

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 jurisdictions 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.¹⁰ 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.¹¹ 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 jurisdiction'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 jurisdiction is approved for participation in the SSBCI. The second and third disbursements will occur when the jurisdiction 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.

¹⁰ 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).

¹¹ More information about the Tribal SEDI allocation will be posted on Treasury's website.

“Expended For” Requirement

A jurisdiction’s SEDI allocation must be expended for SEDI-owned businesses. A jurisdiction 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 jurisdiction’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 jurisdiction—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 jurisdiction expends (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:
 - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
 - gender;
 - veteran status;
 - limited English proficiency;
 - disability;
 - long-term residence in an environment isolated from the mainstream of American society;
 - membership of a federally or state-recognized Indian Tribe;
 - long-term residence in a rural community;
 - residence in a U.S. territory;
 - residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
 - membership of an underserved community (see Executive Order 13985, under which “underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of “equity,” and “equity” is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and

queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality);

- (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);¹²
- (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).¹³

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 jurisdiction 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.

Jurisdictions 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 jurisdiction’s SEDI allocation is not expended for SEDI-owned businesses, Treasury may find that the jurisdiction 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 jurisdiction or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

¹² For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of that calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, in order to provide advance notice to jurisdictions. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent. Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area, available at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>.

¹³ See footnote 10.

CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii)

- (i) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the CDFI Fund:
 - (A) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and
 - (B) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability.
- (ii) The CDFI Fund will not, however, make a payment of any financial assistance to such an entity before or unless it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(i)(B) of this section, the CDFI Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.
- (3) The CDFI Fund shall require an entity to meet any additional eligibility requirements that the CDFI Fund deems appropriate.
- (4) The CDFI Fund, in its sole discretion, shall determine whether an entity fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.*

- (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.
- (2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.
- (3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.
- (4) For the purposes of paragraphs (b)(1) through (3) of this section, an entity will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the entity's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the entity.

§ 1805.201 Certification as a Community Development Financial Institution.

- (a) **General.** An entity may apply to the CDFI Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the CDFI Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the CDFI Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the CDFI Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the CDFI Fund. The CDFI Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section or § 1805.200(b) are no longer met.
- (b) **Eligibility verification.** An entity shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) by providing the information described in the application for certification demonstrating that the entity meets the eligibility requirements described in paragraphs (b)(1) through (6) of this section. The CDFI Fund, in its sole discretion, shall determine whether an entity has satisfied the requirements of this paragraph.
 - (1) **Primary mission.** A CDFI must have a primary mission of promoting community development. In determining whether an entity has such a primary mission, the CDFI Fund will consider whether the activities of the entity are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons or persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).
 - (2) **Financing entity.**
 - (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products and/or Financial Services. An entity may demonstrate that it meets this requirement if it is a(n):
 - (A) Depository Institution Holding Company;
 - (B) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or
 - (C) Organization that is deemed by the CDFI Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its certification application. In conducting such analysis, the CDFI Fund may take into consideration an entity's total assets and its use of personnel.
 - (ii) For the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program (see 12 CFR1808), an Affiliate of a Controlling CDFI may be deemed to meet the financing entity requirement of this section by relying on the CDFI Fund's determination that the Controlling CDFI has met said requirement; provided, however, that the CDFI Fund reserves the right, in its sole discretion, to set additional parameters and restrictions on such, which parameters and restrictions shall be set forth in the applicable Notice of Guarantee Availability for a CDFI Bond Guarantee Program application round.

- (iii) Further, for the sole purpose of participating as an Eligible CDFI in the CDFI Bond Guarantee Program, the provision of Financial Products, Development Services, and/or other similar financing by an Affiliate of a Controlling CDFI need not be arms-length if such transaction is by and between the Affiliate and the Controlling CDFI, pursuant to an operating agreement that includes management and ownership provisions and is in form and substance acceptable to the CDFI Fund.

(3) **Target Market -**

- (i) **General.** A CDFI must serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An entity may demonstrate that it meets this requirement by demonstrating that it provides Financial Products and/or Financial Services in an Investment Areas and/or Targeted Populations as described in this section. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) of this section.

(ii) **Investment Area -**

- (A) **General.** A geographic area will be considered eligible for designation as an Investment Area if it:

- (1) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands); and either
- (2) Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, Financial Products or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or
- (3) Encompasses (*i.e.*, wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

- (B) **Geographic units.** Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, or Indian Reservation. However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, and Indian Reservations. An entity may designate one or more Investment Areas as part of a single certification application.

- (C) **Designation.** An entity may designate an Investment Area by selecting:

- (1) A geographic unit(s) that individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or
- (2) A group of contiguous geographic units that together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

- (D) **Distress criteria.** An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

- (1) The percentage of the population living in poverty is at least 20 percent;
- (2) In the case of an Investment Area located:
 - (i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or
 - (ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- (3) The unemployment rate is at least 1.5 times the national average;
- (4) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or
- (5) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

- (E) **Unmet needs.** An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the entity demonstrates a pattern of unmet needs for Financial Products or Financial Services within such area.

- (F) **Serving Investment Areas.** An entity may serve an Investment Area directly or through borrowers or investees that serve the Investment Area.

(iii) **Targeted Population -**

(A) **General.** Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the entity's Target Market. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands).

(B) **Serving Targeted Populations.** An entity may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve such members.

(4) **Development Services.** A CDFI directly, through an Affiliate, or through a contract with another provider, must have a track record of providing Development Services in conjunction with its Financial Products and/or Financial Services. An entity applying for CDFI certification must demonstrate that it meets this requirement.

(5) **Accountability.** A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board and/or advisory board(s). An entity applying for CDFI certification must demonstrate that it meets this requirement.

(6) **Non-government.** A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity applying for CDFI certification must demonstrate that it meets this requirement. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not Controlled by such entities and maintains independent decision-making power over its activities.

(c) **Records and Review.** The CDFI Fund will review a CDFI's certification status from time to time, as deemed appropriate by the CDFI Fund, to ensure that it meets the certification requirements of this section, as well as review its organizational capacity, lending activity, community impacts, and such other information that the CDFI Fund deems appropriate. Upon request, a CDFI shall provide such information and documentation to the CDFI Fund as is necessary to undertake such review.

Subpart C - Use of Funds/Eligible Activities

§ 1805.300 Purposes of financial assistance.

The CDFI Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to increase available capital and enhance the ability of a Recipient to provide Financial Products, Financial Services, and Development Services.

§ 1805.301 Eligible activities.

Recipients may use financial assistance provided under this part to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Increase the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate homeownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the CDFI Fund.

§ 1805.302 Restrictions on use of assistance.

(a) A Recipient shall use assistance provided by the CDFI Fund and its corresponding matching funds only for the eligible activities approved by the CDFI Fund and described in the Assistance Agreement.

(b) A Recipient may not distribute assistance to an Affiliate without the CDFI Fund's consent.