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State Small Business Credit Initiative: Implementation and Funding Issues

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Summary

Congressional interest in small business access to capital has increased in recent years because of concerns that small businesses might be prevented from accessing sufficient capital to enable them to start, continue, or expand operations and create jobs. Some have argued that the federal government should provide additional resources to assist small businesses. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small businesses and create jobs.

During the 111th Congress, P.L. 111-240, the Small Business Jobs Act of 2010, provided the Small Business Administration (SBA) additional funding and enhanced several SBA lending programs in an effort to assist small businesses access capital. The act also authorized the Secretary of the Treasury to establish and administer a $1.5 billion State Small Business Credit Initiative (SSBCI). Treasury's role in administrating the program ended on September 27, 2017.

The SSBCI provided funding, allocated by formula and distributed in one-third increments, to states, territories, and eligible municipalities (hereinafter referred to as states) to expand existing or create new state small business investment programs, including state capital access programs, collateral support programs, loan participation programs, loan guarantee programs, and venture capital programs. In most instances, the initial round of funding (called a tranche) took place in FY2011. Most states received their second tranche during FY2013. As of December 31, 2016, 98% of total allocated funding had been disbursed to the states and all 57 participants had received their first tranche, 56 had received at least two tranches, and 53 had received their third and final tranche.

SSBCI participants were expected to leverage their SSBCI funds to generate new small business lending that is at least 10 times the amount of their SSBCI funds. As of December 31, 2016, SSBCI participants had leveraged $8.95 in new financing for every $1 in SSBCI funds. Forty-seven states; American Samoa; the District of Columbia; Guam; the Northern Mariana Islands; Puerto Rico; the U.S. Virgin Islands; Anchorage, Alaska; two consortiums of municipalities in North Dakota; and a consortium of municipalities in Wyoming participate in the program.

The Obama Administration recommended in its FY2015, FY2016, and FY2017 budget requests that another $1.5 billion round of funding take place, with $1 billion competitively awarded to states and $500 million awarded "by a need-based formula based on economic factors such as job losses and pace of economic recovery." Legislation with provisions similar to the Obama Administration's proposal was introduced during the 113th Congress (H.R. 4556 and S. 2285), the 114th Congress (S. 1901, H.R. 5144, and H.R. 5672), and the 115th Congress (S. 1897).

This report examines the SSBCI and its implementation, including Treasury's response to initial program audits conducted by the U.S. Government Accountability Office (GAO) and Treasury's Office of Inspector General (OIG). These initial audits suggest that SSBCI participants generally met the statute's requirements but that there were some compliance problems. They also indicate that Treasury's program oversight could have been improved and that performance measures are needed to assess the program's efficacy.

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Overview

Congressional interest in small business access to capital has increased in recent years because of concerns that small businesses might be prevented from accessing sufficient capital to enable them to start, continue, or expand operations and create jobs. Some have argued that the federal government should provide additional resources to assist small businesses. They argue that in recent years many financial institutions have tightened their small business lending standards in reaction to higher loan default rates and higher percentages of loans in arrears resulting largely from relatively weak economic conditions in many parts of the nation. They also assert that the federal government should intervene because it is relatively difficult for many small businesses, including some with excellent credit histories, to access the capital they need to expand their operations.[1]

Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small businesses and create jobs.[2]

During the 111th Congress, P.L. 111-240, the Small Business Jobs Act of 2010, provided the Small Business Administration (SBA) additional funding, authorized several SBA pilot programs, and enhanced several of the SBA's lending programs in an effort to assist small businesses access capital.[3] The act also authorized the Secretary of the Treasury to establish and administer a $30 billion Small Business Lending Fund (SBLF), in which $4.0 billion was issued to encourage community banks with less than $10 billion in assets to increase their lending to small businesses, and a $1.5 billion State Small Business Credit Initiative (SSBCI).[4] The act limited Treasury's role in administrating the SSBCI program to seven years from enactment (September 27, 2010). As a result, Treasury role in administering the program sunset on September 27, 2017.

The SSBCI provided funding, allocated through a statutorily created formula and distributed in one-third increments (called tranches), to states, the District of Columbia, eligible territories, and eligible municipalities (hereinafter states) to expand existing or create new state small business investment programs, including capital access programs, collateral support programs, loan participation programs, loan guarantee programs, and venture capital programs. In most instances, states received their initial tranche in FY2011, with more than $366 million in SSBCI funds transferred to states.[5] At that time, Treasury anticipated providing another $859 million in

[1] The Obama White House, "American Jobs Act," at https://obamawhitehouse.archives.gov/sites/default/files/jobs_act.pdf; and The Obama White House, "Startup America Initiative," at https://obamawhitehouse.archives.gov/economy/business/startup-america.

[2] U.S. Congress, House Committee on Financial Services, *To Create the Small Business Lending Fund Program to Direct the Secretary of the Treasury to make Capital Investments in Eligible Institutions in order to Increase the Availability of Credit for Small Businesses, and for other Purposes*, report to accompany H.R. 5297, 111th Cong., 2nd sess., May 27, 2010, H.Rept. 111-499 (Washington: GPO, 2010), pp. 37, 38; and National Federation of Independent Businesses, "Issues: The Economy," Washington, DC, at http://www.nfib.com/advocacy/economy.

[3] For further information and analysis concerning the Small Business Jobs Act of 2010, see CRS Report R40985, *Small Business: Access to Capital and Job Creation*, by Robert Jay Dilger.

[4] For further information and analysis concerning the Small Business Lending Fund, see CRS Report R42045, *The Small Business Lending Fund*, by Robert Jay Dilger.

[5] U.S. Office of Management and Budget, *Appendix, Budget of the U.S. Government, FY2013: Department of the Treasury*, p. 1061, at http://www.gpo.gov/fdsys/pkg/BUDGET-2013-APP/pdf/BUDGET-2013-APP.pdf.

SSBCI funds to states in FY2012.[6] However, because it took states longer than anticipated to expend, transfer, or obligate their first tranche of SSBCI funds, Treasury transferred less SSBCI funding to states in FY2012 than in FY2011 ($187 million, for a total of $553 million).[7] Treasury transferred $364 million in SSBCI funds to states (totaling $917 million) in FY2013, $229 million in FY2014 (totaling $1.146 billion), $216 million in FY2015 (totaling $1.362 billion), and $50 million in FY2016 (totaling $1.412 billion).[8]

As of December 31, 2016, Treasury had disbursed $1.43 billion, or about 98%, of the $1.45 billion available to states ($1.5 billion minus Treasury's administrative costs).[9] As of December 31, 2016, all 57 participants had received their first tranche, 56 had received their second tranche, and 53 had received their third tranche.[10]

States were expected to leverage their SSBCI funds to generate new small business lending that is at least 10 times the amount of their SSBCI funds (a leverage ratio of 10:1). As of December 31, 2016, SSBCI participants had leveraged $8.95 in new financing for every $1 in SSBCI funds.[11] There are 57 participants: 47 states; American Samoa; the District of Columbia; Guam; the Northern Mariana Islands; Puerto Rico; the U.S. Virgin Islands; Anchorage, Alaska; two consortiums of municipalities in North Dakota; and a consortium of municipalities in Wyoming.

During congressional consideration, advocates argued that the SBLF and SSBCI will promote economic growth and job creation by enhancing small business access to capital. Opponents argued that the SBLF and SSBCI did not address the need to stimulate demand for credit by small businesses, which, in the opponents' view, is the core issue affecting the role of small business in job creation. They argued that "the solutions to America's economic problems do not lie in more taxpayer-funded bailouts" and advocated small business tax reductions as a more effective means to stimulate job creation and economic growth.[12] For additional discussion of these different approaches to stimulate job creation and economic growth, see CRS Report R40985, *Small Business: Access to Capital and Job Creation*, by Robert Jay Dilger and CRS Report R42045, *The Small Business Lending Fund*, by Robert Jay Dilger.

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[6] Ibid.

[7] U.S. Office of Management and Budget, *Appendix, Budget of the U.S. Government, FY2014: Department of the Treasury*, p. 991, at https://www.gpo.gov/fdsys/pkg/BUDGET-2014-APP/pdf/BUDGET-2014-APP.pdf.

[8] U.S. Department of the Treasury, *State Small Business Credit Initiative, FY 2016: President's Budget*, p. 6, at http://www.treasury.gov/about/budget-performance/CJ16/18.%20SSBCI%20FY%202016%20CJ.pdf; U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' Quarterly Reports as of September 30, 2015*, p. 1, at https://www.treasury.gov/resource-center/sb-programs/DocumentsSBLFTransactions/SSBCI%20Quarterly%20Report%20Summary%20September%202015_FINAL.pdf; and U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' Quarterly Reports as of September 30, 2016*, p. 1, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Quarterly%20Report%20Summary%20September%202016_Final.pdf.

[9] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' Quarterly Reports as of December 31, 2016*, p. 1, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Quarterly_Report_Summary_December_2016.pdf.

[10] Ibid.

[11] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' 2016 Annual Reports*, p. 2, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Summary%20of%20States%20Annual%20Report%202016_508%20Compliant.pdf.

[12] U.S. Congress, House Committee on Financial Services, *To Create the Small Business Lending Fund Program to Direct the Secretary of the Treasury to make Capital Investments in Eligible Institutions in order to Increase the Availability of Credit for Small Businesses, and for other Purposes*, report to accompany H.R. 5297, 111th Cong., 2nd sess., May 27, 2010, H.Rept. 111-499 (Washington: GPO, 2010), pp. 37, 38.

It is difficult to determine the full extent of the SSBCI's effect on small business lending. As of December 31, 2016, states had spent or obligated about 88% of the $1.45 billion available ($1.27 billion of $1.45 billion), which is sufficient to provide an indication of the program's impact on small business lending.[13] However, determining the program's influence on small business lending is likely to be more suggestive than definitive because differentiating the SSBCI's effect on small business lending from other factors, such as changes in the lender's local economy, is methodologically challenging, especially given the relatively small amount of financing involved relative to the national market for small business loans. The SSBCI's $1.5 billion in financing represents about 0.24% of outstanding non-agricultural small business loans.[14]

Treasury has reported that SSBCI funds supported more than 21,000 loans and investments in small business amounting to over $10.7 billion, with more than 80% of the funds and investments made to small businesses with 10 or fewer full-time employees. Treasury has also reported that small business owners indicated that the funds helped them to create or retain 240,669 jobs (79,193 new jobs and 161,476 retained jobs).[15]

The Obama Administration recommended in its FY2015, FY2016, and FY2017 budget requests that another $1.5 billion round of funding take place. Under their proposal, $1 billion would have been competitively awarded to states "best able to target local market needs, promote inclusion, attract private capital for start-up and scale-up businesses, strengthen regional entrepreneurial ecosystems, and evaluate results," and $500 million awarded "by formula based on economic factors such as job losses and pace of economic recovery."[16]

Legislation containing provisions similar to the Obama Administration's proposal was introduced during the 113th Congress (H.R. 4556, the Small Business Access to Capital Act of 2014, and S. 2285, its companion bill in the Senate), the 114th Congress (S. 1901, the Small Business Access to Capital Act of 2015, H.R. 5144, the Jumpstart Housing Opportunities Utilizing Small Enterprises Act of 2016, and H.R. 5672, the Small Business Access to Capital Act of 2016), and the 115th Congress (S. 1897, the Small Business Access to Capital Act of 2017).[17]

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[13] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' Quarterly Reports as of December 31, 2016*, p. 1, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Quarterly_Report_Summary_December_2016.pdf. In addition, as of December 31, 2016, 34 states reported that they had spent about $279.9 million for new State Small Business Credit Initiative (SSBCI) supported loans and investments using recycled SSBCI funds generated from SSBCI loan repayments and returns on SSBCI investments.

[14] Federal Deposit Insurance Corporation, "Statistics on Depository Institutions," at https://www5.fdic.gov/sdi/main.asp?formname=compare. As of December 31, 2017, there was $627.8 billion in outstanding non-agricultural small business loans (defined as the sum of "total loans secured by nonfarm nonresidential properties of $1,000,000 or less" and "total commercial and industrial loans to U.S. addressees of $1,000,000 or less").

[15] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' 2016 Annual Reports*, pp. 2, 3, 15, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Summary%20of%20States%20Annual%20Report%202016_508%20Compliant.pdf.

[16] U.S. Office of Management and Budget, *The Appendix, Budget of the United States Government, Fiscal Year 2017: Department of the Treasury*, pp. 1034, 1035, at https://www.gpo.gov/fdsys/pkg/BUDGET-2017-APP/pdf/BUDGET-2017-APP.pdf.

[17] H.R. 5144, the Jumpstart HOUSE Act of 2016, added a provision (SEC. 3. Support for affordable housing projects) designed to facilitate the financing of affordable housing projects: " ... to develop, acquire, construct, rehabilitate, maintain, operate, or manage housing projects that provide housing that is affordable for low- or moderate-income households, as determined by the Secretary, in consultation with the Secretary of Housing and Urban Development."

H.R. 5672, the Small Business Access to Capital Act of 2016, added a provision (SEC. 2. New tranches of capital for successful State programs) that would have included competitive award factors designed to provide preference to participants based on their plans to (I) leverage private sector capital; (II) create and retain jobs during the 2-year period beginning on the date of the award; (III) serve small businesses that have been incorporated or in operation for not

This report examines the SSBCI and its implementation, including Treasury's response to initial program audits conducted by the U.S. Government Accountability Office (GAO) and Treasury's Office of Inspector General (OIG). These audits suggested that states generally met the statute's requirements but that there were some compliance problems. They also indicated that Treasury's oversight of the program could have been improved and that performance measures are needed to assess the program's efficacy.

