed-stage, mezzanine, or angel fund participating in an approved SSBCI program (but not individual investors in such a fund); or a special purpose vehicle or entity. The “investee” is the small business that is the end recipient of SSBCI funds, either directly or indirectly through a venture capital fund.

Tribal enterprises may be lenders or investors in an OCSP, if they comply with all applicable program requirements. Any Tribal enterprise acting as a lender or investor should have sufficient lending or investing experience and the financial and managerial capacity to participate in the OCSP.

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

As required by 12 U.S.C. § 5705(c)(2), for OCSPs to be eligible for federal funding, a state must demonstrate a “reasonable expectation” that, when considered with all other approved state programs under the SSBCI, such programs together have the ability to use federal contributions to such programs to generate small business lending and investment at least 10 times the federal contribution amount. As a part of the 10:1 financing requirement, the statute requires SSBCI funds to “cause and result in” private financing. As a part of the application, states must describe how their OCSPs will in fact “cause and result in” private financing. For example, for OCSPs involving venture capital funds, states may specify such safeguards as limiting investments to anchor investments,²³ prohibiting SSBCI participation after a fund's initial close, or restricting investments in funds for which private capital is likely to be catalyzed by SSBCI participation based on the funds’ age, size, or experience.

Treasury refers to the ratio of small business lending and investment to the federal contribution amount as the “private financing ratio.” Specifically, the private financing ratio is the “private financing” caused by and resulting from the SSBCI investment, divided by the “SSBCI funds used.” These terms are defined below. States must meet an *ex ante* requirement that they demonstrate, at the time they apply for SSBCI funds, a reasonable expectation that their SSBCI programs will achieve a 10:1 private financing ratio. In addition, states must fulfill ongoing *ex post* reporting requirements on actual leverage achieved.

For the *ex ante* requirement, states must provide to Treasury certain estimates or projections of program parameters at the time they apply for SSBCI funds, such as: funding allocation among

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

²³ Anchor investments are meaningful investments made early in the life of the fund that send a strong signal regarding the merits and risk profile of investing in the fund.

various programs (e.g., capital access, venture capital, loan participation, loan guarantee, collateral support); turnover within programs (e.g., average loan tenor); and loss rates.²⁴ The SSBCI application materials will include a template that allows a state to input its estimates or projections of program parameters, and that calculates an estimate of the private financing ratio resulting from the state's inputs. Subject to Treasury's approval, the state may provide its own calculation of the private financing ratio, if the state provides Treasury with its calculation and the inputs, so that Treasury can confirm the results. For purposes of *ex ante* projections, Treasury will calculate the private leverage ratio over a 10-year horizon, commencing with the initial deployment of federal funds. That is, the 10-year time horizon is specific to each initial transaction (or, for simplicity, annual group of transactions), not from the initiation of the program. If a state knows that it will stop recycling funds after the allocation time period or anytime within the 10-year horizon for a particular program, the state should adjust its leverage projections accordingly.

For purposes of calculating and reporting the private financing ratio achieved by SSBCI programs (the *ex post* calculation), records of direct and indirect private financing motivated by federal funds should be maintained and aggregated for the numerator of the private financing ratio. States will be required to provide transaction-level information to Treasury, and Treasury will perform the *ex post* calculation.

"Private financing" means private financing across all approved state programs and includes all loans or investments from a private source to an eligible borrower or eligible investee, whether occurring at or subsequent to loan or investment closing (subject to certain restrictions to be set forth in the Allocation Agreement regarding permissible types of subsequent private financing), and whether funded or unfunded. It encompasses equity investments, written commitments of future equity investments, term loans, lines of credit, and any new infusions of cash by the small business owner into the borrower.²⁵ For a Tribal government program, private financing may include Tribal enterprise funds acquired in commerce, provided that the funds do not originate with the state, federal, or Tribal government. Private financing does not include financing provided by tax-credit supported vehicles, such as funds capitalized by the sale of state tax credits.²⁶ A participating state may count SBA-guaranteed loans or other financing that is credit-enhanced by federal, state, or local incentives, if (1) the financing is caused by, or is the result of, an SSBCI-supported transaction, (2) the capital comes directly from a private entity, and (3) the lender or investor has at least some of its own capital at risk.

"SSBCI funds used" are SSBCI funds that have been (1) disbursed to a lender to cover the SSBCI contributions to a CAP reserve fund, (2) disbursed or committed to a specific borrower as part of a loan participation, collateral support, or direct lending program, (3) set aside to cover obligations arising from individual loan guarantees, loan participations, or collateral support agreements to specific borrowers, or (4) invested or committed to be invested in specific businesses, pursuant to a venture capital investment. If the aggregate amount of these funds exceeds all of the participating state's allocated amounts from the main capital, VSB, SEDI, and

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

²⁵ When a participating state makes a loan to an eligible CDFI, the CDFI may re-lend the funds to other entities. If a CDFI re-lending transaction is eligible and meets all SSBCI program requirements, including obtaining all required assurances and certifications, the participating state may include private financing caused by and resulting from the re-lending transaction in the state's private leverage ratio

²⁶ Angel investments (i.e., investments made by generally high net worth individuals in startup businesses) that generate individual tax credits as a result of their investment activity may be considered private capital for purposes of the minimum private leverage test and calculating subsequent private financing.

