State Small Business Credit Initiative
Capital Access Program Policy

This State Small Business Credit Initiative Capital Access Program Policy ("Program Policies") was adopted on the [XXth day of Month 2024] by the Board of Directors of the New Mexico Finance Authority ("NMFA"), a public body politic and corporate, separate and apart from the State of New Mexico constituting a governmental instrumentality, created by the New Mexico Finance Authority Act, Section 6-21-1 et. seq., NMSA 1978.

I. PURPOSE

A. Statutory Authority

The State Small Business Credit Initiative (SSBCI) is a federal program administered by the United States Department of the Treasury (the "U.S. Treasury Department") intended to strengthen state programming supporting private financing to small businesses. The American Rescue Plan Act of 2021 ("ARPA") amended the Small Business Jobs Act of 2010, codified at 12 U.S.C. § 5701 et seq., to reauthorize and expand SSBCI to provide $10 billion to support small businesses and empower them to access the capital needed to invest in job-creating opportunities as the country emerges from the pandemic.

In 2022 the State of New Mexico through the New Mexico Economic Development Department ("NMEDD") received a total SSBCI potential allocation of seventy-four million, four hundred eighty-eight thousand eight hundred and five dollars ($74,488,805) in federal funding. The U.S. Treasury Department and the NMEDD entered into an Allocation Agreement where the NMEDD shall act as the Implementing Entity and NMFA as the Contracted Entity on the implementation and administration of programs to carry out the SSBCI assistance provisions of ARPA.

Pursuant to the Statewide Economic Development Finance Act, NMSA 1978, Sections 6-25-1 to -28 (the "Act") and SSBCI, the NMFA Board of Directors adopted Rules governing the administration of the Capital Access Program ("CAP") under SSBCI (the "Rules"), which were approved by the NMFA Oversight Committee on November 1, 2023. The Rules and these Program Policies do not apply to other programs administered by the NMFA.

B. SSBCI & Capital Access Program Mission

The federal State Small Business Credit Initiative ("SSBCI") was established in 2010 to help increase the flow of capital to small businesses. In 2021 Congress reauthorized and expanded SSBCI under ARPA and provided $10 billion to support small businesses and technical assistance as the country emerges from the covid pandemic. SSBCI funding seeks to expand access to capital, promote income resiliency and jobs, and increase economic opportunity while focusing on expanding opportunities in underserved communities lacking capital and building ecosystems supporting entrepreneurs and small businesses. States may deploy SSBCI funding toward one or a combination of different program types including capital access programs, loan participation and guarantee programs and equity venture capital programs tailored to meet local market conditions. States receive additional funding if their SSBCI programs meet the needs of businesses owned by socially and economically disadvantaged business individuals ("SEDI"), according to state-specific objectives. The State of New Mexico is seeking to deploy at least fifty-seven percent (57%) of its total SSBCI award to SEDI-owned businesses.

Capital access programs first emerged in the 1980s as an economic development tool to support small businesses. They help mitigate losses on small business loans by building loan loss reserve accounts at participating financial institutions ("PFIs") that can be used to cover losses in the event of loan defaults. The ability to draw on loan loss reserves to cover potential losses on small business loans incentivizes PFIs – insured depository institutions, insured credit unions, or community development financial institutions (CDFIs) – to extend credit to small business borrowers. A capital landscape report commissioned in 2023 by NMFA found one of the greatest unmet capital needs for small businesses in New Mexico is for loans between $100,000 and $250,000, as these loan sizes are larger than most microlenders can provide and smaller than products offered by banks. The core objective of the Program is to collaborate with local lending institutions to facilitate higher volumes of affordable, smaller loan products to local small businesses. NMFA is also seeking to collaborate with lenders to support higher lending volumes to SEDI-owned businesses to meet the SEDI objective for the State.

In administering a capital access program for New Mexico small businesses, NMFA will be working directly with banks, credit unions and CDFIs lending to New Mexico small businesses that apply to participate in the program. Once approved, a PFI enters into a lender agreement with NMFA and establishes a loan loss reserve account capitalized by premium payments. For each enrolled loan, premiums are paid by the borrower and the PFI (up to 7% of the loan amount in total), and matched by SSBCI, making total premium contributions up to 14% of the total loan amount for each enrolled loan. PFIs may not charge borrowers fees to recover the cost of their premium payments. Over time the balance in the loan loss reserve account grows as additional loans are enrolled. The balance of the loan loss reserve account may be used by the PFI to cover losses from the default of any small business loan enrolled in the program.