Legislative Origins

On January 27, 2010, President Obama announced in his State of the Union Address that because "financing remains difficult for small business owners across the country, even those that are making a profit," he would send Congress several legislative proposals designed to enhance small business access to capital, including a proposal to establish a $30 billion SBLF.[18] On May 7, 2010, the Obama Administration sent Congress draft legislation to establish the SBLF and the SSBCI.[19]

On May 13, 2010, Representative (now Senator) Gary Peters introduced H.R. 5302, the State Small Business Credit Initiative Act of 2010. The bill would have authorized a $2 billion SSBCI modeled on the President's SSBCI proposal. That same day, then-Representative Barney Frank, then-chair of the House Committee on Financial Services, introduced H.R. 5297, initially titled the Small Business Lending Fund Act of 2010. Based on the President's SBLF proposal, the bill was designed to encourage lending to small businesses by creating a $30 billion SBLF to make capital investments in eligible community banks with total assets of less than $10 billion.[20] On May 18, 2010, the Committee on Financial Services held a hearing on H.R. 5297 and, the following day, approved the bill, 42-23, as amended.[21] Perhaps the most significant amendment approved was an amended version of the $2 billion State Small Business Credit Initiative Act of 2010. It was approved by a vote of 39-23.[22]

SBLF and SSBCI advocates argued that the programs were necessary because "many companies, particularly small businesses, claim that it is becoming harder to get new loans to keep their business operating and that banks are tightening requirements or cutting off existing lines of even when the businesses are up to date on their loan repayments."[23] In their view, the SBLF and

more than 5 years; (IV) serve low- or moderate-income communities; (V) serve minority- and women-owned small businesses; and establish or continue a robust self-evaluation of their use of awarded funds; provide non-federal funds in excess of the amount required; and the extent to which the participant expended, obligated, or transferred their 2010 allocation.

[18] The Obama White House, "Remarks by the President in State of the Union Address," at https://obamawhitehouse.archives.gov/the-press-office/remarks-president-state-union-address.

[19] U.S. Congress, House Committee on Financial Services, *To Create the Small Business Lending Fund Program to Direct the Secretary of the Treasury to make Capital Investments in Eligible Institutions in order to Increase the Availability of Credit for Small Businesses, and for other Purposes*, report to accompany H.R. 5297, 111th Cong., 2nd sess., May 27, 2010, H.Rept. 111-499 (Washington: GPO, 2010), p. 17.

[20] Ibid., p. 18.

[21] U.S. Congress, House Committee on Financial Services, *Incentives to Promote Small Business Lending, Jobs, and Economic Growth*, 111th Cong., 2nd sess., May 18, 2010, Serial No. 111-137 (Washington: GPO, 2010).

[22] U.S. Congress, House Committee on Financial Services, *To Create the Small Business Lending Fund Program to Direct the Secretary of the Treasury to make Capital Investments in Eligible Institutions in order to Increase the Availability of Credit for Small Businesses, and for other Purposes*, report to accompany H.R. 5297, 111th Cong., 2nd sess., May 27, 2010, H.Rept. 111-499 (Washington: GPO, 2010), pp. 21, 22.

[23] Ibid., p. 16.

SSBCI would promote economic growth and job creation by enhancing small business access to capital.

The House Committee on Financial Services' Republicans indicated in the report accompanying H.R. 5297 that they "were unanimous in our opposition to this misguided legislation."[24] They argued that the SBLF and SSBCI did not address what they considered to be the core issue affecting small business job creation during the economic recovery—the need to stimulate demand for credit by small businesses.[25] They argued that the bill would fail to help small businesses or create jobs, would succeed only in adding billions of dollars to the national debt, and concluded that "the solutions to America's economic problems do not lie in more taxpayer-funded bailouts."[26] Instead of supporting federal spending programs to enhance small business access to capital, they advocated an extension of a series of small business tax credits as a more effective means to stimulate small business job creation and economic growth.[27]

On June 14, 2010, the House Committee on Rules issued a rule for H.R. 5297 (H.Res. 1436) that provided that "in the engrossment of H.R. 5297, the Clerk shall add the text of H.R. 5486, as passed by the House, at the end of H.R. 5297 and that H.R. 5486 shall be laid on the table."[28] H.R. 5486, To Amend the Internal Revenue Code of 1986 to Provide Tax Incentives for Small Business Job Creation, and for Other Purposes, included several tax incentives for small businesses and several revenue-raising provisions designed to offset the costs of the tax incentives. Also, at that time, the House Committee on Rules posted on its website legislative language for a proposed amendment in the nature of a substitute to H.R. 5297, as reported, which included a proposed $1 billion Small Business Early-Stage Investment Program.

On June 17, 2010, the House passed H.R. 5297, by a vote of 241-182. The engrossed bill, retitled the Small Business Jobs and Credit Act of 2010, also included the language in H.R. 5486 and the Small Business Early-Stage Investment Program, as well as the $30 billion SBLF and $2 billion SSBCI.

The arguments presented in the House report accompanying the bill, both for and against the bill's passage, were also presented during House floor debate. For example, advocates argued that the SSBCI would "increase small business lending which will retain and create jobs."[29] Opponents argued that the bill "is repeating the same failed initiatives that have helped our national debt grow to $13 billion in the past two years" and did not address what they viewed as the top problem facing small businesses—"the lack of sales and demand."[30]

The House-passed version of H.R. 5297 was placed on the Senate Legislative Calendar on June 18, 2010. Following a series of votes on motions to invoke cloture on several amendments in the nature of a substitute to H.R. 5297 and the August recess, the Senate passed an amended version of the bill (S.Amdt. 4594, an amendment in the nature of a substitute for H.R. 5297) on

[24] Ibid., p. 18.

[25] Ibid., p. 37.

[26] Ibid., p. 38.

[27] Ibid.

[28] H.Res. 1436. A second rule (H.Res. 1448) was issued on June 16, 2010, to allow consideration of two amendments that were revised to comply with House "pay-go" rules.

[29] Rep. Melissa Bean, "The Small Business Jobs and Credit Act of 2010," House debate, *Congressional Record*, vol. 156, no. 90 (June 16, 2010), p. H4514.

[30] Rep. Randy Neugebauer, "The Small Business Jobs and Credit Act of 2010," House debate, *Congressional Record*, vol. 156, no. 90 (June 16, 2010), p. H4514, H4515.

September 16, 2010, by a vote of 61-38.[31] The Senate-passed version of the bill, which included the SSBCI but funded at $1.5 billion instead of $2 billion, was passed by the House on September 23, 2010, by a vote of 237-187. The enrolled bill, retitled the Small Business Jobs Act of 2010, was signed into law (P.L. 111-240) by President Obama on September 27, 2010.[32]

The arguments presented during Senate floor debate, both for and against the bill's passage, were similar to those presented during House floor debate. One difference was a greater emphasis by the bill's advocates in the Senate on the SSBCI's support of state loan collateral programs. Several Senators argued that the SSBCI's support of state loan collateral programs was needed because, as one Senator pointed out, "just as the recession has battered the value of our homes, it has also battered the value of business property such as real estate, factories, and equipment. That has damaged the ability of small businesses to get bank financing because it has lowered the value of property they can offer as collateral."[33]

SSBCI Programs

The SSBCI provided funding to expand existing or create new state small business investment programs, including capital access programs, loan participation programs, loan guarantee programs, collateral support programs, venture capital programs, and any other small business credit or equity support program that meets the SSBCI's program requirements.

[31] On June 29, 2010, cloture on a motion to proceed to H.R. 5297 was invoked in the Senate, by a vote of 66-33. That same day, Sen. Harry Reid proposed a motion to commit H.R. 5297 to the Senate Committee on Finance with instructions to report back forthwith S.Amdt. 4407, an amendment in the nature of a substitute, which included the Small Business Lending Fund (SBLF) and most of the provisions later included in S.Amdt. 4594. In response to perceived opposition to the SBLF, S.Amdt. 4407 was withdrawn on July 21, 2010. In its place, Sen. Harry Reid proposed for Sen. George LeMieux S.Amdt. 4500, to establish the Small Business Lending Fund Program. He also proposed for Sen. Max Baucus S.Amdt. 4499, an amendment in the nature of a substitute, which contained S.Amdt. 4407, with modifications, minus the SBLF. On July 22, 2010, cloture on S.Amdt. 4500 was invoked in the Senate, by a vote of 60-37. On July 27, 2010, Sen. Harry Reid withdrew S.Amdt. 4500 and introduced for Sen. Max Baucus S.Amdt. 4519, which included the SBLF, the provisions in S.Amdt. 4499, with modifications, $1.5 billion in emergency disaster agricultural assistance, and additional revenue off-sets. On July 29, 2010, a motion to invoke cloture on S.Amdt. 4519 failed, by a vote of 58-42. Debate on the motion focused on differences concerning the SBLF and the number of amendments to be offered. On August 5, 2010, Sen. Harry Reid introduced for Sens. Max Baucus and Mary Landrieu S.Amdt. 4594, an amendment in the nature of a substitute. It contained the provisions in S.Amdt. 4519 except that it removed a provision to eliminate the advance payment option for the earned-income tax credit that would have raised $1.1 billion, removed a provision that would have reallocated $500 million in future spending from P.L. 111-5, the American Recovery and Reinvestment Act of 2009, and removed a provision to provide $1.5 billion in emergency agricultural assistance funding. On September 14, 2010, the Senate invoked cloture on S.Amdt. 4594, by a vote of 61-37, and passed it on September 16, 2010, by a vote of 61-38. See Sen. Harry Reid, "Text of Amendments: SA 4519," *Congressional Record*, vol. 156, no. 111 (July 27, 2010), pp. S6309-S6337; Sen. Kay Hagan, "Motion to Invoke Cloture on amendment No. 4519," Roll Call Vote No. 221 Leg., *Congressional Record*, vol. 156, no. 113 (July 29, 2010), p. S6473; Sen. Harry Reid, "Small Business Lending Fund Act of 2010," Remarks in the Senate, *Congressional Record*, vol. 156, no. 113 (July 29, 2010), pp. S6472, S6473; Sen. Mitch McConnell, "Small Business Lending Fund Act of 2010," Remarks in the Senate, *Congressional Record*, vol. 156, no. 113 (July 29, 2010), pp. S 6472, S6473; Sen. Kay Hagen, "Motion to Invoke Cloture on H.R. 5297, the Small Business Lending Fund Act of 2010," Rollcall Vote No. 236 Leg., *Congressional Record*, daily edition, vol. 156, part 125 (September 16, 2010), p. S 7158; and Sen. Al Franken, "Small Business Lending Fund Act of 2010," Rollcall Vote No. 237 Leg., *Congressional Record*, daily edition, vol. 156, part 125 (September 16, 2010), p. S7158.

[32] Sen. Al Franken, "Small Business Lending Fund Act of 2010," Rollcall Vote No. 237 Leg., *Congressional Record*, daily edition, vol. 156, part 125 (September 16, 2010), p. S7158.

[33] Sen. Carl Levin, "Small Business Lending Fund Act of 2010," remarks in the Senate, *Congressional Record*, vol. 156, part 124 (September 15, 2010), p. S7123.

State Capital Access Programs

State capital access programs (CAP) are loan portfolio insurance programs that enable "small businesses to obtain credit to help them grow and expand their business."[34] Under a CAP, when a participating lender originates a loan, the lender and borrower combine to contribute a percentage of the loan or line of credit into a reserve fund, which is held by the lender. Under the SSBCI, the contribution must be from 2% to 7% of the amount borrowed. Typically, the contributions range from 3% to 4%. The state then matches the combined contribution and sends that amount to the lender, who deposits the funds into the lender-held reserve fund. State CAPs encourage lending to small businesses because the reserve fund reduces the lender's risk of losses by being available to cover any losses on any of the loans in the lender's CAP portfolio. Interest rates, maturity, collateral, and other loan terms are negotiated between the lender and the borrower.[35]

Under the SSBCI, approved state CAPs are eligible for federal funding equal to the amount of the insurance premiums paid by the borrower and the lender into the lender-held reserve fund, as calculated on a loan-by-loan basis. The state may use SSBCI funding to make its contribution to the lender-held reserve fund. States may also supplement the federal contribution with state or private funds if they choose to do so.[36]

Subject to some restrictions, SSBCI state CAP loans may be used for most business purposes, "including, but not limited to: start-up costs, working capital, business procurement, franchise fees, equipment, inventory, and the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes."[37] In addition, the borrower must have 500 employees or fewer at the time that the loan is enrolled in the program and the loan amount may not exceed $5 million.[38]

State Loan Participation Programs

State loan participation programs enable "small businesses to obtain medium to long-term financing, usually in the form of term loans."[39] States may structure loan participation programs in two ways: (1) by purchasing a portion of a loan originated by a lender (also known as a purchase transaction or purchase participation) or (2) by participating in the loan as a co-lender (also known as a companion loan). In a companion loan, a lender originates a senior loan and the state originates a second loan, which is usually subordinate to the lender's senior loan should a default occur, to the same borrower. State loan participation programs encourage lending to small businesses because the lender is able to diversify its risk of loss by sharing its exposure to loan losses with the state. Interest rates, maturity, collateral, and other loan terms for purchase transactions and purchase participations are negotiated between the lender and the borrower,

[34] U.S. Department of the Treasury, "SSBCI Program Profile: Capital Access Program," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Capital_Access_Program_FINAL_May_17.pdf.

[35] Ibid.

[36] Ibid.

[37] Ibid. State capital access programs (CAPs) under the SSBCI program may not enroll the unguaranteed portions of Small Business Association (SBA) guaranteed or other federally guaranteed loans without the express, prior written consent of Treasury. Also, restrictions apply to refinancing and other uses.