SEDI incentive allocations (because some of the funds invested have generated program income that has been added to allocated funds), the “SSBCI funds used” means the participating state’s total allocated amounts. SSBCI funds used are distinguishable from funds considered deployed (i.e., expended, transferred or obligated, and delivered) as described in Section III.b above.

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

As required by 12 U.S.C. § 5705(c)(1), each OCSP must “demonstrate that, at a minimum, \$1 of public investment by the state program will cause and result in \$1 of new private credit.” Unlike the 10:1 financing expectation described above, this 1:1 financing is an eligibility requirement. As a result, Treasury will only approve OCSPs that demonstrate that the design of the program will meet the 1:1 financing ratio.

For purposes of this requirement, states should calculate their “new private credit” (which Treasury refers to as “private financing”) for each individual OCSP using the following formula:

- Financing ratio = [total aggregate private financing generated by the individual OCSP] *divided by* [SSBCI funds used by the individual OCSP]
- “Private financing” and “SSBCI funds used” have the same definitions as those set forth in Section VIII.b above.

As noted above, the statute requires SSBCI funds to “cause and result in” 1:1 private financing. Therefore, in the SSBCI application, states must describe how their OCSPs will “cause and result in” private financing. For example, for OCSPs involving venture capital funds, states may specify that (1) the program will limit investments to anchor investments²⁷ or prohibit SSBCI participation after the initial close of the fund, or (2) the program will only work with funds for which private capital is likely to be catalyzed by SSBCI participation based on the funds’ age, size, or experience.

A private investment that occurs prior to the SSBCI investment may count towards the state’s 1:1 financing ratio when a state can document that the forthcoming SSBCI funds were the “cause and result” of the private investment. For example, a private investment that occurs prior to an SSBCI investment may count towards the state’s private capital ratio if the state supplies documentation (e.g., board meeting minutes) evidencing the causal connection between the SSBCI investment and the private investment. In addition, private capital raised within the same funding round as the SSBCI funding may be counted toward the 1:1 financing ratio if a term sheet or similar agreement specifies the inclusion of SSBCI capital and the private financing transaction occurs no earlier than 90 days before the SSBCI investment.

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

OCSPs must mandate that lenders and investors—through which OCSPs provide loans, investments, or other credit or equity support—have “a meaningful amount of their own capital resources at risk.” Treasury has determined that “meaningful amount” differs for various types of lenders and investors, as some will bear risk at the transaction level while others bear pooled risk.

Lenders

²⁷ Anchor investments are meaningful investments made early in the life of a fund that send a strong signal regarding the merits and risk profile of investing in the fund.

Lenders that transact with small businesses and bear the risk of loss in such transactions (e.g., by originating loans supported by collateral support, loan guarantees, loan participations, or other types of credit support) have a meaningful amount of capital resources at risk if they bear 20 percent or more of the risk of loss in any transaction. If such lenders transfer loans to debt investors, then the lenders must retain at least 5 percent of the risk of loss of the transaction.

Debt Investors

Debt investors that originate loans have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with, or junior to, the SSBCI capital in cash flow rights up to the repayment of the SSBCI investment. For these debt investors, the 1:1 financing requirement is met at the fund level.

Debt investors that do not originate loans²⁸ have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital in the same risk layer²⁹ as the SSBCI capital is *pari passu* with, or junior to, the SSBCI investment in cash flow rights. For these debt investors, the 1:1 financing requirement is met at the risk layer level.

If the debt investor is a fund or similar entity, the fund or entity manager should have exposure to the risk of its portfolio in a manner that is consistent with industry standards.

Equity Investors

Equity investors have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with, or junior to, the SSBCI investment in cash flow rights.

Eligible equity investors that make qualifying investments under the Incubation Funding Model or Early-Stage Investor Model, as defined in Section VIII.i below, have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with the SSBCI investment in cash flow rights up to the repayment of the SSBCI investment.

If the equity investor is a fund or similar entity, the fund or entity manager must have exposure to the risk of its portfolio in a manner that is consistent with industry standards.

e. Borrower/Investee and Loan/Investment Size Requirements – 12 U.S.C. § 5705(c)(4)

OCSPs are required (1) to target an average borrower or investee size of 500 employees or less, (2) not to extend credit support to borrowers that have more than 750 employees, (3) to target support towards loans or investments with an average principal amount of \$5 million or less, and (4) not to provide credit or investment support if a given transaction exceeds \$20 million. For loan programs, the \$20 million restriction applies to the principal amount of the loan directly supported by SSBCI, plus all other loans for the same loan purpose that close on or about the same date. Direct SSBCI support for a loan includes a guarantee, cash collateral, and loan participation (either purchased participation or companion participation loan). For equity

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

²⁹ Whole loans, pools of loans, or other assets from a lending contract can be placed in a special-purpose vehicle. The vehicle then receives principal and interest payments, or other cash flows, from the underlying loan or other assets. The resulting cash flows are then distributed to different investment tranches in the vehicle (i.e., layers of risk). The sequencing of payments to the various tranches reflects the seniority of each of those tranches. “Risk layer” here refers to the tranche of the asset-backed security in which the SSBCI capital is invested.

investment programs, the \$20 million restriction applies to a single investment round that includes an SSBCI-funded investment, including all classes of equity instruments that close on or about the same date. SSBCI support for an investment includes direct equity investments in small businesses made by a state or its contractors, as well as investments in small businesses made by privately managed funds in which the state invested SSBCI funds (“fund of funds” investments). The \$20 million restriction cannot be avoided by dividing a larger loan into smaller loans or by creating separate equity instruments within an investment round. Participating states should evaluate transactions that in the aggregate exceed the \$20 million limit and that have substantially similar terms and conditions,³⁰ including documenting the justification for participating in any transaction that could reasonably be viewed as exceeding the \$20 million restriction.