C. Policy Objectives

The Rules define participating financial institutions, qualified loans, and small businesses; describe application, loan enrollment and loan loss reserve account procedures; specify eligible and restricted uses of SSBCI funds; and outline monitoring and reporting requirements. These

Program Policies provide additional guidance regarding program implementation, including eligibility requirements, approval, and monitoring procedures for participating financial institutions and enrolled loans, and SSBCI compliance and reporting requirements.

These Program Policies shall be implemented by the NMFA Board of Directors, pursuant to the authority of the Act and SSBCI, as amended and supplemented from time to time, and may, at times, be waived or revised, if the NMFA Board of Directors determines a deviation or revision is appropriate. Any revisions to these Program Policies will be reflected in a new documented version dated as of the NMFA Board of Directors approval of the revision. Any waiver or revision must not conflict with the provisions of the Act.

II. DEFINITIONS

The following words and terms, when used in this Program Policies shall have the following meaning, unless the context clearly indicates otherwise:

A. "Act" means the Statewide Economic Development Finance Act, NMSA 1978, Sections 6-25-1 to -28, as amended;

B. "Allocation Agreement" means that certain U.S. Treasury Department State Small Business Credit Initiative Allocation Agreement dated September 8, 2022 and amended on August 25, 2023 by and between the NMEDD and the U.S. Treasury Department, as further amended or supplemented;

C. "Agreement" means a contract between a PFI and the NMFA that authorizes the PFI to participate in the Program and establishes the terms required for participation;

D. "Board" means the NMFA Board of Directors;

E. "Borrower" means a Qualified Business that has received a Qualified Loan from a PFI;

F. "CEO" means the NMFA Chief Executive Officer or CEO designee;

G. "Deposit Account" means a restricted account established at a PFI in which NMFA deposits funding available to the PFI to fund SSBCI contributions to the Loan Loss Reserve Account;

H. "Eligibility Requirements" means those certain criteria in these Policies for the SSBCI CAP Program approved by the Board and made available by the NMFA;

I. "Enrolled Loan" means a Qualified Loan enrolled in the Program;

J. "Financial Institution" means an insured depository institution (including depository CDFIs), federally insured credit union (including CDFI credit unions), or Community

Development Financial Institutions (excluding insured depositories and credit unions), as each of those terms is defined in 12 U.S.C. § 4702;

K. “Financial Performance Report” or “FPR” means a Financial Performance Report from the National Credit Union Administration

L. “Loan Loss Reserve Account” means a restricted account established at a PFI in which premiums are deposited to reimburse a PFI for Losses on Enrolled Loans;

M. “Loss” means any principal amount due and not paid and not more than the enrolled amount of the Qualified Loan plus reasonable out-of-pocket expenses. In the event only a portion of a Qualified Loan was enrolled, the NMFA limits reimbursement of out-of-pocket expenses to the ratio of the enrolled portion to the total loan amount;

N. “NMEDD” means the New Mexico Economic Development Department;

O. “NMFA” means the New Mexico Finance Authority;

P. “Oversight Committee” means the joint interim legislative committee established pursuant to NMSA 1978, Section 6-21-30;

Q. “Participating Financial Institution” or “PFI” means a Financial Institution authorized to conduct business in the State that has adequate capacity, as determined by the NMFA in its sole discretion, to underwrite and monitor bankable loans and has executed an Agreement with the NMFA to participate in the Program;

R. “Principal of a Borrower” means a person, other than an insured bank, that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a Qualified Business. Shares owned or controlled by a member of an individual’s immediate family are considered to be held by the individual;

S. “Principal of a PFI” means:

1. if a sole proprietorship, the proprietor;

2. if a partnership, each partner; and

3. 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 percent or more of the ownership stock or stock equivalent of the entity;

T. “Program” means this Program authorized by SSBCI, the Act and these Rules;

U. “Program Policies” means policies and procedures governing the administration of the Program as approved by the Board;

V. “Qualified Business” means a Small Business authorized to conduct business in the State that meets the Eligibility Requirements;

W. “Qualified Loan” means a loan or a portion of a loan that is made by a PFI to a Qualified Business consistent with the Eligibility Requirements, and not contrary to State or federal law or policy;

X. “Small Business” means a corporation, partnership, sole proprietorship, non-profit or other legal entity that:

1. is domiciled in the State;
2. is independently owned and operated; and
3. employs fewer than 500 employees;

Y. “Socially and Economically Disadvantaged Individuals” or “SEDI” is defined in the State Small Business Credit Initiative Capital Program Policy Guidelines and means individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially or economically disadvantaged;

Z. “SSBCI” means the Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public Law No. 111-240, 124 Stat. 2504), as amended by the American Rescue Plan of 2021 (Public Law No. 117-2, 135 Stat. 4) (“ARPA”) and all federal law, regulations, policies, guidelines and national standards related thereto;

AA. “SSBCI Premium Payments” means the total amount of funding a PFI may draw from the Deposit Account to match the premium contributions from the Borrower and the PFI on a Qualified Loan

BB. “State” means the State of New Mexico;

CC. “Treasury Department” means the United States Department of the Treasury; and

DD. “Total Program Funding” means the total amount of SSBCI funds transferred by the NMFA to the Deposit Account held at a PFI in the Program.