[38] Ibid.

[39] U.S. Department of the Treasury, "SSBCI Program Profile: Loan Participation Program," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Loan_Participation_FINAL_May_17.pdf.

although the state may seek to approve the loan terms prior to closing. For companion loans, the state and lender negotiate interest rates, maturity, collateral and other loan terms.[40]

Subject to some restrictions, loans in SSBCI state loan participation programs may be used for most business purposes (start-up costs, working capital, business procurement, franchise fees, etc.). In addition, SSBCI state loan participation programs must target an average borrower size of 500 employees or fewer and may not extend credit to borrowers with more than 750 employees. They must also target an average loan amount of $5 million or less and may not extend credit for any single loan exceeding $20 million.[41]

State Loan Guarantee Programs

State loan guarantee programs enable "small businesses to obtain term loans or lines of credit" by providing the lender "with the necessary security, in the form of a partial guarantee, for the lender to approve a loan or line of credit."[42] The guarantee percentage is determined by the states and lenders but, under the SSBCI, may not exceed 80% of loan losses. Also, origination and annual utilization fees are determined by each state to defray the program's cost. Under the SSBCI, fees may range from 0% to 3% of the loan amount. States typically establish limits on the amount of loans any one lender can originate in the program and have a cash reserve to cover anticipated losses on the guarantees. Interest rates, maturity, collateral, and other loan terms are typically negotiated between the lender and the borrower, although in some cases loan terms are subject to state approval and, in many cases, the state and lender will discuss and negotiate loan terms and guarantee options prior to reaching agreement to approve the loan and issue a guarantee.[43]

Subject to some restrictions, loans in SSBCI state loan guarantee programs may be used for most business purposes. In addition, SSBCI state loan guarantee programs must target an average borrower size of 500 employees or fewer and may not guarantee credit to borrowers with more than 750 employees. They must also target an average loan amount of $5 million or less and may not guarantee credit for any single loan exceeding $20 million.[44]

State Collateral Support Programs

State collateral support programs are "designed to enable financing that might otherwise be unavailable due to a collateral shortfall."[45] They provide pledged collateral accounts to lenders to enhance the collateral coverage of individual loans. Lenders are required to have at least 20% of their own capital at risk in each loan. Interest rates, maturity, collateral, and other loan terms are negotiated between the lender and the borrower. The state and lender negotiate the amount of cash collateral to be pledged by the state. In practice, state collateral support is rarely provided for more than 50% of the loan value.[46]

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[40] Ibid.

[41] Ibid.

[42] U.S. Department of the Treasury, "SSBCI Program Profile: Loan Guarantee Program," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Loan_Guarantee_FINAL_May_17.pdf.

[43] Ibid.

[44] Ibid.

[45] U.S. Department of the Treasury, "SSBCI Program Profile: Collateral Support Program," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Collateral_Support_FINAL_May_17.pdf.

[46] Ibid.

Subject to some restrictions, SSBCI state collateral support program loans may be used for most business purposes. In addition, SSBCI state collateral support programs must target an average borrower size of 500 employees or fewer and may not support credit to borrowers with more than 750 employees. They must also target an average loan amount of $5 million or less and may not support credit for any single loan exceeding $20 million.[47]

State Venture Capital Programs

State venture capital programs provide "investment capital to create and grow start-up and early-stage businesses."[48] They come in two forms: a state-run fund, which may include private investors, that invests directly in businesses and a fund of funds that invests in other venture capital funds that, in turn, invest in individual businesses.[49] In both cases, the day-to-day management of the fund is typically outsourced to a professional firm. Investments are typically equity (stock) and hybrid investments, such as preferred equity and subordinated debt. Terms are negotiated between the business owner and the venture capital fund. The standard life of most state venture capital funds is 12 years, and individual fund investments are typically for 3 years to 7 years.[50]

Subject to some restrictions, SSBCI state venture capital program investments may be used for most business purposes. In addition, SSBCI state venture capital programs must target their investments to businesses that have 500 employees or fewer and may not invest in businesses with more than 750 employees. They must also target an average investment of $5 million or less and may not make a single investment exceeding $20 million.[51]

SSBCI Funding

P.L. 111-240 appropriated $1.5 billion to the Department of the Treasury for the SSBCI program, including the "reasonable costs of administering the program."[52] The 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, and, in some instances, municipalities were eligible for funding, with the amount available to each state, territory, and municipality determined by a formula contained in the act (described later in this section).

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[47] Ibid.

[48] U.S. Department of the Treasury, "SSBCI Program Profile: Venture Capital Program," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Program_Profile_Venture_Capital_FINAL_May_17.pdf.

[49] Ibid.

[50] Ibid.

[51] Ibid.

[52] 12 U.S.C. §5708(b). Treasury reports that SSBCI administrative expenses, which include the cost of government employee salaries, contract support, and reimbursement to the Treasury OIG for program audits, were $5.393 million in FY2011, $4.746 million in FY2012, and $6.431 million in FY2013; and is estimated to be $8,299,000 in FY2014. See U.S. Department of the Treasury, *State Small Business Credit Initiative: FY2013 President's Budget Submission*, pp. 3, 8, at http://www.treasury.gov/about/budget-performance/Documents/16%20-%20FY%202013%20SSBCI%20CJ.pdf; U.S. Department of the Treasury, *State Small Business Credit Initiative: FY2014 President's Budget*, pp. 3, 8, at http://www.treasury.gov/about/budget-performance/CJ14/16.%20SSBCI%20CJ%20FINAL%20ok.pdf; and U.S. Department of the Treasury, *State Small Business Credit Initiative: FY2015 President's Budget*, pp. 3, 9, at http://www.treasury.gov/about/budget-performance/CJ15/21.%20SSBCI.pdf.

Application Process

To receive SSBCI funding, states, American Samoa, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, and the U.S. Virgin Islands were required to file a notice of intent to apply for funding with Treasury by November 26, 2010. After filing a notice of intent to apply for funding, they were required to submit to Treasury an application for funding by June 27, 2011.

Municipalities were allowed to apply for funding only in the event their state did not participate in the program. Municipalities were eligible to apply for funding up to the total amount of their state's SSBCI allotment, with the final approved amounts apportioned based on their proportionate share of the population of all approved municipal applicants in that state, based on the most recent available decennial census.[53] Eligible municipalities were required to submit to Treasury an application for funding by September 27, 2011.

The application for funding requested information concerning such items as

- the amount requested;
- how the funds are to be used (state capital access program, collateral support program, loan participation program, loan guarantee program, venture capital program, or other small business support program);
- confirmation that, at a minimum, $1 of public investment will result in at least $1 of new private credit; that there is a reasonable expectation the funding will result in new small business lending of at least 10 times the amount of the SSBCI federal contribution; that the funding targets small businesses with 500 employees or fewer, does not support borrowers that have more than 750 employees, targets loans with an average principal of $5 million or less, and does not extend credit support to loans that exceed $20 million;
- documentation describing the operational capacity, skills, and experience of the applicant's management team in operating capital access and other small business capital support programs;
- documentation describing the internal accounting and administrative control systems used to safeguard against waste, loss, unauthorized use, and misappropriation; and
- documentation describing how the participant planned to use the funds "to provide access to capital for small businesses (1) in low- and moderate-income communities, (2) in minority communities, (3) in other underserved communities, and to (4) women- and minority-owned small businesses."[54]

The Funding Formula

The SSBCI funding formula took into account the number of jobs and job losses for each state in proportion to the aggregate number of jobs and job losses nationally. Specifically, it was based on

[53] 12 U.S.C. §5703(d)(6). If more than three municipalities or combinations of municipalities from the same state are approved, Treasury is required to allocate federal funds to the three municipalities (or combination of municipalities) with the largest populations. See 12 U.S.C. §5703(d)(5).

[54] U.S. Department of the Treasury, "State Small Business Credit Initiative: Application," at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Application.pdf.

the average of (1) the number of individuals employed in each state in December 2007 compared with the number of individuals employed in each state in December 2008 and (2) the number of individuals unemployed in each state in December 2009 compared with the number of individuals unemployed nationally in December 2009. After accounting for Treasury's anticipated administrative costs, each participating state was guaranteed a minimum allotment of 0.9% of available funding ($13.168 million).[55]

Funding was provided in three installments (called tranches), each approximately one-third of the participant's approved allotment. The first tranche was provided "immediately following the receipt of the fully signed Allocation Agreement."[56] Allotment agreements described how states were to comply with program requirements and were signed after the state's application was approved.

Prior to the receipt of the second and third tranches, each state was required to certify that it had expended, transferred, or obligated at least 80% of the previous disbursement to, or for the account of, one or more approved state programs.[57] Treasury was authorized to recoup misused funds should the state be found in default of the allocation agreement and could terminate any portion of an allotment that Treasury had not disbursed within two years of the date on which the allocation agreement with the state was signed. By statute, all SSBCI allocation agreements expired on March 31, 2017.

State-by-State Allotments

By the June 27, 2011, deadline, 48 states, American Samoa, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, and the U.S. Virgin Islands had submitted an application to participate in the program. Collectively, they requested approximately $1.4 billion in funding.[58] North Dakota and Wyoming did not apply. Alaska later withdrew its application. Five municipalities (one in Alaska, two in North Dakota, and two in Wyoming) subsequently requested $39.5 million in SSBCI funding.[59] Funding was allotted to Anchorage, Alaska ($13.168 million); a Laramie, Wyoming, led consortium of 17 municipalities ($13.168 million); a Mandan, North Dakota, led consortium of 37 municipalities and an Indian tribe ($9.711 million); and a Carrington, North Dakota, led consortium of 36 municipalities ($3.458 million).

Table 1 shows the amount of SSBCI funding awarded to each state and territory (hereinafter referred to as states unless otherwise noted) and the types of small business investment programs supported. As shown on **Table 1**, California received the largest allotment ($167.75 million) and American Samoa, which requested less than the minimum guaranteed allotment, received the smallest allotment ($10.5 million).

[55] Treasury anticipates that its total administrative costs over the lifetime of the SSBCI program will be about $36.85 million.

[56] U.S. Department of the Treasury, "State Small Business Credit Initiative: Frequently Asked Questions," at http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci-faqs.aspx#gen3.

[57] Ibid.

[58] Applicants were entitled to the funding provided by the SSBCI formula. American Samoa requested $10,418,500. The minimum SSBCI allotment is $13,168,350. All other applicants requested the amount provided by the SSBCI formula. See U.S. Government Accountability Office (GAO), *State Small Business Credit Initiative*, GAO-12-173, December 7, 2011, p. 9, at http://www.gao.gov/assets/590/586727.pdf.

[59] Ibid.

States use SSBCI funding to support small business investment programs: 23 support a capital access program, 40 support a loan participation program, 20 support a loan guarantee program, 16 support a collateral support program, and 38 support a venture capital program.

Table 1. SSBCI Programs

Participant	Allotment ($ millions)	Capital Access Program	Loan Participation	Loan Guarantee	Collateral Support	Venture Capital
Alabama	$31.301	X	X	X		
Alaska, Anchorage	$13.168					X
American Samoa	$10.500					X
Arizona	$18.204		X			
Arkansas	$13.168	X	X	X		X
California	$167.755	X	X	X	X	
Colorado	$17.233	X			X	
Connecticut	$13.301					X
Delaware	$13.168	X	X			
District of Columbia	$13.168		X		X	X
Florida	$97.622	X	X	X		X
Georgia	$47.808	X	X	X		
Guam	$13.168	X	X	X		
Hawaii	$13.168					X
Idaho	$13.168				X	
Illinois	$78.365	X	X		X	X
Indiana	$34.339	X				X
Iowa	$13.168	X	X			X
Kansas	$13.168		X			X
Kentucky	$15.487	X	X		X	
Louisiana	$13.168			X		X
Maine	$13.168		X			X
Maryland	$23.025		X	X		X
Massachusetts	$22.023	X	X			
Michigan	$79.157	X	X	X	X	X
Minnesota	$15.463	X	X	X		X
Mississippi	$13.168			X		
Missouri	$26.930		X			X
Montana	$13.168		X			
Nebraska	$13.168		X			X

Participant	Allotment ($ millions)	Capital Access Program	Loan Participation	Loan Guarantee	Collateral Support	Venture Capital
Nevada	$13.803		X		X	X
New Hampshire	$13.168	X	X	X	X	X
New Jersey	$33.760		X	X		X
New Mexico	$13.168		X			X
New York	$55.351	X		X		X
North Carolina	$46.061	X	X			X
North Dakota, Mandan & Carrington Consortiums	$13.168		X[a]		X	X
Northern Mariana Islands	$13.168		X		X	
Ohio	$55.138	X			X	X
Oklahoma	$13.168					X
Oregon	$16.516	X	X	X		
Pennsylvania	$29.241		X			X
Puerto Rico	$14.540		X			X
Rhode Island	$13.168		X			X
South Carolina	$17.990	X	X			
South Dakota	$13.168		X			
Tennessee	$29.672					X
Texas	$46.553		X			X
Utah	$13.168		X	X		X
Vermont	$13.168		X			
Virgin Islands	$13.168			X	X	
Virginia	$17.953	X	X		X	X
Washington	$19.722	X	X		X	X
West Virginia	$13.168		X	X	X	X
Wisconsin	$22.363			X		X
Wyoming, Laramie Consortium[b]	$13.168			X		X

Sources: U.S. Department of Treasury, "State Programs Funded by SSBCI," at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20State%20Programs%20and%20Contacts.pdf; and U.S. Government Accountability Office, *State Small Business Credit Initiative*, GAO-12-173, December 7, 2011.

a. The Mandan, North Dakota, led consortium of 37 municipalities and an Indian tribe was allotted $9.711 million to administer a loan participation program. The Carrington, North Dakota, led consortium of 36 municipalities was allotted $3.458 million to administer a collateral support program and a venture capital program.
b. The Laramie, Wyoming, led consortium includes 17 municipalities.