The standard for calculating borrower size for CAPs in Section VII.e applies for purposes of calculating the borrower or investee size for OCSPs.

f. Loan/Investment Purpose Requirements and Prohibitions – 12 U.S.C. § 5705(f) **Generally**

Pursuant to 12 U.S.C. § 5705(f)(2), Treasury may prescribe limitations and prohibitions on loan purposes or investment purposes for OCSPs. Accordingly, for each loan or investment resulting from an approved OCSP, the participating state must require the lenders or investors to obtain an assurance from each borrower or investee stating that the loan or investment proceeds will not be used for an impermissible purpose under the SSBCI program as set forth in the following sections of Section VII.f above: *Business Purpose Generally – 12 U.S.C. § 5704(e)(7)(A)(i)(I)*; *Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I)*; *Prohibited Loan Purposes – 12 U.S.C. § 5704(e)(7)(A)(i)(II)*; *Additional Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(iv)* (except the sex offender certification in the section above applies only to OCSP loan programs; the sex offender certification for venture capital programs is addressed below); *Lender Assurances – 12 U.S.C. § 5704(e)(7)(A)(ii) and (iii)*; and *Lender Assurances: Refinancing and New Extensions of Credit – 12 U.S.C. § 5704(e)(7)(A)(ii)*. The “lender” requirements in Section VII.f shall apply to OCSP lenders and investors. The “borrower” requirements shall apply to OCSP borrowers and investees. The conflict-of-interest provisions specified in Section VII.f *Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(i)(III)* apply to CAP and OCSP loan programs. Conflict-of-interest provisions applicable to venture capital programs and Tribal SSBCI programs are set forth below.

Venture Capital Programs: Conflict-of-Interest Standards

Funds from an SSBCI venture capital program must not be used to make an investment in a business in which an SSBCI insider has a personal financial interest. States with venture capital programs should adopt conflict-of-interest policies consistent with the standards set forth in this section.

The following definitions apply to the conflict-of-interest standards for venture capital programs:

- An “SSBCI insider” of an SSBCI venture capital program is a person who, in the 12-month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

³⁰ Such transactions may include, but are not limited to, transactions that involve the same or affiliated businesses, single or multiple loans or investments, terms and conditions that provide for cross-collateralization with multiple borrowers, affiliates, or a single borrower and different assets, cross guarantees, or the presence of other substantially similar terms or conditions among the transactions.

- Was:
 - a manager or staff member, whether by employment or contract, in the state’s SSBCI venture capital program;
 - a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official’s immediate supervisor;
 - a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;
 - a member of the board of directors or similar body for an independent non- profit or for-profit entity that operates an SSBCI venture capital program; or
 - an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or
- Exercised a controlling influence on state decisions regarding:
 - The allocation of SSBCI funds among approved state venture capital programs;
 - Eligibility criteria for the state’s SSBCI venture capital programs; or
 - The processes for approving investments of SSBCI funds under the state’s SSBCI venture capital program.
- A “business partner” of an SSBCI insider is a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.
- A “family member” of an SSBCI insider means:
 - Such person’s spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and
 - Any other relatives who live in the same household as the SSBCI insider.
- An “independent non-profit entity” means any non-profit entity that is not state- sponsored.
- A “personal financial interest” means any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).



- A “state-sponsored non-profit entity” is a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Subject to the exceptions described below, SSBCI funds may not be used by SSBCI venture capital programs to make or support investments in a company or venture capital fund if an SSBCI insider, or a family member or business partner of an SSBCI insider, has a personal financial interest in the company or venture capital fund. A prohibited conflict of interest is deemed to exist even if the conflict is disclosed or the relevant individuals recuse themselves from participating in the investment. Further, accepting a role as an SSBCI insider does not require a person to divest financial interests in a company or venture capital fund resulting from previous employment or personal investment activity. However, if a person is an SSBCI insider, any company or venture capital fund in which the insider has a personal financial interest is prohibited from receiving investments or financial support from SSBCI funds.

Exceptions to the general prohibition are as follows:

- A governmental entity or a state-sponsored non-profit entity may use SSBCI funds for follow-on investments in companies or venture capital funds if the entity has an existing ownership or voting interest resulting from a prior investment of SSBCI funds or non- SSBCI funds. Furthermore, in this circumstance, the entity may authorize investments if an SSBCI insider serves on the board of directors of the company or venture capital fund, if an SSBCI insider does not have a personal financial interest in the company or venture capital fund and the entity’s prior financial interest is in compliance with all applicable state laws and rules.
- An independent non-profit or for-profit entity managing or investing SSBCI funds for an SSBCI venture capital program is not precluded from authorizing follow-on investments using SSBCI funds in a company or venture capital fund in which the entity previously invested SSBCI funds or the entity has previously appointed a representative to serve on the board of directors in stewardship of the investment. However, such independent non- profit or for-profit entity may not authorize (or seek approval from the participating state for) an investment of SSBCI funds in a company or venture capital fund in which the entity holds any type of financial interest resulting from an investment made with non- SSBCI funds.

