

American Rescue Plan Small Business Credit Initiative: Tribal Small Business Credit Support

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The National Center
for American Indian Enterprise Development



Pilar Thomas, Presenter

Pilar Thomas is a partner in the firm's Energy, Environment & Natural Resources Practice Group and the Indian Law and Policy group. She focuses her practice on tribal renewable energy project development and finance, tribal economic development, federal Indian Law, and natural resource development. She serves as general counsel for several tribes, Section 17 and tribal business entities.

Prior to her legal career, Pilar worked for 15 years in the financial services industry, for a Fortune 250 company. She has experience in all aspects of consumer, mortgage and commercial lending, including underwriting and credit risk.

She received her J.D. from the University of New Mexico School of Law, magna cum laude, and her B.A. in Economics from Stanford University.

Presentation Agenda

- Background on SSBCI and Amendments
- Program Approval Requirements
- Potential Tribal Programs
- Program Administration

Overview of SSBCI

- The SSBCI - originally enacted in 2010 to "strengthen state programs that support financing of small businesses" - provides federal funding for state credit support or venture capital support programs. 12 U.S.C. § 5701 *et. seq.*
- SSBCI establishes two types of credit support programs: Capital Access Programs, 12 USC § 5701(11) and Other Credit Support Programs, 12 USC § 5701(12)
 - CAP – 500 employees, \$5 million loan cap
 - OCSP – target 500 employees, no more than 750; \$5 million average loan size, no more than \$20 million credit or investment support
- States apply to Treasury to administer programs, 12 USC § 5703, and have to comply with statutory requirements. 12 USC §§ 5704, 5705.
- Allowed to use 3 - 5% of funds for administration

ARP Amendments to SSBCI – Title III, Section 3301

- Includes tribes
 - Amends definition of "State" to include federally recognized Indian Tribes
 - Allocates \$500 million to Tribes; tribal allocations by Secretary of Treasury considering employment and economic data
- Created set-asides and incentive programs
 - \$1.5 billion for socially and economically disadvantaged businesses
 - \$1 billion for incentive program if have robust support for socially and economically disadvantaged businesses
 - \$500 million for "very small businesses" – less than 10 employees

Updated Treasury SSBCI – Key Dates for Tribes

- Late June – Treasury issued allocation guidance – based on tribal member enrollment, pro rata allocation with \$436,000 min, Tribes will get \$500 million PLUS \$40 million for VSB set aside
- August 16, 2021 – Notice of Intent to Apply due for Tribal governments; NOI form now available to be filed with Treasury
- December 11, 2021 – Applications due for states, territories, Washington, DC, and Tribal governments (application form forthcoming).



Tribal Notice of Intent



U.S. Department of the Treasury
State Small Business Credit Initiative

Instructions

Tribal Governments must complete and submit this Notice **by 5:00 pm ET on July 30, 2021**. Each Tribal Government that intends to apply must file a Notice even if the Tribal Government intends to apply jointly with other Tribal Governments. If a delegated third party, such as a lawyer, consultant, or intermediary, signs on behalf of the Tribal government, evidence that the Tribal government has delegated authority to the third party to act on behalf of the Tribal government must be uploaded with this form (see instructions below) by **5:00 pm ET on July 30, 2021**. Alternatively, if uploading is not possible, evidence of delegation may be submitted to ssbci_information@treasury.gov by the same deadline. This can be a Tribal resolution or other document signed by the Tribe's primary Tribal leader authorizing the third party to act on behalf of the Tribal government for the purposes of submitting this Notice.

If you have questions about the form or program, please email ssbci_information@treasury.gov.

NOTICE OF INTENT TO APPLY

I hereby notify the Department of the Treasury ("Treasury") that

("Applicant")¹ intends to apply for approval to be a participating State under Treasury's State Small Business Credit Initiative. The Applicant intends to file a complete application with Treasury **no later than 5:00 pm ET December 11, 2021**.

Authorized Official for the Applicant

First Name		Last Name	
Title		Email	
Organization			
Street		City	
State		Zip Code	
Phone		Additional Phone	

Is the Authorized Official a delegated third party, such as a lawyer, consultant, or intermediary?

If the Authorized Official is a delegated third party, will a tribal resolution or other delegation of authority evidencing that the Tribal government has delegated authority to the third party to sign on behalf of the Tribal government be uploaded with this form or submitted to ssbci_information@treasury.gov?

A tribal resolution or other delegation of authority to the third party must be uploaded here or have been previously submitted to ssbci_information@treasury.gov for the NOI to be accepted.

¹ The following entities are eligible to apply at this time: a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, a Tribal government, or a group of Tribal governments applying jointly.



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Contact Person

First Name		Last Name	
Title		Email	
Organization			
Street		City	
State		Zip Code	
Phone		Additional Phone	

(Note that Tribal governments may update the contact person at any time.)

At this time, does the Applicant intend to apply jointly with other Tribal governments?

Joint applicants (if known):

Signature of Authorized Official

The undersigned affirms that the undersigned is authorized to file this Notice with Treasury on behalf of the Applicant. The Authorized Official for a Tribal government may be an individual within the Tribal Government designated on behalf of the Tribal government or a delegated third party. If the Authorized Official is a delegated third party, a tribal resolution or other delegation of authority signed by the Tribe's primary Tribal leader authorizing the third party to act on behalf of the Tribal government for the purposes of submitting this Notice must be uploaded with this form or submitted to ssbci_information@treasury.gov.