Approximately 32.5% of SSBCI funds have been allocated to loan participation programs, 29.5% to venture capital programs, 18.4% to collateral support programs, 16.9% to loan guarantee programs, and 2.7% to capital access programs.[60]

As mentioned previously, most states received their initial tranche in FY2011 and, as of December 31, 2016, all 57 participants had received their first tranche, 56 had received their second tranche, and 53 had received their third tranche.[61]

States were allowed to use up to 5% of their initial tranche, and up to 3% of their second and third tranches, for administrative expenses related to implementing an approved small business investment program. They were also subject to several reporting requirements. For example, states had to submit quarterly reports to Treasury describing the use of allocated funds for each approved program, including the total amount of allocated funds used for direct and indirect administrative costs, the total amount of allocated 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 CAP. States were also required to submit annual reports to Treasury, by March 31 of each year, containing, among other things, transaction-level data for each loan or investment made with SSBCI funds for that year.

Audits, Evaluation Reports, and Program Adjustments

P.L. 111-240 required Treasury's OIG to conduct, supervise, and coordinate audits and investigations into the use of SSBCI funds. The act also required GAO to perform an annual audit of the SSBCI program. P.L. 113-188, the Government Reports Elimination Act of 2014, eliminated this requirement.

Treasury's OIG released its first evaluation report of Treasury's implementation of the SSBCI on August 5, 2011, and its first audit of a state's use of SSBCI funds (California) on May 24, 2012. It has completed audits of 24 participants' use of SSBCI funds (California, Montana, Vermont, Michigan, Texas, Massachusetts, Delaware, New Jersey, Alabama, Missouri, Washington, Kansas, Florida, West Virginia, Illinois, South Carolina, American Samoa, North Carolina, Idaho, Indiana, Tennessee, the North Dakota Mandan consortium, Rhode Island, and New York).[62]

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[60] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' Quarterly Reports as of December 31, 2016*, p. 10, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI_Quarterly_Report_Summary_December_2016.pdf.

[61] Ibid., p. 1.

[62] U.S. Department of the Treasury, Office of Inspector General (OIG), Small Business Lending Fund Program Oversight Office, *Small Business Lending Fund Oversight Reports*, at http://www.treasury.gov/about/organizational-structure/ig/Pages/Office-of-Small-Business-Lending-Fund-Program-Oversight.aspx. An audit of Louisiana's use of SSBCI funds was issued on January 9, 2014, and removed from the Treasury OIG's website on February 19, 2015, pending further review. The OIG later determined that the work performed was not sufficient to support the findings and conclusions in the report under generally accepted government auditing standards. The audit report will not be reissued.

GAO released annual audits of the SSBCI program on December 7, 2011, December 5, 2012, December 18, 2013, and December 11, 2014.

GAO's 2011 Audit

GAO noted in its 2011 SSBCI audit that Treasury's early implementation efforts were appropriately focused on establishing the application process and the process for distributing initial installments of funds to recipients as quickly as possible.[63] Left unstated was that Treasury established the program's policy guidelines and paperwork requirements essentially from scratch. Also, participants reported that nearly one-half of their SSBCI investment programs were new.[64] This suggests that at least some states had limited prior experience operating and overseeing many of their small business investment programs.[65]

GAO found that Treasury issued an initial set of policy guidelines and application materials via its website on December 21, 2010, and "was able to review, approve and obtain signed allocation agreements with and distribute first installments of funds to two states in January 2011."[66] In response to feedback from states, the SBA, and other federal agencies, Treasury revised its policy guidelines and application paperwork in April 2011 "to better articulate what documentation was required for both the application and review processes."[67] The two previously approved states were asked to sign an amended allocation agreement that incorporated the revisions.

GAO reported that several states indicated they had delayed submitting their SSBCI applications until Treasury issued its final application guidance and 37 states submitted their applications in June 2011, the final month that applications were allowed. Although some states had postponed the submission of their applications, GAO found that "despite the delay in providing application guidance, applicants generally viewed Treasury officials as helpful throughout the application process—providing answers to most questions immediately and determining answers as soon as possible when not readily available."[68]

GAO also found that Treasury finalized its disbursement procedures for second and third installments of SSBCI funds at the beginning of November 2011. Treasury officials reported that despite this delay, no state, at that time, had expended 80% of its initial disbursement to support loans or investments to small businesses. However, GAO noted that while Treasury was finalizing the disbursement procedures "states were potentially delayed in receiving their remaining SSBCI funding."[69] GAO noted that one state reported it was ready for its second installment before

[63] U.S. Government Accountability Office (GAO), *State Small Business Credit Initiative*, GAO-12-173, December 7, 2011, p. 21, at http://www.gao.gov/assets/590/586727.pdf.

[64] Ibid., p. 11.

[65] An independent analysis of the SSBCI program funded by Treasury recommended that "future federal venture capital initiatives should require relevant program-specific training for VC [venture capital] program managers. VC program managers empowered by state government leaders range from novice to expert with respect to their preparedness to manage VC programs, and therefor need a common baseline of knowledge about options for design and operation of a state venture capital program." See Cromwell Schmisseur LLC, *Information and Observations on State Venture Capital Programs: Report for the U.S. Department of the Treasury and Interested Parties in the State Small Business Credit Initiative (SSBCI)*, February 2013, p. 6, at http://www.treasury.gov/resource-center/sb-programs/Documents/VC%20Report.pdf.

[66] Ibid., p. 14.

[67] Ibid.

[68] Ibid., pp. 14, 15.

[69] Ibid., p. 16.

Treasury had finalized the disbursement procedures but told by Treasury officials that it would have to wait until the disbursement procedures were finalized.[70]

GAO concluded its audit by noting that Treasury had not yet developed performance measures for the SSBCI program. According to GAO, "measuring performance allows organizations to track progress toward their goals and gives managers crucial information on which to base decisions" and "until such measures are developed and implemented Treasury will not be in a position to determine whether the SSBCI program is effective in achieving its goals."[71]

Treasury's Response to GAO's 2011 Audit: Performance Measures

In response to GAO's audit, in January 2012, Treasury adopted three performance goals to measure its administration of the program and four performance indicators to measure SSBCI outcomes.

The three administrative performance goals were

- 90% of requests for modifications to allocation agreements are approved or rejected within 90 days of receiving a final submission;
- 90% of requests for subsequent disbursements under existing allocation agreements are approved or rejected within 90 days of receipt of a formal submission; and
- 90% of quarterly reports are received within 5 days of the deadline.[72]

Treasury tracked these performance goals continuously and reported 12-month data to the Office of Management and Budget as part of its annual budget submission.

The four performance indicators were

- the amount of SSBCI funds used over time, as reported on SSBCI quarterly reports;
- the volume and dollar amounts of loans or investments supported by SSBCI funds, as reported on SSBCI annual reports;
- the amount of private sector leverage, as reported on SSBCI annual reports; and
- the estimated number of jobs created or retained, as reported on SSBCI annual reports.

Treasury reported performance data internally to the Assistant Secretary of Financial Institutions on an annual basis. Treasury also noted that these outcomes were not directly within its control, given that it approves and provides funding for state loan and investment programs, but the participating states are responsible for designing, establishing, and implementing the state programs. In addition, Treasury noted that

> the results of these outcomes are highly dependent on exogenous factors such as the demand for credit in a given locality and the quality of the small business borrowers' requests for such funds. Establishing these indicators for lending and investing activity as performance goals would imply that Treasury has direct control where none exists.

[70] Ibid.

[71] Ibid., p. 21.

[72] U.S. Treasury, "Correspondence with the author," June 22, 2012. For the first two goals, the measurement period starts once all required documentation from the requesting participating state is received.

> Nonetheless, measuring these outcomes will be integral to assessing the relative utility of federal support for these state programs and informing future policy direction.[73]

GAO's 2012 Audit

GAO's second annual SSBCI audit, issued on December 5, 2012, found that as of June 30, 2012, Treasury had transferred $468 million in SSBCI funds to states (about one-third of total SSBCI funds) and states had disbursed about $150 million of that amount (about 10% of total SSBCI funds). GAO reported that the states interviewed said that "disbursing funds was much faster for state programs that were in existence before SSBCI because the infrastructure was already in place and lenders were already familiar with the programs" but that "some states implementing new programs told [GAO] that it could take time to use the funds because they had to conduct extensive outreach to lenders to make them aware of the programs and encourage them to commit to small business lending."[74]

GAO noted that Treasury was authorized to revoke any portion of a participating state's allocated SSBCI funds that had not been transferred to the state by the end of the two-year anniversary of the state's approval to participate in the SSBCI. GAO noted that Treasury had not developed a written policy on how it will use this authority, that most of the participating states' two-year period will end sometime in 2013, and that "it is still unknown if they all will be able to use their funds in the time to obtain the third and final disbursement within this time frame."[75] GAO also stated that although Treasury officials had indicated at an October 2012 conference attended by many SSBCI participants that "Treasury did not currently plan to exercise this authority in the near future," GAO argued that "when states are required to spend federal funds to meet a statutory deadline or specific program requirements, agencies should provide guidance to the states on what they should expect if they are unable to meet the deadline."[76] In the absence of a formal written policy on this matter, GAO asserted that it was unclear how Treasury would use this authority in a consistent manner.

GAO also acknowledged that, in response to its first annual audit of the SSBCI, Treasury had created performance measures "to help monitor and measure the effectiveness of SSBCI."[77] However, GAO noted that Treasury "has not yet determined how and when it will make this information public."[78] GAO argued that although "it is still early in the program and results vary greatly across the program participants for a variety of reasons," but "Treasury should make information publicly available concerning its performance indicators" because "performance information is an important tool for policymakers, particularly as Congress reviews and considers programs to assist small businesses going forward."[79]

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[73] Ibid.

[74] GAO, *Small Business Lending: Opportunities Exist to Improve Performance Reporting of Treasury's Programs*, GAO-13-76, December 5, 2012, p. 22, at http://www.gao.gov/assets/660/650555.pdf.

[75] Ibid., p. 24.

[76] Ibid., p. 25.

[77] Ibid., p. 40.

[78] Ibid.

[79] Ibid, pp. 40-41.

Treasury's Response to GAO's 2012 Audit: Written Policy Guidance and Publishing Performance Measures

In June 2013, Treasury responded to GAO's recommendation for written policy guidance concerning the Treasury's discretionary authority to revoke a participating state's allocated SSBCI funds that had not been transferred to the state by the end of the two-year anniversary of the state's approval to participate in the SSBCI by disseminating, by email, a "Frequently Asked Question" (FAQ) narrative on the topic to all participating states. Treasury also discussed its policy guidance on this subject at the national SSBCI conference held on June 3 and 4, 2013.[80]

Treasury issued the following policy guidance on this subject:

> Treasury will deem any Participating State that submits its second disbursement request by June 30, 2015 and qualifies to receive that disbursement to have made sufficient progress in implementing its Approved State Programs. For such a Participating State, Treasury will not terminate the availability of any Allocated Funds that remain un-transferred as of that date, and the Participating State will retain access to the full amount of its Allocated Funds for the duration of the Allocation Time Period, which is March 31, 2017. For any Participating State that Treasury determines has not qualified for its second disbursement of Allocated Funds through a submission made by June 30, 2015, Treasury expects to conduct an analysis of the Participating State's progress in implementing its SSBCI programs at that time to determine whether Treasury should exercise its authority to terminate the availability of un-transferred funds.[81]

In response to GAO's recommendation that Treasury officials make SSBCI performance information publicly available, on September 25, 2013, Treasury released the first of what would become an annual summary report of performance information drawn from SSBCI participants' annual reports.[82] The summary report contained information drawn from SSBCI participants' 2012 annual reports and included data related to each of the Treasury's four performance measures (amount of SSBCI funds used over time; volume and dollar amounts or investments supported by SSBCI funds; amount, in dollars, of private-sector leverage; and estimated number of jobs created or retained) as of December 31, 2012.

GAO's 2013 Audit

GAO's third annual SSBCI audit, issued on December 18, 2013, found that although the pace of participant SSBCI spending had increased since the second annual audit, participants were still facing several challenges in using their SSBCI funds. For example, as of June 30, 2013, Treasury had disbursed about $811 million in SSBCI funds to participants (about 54% of total SSBCI funds). Eight participants had received their third and final tranche, 19 participants had received their second tranche, and 30 participants were "still working to use their first disbursement of SSBCI funding."[83]

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[80] U.S. Department of the Treasury, State Small Business Credit Initiative Office, "Email correspondence with the author," July 9, 2013.

[81] Ibid.

[82] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' 2012 Annual Reports*, September 25, 2013, at http://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Summary%20of%20States%202012%20Annual%20Reports%20FINAL.pdf.

[83] GAO, *State Small Business Credit Initiative: Opportunities Exist to Enhance Performance Measurement and Evaluation*, GAO-14-97, December 18, 2013, p. 9, at http://www.gao.gov/products/gao-14-97.