Venture Capital Programs: Certification Relating to Sex Offenses

If a business is to receive the benefit of SSBCI funds through a venture capital program, the certification related to sex offenders set forth in Section VII.f above must instead state that no principal of the investor or the investee has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 50 percent or more ownership interest of any class of the partnership interests; if a corporation, limited liability company,

association, development company, or other entity, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 50 percent or more of any class of equity interest in the entity; and if a partnership where the managing partner is a corporation, limited liability company, association, development company, or other entity, each director and each of the five most highly compensated executives or officers of the entity.

Tribal Programs: Conflict-of-Interest Standards

Under a Tribal OCSP program, if a Tribal enterprise lends to or invests in another Tribal enterprise, relationships that would otherwise be prohibited under these guidelines related to conflicts of interest in loan programs and venture capital fund programs are permitted if such relationships occur by virtue of common Tribal ownership, provided that:

- The lender/investor and borrower/investee certify that the transaction is in accordance with the Tribal conflict-of-interest policy;
- The Tribal conflict-of-interest policy addresses:
 - Conflicts arising from immediate family and self-dealing; and
 - Enforcement mechanisms for violations of the conflict-of-interest policy; and
- The Tribal enterprise lender or investor will publicly disclose its transactions with Tribal enterprise borrowers or investees.

g. Additional Considerations for Approving OCSPs

In determining whether an OCSP is eligible, the SSBCI statute requires Treasury to consider five specific factors related to the proposed OCSP. Following is a discussion of these factors intended to guide states in demonstrating that a proposed OCSP meets these standards.

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

Treasury will consider, when determining OCSP eligibility, the anticipated benefits to the state, its businesses, and its residents to be derived from the federal contributions to, or for the account of, the OCSP, including the extent to which resulting small business lending and investment will expand economic opportunities. States should present as part of their SSBCI application the projected loan and investment volumes of their programs, and describe the expected benefits to the state, the state's businesses, and the state's residents. In describing expected benefits, states should focus on, but not limit their discussion to, the following measures. Estimates may cover the anticipated allocation time period.

- The projected number and amount of SSBCI-supported small business loans or investments closed through the OCSP, including all forms of financing funded, guaranteed, or insured by OCSPs, including leases, credit lines, and investments.
- The number and types of jobs created, as well as the quality of jobs created (defined as locally appropriate), including the projected permanent, full-time workers hired by small business borrowers or investees as a result of receiving

SSBCI-supported small business loans and investments through the OCSP, and an indication of the wage level and benefits relative to local standards.

- The projected increases in state or local sales, income, or other tax revenues resulting from SSBCI-supported small business loans and investments through the OCSP. These estimates may include taxes paid by both permanent and temporary workers hired as a result of SSBCI-supported small business loans and investments through the OCSP.
- Long-term economic benefits of the state's investments. For example, climate transition investments may result in efficient energy use, sustainable jobs, or economic growth in sustainable manufacturing and industrial decarbonization, sustainable agriculture, bio- materials, and electric vehicles and changing infrastructure. Another example is that investments in areas such as small and mid-size enterprise (SME) manufacturing and supply chain resiliency may result in stronger economic growth, high-quality jobs, and innovation. Also, investments focused on innovation in supply chains of critical products such as semiconductors, critical minerals and materials, and advanced pharmaceuticals may provide long-term national and economic security benefits.
- Other expected benefits from the economic development objectives of the state.

OCSP Experience and Capacity – 12 U.S.C. § 5705(d)(2)

Treasury will consider, when determining OCSP eligibility, the operational capacity, skills, and experience of the management team of the OCSP. A state can demonstrate these factors with information such as:

- Qualifications and experience of senior management. The OCSP's senior management may include people who have significant credit underwriting or risk-management experience with institutions such as banks, finance companies, rating agencies, or insurance companies.
- Experience of senior management in operating public credit support or capital access programs. The OCSP might employ people with underwriting or credit risk management experience in federal, state, or local small business credit programs (e.g., SBA or state development finance authorities).
- Adoption of industry best practices. The OCSP may demonstrate that it employs industry best practices. The adoption of best practices helps to demonstrate the industry knowledge and sophistication of the OCSP management.

OCSP Capacity to Manage Increases – 12 U.S.C. § 5705(d)(3)

Treasury will consider, when determining OCSP eligibility, the capacity of the OCSP to manage increases in the volume of its small business lending (or investing). This can be demonstrated through:

- Financial strength. An applicant should demonstrate that it possesses adequate financial resources to support the staffing increases and infrastructure

improvements needed to undertake a significantly increased number of financing transactions.

- Operational capacity. An applicant should demonstrate that the OCSP has systems, policies, and procedures in place to accommodate a significantly increased transaction volume.

OCSP Accounting and Administrative Controls – 12 U.S.C. § 5705(d)(4)

Treasury will consider, when determining OCSP eligibility, the internal accounting and administrative controls systems of the OCSP, and the extent to which they can provide reasonable assurance that the funds of the state program are safeguarded against waste, loss, unauthorized use, or misappropriation. This can be demonstrated by:

- Evidence that management conducts, or in the case of a new OCSP, intends to conduct, periodic internal audits.
- A requirement for annual independent audits (including management letters).