EE. "Uniform Bank Performance Report" or "UBPR" means a Uniform Bank Performance Report from the Federal Financial Institutions Examination Council

FF. "Very Small Business" or ("VSB") means a Small Business that employs fewer than 10 employees.

III. ADMINISTRATIVE ROLES AND RESPONSIBILITIES

A. Approval of PFIs and Enrolled Loans

The NMFA Credit Department reviews applications from Financial Institutions seeking to participate in the Program submitted via the online application system and recommends the approval of PFIs to the NMFA Private Credit Committee. NMFA will make best efforts to approve applications from Financial Institutions within thirty (30) business days upon receipt of complete applications.

Once approved, an Agreement with the PFI establishing terms of participation in the Program is executed by the NMFA CEO. Agreements with PFIs include all lender assurances, permitted uses, restrictions, and monitoring and reporting requirements under SSBCI and parameters for the establishment, maintenance, and closure of the Loan Loss Reserve Account. Upon execution of an Agreement a PFI may start to enroll loans in the Program.

To enroll a loan in the Program PFIs must complete an online enrollment form for each loan verifying the Small Business is a Qualified Business and the loan is a Qualified Loan. The PFI must also submit relevant borrower information and SSBCI certifications via the online portal.

The NMFA Credit Department is responsible for reviewing and approving loan enrollment forms. NMFA may request additional information from the PFI regarding a loan enrollment request. NMFA will make best efforts to approve enrollment requests within five (5) business days upon receipt of complete enrollment forms and information requested.

B. Program Monitoring; SSBCI Compliance & Reporting

The NMFA Credit Department is responsible for monitoring PFIs and enrolled loan portfolios. Credit Department staff report monthly to the Private Credit Committee and Economic Development Committee on PFIs pending approval and approved, in addition to characteristics of underlying loan portfolios and Borrowers, including total lending volumes, loan sizes, and geographic distribution and sectors of small businesses receiving loans. Monthly reporting also includes delinquencies, defaults or claims reported by PFIs. Credit Department staff review PFI approval status on at least an annual basis and may review the approval status of PFIs at any time at its discretion.

As part of the regular Economic Development Committee report, the NMFA Board receives monthly updates on Program implementation.

On a quarterly and annual basis, NMFA staff compiles all information required to fulfill SSBCI quarterly and annual reporting requirements and collaborates with NMEDD to submit the required information to the U.S. Treasury in a timely manner.

IV. APPLICATION REQUIREMENTS AND APPROVAL OF PARTICIPATING FINANCIAL INSTITUTIONS

Financial Institutions seeking to participate in the program may complete an application form made available online by the NMFA that requests the following:

- Details for key contact person responsible for capital access program implementation;
- Three years of audited financial statements;
- Latest annual report;
- Names and biographies of current Board of Directors
- Number of branches and locations serving New Mexico small businesses;
- Number of personnel supporting lending to New Mexico small businesses;
- Description of loan products and/or potential products supported by the Program, in addition to anticipated fee schedules;
- Description of lending and other services provided to SEDI-owned businesses and VSBs; and
- Description of past/current participation or experience with SSBCI-funded programs.

Additional documentation is required, depending on the type of financial institution:

- Banks must submit a UBPR demonstrating commercial loans and leases comprise a significant part of the institution's assets; a UBPR peer group analysis demonstrating non-current loans and leases do not exceed its peer group average; and self-certify it is not operating under any supervisory enforcement action
- Credit unions must submit recent FPRs and self-certify it is not operating under any supervisory enforcement action
- CDFIs must submit a review of the most recent CDFI Assessment and Rating System rating or Aeris rating, if available

Applications from PFIs are accepted on a rolling basis upon completion. The NMFA Credit Department reviews PFI applications and may request additional information. Financial Institutions that demonstrate the following may be recommended for approval:

- Established track record lending to Small Businesses and/or Qualified Businesses in New Mexico
- Established track record lending to Small Businesses and/or Qualified Businesses in low-income communities and/or meeting definitions of SEDI-owned businesses or VSBs
- Financial strength demonstrated by financial ratios
- Requisite underwriting capabilities, including local staffing and geographic coverage
- Pipeline of loans that could be enrolled in the program
- Adequate loan servicing, monitoring and operational back-office capabilities
- Adequate regulatory, compliance and reporting capabilities to meet SSBCI requirements

V. AGREEMENTS

Agreements with Participating Financial Institutions include standard terms governing the following but not limited to:

- Establishment of the Deposit Account and the Loan Loss Reserve Account
- Ownership, Control and Investment of the Deposit Account and Loan Loss Reserve Account
- Enrollment of Qualified Loans in the Program
- Transfer of SSBCI Premium Payments on Qualified Loans from the Deposit Account to the Loan Loss Reserve Account
- Filing of Claims; Excessive Claims
- Unenrollment of Qualified Loans in the Program
- Payments out of the Loan Loss Reserve Account
- Reporting
- Withdrawals from the Deposit Account and the Loan Loss Reserve Account
- Termination
- Covenants, Representations and Warranties

A. Deposit Accounts; Limit on Total Program Funding

Once a Deposit Account has been established at a PFI, NMFA will make an initial deposit of two-hundred thousand dollars ($200,000) into the Deposit Account. PFIs may request additional funding into the Deposit Account in increments of no more than one-hundred thousand dollars ($100,000). PFIs may not request more than five-hundred thousand dollars ($500,000) in Total Program Funding. The NMFA Credit Department is responsible for reviewing and approving requests for additional funding. Subsequent deposits shall be made at the NMFA's sole discretion and upon the PFI meeting Program objectives, monitoring and reporting requirements as required by NMFA.

B. Investment of the Deposit Account and Loan Loss Reserve Account

Cash balances held in the Deposit Account and Loan Loss Reserve Account are to be invested in money market accounts at interest rates specified in Agreements. All money in the Deposit Account and Loan Loss Reserve Account established under the Program is property of the State. The State is entitled to all interest income earned on the Deposit Account, and fifty percent (50%) of interest income earned on the Loan Loss Reserve Account.

C. Enrollment of Qualified Loans

PFIs may submit enrollment request forms for loans meeting all Eligibility Requirements to NMFA via the online portal. The NMFA may disallow a PFI from enrolling any additional Qualified Loans if the NMFA determines, in its sole discretion, that the PFI's practices do not meet Program standards or monitoring requirements.

D. SSBCI premium contributions for Qualified Loans; Transfers to Loan Loss Reserve Account

SSBCI funding may be used to match total premium contributions from the Borrower and the PFI, up to seven percent (7%) of the original loan principal amount for each Qualified Loan. PFIs may use the following schedule when determining premium contributions from SSBCI for each Qualified Loan:

SEDI/VSB Borrower	Non-SEDI/VSB Borrower	PFI	Total Borrower and PFI	SSBCI Contribution	Total Premium Contribution
0.5% to 1% of loan principal	2% to 3.5% of loan principal	3.5% to 6.5% of loan principal	4% to 7% of loan principal	4% to 7% of loan principal	8% to 14% of loan principal

Once a PFI receives approval from NMFA on the request to enroll a loan (at which time the loan is deemed a Qualified Loan), the loan is considered enrolled and the PFI may transfer the appropriate SSBCI contribution for the Enrolled Loan from the Deposit Account to the Loan Loss Reserve Account.

E. Claims; Excessive Claims

PFIs may not submit claims within the first six months following the execution of their Agreement with NMFA. PFIs may only submit claims after the first anniversary of the PFI's enrollment of an Enrolled Loan in the Program, and only after exercising due care and diligent efforts to liquidate collateral. If a PFI incurs Losses on all or part of a Qualified Loan, the PFI may request reimbursement via submission of a claims form via the online portal. The NMFA Credit Department will review claims submissions and may request additional information. NMFA will make best efforts to approve claim reimbursements within twenty (20) business days upon receipt of all information requested. Once a PFI receives approval of a claim reimbursement, the approved amount of the claim reimbursement may be transferred from the Loan Loss Reserve Account.

If the PFI recovers on a debt from a Borrower after receiving reimbursement for a claim, the PFI shall promptly repay into the Loan Loss Reserve Account the amount recovered, not to exceed the amount reimbursed.

The NMFA may disallow a PFI from enrolling any additional Qualified Loans if the PFI demonstrates a default rate exceeding six (6) percent on its pool of Qualified Loans.

NMFA reserves the right to deny claims submissions from PFIs out of compliance with any terms of their Agreements.