Participants told GAO that Treasury's delay in finalizing the program's guidelines and the learning associated with implementing a relatively large number of new small business programs had slowed spending. However, they also reported that those issues were now largely resolved and "were issues that they would expect to occur with the implementation of any new program."[84] Participants also told GAO the unexpected low demand for some SSBCI capital access programs (CAP) further slowed their SSBCI spending. They explained that it took some time for them to reallocate funds from SSBCI programs experiencing low demand to those experiencing higher demand.[85]

Participants indicated they were now facing several new challenges in spending their SSBCI allotment, including (1) the reluctance of large banks to participate in the program, (2) the Small Business Jobs Act of 2010's requirement that participants obtain certifications from lenders and borrowers that they have not been convicted of a sex offense against a minor, and (3) concerns expressed by some lenders that they could be subject to additional regulatory scrutiny for using SSBCI programs to underwrite loans.[86]

Treasury officials and representatives of a trade association told GAO the reluctance of large banks to participate in the SSBCI was due to the variation of SSBCI programs across the nation. They explained that "national banks typically design programs that can be implemented consistently throughout the country and that they are reluctant to tailor different processes to each SSBCI participant's program."[87]

Two SSBCI participants told GAO there were banks that refused to participate in their SSBCI programs because of the sex offender certification requirement.[88] Several SSBCI participants also told GAO that "some banks have determined that, for legal reasons, they are not able to sign the certification, while other banks do not understand the need for the requirement."[89]

To help address lenders' concerns about being subject to additional regulatory scrutiny for using SSBCI programs to underwrite loans, Treasury officials briefed officials from the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, and the Office of the Comptroller of the Currency (OCC) concerning the SSBCI program and provided them periodic program updates. The FDIC and OCC also published guidance assuring their regulated entities that solely participating in the SSBCI does not subject them to increased regulatory scrutiny.[90]

GAO concluded its audit by noting that Treasury had developed targets for its three measures relating to administrative performance but had not developed targets for its four measures related to program performance. It recommended that Treasury establish targets for selected performance measures related to monitoring program performance and seek input from program stakeholders, including other agencies involved in promoting small businesses and Congress, as it designs its SSBCI program evaluation.

[84] Ibid., 13.

[85] Ibid., p. 16.

[86] Ibid., p. 18.

[87] Ibid.

[88] Ibid.

[89] Ibid.

[90] Ibid.

Treasury's Response to GAO's 2013 Audit: Targets for Program Performance Measures and Outreach

On December 4, 2013, Treasury officials informed GAO that Treasury agrees with both of GAO's recommendations and had begun the process of establishing targets for program performance measures and for gathering input from program stakeholders in designing SSBCI program evaluations.[91]

GAO's 2014 Audit

GAO's fourth annual SSBCI audit, issued on December 11, 2014, found that although the pace of participant SSBCI spending had increased since its third audit, officials from three of the 10 SSBCI participants it interviewed reported that some banks were still reluctant to participate in the program because they were unfamiliar with it or perceived that it would increase scrutiny from regulators.[92] Officials from three of the 10 SSBCI participants interviewed also indicated that "there continues to be a lack of clarity in Treasury's guidance regarding the use of SSBCI funds for certain transactions."[93]

GAO noted that, consistent with its recommendation in its third annual audit to develop targets for its four performance indicators, Treasury had established targets in October 2014 related to the amount of private-sector leverage raised (to have a cumulative private-sector leverage ratio of 10 to 1 by December 31, 2016); the amount of funds available to states (to disburse 98% of the funds available to states by December 31, 2016); the number of other credit support programs (OCSPs) that target borrowers with 500 or fewer employees (to have 98% of OCSPs expend SSBCI funds to support an average borrower or investee size of 500 employees or fewer by December 31, 2016); and the number of OCSPs that seek to make loans with an average principal amount of $5 million or less (to have 98% of OCSPs expend SSBCI funds to support loans of investments with an average principal amount of $5 million or less by December 31, 2016).[94]

In addition, GAO noted that, consistent with its recommendation in its third annual audit, Treasury had sought input from program stakeholders, including other agencies involved in promoting small businesses and Congress when it designed its SSBCI program evaluation metrics.[95]

These four performance measures and targets were designed to augment the information provided by Treasury's continued monitoring of the amount of SSBCI funds used over time, the volume and dollar amount of loans or investments supported by SSBCI funds, and the estimated number of jobs created or retained. GAO found that Treasury's efforts to provide additional performance information concerning the SSBCI was a "positive development that could help ensure that the agency decision makers and Congress have information to assist them in making programs more

[91] Ibid., p. 44.

[92] GAO, Small Business Credit Programs: Treasury Continues to Enhance Performance Measurement and Evaluation but Could Better Communicate and Update Results, GAO-15-105, December 11, 2014, p. 19, at http://www.gao.gov/assets/670/667450.pdf.

[93] Ibid.

[94] Ibid., p. 31. The SSBCI supports Capital Access Programs and other credit support (OCSP) programs, including collateral support programs, loan participation programs, state-sponsored venture capital programs, loan guarantee programs, and similar programs.

[95] Ibid.

efficient and effective."[96] GAO did not make any recommendations regarding Treasury's administration of the SSBCI.

Treasury's Response to GAO's 2014 Audit

Treasury reported that it appreciated GAO's guidance on developing program evaluation metrics and noted that its final assessment of the SSBCI's performance in 2017 would include three sections:

1. a review of national program-wide outcomes;
2. review of state-by-state variation in program outcomes; and
3. feedback from private sector lenders and investors.[97]

Treasury's Inspector General Evaluation Reports

On August 5, 2011, Treasury's OIG issued its first evaluation report examining the SSBCI program.[98] The OIG praised Treasury officials for "seeking [the OIG's] assistance during the developmental stage of the program."[99] The OIG also noted that Treasury officials had previously made several revisions to the SSBCI's initial policy guidelines, allocation agreement, and application materials following consultation with the OIG, including modifying "the SSBCI application to require that applicants detail their oversight and compliance regimes prior to receiving program approval."[100]

After examining Treasury's policy guidelines and the allocation agreement between Treasury and participating states, the OIG made nine recommendations for improvements. For example, the OIG recommended that Treasury improve the understanding of state oversight responsibilities by more clearly defining what is meant by the terms "supervision and oversight and accountability" and by setting "minimum standards for participating state oversight of SSBCI recipients, including defining a participating state's role in overseeing compliance with loan use requirements and restrictions."[101] The OIG also recommended that Treasury "either modify the allocation agreement or amend the policy guidelines to require participating states to make a representation that it is aware of, monitoring, and enforcing compliance with the policy guidelines and other restrictions applicable to the other participants [lenders and borrowers] in the program."[102]

Treasury took several immediate actions to address the OIG's recommendations. For example, in response to the recommendation that Treasury more clearly define the terms "supervision and oversight and accountability" and establish minimum standards for participating state oversight of SSBCI recipients, Treasury revised the SSBCI FAQ document on its website "to combine all applicable oversight requirements in one place" and "elaborate on the specific duty that each

[96] Ibid., p. 34.

[97] Ibid., p. 35.

[98] U.S. Department of the Treasury, OIG, "State Small Business Credit Initiative: Treasury Needs to Strengthen State Accountability for Use of Funds," August 5, 2011, at http://www.treasury.gov/about/organizational-structure/ig/Pages/by-date-2011.aspx.

[99] Ibid., p. 1.

[100] Ibid., p. 14.

[101] Ibid., p. 19.

[102] Ibid., p. 20.

provision imposes upon the participating state."[103] In addition, Treasury took into consideration the OIG's recommendations as it developed its "SSBCI National Standards for Compliance and Oversight" document, which was released on May 15, 2012.[104]

Treasury's Inspector General Use of SSBCI Funds Audit Reports

On May 24, 2012, Treasury's OIG released the first of a planned series of audits of state use of SSBCI funds, starting with California.[105] Treasury's OIG has completed audits of 24 participants' use of SSBCI funds (California, Montana, Vermont, Michigan, Texas, Massachusetts, Delaware, New Jersey, Alabama, Missouri, Washington, Kansas, Florida, West Virginia, Illinois, South Carolina, American Samoa, North Carolina, Idaho, Indiana, Tennessee, the North Dakota Mandan consortium, Rhode Island, and New York).[106] A summary of the OIG's findings for each state follows, starting with California.

In each audit, the OIG reviewed a judgmental sample of small business loans or investments to "determine whether [the loans or investments] complied with program requirements for loan use, capital at risk, and other restrictions."[107] The OIG then determined if there were "any instances of reckless or intentional misuse."[108] Treasury was required to recoup any funds the OIG identifies as intentionally or recklessly misused.[109] To date, only Texas, New Jersey, West Virginia, and the North Dakota Mandan consortium were found to be in full compliance with all SSBCI requirements.

California

Treasury's OIG determined that California had properly used the majority of the $3.6 million in SSBCI loans it examined, but it identified $133,250 in loan loss reserves funded under California's Small Business Loan Guarantee Program that did not comply with SSBCI program requirements.[110] The OIG indicated that these noncompliant expenditures "constitute a 'reckless' misuse of funds as defined by Treasury guidance, which under the provisions of the Small Business Jobs Act must be recouped."[111] The OIG also identified $160,988 in administrative

[103] Ibid. p. 10.

[104] U.S. Department of the Treasury, "SSBCI National Standards for Compliance and Oversight," May 15, 2012, at http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx.

[105] U.S. Department of the Treasury, OIG, *Small Business Lending Fund: California Needs to Improve Its Oversight of Programs Participating in the State Small Business Credit Initiative*, May 24, 2012, at http://www.treasury.gov/about/organizational-structure/ig/Agency%20Documents/OIG-SBLF-12-003.pdf.

[106] U.S. Department of the Treasury, OIG, Small Business Lending Fund Program Oversight Office, *Small Business Lending Fund Oversight Reports*, at http://www.treasury.gov/about/organizational-structure/ig/Pages/Office-of-Small-Business-Lending-Fund-Program-Oversight.aspx.

[107] U.S. Department of the Treasury, OIG, *Small Business Lending Fund: California Needs to Improve Its Oversight of Programs Participating in the State Small Business Credit Initiative*, May 24, 2012, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Agency%20Documents/OIG-SBLF-12-003.pdf.

[108] U.S. Department of the Treasury, OIG, Small Business Lending Fund Program Oversight Office, *Fiscal Year 2013 Audit Work Plan*, pp. 12-29, at http://www.treasury.gov/about/organizational-structure/ig/Agency%20Documents/2013%20SBLF%20Audit%20Work%20Plan.pdf.

[109] Ibid.

[110] U.S. Department of the Treasury, OIG, *Small Business Lending Fund: California Needs to Improve Its Oversight of Programs Participating in the State Small Business Credit Initiative*, May 24, 2012, p. 3, at http://www.treasury.gov/about/organizational-structure/ig/Agency%20Documents/OIG-SBLF-12-003.pdf.

[111] Ibid.

expenses charged to the SSBCI program that were "not adequately supported by actual expenses incurred or with proper documentation to validate the costs claimed."[112] In addition, the OIG reported that "42 or approximately 58 percent, of the 73 loans [OIG] tested lacked all of the required borrower and lender assurances."[113]

Treasury agreed to recoup from California the $133,250 in loan loss reserves identified by the OIG as a reckless misuse of funds; required California to provide additional supporting documentation for its SSBCI administrative expenses; and instructed California program officials to address missing borrower and lender certifications and assurances. Treasury subsequently noted that any loans still missing required assurances and certifications had been unenrolled and that all other certification issues had been resolved.[114]

Montana

Treasury's OIG found that Montana had misused $2.73 million of the $4.9 million in SSBCI funds it examined because the funds were used for passive real estate investments and the refinancing of prior debt, which "are prohibited under the Small Business Jobs Act or SSBCI Policy Guidelines."[115] The OIG also found that $3,426 in personnel costs incurred for administering SSBCI funds were not allowable or allocable because the costs were not properly supported as required by OMB Circular A-87.[116]

The OIG "did not find the misuse of funds to be intentional or reckless as Montana sought guidance from Treasury before enrolling the loans."[117] The OIG reported that Treasury officials did not provide definitive guidance on the permissibility of passive real estate loans and informed Montana that refinancing prior debt to the same lender was allowable if the prior debt had matured and new underwriting had occurred. The OIG noted that Treasury attempted to clarify the Small Business Job Act's prohibition on the refinancing of prior debt by defining *refinancing*, which is not defined in the act. The OIG challenged Treasury's conclusion "that the statutory prohibition on refinancing the same lenders' loans pertained only to existing debt that had not yet matured and that refinancing debt after it matures constitutes 'refunding,' a permitted use."[118] The OIG noted that there were no references in the Small Business Jobs Act or in Treasury's SSBCI policy guidelines concerning "re-funding."[119]

Treasury agreed to notify participating states that loans for passive real estate are considered a misuse of funds and encourage them to review their loan enrollments to ensure compliance with guidance that was in place at the time the loans were made.[120] Treasury also agreed to "provide a clear and rigorous analysis documenting how Treasury concluded that some refinancing of existing debt from the same lender, or 're-funding,' is consistent with the statutory language, or

[112] Ibid.

[113] Ibid.

[114] Ibid., pp. 13-14.

[115] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Montana's Use of Funds Received from the State Small Business Credit Initiative*, September 27, 2012, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF12006.pdf.

[116] Ibid.

[117] Ibid., pp. 2, 9.

[118] Ibid., p. 3.

[119] Ibid., p. 12.