OCSP Program Design and Implementation Plan – 12 U.S.C. § 5705(d)(5)

Treasury will consider, when determining OCSP eligibility, the soundness of the program design and implementation plan of the OCSP. This can be demonstrated by:

- For both new and existing OCSPs, the adoption or use of established business models and strategies for managing the risks associated with making, insuring, or guaranteeing small business strategies and models.
- For an existing OCSP, the absence of material weakness or deficiency findings by external auditors. Soundness of program design can also be shown through operating results; for example, a management letter citing no significant operational or financial weaknesses can be employed as evidence of appropriate program design.

h. Relationship to Tax Credit Programs

Fund managers may not combine financing from private tax credit-supported entities (i.e., entities that are funded through the sale of tax credits they received from a state) and SSBCI-supported programs for the same business purpose, or within the same investment or loan fund.³¹ However, state agencies and non-profit state-sponsored entities that receive funding from the sale of tax credits are permitted to combine these two types of funding for their loans and investments. For these entities, the tax credit funds are still not considered private capital.

An SSBCI-supported transaction cannot be used by an entity to increase the pool of funds that generates New Markets Tax Credits or Historic Preservation Tax Credits. If, however, a transaction supported with SSBCI funds meets program requirements, an entity may use SSBCI funds alongside a transaction that generates tax credits.

³¹ In addition, for purposes of the 10:1 financing ratio and 1:1 financing requirement for OCSPs, financing provided by tax-credit supported vehicles, generally, are not considered private financing. See Section VIII.b.

i. Additional Guidance Regarding Venture Capital Programs
Multistate Funds

State-sponsored venture capital programs may participate in multistate fund structures. Multistate funds are funds that can receive SSBCI capital from multiple states or invest in ventures across multiple states. Multistate funds may set up opportunities to invest in small businesses for more than one SSBCI participating state and can then raise outside capital more easily because of the scale of entrepreneurs. In these arrangements, each state must have a separate agreement with the fund manager. States can require the fund manager to invest in small businesses within its state only. They can also give permission to allow investments in certain out-of-state small businesses (see Section IX.c below). States must report on all SSBCI investments to which the state's SSBCI capital has exposure, regardless of whether the investment occurs in state or out of state.

Services to Portfolio Companies

Venture capital funds offer a variety of services to their portfolio companies (i.e., the potential SSBCI investees). These services can include, for example, financial management, operational guidance, IT consulting, and connecting portfolio companies to potential customers, investors, board members, and officers. These services vary depending on the portfolio company's stage in the venture capital ecosystem. As these services to portfolio companies are a type of equity support, SSBCI funds, out of the federal contribution, may be used to pay for such support up to an annual average of 1.71 percent of the federal contribution to a venture capital fund over the life of the state's venture capital program. Treasury established the 1.71 percent average limit based on data on fee benchmarks from venture capital fund contracts covering the operating costs of general partners, under which the median lifetime fees paid to fund managers amounted to an annualized 2.138 percent of the fund size.³² Treasury determined that 80 percent of the 2.138 percent (which equals 1.71 percent) is a reasonable estimate of the percentage of SSBCI funds invested in venture capital funds that would be used, on average, to provide services to portfolio companies, based on data indicating that venture capital fund general partners spent an average of approximately 80 percent of their time engaging with small businesses (which were potential portfolio companies) and relevant networks.³³ This equity support is subject to both the 10:1 and 1:1 financing requirements.

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

³² Robinson and Sensoy, Do Private Equity Fund Managers Earn Their Fees? Compensation, Ownership, and Cash Flow Performance, 2013. The same study found that the average lifetime fee paid to a fund manager was 2.037 percent of the fund size. We choose to use the median lifetime fee paid to fund managers instead of the average, as the median is more representative of fees paid to the fund manager in the majority of funds.

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

Incubation and Early-Stage Investment Models

In the “Incubation Funding Model,” for venture capital funds that make early-stage qualifying investments³⁴ (as defined below) in businesses, the state may offer these venture capital funds a call option to buy the cash flow rights of the SSBCI capital for a predetermined multiple (greater than or equal to 1) of the SSBCI capital based on a negotiated trigger event.

In the “Early-Stage Investor Model,”³⁵ for states that use direct investment programs to provide capital directly to early-stage businesses, the state may offer early-stage co-investors a call option to purchase SSBCI shares at a price equal to a predetermined multiple (greater than or equal to 1) of the SSBCI capital that is used for qualifying investments based on a negotiated trigger event.

For both models, “qualifying investment” means an investment with the following attributes:

- The investment must be the first SSBCI investment in a company, raising early-stage capital, up to \$125,000 per company (with a maximum round of \$375,000);
- The state conducts robust due diligence on the venture capital fund or early-stage investor, including (but not be limited to) ensuring that: (1) the investor has experience and a track record in early-stage investing and understands the early-stage investment process; and (2) the investor has a history of directly or indirectly³⁶ providing incubator-like services; and
- For the Incubation Funding Model, the available incubator-like services must be equally accessible to all portfolio companies.

Reporting

When a state provides SSBCI capital to private investment funds, a state’s capital must be either (1) held in a separate fund and separately accounted for, or (2) held in a fund with other investors’ funds, with each investor’s investment accounted for separately. State-sponsored venture capital programs must be able to trace and report on each investment in a fund’s portfolio that was funded partially or entirely by the SSBCI contribution to the fund. A state will be required to report to Treasury on investment performance and other transaction-specific details for each business that received SSBCI capital.

³⁴ Early-stage equity investment, including convertible debt funding, is funding intended for companies in the development phase. This stage of financing varies from small funds for companies cultivating ideas or concepts to larger sums for companies looking to grow their products and services.

