

Loan Purpose Requirements and Prohibitions – As required by Section 3005(e)(7) of the Act, for each loan enrolled in a state CAP, the participating state shall require the financial institution lender to obtain an assurance from each borrower stating that the loan proceeds will not be used for an impermissible purpose under the SSBCI Program.

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

1. The loan proceeds must be used for a “business purpose.” A business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business’ continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

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

4. The borrower (2) is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the

business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or

e. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

5. 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 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 a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity."

²Note: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

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

1. The loan has not been made in order to place under the protection of the approved state CAP prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender.

2. The loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender. 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 or a development company, each director, each of the five most highly compensated executives, officers, or

employees of the entity, and each direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.”

iv. Relationship to Small Business Administration (SBA) Lending Programs - Under the SSBCI Program, eligible state CAPs may not enroll the unguaranteed portions of SBA-guaranteed loans without the express, prior written consent of the Treasury.

v. Capital Access in Underserved Communities - The Act requires that each application contain a report detailing how the state plans to use the federal contributions to the reserve fund 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. The design of each state’s strategy is left to its discretion. While there is no one single approach to what should be in a state’s plan, the plans should be sufficient to allow Treasury to evaluate whether the plan is substantive and relevant to local market conditions. The state’s plan should include a method for the state to monitor the status of its plans. Treasury will provide further commentary and examples of strategies proposed by states on www.treasury.gov/ssbci.

XII. Limitation to New Extensions of Credit

Funds made available to states under the SSBCI will be permitted only for new extensions of credit or new investments. That is, funds made available to states pursuant to the SSBCI shall not be used to support existing extensions of credit or financing – including but not limited to prior loans, lines of credit or other borrowing –that were previously made available as part of a state small business credit enhancement program.

Complete Policy Guidelines for the State Small Business Credit Initiative:

<http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Policy%20Guidelines.pdf>