[120] Ibid., p. 16.

amend the program procedural guidance to remove that possibility."[121] Treasury also found that Montana was unable to provide the necessary documentation for the $3,426 in personnel costs cited by the OIG in its review of the state's SSBCI administrative expenses and that those costs would be disallowed.[122]

Vermont

Treasury's OIG examined 26 loans issued under Vermont's four SSBCI programs and found that Vermont's interest rate subsidy program ($931,000 in SSBCI funding) did not comply with the requirements established by its allocation agreement with Treasury.[123] Because the state estimated its interest rate subsidies, the OIG found that Vermont's quarterly reports to Treasury "do not reflect the State's actual use of funds for the program" and, therefore, "the State cannot provide Treasury with accurate information for measuring the leverage achieved with SSBCI funds."[124] The OIG recommended that Treasury require Vermont to provide a subaccounting of all funds transferred in connection with the interest rate subsidy program as well as program income generated from the use of such funds. In addition, the OIG recommended that Treasury determine whether Vermont "is in general default of its Allocation Agreement due to its non-compliance with accounting and lender/borrower assurance requirements, and whether future funding to the State should be reduced, suspended, or terminated."[125] The OIG also found that $216,820 in administrative expenses charged to the SSBCI program did not comply with program guidance.[126]

Treasury agreed to require Vermont to provide a subaccounting of all the funds transferred in connection with the interest rate subsidy program as well as all program income generated from the use of such funds.[127] Treasury also agreed to determine whether "there has been a general event of default under Vermont's Allocation Agreement resulting from the State's non-compliance with the grants management common rule or lender/borrower assurance requirements [and], if such an event has occurred and has not been adequately cured, determine whether it warrants a reduction, suspension, or termination of future funding to the State."[128] In addition, Treasury agreed to disallow the $216,820 in administrative expenses charged to the SSBCI program by Vermont unless the state provides supporting documentation in accordance with OMB Circular A-87.[129]

Michigan

Treasury's OIG found that Michigan had used the majority of the $38.5 million in SSBCI loans it examined properly, but it identified "approximately $2.524 million in misuse, of which $2.5 million was used to finance lender purchase transactions that did not involve extensions of additional credit to borrowers; $3,000 supported a partner buy-out, a prohibited use; and $21,000

[121] Ibid.

[122] Ibid., p. 18.

[123] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Vermont's Use of Federal Funds for Capital Access and Credit Support Programs*, November 30, 2012, p. 2, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13001.pdf.

[124] Ibid, pp. 2-3.

[125] Ibid., pp. 3-4.

[126] Ibid., p. 3.

[127] Ibid., p. 15.

[128] Ibid.

[129] Ibid., p. 14.

was used to pay the CAP insurance premium on a loan closed and funded prior to Michigan's acceptance into the SSBCI program and Treasury's allocation of funds to the State."[130] The OIG determined that the $21,000 used to pay the CAP insurance premium was a "reckless" misuse of funds that must be recouped. Although the OIG did not find the $2.5 million used to finance lender purchase transactions that did not involve extensions of additional credit to borrowers to be a similarly reckless misuse of funds, it did question whether the purchase transactions were "consistent with the intent of the [Small Business Jobs] Act to help small businesses expand, grow, and create jobs."[131] It recommended that Treasury develop guidance for such transactions. In addition, the OIG found $8,506 in administrative expenses charged to the SSBCI program that were incurred prior to the date Michigan was approved to participate in the program and notified of its SSBCI allocation. The OIG recommended that those expenses be disallowed.[132]

Treasury agreed to issue guidance to address the conditions under which loan purchase transactions would be permitted.[133] Treasury also agreed to recoup the $21,000 used to pay the CAP insurance premium on a loan closed and funded prior to Michigan's acceptance into the SSBCI program and Treasury's allocation of funds to the state and to disallow the $8,506 in administrative expenses that were incurred prior to the date Michigan was approved to participate in the program and notified of its SSBCI allocation.[134]

Texas

Treasury's OIG examined five investments, totaling $6.3 million, financed by the Texas Small Business Venture Capital Program and $105,000 of administrative costs that the state charged against SSBCI funds. The OIG found the program in full compliance with all SSBCI requirements. The OIG credited the state's "success in ensuring full compliance with SSBCI requirements" to Texas's "use of a checklist to evaluate compliance with program requirements prior to the completion of each transaction."[135]

Massachusetts

Treasury's OIG contracted with an independent certified public accounting firm to audit Massachusetts's use of SSBCI funds. As of June 30, 2012, Massachusetts had obligated or spent approximately $6.6 million of the SSBCI funds disbursed, including $4 million for the Massachusetts Growth Capital Corporation (MGCC) loan participation program, $2.1 million for the Massachusetts Business Development Corporation (MBDC) loan participation program, and $211,000 for the Massachusetts Capital Access Program (MCAP). Massachusetts also incurred approximately $321,000 in administrative costs.

The accounting firm reviewed the state's administrative costs and a randomly selected sample of 35 state SSBCI transactions (3 loan participation loans and 32 capital access loans) to determine

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[130] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Michigan's Use of Federal Funds for Capital Access and Other Credit Support Programs*, December 13, 2012, pp. 2-3, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-13-002.pdf.

[131] Ibid., p. 3.

[132] Ibid.

[133] Ibid., p. 13.

[134] Ibid., pp. 15-16.

[135] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Texas' Use of Federal Funds for Other Credit Support Programs*, January 29, 2013, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-13-003.pdf.

their compliance with SSBCI requirements. The audit found that Massachusetts charged $200,000 in administrative costs to the SSBCI program that did not comply with program guidance and that the state did not include in its quarterly reports to Treasury $51,248 of program income. The audit also found that 34 of the 35 transactions were in compliance with program requirements. The accounting firm noted that a transaction for $237,000 made by the MBDC loan participation program appeared to be prohibited by SSBCI policy guidelines because it involved an SBA-guaranteed loan. Massachusetts officials reportedly "believed that the loan in question was compliant with program requirements because Treasury's SSBCI Policy Guidelines prohibit the enrollment of only the unguaranteed portions of federally-guaranteed loans. Therefore, they reasonably believed the prohibition on credit enhancement did not pertain to the *guaranteed* portion of federally-guaranteed loans."[136] In addition, the audit found that Massachusetts did not obtain complete borrower and lender assurances for 89% of the loans reviewed by the time of loan closing.[137]

The OIG recommended that Treasury "revise its program guidance to make the enrollment of federally-guaranteed loans a clear prohibition, disallow $200,000 in administrative expenses unless the Commonwealth can provide adequate support for such costs, and require the Commonwealth to demonstrate that it has a compliant system for allocating administrative costs."[138] The OIG also recommended that Treasury "determine whether there has been a general event of default of the Allocation Agreement resulting from Massachusetts's non-compliance with lender/borrower assurance requirements, materially inaccurate certifications, and failure to report program income."[139]

In response to the OIG's recommendations, Treasury indicated it was in the process of revising its program guidance on the enrollment of federally guaranteed loans. It also stated that it will determine whether Massachusetts has adequately cured its noncompliance with program requirements and whether additional action is warranted. Massachusetts clarified that although it reported $200,000 in administrative expenses; it did not charge the SSBCI fund for these expenses and does not intend to seek reimbursement from SSBCI for them. Massachusetts also reported that many of the transactions examined during the audit "were made in the early stage of the SSBCI program, before suggested reporting forms were promulgated by Treasury."[140]

Delaware

Treasury's OIG found that as of September 30, 2012, Delaware had obligated or spent approximately $4.1 million of its first SSBCI disbursement of $4.3 million—$80,883 for 36 loans enrolled in the Delaware Access Program and approximately $4 million for 14 loans enrolled in the Delaware Strategic Fund (DSF) Loan Program. The OIG reviewed a random sample of 26 loans (19 from the Delaware Access Program and 7 from the DSF Loan Program) that were enrolled as of September 30, 2012, to determine if they were in compliance with program requirements.[141]

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[136] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Massachusetts' Use of Federal Funds for Capital Access and Other Credit Support Programs*, May 14, 2013, p. 7, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13007.pdf.

[137] Ibid., pp. 1-3.

[138] Ibid., p. 3.

[139] Ibid.

[140] Ibid., p. 19.

[141] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Delaware's Use of Federal Funds for*

The OIG did not identify any instances of intentional or reckless misuse of funds. However, it did find that although Delaware obtained most borrower and lender assurances at loan closing, these assurances did not contain all required affirmations.[142] Several assurances were also missing signatures or dates. In addition, the OIG found that Treasury became aware of Delaware's noncompliance with the assurance requirements in May 2012, but it was not until October 2012 that Treasury directed Delaware's officials to obtain the missing assurances for each loan. By November 2012, Delaware had retroactively obtained these assurances.

The OIG recommended that Treasury "examine the reasons why appropriate and timely actions were not taken to address Delaware's compliance and certification issues, and take appropriate actions to strengthen its compliance monitoring and enforcement of program requirements."[143] In response to this recommendation, Treasury reported that it "is in the process of adjusting the quarterly certification process to cover circumstances where a participating state has a known unresolved item of noncompliance."[144] Also, Delaware officials reported that they had implemented "additional precautions, including random audits of SSBCI loans, to ensure compliance with use of proceeds, capital-at-risk, and assurance requirements."[145]

New Jersey

Treasury's OIG contracted with an independent certified public accounting firm to audit New Jersey's use of SSBCI funds.[146] The accounting firm found that as of June 30, 2012, New Jersey had spent about $2.9 million of its first SSBCI disbursement of $11.1 million—$1.76 million for two loan participations, $675,000 for a credit guarantee, and $500,000 for a direct loan.[147]

The accounting firm reviewed all four transactions and determined that New Jersey complied with all program requirements in administering the $2.9 million in SSBCI funds. The OIG concluded that New Jersey's "success in ensuring full compliance was attributable to several best practices that the New Jersey Economic Development Authority [which administers New Jersey's SSBCI program] employed to enhance its program oversight," including the use of an "SSBCI Application Eligibility Criteria Checklist that listed each of the required SSBCI assurances and specific SSBCI program requirements" and that had to be completed and signed prior to each transaction.[148]

Capital Access and Other Credit Support Programs, March 29, 2013, p. 11, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13006.pdf.

[142] Participating states 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 purpose under the SSBCI program. For example, the loan proceeds must be used for an approved "business purpose" and they cannot 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; reimburse funds owed to any owner, including any equity injection or injection of capital for the business's continuance; or purchase any portion of the ownership interest of any owner of the business.

[143] Ibid., p. 3.

[144] Ibid., p. 4.

[145] Ibid., pp. 3-4.

[146] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: New Jersey's Use of Federal Funds for Other Credit Support Programs*, February 27, 2013, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13005.pdf.

[147] Ibid., p. 4.

[148] Ibid., p. 8.

Alabama

Treasury's OIG contracted with an independent certified public accounting firm to audit Alabama's use of SSBCI funds. The accounting firm reviewed all 14 loans enrolled in Alabama's loan guarantee program, totaling approximately $3.8 million, made between the signing of the SSBCI allocation agreement on August 24, 2011, and June 30, 2012. The accounting firm also reviewed the $45,172 in administrative expenses Alabama charged against SSBCI funds during that time period to ensure these expenses were allowable, reasonable, and allocable.

The audit found that Alabama complied with all program requirements in administering the $3.8 million of SSBCI funds used as of June 30, 2012. The OIG attributed "the state's success in ensuring full compliance" to the Alabama Department of Economic and Community Affairs' requirement that a checklist containing SSBCI requirements be completed prior to each loan enrollment to ensure the loan was in full compliance with SSBCI requirements.[149] The audit also found that Alabama had overstated the amount of SSBCI funds used by approximately $1 million in its March 31, 2012, quarterly report and by approximately $4 million in its June 30, 2012, quarterly report. The OIG indicated that the errors occurred because Alabama incorrectly included private-lender contributions to loan loss reserves for loans guaranteed with SSBCI funds. However, because Treasury identified and corrected the inaccuracies prior to the audit, the OIG made no recommendations concerning the errors.[150]

Missouri

Treasury's OIG contracted with an independent certified public accounting firm to audit Missouri's use of SSBCI funds. The accounting firm reviewed all 17 SSBCI transactions between the signing of the SSBCI allocation agreement on May 23, 2011, and March 31, 2012. These transactions included 16 investments, totaling $6.6 million, by the Missouri Innovation, Development, and Entrepreneurship Advancement (IDEA) Fund and one loan, totaling $511,135, by the Grow Missouri Loan Fund. The accounting firm also reviewed the $151,568 in administrative expenses Missouri charged against SSBCI funds during that time period to ensure these expenses were allowable, reasonable, and allocable. Because the audit of the IDEA Fund revealed a prohibited party relationship, the audit's scope was expanded to include seven additional IDEA Fund transactions made between April 1, 2012, and September 30, 2012, "to determine whether additional prohibited party relationships existed."[151]

The OIG found that Missouri "properly used over 96% of the $7.3 million in SSBCI funds expended, and that all related administrative costs were compliant with program requirements."[152] However, the audit revealed that a $240,000 venture capital investment made by the IDEA Fund "constituted a reckless misuse of funds, as defined by Treasury" because a director of the board that approved the investment "had a prohibited party relationship with the company that received the investment based on the director's controlling interest in the investee."[153] The director had

[149] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Alabama's Use of Federal Funds for Capital Access and Other Credit Support Programs*, June 4, 2013, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13008.pdf.

[150] Ibid., pp. 1-2.

[151] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Missouri's Use of Federal Funds for Other Credit Support Programs*, July 24, 2013, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF13009.pdf.

[152] Ibid., p. 3.