³⁵ For example, an early-stage investor can be an unaffiliated, private market venture capital fund, professional angel investor, accelerator, charitable foundation, or other professional early-stage investor. A professional angel investor is one who is dedicated to the business, understands how startups work, and can contribute smart capital and relationships to push potential investees to the next stage of maturity. Angel investors are private investors who fund start-up businesses, usually in return for equity in the company. An accelerator is an organization that offers mentorship, capital, and connections to investors and business partners

³⁶ These venture capital funds and early-stage investors that make early-stage investments may provide incubator like services either by themselves or through a partnership with an incubator or another organization that provides similar services to portfolio companies.

Section IX. Other SSBCI Program Requirements

a. Capital Access in Underserved Communities

The SSBCI statute, 12 U.S.C. § 5704(e)(8), requires that a state's application for a CAP must contain a report detailing how the state plans to use the federal contributions to the approved program to help provide access to capital for small businesses in low- and moderate- income, minority, and other underserved communities, including women- and minority-owned small businesses (collectively, "underserved communities"). Treasury encourages states to consider the following areas when including plans regarding "other underserved communities" in their report: rural communities; communities undergoing economic transitions, including communities impacted by the shift towards a net-zero economy or deindustrialization; and communities surrounding Minority-Serving Institutions.³⁷ The SSBCI statute, 12 U.S.C. § 5705(f)(2), mandates that Treasury consider the same eligibility criteria for OCSPs as for CAPs, to the extent the Secretary determines applicable and appropriate. Treasury has determined that a state report regarding capital access to underserved communities should also be required in an application for an OCSP.

A state's report should contain information sufficient for Treasury to evaluate whether the state's plans to help provide access to capital for underserved communities are substantive and relevant to local market conditions. An acceptable report will contain plans that describe (1) how the state will provide access to capital for small businesses in underserved communities, and (2) how the state will monitor performance relative to the plans in the report.

When describing how the state will provide access to capital for small businesses in underserved communities, the state may have different strategies for different underserved groups referenced in the SSBCI statute. For example, some states may plan to provide access to capital through the design of the program itself (e.g., providing reduced pricing or enhanced risk mitigation as an incentive for certain underserved geographies or populations). Other states may plan to provide access to capital through a concerted campaign to disseminate information through organizations that have business relationships with underserved communities (e.g., seminars and one-on-one counseling; advertisements in specialized media; periodic e-mailed newsletters that reach underserved populations). Where relevant, the report should address how the state will work with CDFIs and minority depository institutions, as defined in 12 U.S.C. § 5701(17), to reach underserved communities. The report is part of the application that is incorporated by reference in the Allocation Agreement between Treasury and the participating state. Further, the report may be made public by Treasury. If Treasury makes the report public, Treasury will withhold information that appears to be personally identifiable information (PII), sensitive information such as commercial or financial information about small businesses, or information that involves privacy, security, and proprietary business

³⁷ Minority-serving institutions are institutions of higher education that serve minority populations and include, but are not limited to, Historically Black Colleges and Universities (as defined in 20 U.S.C. § 1061(2)), Hispanic-Serving Institutions (as defined in 20 U.S.C. § 1101a(a)(5)), Tribal Colleges and Universities (as defined in 20 U.S.C. § 1059c(b)(3)), and Asian American and Pacific Islander Serving Institutions (as defined in 20 U.S.C. § 1059g(b)(2)).

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

When describing how the state will monitor performance relative to the plans in its report, the state's report must include a way for the state to periodically assess the progress of its plans over the course of the allocation period. In its annual report to Treasury (see Section X below), the state will be required to provide a description of any updates to its plan and its progress toward the metrics cited in its own plan.

For example, some applicants may maintain records of their outreach activities (e.g., the number of seminars held and number of businesses that attended). Alternatively, applicants may monitor the loan volume to underserved groups or to low- and moderate-income communities; loan results may be compared to prior years' results, to the region's business demographics, or to private lending in general.

In addition to requiring that states present a report with their plans for expanding access to capital for underserved communities, the SSBCI statute also provides an allocation based on the needs of SEDI-owned businesses and an incentive allocation based on states' robust support for SEDI-owned businesses (see Section IV above). A state's plan for expanding access to capital for underserved communities may include the state's plan to expand access to capital for SEDI-owned businesses, but may also be broader to include other underserved communities, as determined by the state. The SEDI-owned business allocations described in Section IV will not take into account these reports.

b. Compliance with Civil Rights Requirements

SSBCI capital funds are considered federal financial assistance for purposes of legal requirements related to nondiscrimination and nondiscriminatory use of federal funds, where such laws are applicable to a recipient and any contracted entity operating SSBCI programs on its behalf. These requirements include ensuring that entities receiving federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury's implementing regulations at 31 C.F.R. part 23.

c. In-State and Out-of-State Loans and Investments

SSBCI funds for each state are intended to benefit that state, its businesses, and its residents. Treasury requires each state to use at least 90 percent of its capital allocation for loans, investments, and other credit or equity support for small businesses headquartered in the state. This means that, at most, 10 percent of a state's SSBCI allocation may be used to support loans, investments, or other credit or equity support for out-of-state small businesses. For each loan, investment, or other support for small businesses headquartered outside of the state, the state must provide a reasonable explanation of the benefits of that investment to businesses headquartered in the state.