Signature: _____

Date: _____

Summary of Programs

- **Capital access programs (CAPs)** provide a portfolio loan loss reserve for which the lender and borrower contribute a share of the loan value (up to 7 percent) that is matched on a dollar for dollar basis with SSBCI funds.
- **Loan guarantee programs (LGPs)** provide an assurance to lenders of partial repayment if a loan goes into default once the lender makes every reasonable effort to liquidate available collateral and collect on personal guarantees.
- **Collateral support programs (CSPs)** provide cash to lenders to boost the value of available collateral.
- **Loan participation programs (LPPs)** purchase of a portion of a loan that a lender makes or make a direct loan from the state in conjunction with a private loan (companion loan). The state often subordinates to the lender's senior loan.
- **Venture capital programs (VCPs)** provide financing by purchasing an ownership interest or providing equity-like loans to enterprises that typically do not participate in debt financing markets due to their business stage and structure. SSBCI categorized VCPs into four different groups based on how the state engaged with the investment process: Funds, State-supported entities, State agencies and Co-Investment Models.

Participation Approval – 12 USC § 5703

- The Secretary "shall" approve a State (Tribe) if:
 - A specific department, agency or political subdivision designated to implement the program;
 - All legal actions necessary to enable participation;
 - Filed an application for approval; and
 - Executed an allocation agreement
- State (Tribe) can also participate if have contractual arrangement with another State (Tribe) or an authorized agent of or entity supervised by the State (Tribe), including non-profit and for-profit entities

Other Capital Support Programs (OCSP) – 12 USC § 5705

- Eligibility Criteria:
 - Demonstrate a minimum 1:1 leverage
 - Demonstrate reasonable expectation that new small business lending at least 10 times the federal contribution
 - Financial lenders have their own capital resources at risk (20% minimum)
 - Targets average borrower size of 500 employees, but no more than 750; average loan principal of \$5 million or less, but no more than \$20 million

OCSP – Statutory Requirements

- Additional Considerations:
 - Benefits to states and residents and businesses - expanded economic opportunities
 - Operational skills, capacity and experience of state management team
 - Capacity of state to manage increases in volume of small business lending
 - Internal account and admin controls systems – provide reasonable assurance funds are safeguarded
 - Soundness of program design and implement plan

Equity Investment Programs Implemented

Figure 4-4: Classifications of SSBCI Venture Capital Programs

VCP Category	Investment Management	Investment Terms	ROI Measures
State Agencies	Staff at state agency or a contractor, often with an external investment committee.	States directly engage in transactions and receive returns based on the investment contract.	Financial ROI and other economic development considerations.
Co-Investment Models	Eligible investors or funds identify qualifying investments for state participation on a formulaic basis.	States invest directly or through an intermediary. Principal and proceeds on individual investments are returned to the state or intermediary.	Financial ROI and other economic development consideration.
State-Supported Entities	State supported entities aligned with public benefit (private non-profit corporation, quasi-state entity).	State-funded intermediaries invest in companies. Investment principal and gains return to the intermediary to be reinvested.	Financial ROI and other economic development considerations.
Funds	The general partner or staff at the fund.	Funds invest in companies. Investment principal and gains on the investment portfolio return to state minus fees and carried interest.	Financial ROI.

Loan Participation / Relending

Involves purchases of a portion of a loan that a lender makes or the provision of a companion loan. In some cases, the state purchases a portion of the loan at closing, and in others, states made a companion loan directly to the borrower in concert with a private lender. In some cases, states co-fund loans in partnership with CDFIs.

Loan Guarantee

Provides an assurance to the lender of partial repayment if a loan goes into default once the lender makes every reasonable effort to liquidate available collateral and collect on personal guarantees. This model involves providing a guarantee on only a portion of the loan (and always less than the total capital at risk for SSBCI) and reserves a portion of the amount guaranteed in a segregated cash account controlled by the state.

Program Opportunities – Credit Support

- A few examples of credit support programs:
 - Provide "collateral support" for tribal member owned small businesses that don't have sufficient collateral for necessary debt financing
 - Participate directly in debt financing for tribal member owned, or tribal owned small businesses
 - Lend funds to Native CDFI for relending
 - Develop and implement a loan guarantee program with Native CDFI/banks for loans to tribal small businesses

Program Opportunities – Equity Investments

- A few examples of equity investments:
 - Direct equity investment in company or companies (all stages of development)
 - Capitalize tribal-owned small business (directly owned or subsidiaries) through direct equity investment
 - Establish multiple investor venture capital fund (co-investment fund or fund of funds) to diversify investments, pool funds, diversity risk (investment risk and administrative risk)

Unique Implementation Models

- Partnering with Native Community Development Financial Institutions (CDFIs)
- Industry-focused multi-tribal program
 - Agriculture
 - Construction
 - Energy

Program Administration

- Administration options include:
 - Directly administer – individually, inter-tribal consortium
 - Create a separate governmental or non-profit entity
 - Hire a third party administrator (for-profit, non-profit, CDFI)
 - Establish or participate in venture capital fund(s)
- The administration of these options can be funded by the federal contribution of funds to the Tribe.

Potential Program Development Process

- Begin program evaluation – start today
 - What kind of programs do you want to design, invest in?
 - Do you have internal capacity to develop or need to hire outside?
- File the Notice of Intent to Participate August 16 – raise your hand
- Begin program design – internal or hire
 - Statutory requirements for each program
 - Join with other tribes?
 - Descriptions for each program
- Select administration approach
- Take Appropriate Tribal Legal Actions
- File Application for Program Approval by December 11

Contact Information

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