[153] Ibid.

recused herself from the vote approving the investment. The OIG noted that the board should have known that prohibited party relationships are not allowed because the SSBCI policy guidelines "require every borrower and investee receiving funds to certify that such a relationship did not exist."[154] The OIG recommended that Treasury recoup the $240,000 investment. Missouri disagreed with the OIG's finding that it "recklessly misused funds," arguing that the board was in compliance with its own conflict-of-interest policy and that the relationship with the "potentially interested director" was "disclosed repeatedly in the application materials which were provided to the Board" and that the investment "was made on the merits through a rigorous and independent process."[155] Nonetheless, Missouri took measures "to remedy the situation and prevent similar issues in the future."[156] For example, the board administering the IDEA Fund "replenished the SSBCI program account in the amount of the misused funds and unenrolled the transaction," amended its conflict-of-interest policy to comply with the SSBCI guidelines on conflicts of interest, and created a checklist to ensure that each transaction supported by SSBCI funds is in compliance with the SSBCI guidelines on conflicts of interest.[157]

Treasury agreed to recoup the $240,000 from Missouri. Treasury also agreed to "determine whether Missouri has adequately cured its non-compliance with the related party prohibition, requirements for assurances, and certification filings" and if further action is warranted.[158]

Washington

Treasury's OIG contracted with an independent certified public accounting firm to audit Washington's use of SSBCI funds. The accounting firm reviewed all of the state's $5.3 million in SSBCI loans issued by Washington's Enterprise Cascadia Loan Participation Program and all of the $1.7 million in investments issued by the state's W Fund Venture Capital Program between the signing of the SSBCI allocation agreement on October 31, 2011, and June 30, 2012. The accounting firm also reviewed the $92,291 in administrative expenses Washington charged against SSBCI funds during that time period to ensure these expenses were allowable, reasonable, and allocable.[159]

The audit determined that all $7.1 million in loans and venture capital investments "complied with SSBCI program requirements and restrictions, and that borrower and lender assurances were complete and timely."[160] However, the audit found that the $92,291 in administrative expenses reported to Treasury "was overstated by $5,779 as a result of an accounting change [comprised of payroll costs for administration of the SSBCI program that were incurred during the reporting period, but subsequently transferred to an alternative funding source] that was not reflected in the state's SSBCI Quarterly Report."[161] When the auditors brought the overstatement to their attention, Washington officials notified Treasury of the need to adjust their SSBCI Quarterly

[154] Ibid.

[155] Ibid., p. 26.

[156] Ibid., p. 22.

[157] Ibid.

[158] Ibid.

[159] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Washington's Use of Federal Funds for Capital Access and Other Credit Support Programs*, August 15, 2013, pp. 1, 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-13-011.pdf.

[160] Ibid., p. 2.

[161] Ibid.

Report to reflect the cost transfer. Treasury "advised Washington that it would authorize the adjustment upon completion of the OIG's audit."[162]

Kansas

Treasury's OIG contracted with an independent certified public accounting firm to audit Kansas's use of SSBCI funds. The accounting firm reviewed all of the state's $1.53 million in SSBCI loans issued by the Kansas Capital Multiplier Loan Fund and the $696,950 in investments issued by the Kansas Capital Multiplier Venture Fund between the signing of the SSBCI allocation agreement on June 28, 2011, and March 31, 2012. The accounting firm also reviewed the $14,585 in administrative expenses Kansas charged against SSBCI funds during that time period to ensure these expenses were allowable, reasonable, and allocable.

The audit found that Kansas "appropriately used most of the SSBCI funds it had expended" but questioned three $250,000 loans that were issued to affiliated entities as part of a $31 million aggregate financial arrangement.[163] The OIG noted that there is a $20 million cap on SSBCI loans made under other credit support programs (OCSPs) and that Treasury's guidance "does not address how the cap should be applied when funds are used to make companion loans comprising a larger financial package or where multiple loans are made to affiliated entities."[164] The OIG recommended that Treasury clarify the requirement that SSBCI funds not be used to support loans that exceed a principal amount of $20 million. Treasury agreed to revise the SSBCI policy guidelines to clarify the requirement.[165]

The audit also found that Kansas inaccurately reported in its March 31, 2012, SSBCI quarterly report a $173,822 advance for administrative costs issued to NetWork Kansas (a nonprofit entity that, among other activities, administers the Kansas Capital Multiplier Loan Fund and the Kansas Capital Multiplier Venture Fund) as a loan and that $29,247 of that advance was not subsequently reported as administrative expenses in the state's June 30, 2012, SSBCI quarterly report because those spent funds were previously incorrectly reported as a loan.[166] In addition, the audit found that $13,181 of the $29,247 should be disallowed by Treasury because the funds were used to pay audit and tax consulting costs that were not properly allocated through a cost allocation plan or an indirect cost proposal as required by OMB Circular A-87.[167] Treasury agreed to work with Kansas "to correct its quarterly statements, remove the $13,181 in disallowed audit and tax consulting costs from the State's quarterly reports, and review Kansas' cost allocation plan for administrative costs."[168]

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[162] Ibid., p. 7.

[163] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Kansas' Use of Federal Funds for Other Credit Support Programs*, September 5, 2013, p. 2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-13-013.pdf.

[164] Ibid.

[165] Ibid., p. 18. Kansas officials explained that the three loans in question were "made to separate legal entities which were operated as separate businesses at separate locations, but who sold product to a common buyer [and] not contrived to avoid the $20 million cap on loans." Officials also explained that "while the similarity in names and inadvertent language in the applications make the independence of the loans more difficult to ascertain, review of the facts shows SSBCI loan support was not to a single loan in excess of $20 million. Rather, SSBCI funds were used to support separate loans to separate businesses." See ibid., p. 20.

[166] Ibid., pp. 3, 12, 13.

[167] Ibid., p. 13.

[168] Ibid., p. 19. Treasury also agreed to inform Kansas "that the State is required to obtain lender assurances from relevant companion lenders in future transactions, but agrees with Kansas that retroactively collecting companion

Florida

Treasury's OIG reviewed all 7 SSBCI venture capital investments, totaling $37 million, issued by the Florida Venture Capital Program and all 17 SSBCI loans, totaling approximately $14.6 million, issued by the Florida Loan Participation Program (11 loans, totaling $9.75 million); Florida Direct Loans Program (1 loan, totaling $3.5 million); Florida Loan Guarantee Program (3 loans, totaling $1.37 million); and Florida Capital Access Program (2 loans, totaling $780 for portfolio insurance) between the signing of the SSBCI allocation agreement on August 24, 2011, and December 31, 2012.[169] The OIG also reviewed the $378,634 in administrative expenses Florida charged against SSBCI funds during that time period to ensure these expenses were allowable, reasonable, and allocable.

The OIG found that Florida "properly used the majority (92%) of the SSBCI funds it expended" and that "23 of the 24 transactions ... sampled were compliant with program guidelines related to prohibited relationships, maximum transaction amounts, use-of-proceeds, capital-at-risk, and other restrictions noted in the [Small Business Jobs] Act and SSBCI Guidelines."[170] The questionable transaction involved the use of $4 million in SSBCI funds in a $34.7 million investment "that involved multiple equity instruments, which ... exceeded the $20 million restriction in the [Small Business Jobs] Act intended [to] be placed on the amount of credit support that may be extended to a recipient."[171] The OIG concluded that "although two equity instruments were involved [$4 million from the SSBCI and $30.7 million from private capital], the transaction constituted one investment package because if the business were to fail, both equity instruments would be affected."[172] The OIG recommended that Treasury "revise the SSBCI Policy Guidelines to clarify how the $20 million restriction on credit support should be applied when an investment involves multiple equity instruments."[173] Treasury agreed to revise the program's guidance concerning the $20 million credit support restriction.[174]

The OIG also found that Florida had overstated its administrative expenses by approximately $55,000. Florida officials indicated that the overstatement "occurred because of incorrect selection criteria used to pull administrative cost information from the state accounting system" following the merger of several state agencies. Florida officials informed Treasury of the error and made adjustments to the state's administrative expenses to account for the error in their March 31, 2013, SSBCI quarterly report.[175]

In addition, the OIG found that Florida had "overstated by approximately $23 million the amount of SSBCI funds that had been obligated because it included FLVCP [Florida Venture Capital Program] reserves that were set aside for future follow-on investments to existing investees."[176]

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lender assurances [as was recommended by the OIG] is impractical and unnecessary." See ibid., p. 18. Treasury agreed to clarify the "SSBCI National Standards for Compliance and Oversight" document to specify which companion lenders must submit assurances.

[169] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Florida's Use of Federal Funds for Capital Access and Other Credit Support Programs*, November 15, 2013, pp. 1, 13, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14002R.pdf.

[170] Ibid., p. 7.

[171] Ibid.

[172] Ibid., pp. 7, 8.

[173] Ibid., p. 11.

[174] Ibid., pp. 12, 15.

[175] Ibid., p. 9.

[176] Ibid., p. 4.

Florida officials asserted that their reporting of these funds was in compliance with the definitions provided in the SSBCI policy guidelines and FAQ documents at the time that the funds were reported.[177] However, state officials also noted that Treasury had informed them in February 2013 that Florida's "reserve commitment letters did not meet Treasury's criteria for designation as obligated funds" and that the state had submitted an updated disbursement request with its second tranche of funding, which was received in June 2013.[178] Subsequently, "Florida adjusted its quarterly statements for June 30, 2012, September 30, 2012, and December 31, 2012, to exclude amounts shown as obligated pursuit to the FLVCP reserve commitment letters."[179] Treasury also agreed to determine whether Florida has adequately addressed its reporting of obligated funds and whether additional action is warranted.[180]

West Virginia

Treasury's OIG reviewed a random sample of 28 SSBCI loans and investments, totaling approximately $9.5 million, made by West Virginia's four SSBCI programs (13 from the Seed Capital Co-Investment Fund, 11 from the West Virginia Collateral Support Program, 3 from the Subordinated Debt Program, and 1 from the West Virginia Loan Guarantee Program) issued between the signing of the allocation agreement on November 18, 2011, and June 30, 2013. The OIG also examined a sample ($170,533) of West Virginia's $181,784 in SSBCI administrative costs. The program was found to be in full compliance with all SSBCI requirements.[181]

Illinois

Treasury's OIG examined a random sample of 48 SSBCI loans and investments, totaling $34.5 million, issued by five SSBCI programs in Illinois (35 from the Illinois Participation Loan Program, 8 from the Invest Illinois Venture Fund, 3 from the Illinois Capital Access Program, 1 from the Collateral Support Program, and 1 from the Conditional Direct Loan Program) between the signing of the allocation agreement on July 26, 2011, and March 31, 2013. The OIG also examined a sample ($589,882) of the state's $1.03 million in SSBCI administrative costs and found the sampled administrative expenses to be in full compliance with SSBCI requirements.[182]

The OIG found that "Illinois appropriately used most of the $34.5 million in SSBCI funds it had expended as of March 31, 2013, but spent $105,000 to participate in a loan that was used to purchase the stock of a company representing its entire ownership interest, which is prohibited by the SSBCI Policy Guidelines."[183] The OIG also identified 22 other transactions "that did not fully comply with lender sex offender certification requirements" and found that "Illinois neglected to execute lender certifications on the State's behalf as prescribed in the National Standards" for

[177] Ibid., p. 19.

[178] Ibid.

[179] Ibid., p. 20.

[180] Ibid., p. 15.

[181] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: West Virginia's Use of Federal Funds for Other Credit Support Programs*, March 19, 2014, pp. 1-2, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14004R.pdf.

[182] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Illinois' Use of Federal Funds for Capital Access and Other Credit Support Programs*, March 26, 2014, p. 17, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-14-005R%20(for%20web).pdf.

[183] Ibid., pp. 2-3.

direct loans and state-run venture capital investments.[184] Also, the OIG determined that Illinois unintentionally overstated, in the state's 2012 annual report, the amount of private financing associated with a loan in which the state participated by $4.7 million. This occurred because the financing structure of the transaction was changed without the state's knowledge.[185]

Treasury informed the OIG that it will recoup from Illinois the $105,000 expenditure identified by the OIG as being prohibited, require Illinois to modify any master agreements with lenders that do not include required language mandating that lenders notify the state of changes in the sex-offender status of their principals, and require Illinois to provide lender certifications when it is acting as a direct lender under the SSBCI program. Treasury also indicated that it will work with Illinois to adjust the $4.7 million overstatement in the state's 2012 annual report and determine whether a general default has occurred as a result of the OIG findings.[186]

South Carolina

Treasury's OIG examined a random sample of 38 SSBCI loans issued by South Carolina's two SSBCI programs (10 from the South Carolina Capital Access Program and 28 from the South Carolina Loan Participation Program), totaling $11.4 million, between the signing of the allocation agreement on July 6, 2011, and June 30, 2013. The OIG also examined South Carolina's $136,449 in SSBCI administrative costs.[187]

The OIG found that South Carolina appropriately used most of its SSBCI funds "but misused $427,500 to participate in a loan that was used to finance the building of a new church sanctuary and make renovations to the existing sanctuary, which is prohibited by the SSBCI Policy Guidelines."[188] The OIG noted, however, that although South Carolina misused those funds, the misuse was "not reckless or intentional because SSBCI Policy Guidelines do not explicitly prohibit the use of SSBCI funds for non-secular purposes."[189] The OIG also identified eight other transactions "that did not comply with the National Standards because the State did not verify that the borrower and lender assurances were complete and duly executed prior to the transfer of SSBCI funds."[190] South Carolina's administrative charges were found to be in full compliance with all SSBCI requirements.

Treasury informed the OIG that it will publish guidance to clarify that using SSBCI funds to support transactions with a non-secular identity is not a permitted business purpose and determine whether a general event of default has occurred as a result of South Carolina's not fully complying with borrower and lender assurance requirements.[191] South Carolina informed Treasury that it had added an additional line item to its internal control compliance checklist to

[184] Ibid., p. 3.

[185] Ibid., pp. 12-13.

[186] Ibid., pp. 19-20.

[187] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: South Carolina's Use of Federal Funds for Capital Access and Other Credit Support Programs*, March 26, 2014, p. 12, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-14-006.pdf.