For example, such loans, investments, and other support can aid states in expanding their economic ecosystem and benefit their residents by bolstering in-state economies through, for instance, the creation of, and increase in, demand for in-state business products and services.

For SSBCI funds allocated to Tribal governments, in-state transactions include the following:

- Transactions with businesses on Tribal lands.
- Transactions with businesses in states where the Tribe is physically located or within which the Tribe exercises jurisdiction. For example, a Tribe located in Montana with Treaty rights in Wyoming can include Montana and Wyoming as “in-state” jurisdictions.
- Transactions with Tribal enterprise-operated businesses, businesses owned by Tribal members, and businesses in the states in which Tribal members reside. For example, an Arizona Tribe may have the bulk of its members in a town on the border of Nevada and Arizona. Because the Tribe is exercising jurisdiction over its members in both states, it may invest in both states.

Tribal SSBCI program transactions that do not fall into the above categories constitute out-of-state investments, loans, or other credit or equity support subject to the 10 percent restriction on out-of-state investments, and must reasonably benefit the Tribal government’s businesses or members.

d. Enrollment of Loans in Loan-Related SSBCI Programs

One loan cannot be enrolled in more than one approved state program at the same time. A lender may not divide one loan into multiple agreements or notes, each enrolled in an approved state program, for the same loan purpose. If, for example, a borrower receives two loans under separately approved state programs, each participating state should maintain documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements, copies of checks paid to vendors with the proceeds of the two loans, or a statement signed by the lender or borrower prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans.

e. Relationship to SBA Lending Programs and Other Federal Loans

Under the SSBCI Program, eligible state CAPs or OCSPs may not enroll any portion of an SBA-guaranteed loan or the unguaranteed portion of any other federal loan without the express, prior written consent of the Treasury.

If a borrower receives a loan guaranteed by the SBA’s 7(a) or 504 loan programs or the U.S. Department of Agriculture’s Business and Industry (USDA B&I) loan program, SSBCI funds may not be used as credit support to a loan or investment for the same purpose as the SBA- or USDA-guaranteed loan. For example, a borrower may not use a loan guaranteed under SBA’s 7(a) program and an SSBCI-supported loan to purchase the same real estate, including land and improvements. In contrast, a borrower may receive two sources of federal support in two separate loans if the proceeds for the two loans are for different purposes. For example, if a borrower receives a loan guaranteed under the

SBA 7(a) or 504 program or the USDA B&I program to purchase real estate occupied by the borrower, the borrower also may receive an SSBCI-supported loan to purchase equipment. States must require documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks paid to different vendors from the proceeds from the two loans, or a statement signed by the lender or borrower prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans.

f. Minimum National Customer Protection Standards

SSBCI funds are intended to benefit small businesses by making capital available for lending and investment. To promote program integrity and ensure that SSBCI transactions primarily benefit small businesses, SSBCI programs must conform to the minimum national customer protection standards, which would apply to small businesses that are SSBCI borrowers, set forth herein. Many state programs and program participants (such as financial institutions) are subject to separate state or federal requirements related to customer protection; these standards do not affect a lender's obligation to adhere to those other applicable requirements. In light of the variety of state programs and potential state lending partners, states must ensure state programs meet these minimum standards to ensure SSBCI financing supports transactions that are economically beneficial to small businesses.³⁸ The following standards are minimum standards, and states should consider the credit environment and needs of small businesses in their state in determining whether to impose additional standards. For example, states may impose lower rates or limits on product types offered as appropriate to achieve the purposes of the state program. State regulatory requirements may also apply and result in additional standards, such as lower rates or limits on permissible terms.

- *Rate cap.* The interest rate for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board.³⁹ The NCUA's permissible interest rate ceiling supports its mission to protect credit unions and its consumers. In choosing to adopt the NCUA interest rate ceiling, Treasury aims to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them.
- *Exclusion of certain features.* SSBCI-supported transactions may not include any of the following: (1) confessions of judgment;⁴⁰ (2) prepayment or "double-dipping" fees;⁴¹ or (3) upfront fees or charges paid by the small business, excluding fees to

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

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

⁴⁰ A confession of judgment is usually a contractual clause in which the debtor agrees to allow a creditor, upon the nonoccurrence of a payment, to obtain a judgment against the debtor, often without advanced notice or a hearing.

⁴¹ "Double dipping" occurs when a lender issues new credit to refinance prior credit without forgiving a portion of the fee already paid and results in the borrower paying a fee on top of a fee.

the state program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000. Contract clauses requiring confessions of judgment often take away small business borrowers' legal defenses without any due process and, thus, tend to be harmful to these borrowers. Mechanisms of prepayment and "double-dipping" fees are often used by creditors to hide costs to borrowers and charge fees that can be detrimental to the borrower. By disallowing these mechanisms, Treasury aims to ensure greater transparency for small business borrowers and to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them. Treasury's establishment of the cap on upfront fees or charges also furthers these aims. The 2 percent cap on these fees for loans greater than \$25,000 is based on the SBA's 2 percent limit on loan closing fees pursuant to 13 C.F.R. § 107.860(c). The \$500 cap on these fees for loans under \$25,000 is reasonable because the fixed underwriting costs per loan often exceed 2 percent of the loan amount for loans under \$25,000. Setting the cap at \$500 for all loan amounts under \$25,000 would likely facilitate lending from financial institutions to very small businesses that need a small loan.

g. Disclosure of Terms

SSBCI-supported transactions must include disclosure by the lender or investor of all key terms in an easy-to-understand manner. Such disclosures should include, for example, the loan or investment amount; payment obligation and schedule; any terms giving the lender or investor control over the borrower's or investee's cash balances, cash flows or ownership; any conversion rights and future rights to purchase equity; and any fees or extra costs. This minimum standard applies across all SSBCI programs; however, these standards do not supersede disclosure requirements that may apply under other applicable law. All applicable federal and state securities and lending disclosure laws, rules, and regulations continue to apply.