VI. ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES AND LOANS

A. Small Businesses

Small Businesses must meet at least two (2) of the following Eligibility Requirements for Small Businesses to be considered Qualified Businesses:

1. Have fewer than one hundred (100) employees
2. Fifty-one percent (51%) or more SEDI-owned
3. Located in a CDFI Investment Area[1]
4. The primary owner of the Qualified Business has a FICO score less than 700
5. Has been denied bank financing within the last two (2) years due to inability to meet credit requirements regarding any one or more of: the business owner's personal credit score; collateral; or ability to provide an adequate personal guarantee on the loan

Additionally per SSBCI, Small Businesses must meet all the following Eligibility Requirements for to be considered Qualified Businesses:

1. May not be owned by an executive officer, director, or Principal of the PFI, or person with comparable capacity with or significant ownership in the PFI, or a member of the immediate family of such a person;
2. May not be engaged in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade unless those activities are incidental to the regular activities of the business and are part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;
3. May not earn more than half of its annual net revenue from lending activities unless the Borrower is a Community Development Financial Institution that is not a depository institution or a bank holding company or a tribal enterprise lender that is not a depository institution or a bank holding company;
4. May not engage in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
5. May not engage in activities that are prohibited by state law, federal law, or other applicable laws in the jurisdiction where the business is located or conducted;
6. At the time of loan obligation, may not be delinquent in any taxes owed the State, and is in good standing with the State Secretary of State; and
7. May not derive any of its gross annual revenue from gambling activities

B. Loans must meet all the below Eligibility Requirements to be considered Qualified Loans:

1. May be lines of credit or term loans where proceeds are used for business start-up or expansion, facility (purchase, construction or renovation), technology upgrades, acquisition of equipment, inventory, or other working capital needs
2. May be for amounts between $10,000 to $1,500,000, provided that no Borrower may borrow more than $1,500,000 from the Program

[1] As defined in 12 C.F.R. § 1805.201(b)(3)(ii); For each calendar year, the U.S. Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of that calendar year. The U.S. Treasury has provided a mapping tool to identify whether the relevant address is in a CDFI Investment Area.

3. Enrollment would not result in a single loan being enrolled in more than one program associated with SSBCI at the same time
4. Must be for terms no greater than seven years
5. Must comply with minimum national customer protection standards as outlined under SSBCI including but not limited to:
    - At an interest rate that does not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions and set by the NCUA board
    - Cannot include confessions of judgment, double-dipping of fees, or up-front fees including application, origination and documentation preparation fees in excess of $750 for loans under $25,000 or 3% for loans of $25,000 or greater
6. May not be for any of the following purposes:
    - acquiring or holding passive investments in real estate;
    - the purchase of owner-occupied residential housing;
    - the construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower;
    - the purchase of real property that is intended for resale or not used for the business operations of the Borrower;
    - refinancing the balance of an existing loan that is not an Enrolled Loan
    - the purchase of securities;
    - lobbying activities;
    - the purchase of good will;
    - inside bank transactions;
    - repayment of delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority with respect to such delinquent taxes;
    - repayment of taxes held in trust or escrow;
    - reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business's continuance;
    - purchase of any portion of the ownership interest of any owner of the Borrower, such as the acquisition of shares or member interests of a company or the partnership interest of a partner when the proceeds of the Enrolled Loan will go to any existing owner or partner of the Borrower;
    - refinance any portion of a loan enrolled in another state or federal credit enhancement or credit insurance program;
    - a loan in which any Principal of a Borrower has been convicted of a sex offense against a minor as such terms are defined under 34 U.S.C. 20911;
    - a loan that is contrary to federal or State law or policy; or
    - any additional prohibited uses in the SSBCI Capital Program Policy Guidelines as amended.
7. Does not violate predatory lending laws or other state or federal laws, policies, regulations, or guidance

VII. MONITORING, COMPLIANCE AND REPORTING

PFIs shall provide quarterly and annual reports to the NMFA in accordance with that PFI's Agreement. Required reporting information includes loan sizes, types, uses of funds, borrower name and location, SEDI and VSB characteristics and repayment and delinquency status.

Each PFI will be required to provide information sufficient to meet all federal compliance and reporting requirements of SSBCI as detailed in the SSBCI Capital Program National Compliance Standards, including all relevant conflict of interest, use of proceeds, sex offender and other certifications.

The NMFA reserves the right to request additional information on any Enrolled Loan. NMFA may suspend enrollment of future loans of a PFI that fails to comply with the reporting requirements prescribed in that PFI's Agreement.