Section X. Reporting

For reporting purposes, SSBCI capital funds are not considered federal financial assistance. The SSBCI statute, 12 U.S.C. § 5702(c)(5), specifically states that capital funds transferred to states, the District of Columbia, territories, Tribal governments, and eligible municipalities are not considered federal financial assistance for the purposes of 31 U.S.C. subtitle V. Funds given to provide technical assistance, however, are considered federal financial assistance, and therefore the related reporting requirements, which will be described in the forthcoming technical assistance guidance, will apply to those funds. Treasury will also issue reporting requirements related to the demographics of owners of small business that participate in a SSBCI capital or technical assistance program.

Participating states are required to submit the following reports to Treasury. Treasury may make information from the reports public. If Treasury decides to make these reports public, Treasury will withhold information that appears to be personally identifiable information (PII), sensitive information such as commercial or financial information about small businesses, or information that involves privacy, security, and proprietary business interests. Treasury will work with states to seek to protect the confidentiality of such information.

- *Quarterly reports.* Within 30 days after the end of each quarterly reporting period, the state will be required to deliver to Treasury a quarterly report describing the use of SSBCI funds for each approved state program on both a quarterly and a cumulative basis, including the total amount of SSBCI funds used for direct and indirect administrative costs, the total amount of SSBCI funds used, the amount of program income generated, and the amount of charge-offs against the federal contributions to the reserve funds set aside for any approved capital program. Additionally, the state will identify the contracted entities and amounts of SSBCI funds transferred in the period; the aggregated amount of SSBCI funds deployed by the state or contracted entities to support loans to or investments in eligible small businesses; and the aggregate amount of SSBCI funds deployed for allocations related to SEDI-owned businesses and VSBs.
- *Annual reports.* By March 31 of each year, beginning March 31, 2023, the participating state will be required to submit to Treasury an annual report for the prior calendar year. This annual report will be required to contain transaction-level data for each loan or investment, including small business characteristics, made with SSBCI funds for that year, and information on subsequent private financing for OCSP loans and investments made in prior years when required by the SSBCI Allocation Agreement. The annual report will also be required to provide information on any qualifying loan or swap funding facility, if applicable.
- *SF-425 Federal Financial Reports.* SF-425 Federal Financial Reports are to be submitted on an annual basis.
- *Performance results.* A summary of the performance results of the participating state's allocation are to be submitted with the participating state's final annual report.

Section XI. Administrative Costs – 12 U.S.C. § 5702(c)(3)(C)-(D)

SSBCI administrative costs are defined and governed by the Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E. The Uniform Cost Principles contain criteria that must be used to establish chargeable administrative costs and specific information on allowable costs in various cost categories. Administrative costs are capped by statute (see 12 U.S.C. § 5702(c)(3)(C)-(D)). Specifically, for the first tranche, the administrative costs are not to exceed 5 percent of SSBCI funds, and for the second or third tranche, the administrative costs are not to exceed 3 percent for the respective tranche.

Section XII. Un-enrollment – 12 U.S.C. § 5702(c)(1)(C)

a. Requesting Approval to Replenish and Un-enroll

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

If Treasury identifies a potentially noncompliant use of funds, it will assess relevant facts and applicable program requirements, including these guidelines, the Allocation Agreement, and the National Standards for Compliance and Oversight. The state will be

afforded an opportunity to provide Treasury additional information that will be used to determine whether a violation of the Allocation Agreement or other program requirements has occurred. The state will be given at least 30 days to supply additional information.

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

If Treasury determines that SSBCI funds have been used for an impermissible purpose, Treasury may also allow the state to replenish its SSBCI program account in the amount of the funds found to be misused. In such a case, Treasury may allow the state to un-enroll the loan or investment or remove the disallowed administrative expenses from the SSBCI account. Treasury may also exercise other remedies, including reducing the amount of future disbursements.

Treasury's written approval is needed for replenishment and un-enrollment. Note that Treasury's approval of any replenishment and un-enrollment does not preclude OIG from conducting its own review of potential noncompliance issues.

b. Documentation for the Replenishment of Loans and Investments

A state must provide Treasury with a written description of each transaction and the justification for a proposed replenishment and un-enrollment. Treasury may provide the state with written conditional approval. Once the state has replenished its SSBCI program account, the state must provide Treasury the following:

- A letter from the state to the lender, investor, or third party involved in administration that informs such party that the transaction is no longer enrolled in the SSBCI program, and that SSBCI funds no longer support the transaction. For certain transactions, as determined by Treasury, the state must provide evidence that the relevant contract is no longer valid or will not be honored using SSBCI funds;
- Accounting documentation evidencing that the SSBCI program account has been replenished; and
- A certification from the authorized state official that explains the reason for un-enrollment of each transaction and states that the state has undertaken all necessary actions and transactions to replenish the SSBCI program account.

⁴² 12 U.S.C. § 5702(c)(1)(C)(ii).