[188] Ibid., pp. 2-3.

[189] Ibid., p. 3.

[190] Ibid.

[191] Ibid., pp. 13-14.

ensure that all borrower and lender assurance requirements are signed and dated prior to the transfer of SSBCI funds.[192]

American Samoa

American Samoa was awarded $10.5 million in SSBCI funds on January 12, 2012, and received its first disbursement of $3.465 million later that month. Treasury's OIG found that American Samoa had not obligated or spent any SSBCI funds for credit support as of September 30, 2013. As a result, the OIG's audit focused on whether American Samoa's $50,307 in SSBCI administrative costs was "reasonable, whether the territory was fully positioned to extend credit, and whether the territory was in compliance with the program's reporting and certification requirements."[193]

The OIG "identified $49,155 in unsupported personnel and travel expenses that should be disallowed," and found that "American Samoa has not provided Treasury with records that would allow the Department to determine whether the Territory is 'fully positioned' to provide credit support to small businesses, as required by its Allocation Agreement."[194] The OIG also found that American Samoa "did not obtain Treasury's prior approval for three changes to the entity designated to administer the SSBCI funds; did not submit two of its quarterly reports or its 2012 annual report to Treasury on time, causing Treasury to declare a general event of default of American Samoa's Allocation Agreement; and incorrectly certified the accuracy of two quarterly reports to Treasury and did not certify the accuracy of three other quarterly reports."[195] Based on its findings, the OIG recommended that Treasury disallow the $49,155 in unsupported administrative expenses, "determine whether a reduction, suspension, or termination of future funding to the Territory is warranted," and, if funding is not terminated, "require that the Territory first comply with the terms of its Allocation Agreement, and approve the agreement modifications, before disbursing additional funds."[196]

Treasury informed the OIG that it will disallow the $49,155 in unsupported administrative costs, determine whether American Samoa has again defaulted on its allocation agreement, and determine what form of remedy may be appropriate.[197] Treasury also indicated that if American Samoa's funding is not terminated, Treasury "will not disburse additional funds before requiring that the Territory first comply with the terms of the Allocation Agreement."[198]

Officials with American Samoa's Department of Commerce agreed with the recommendation to disallow the questioned SSBCI administrative expenses, which, they noted, were made by a previous American Samoa administration. However, they also noted that they were "somewhat taken aback with the harshness and severity of the positions taken" in the OIG's audit.[199] They pointed out that the OIG report did not reflect the "significant organizational issues facing the Governor which necessitated his decision with respect to the location and management of this

[192] Ibid., p. 16.

[193] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: American Samoa's Administrative Expenses and Reporting*, March 26, 2014, p. 1, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-SBLF-14-007.pdf.

[194] Ibid., p. 2.

[195] Ibid., pp. 2-3.

[196] Ibid., p. 13.

[197] Ibid., p. 17.

[198] Ibid.

[199] Ibid., p. 19.

vital program" and that "to the best of [their] knowledge Treasury SSBCI supported the decision made by the Governor."[200] They also noted that since the audit they had filed with Treasury all missing quarterly and annual reports, hired consultants to design and implement a compliance program for American Samoa's SSBCI program, and sent, in February 2014, a modified allocation agreement for Treasury's review. They requested that Treasury approve the program modification changes this modified agreement requested and maintained that American Samoa's SSBCI program now "complies with all Treasury regulations and guidance and is fully positioned to provide small businesses with credit assistance."[201]

North Carolina

Treasury's OIG examined a random sample of 45 SSBCI loans issued by North Carolina's three SSBCI programs (31 were from the North Carolina Capital Access Program, 9 were from the North Carolina Loan Participation Program, and 5 were from the North Carolina Venture Capital Fund-of-Funds Program), totaling $4.9 million, between the signing of the allocation agreement on May 23, 2011, and December 31, 2012. The OIG also reviewed 46 of the state's SSBCI administrative cost transactions, totaling $720,257.[202]

The OIG found that North Carolina appropriately used most of its SSBCI funds "but [due to misrepresentations by a lender] contributed $6,690 to a reserve fund under the Capital Access Program for a loan that refinanced one previously made to the borrower by the same lender."[203] The OIG noted that "such refinancings are prohibited by the [Small Business Jobs] Act and constitute a misuse of funds" but not an intentional or reckless misuse of funds due to the lender's misrepresentations.[204]

The OIG also found that North Carolina did not obtain fully compliant lender sex-offender assurances for 19 (or 42%) of the 45 transactions tested, as required.[205] The OIG noted that North Carolina chose to rely on annual lender certifications of compliance with this requirement, which is permitted, but it neglected to require lenders to notify the state should an event occur that rendered the certifications obsolete.

In addition, North Carolina "inaccurately reported to Treasury the total amount of an enrolled investment on three separate occasions because it misreported the private investor's contribution to the investment" and "reported $10.3 million in capital commitments with SSBCI funds to four angel investment funds as obligated funds even though only $2.9 million had been pledged to investees."[206] The OIG expressed concern that "while obligating funds on a multi-year basis generally is an accepted practice," using capital commitments to angel investment funds with multiyear investment horizons "to measure performance and qualifying a state for additional transfers of SSBCI funds is inappropriate and does not meet the intent of the Small Business Jobs

[200] Ibid.

[201] Ibid., pp. 14, 19-24.

[202] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: North Carolina's Use of Federal Funds for Capital Access and Other Credit Support Programs*, March 27, 2014, pp. 1-2, 16, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14009.pdf.

[203] Ibid., pp. 3, 8-9.

[204] Ibid.

[205] Ibid. pp. 10-11.

[206] Ibid., pp. 3-4.

Act."[207] The OIG found that all 46 administrative cost transactions it reviewed were in full compliance with SSBCI guidelines.[208]

The OIG recommended that Treasury (1) verify, as North Carolina had reported, that $6,690 in SSBCI funds has been withdrawn from the prohibited loan and that the SSBCI account has been reimbursed for the same amount; (2) determine whether there has been a general event of default under North Carolina's allocation agreement resulting from the state's failure to fully comply with the lender assurance requirements and for inaccurate reporting of venture capital investment amounts; (3) revise the definition of funds obligated for venture capital programs to include only funds that have been designated for specific investees; (4) require participants to distinguish in their quarterly reports the venture capital funds previously reported as obligated to specific investees from that obligated to angel funds but not yet disbursed to investees; and (5) adopt a standard definition of *funds used* for all program-reporting purposes instead of defining *funds used* differently for different purposes.[209]

Treasury informed the OIG that it will (1) verify that North Carolina has withdrawn SSBCI funds from the prohibited loan and replenished the SSBCI account; (2) determine whether a general event of default has occurred; (3) change its disbursement procedures to confirm prior to making a disbursement that states are not holding excess idle cash that is not likely to be expended, obligated, or transferred to small businesses within a reasonable time period; (4) explain in the summary quarterly reports that funds "expended, obligated, or transferred" include obligations to venture capital funds not yet linked to specific small business investments; and (5) make every effort to follow the definition of *funds used* in the SSBCI policy guidelines.[210]

Idaho

Treasury's OIG examined a random sample of 30 SSBCI loans enrolled in the Idaho Collateral Support Program (ICSP), totaling $50.3 million, for which Idaho provided $7.6 million in collateral and 12 loans committed for enrollment into the ICSP, totaling $10.8 million, for which Idaho had reserved $2 million in collateral as of September 30, 2013. Treasury had previously reviewed Idaho's administrative expenses from January 2012 to September 2012 and had reduced Idaho's final allotment by $31,806 for expenses that were not adequately supported in accordance with OMB Circular A-87. Subsequent to that review, Idaho had reported an additional $272,744 in administrative expenses as of September 30, 2013. The OIG reviewed these additional administrative expenses for compliance with SSBCI guidelines.[211]

The OIG found that Idaho appropriately used the $9.6 million in collateral support that was reviewed but "mistakenly overstated by $111,923 the total principal for 3 of [the] 42 loans ... reviewed because the amounts reported were not based on the final loan documents."[212] The OIG also noted that Idaho "inaccurately reported $781,000 as Treasury-approved subsequent private

[207] Ibid., p. 14.

[208] Ibid., p. 16.

[209] Ibid., p. 17.

[210] Ibid., pp. 18, 22-23.

[211] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Idaho's Use of Federal Funds for its Collateral Support Program*, May 19, 2014, pp. 2, 10, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14010R.pdf.

[212] Ibid., p. 3.

financing," but Treasury acknowledged the mistake "was due to inconsistent guidance to the State."[213]

Idaho was provided a copy of the OIG's audit prior to its deadline for submitting its 2013 SSBCI annual report to Treasury. As a result, the state was able to correct its report prior to submitting it to Treasury to account for two of the three loan principal amounts that were overstated. The state also indicated that it had implemented new controls in February 2014 that "require a copy of the Bank's promissory note to verify the actual/final loan origination amount prior to funding the collateral support account on the enrolled loan" to ensure the amount reported is the actual amount of the executed loan.[214] In addition, Idaho noted that it "will work with Treasury to rectify the erroneous inclusion of subsequent private financing and incorrect loan origination amounts in their 2012 report."[215] Treasury informed the OIG that it would work with Idaho to resolve the issues identified in the audit.[216]

Idaho's $272,744 in administrative expenses reported since Treasury's earlier audit were found to be in full compliance with SSBCI guidelines.[217]

Indiana

At the request of Treasury SSBCI program officials, Treasury's OIG was asked to determine whether two investments made by the Indiana Angel Network Fund (IANF) under Indiana's Venture Capital Program complied with SSBCI policy guidelines. The OIG found that the two IANF investments, one totaling $499,986 and the other totaling $300,000, involved transactions between the board chairman of Elevate Ventures and the investees.[218] Elevate Ventures manages the IANF's investments on behalf of the Indiana Economic Development Corporation (IEDC), and it approved and executed the two investments in question.

The OIG found that the $499,986 investment constituted an "intentional" misuse of funds because the board chairman of Elevate Ventures had a controlling interest and voting stock ownership of more than 10% in the investee, which created a "prohibited related party interest."[219] The OIG noted that "SSBCI Policy Guidelines prohibit an investee receiving SSBCI funds from a related interest of any such executive officer, director, principal shareholder or immediate family."[220]

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[213] Ibid.

[214] Ibid., pp. 16-17.

[215] Ibid., p. 14.

[216] Ibid.

[217] The OIG also identified five loans, totaling approximately $9.8 million and supported by $1.3 million in SSBCI collateral, that provided interim financing of real estate acquisitions, construction projects, or equipment purchases that had been approved for the SBA's 504/Certified Development Company (CDC) loan guaranty program. The OIG expressed concern that Treasury's reporting of jobs created or retained by recipients of SSBCI supported loans may potentially duplicate the SBA's reporting of jobs created or retained by 504/CDC loan program recipients. Treasury agreed to explain clearly in the summary of states' annual reports that there is a possibility for duplicate reporting of job creation and retention figures in such circumstances. See ibid., pp. 5-7, 11, 15.

[218] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Indiana's Use of Federal Funds for Other Credit Support Programs*, June 18, 2014, pp. 2, 6-10, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14011.pdf.

[219] Ibid., p. 6.

[220] Ibid.

Intentional misuse of funds "is defined as a use of allocated funds that the participating state or its administering entity knew was unauthorized or prohibited."[221]

The $300,000 investment was found to be in compliance with SSBCI guidelines. However, the OIG noted that the closeness of the relationship between the Elevate board chairman and the applicant (the board chairman's adult son was the company's chief executive officer), although not prohibited, "may raise the appearance of partiality and should be addressed by SSBCI Policy Guidelines."[222]

The OIG recommended that (1) Treasury recoup the $499,986 of federal funds "intentionally" misused and declare a specific event of default of its allocation agreement with Indiana; (2) determine whether the state's funding should be reduced, suspended or terminated as a result of the specific event of default; and (3) require the state to ensure that IEDC reviews each IANF investment decision going forward.[223]

Treasury agreed with all three recommendations but indicated that it "would not characterize [the $499,986] investment as an 'intentional' misuse of funds based on the facts set forth in the report" because "intentional misuse requires knowledge that the use of the funds is contrary to the program rules, and action taken must be in a knowing effort to violate those rules."[224]

Indiana reported that it had completed an independent audit of the remainder of its SSBCI investments and did not find any other prohibited party transactions or other violations. The state also noted that the board chairman of Elevate Ventures had resigned, effective December 31, 2013; that the $499,986 investment had been repaid with a 15% return on February 6, 2014; and that the investment "had led to the creation of numerous new jobs for the people of Indiana."[225] In addition, Indiana reported that it "will independently review any future potential investment conflict."[226]

Tennessee

Treasury's OIG examined a random sample of 20 SSBCI investments made by Tennessee's INCITE Co-Investment Fund, a venture capital program, totaling $13.5 million. The sample was drawn from the 43 investments made by the fund between October 4, 2011 (the signing of the state's SSBCI allocation agreement), and September 30, 2013. The OIG also reviewed a sample of the state's SSBCI administrative expenses ($483,254 out of $685,880) that had been incurred as of September 30, 2013.[227]

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[221] Ibid., p. 1.

[222] Ibid., p. 10. The OIG noted that "the son is not considered an immediate family member because he does not reside with his father nor is he a minor. Therefore, while the investment constituted a related party transaction, it did not meet the criteria needed to establish it as a prohibited related party interest. The conflict of interest existing for [the $300,000 investment] ... was disclosed to the Board of Elevate Ventures in accordance with Elevate Venture's conflict-of-interest policy, and the Board approved the investment without any review by the State." See ibid., p. 9.

[223] Ibid., p. 10.

[224] Ibid., pp. 10-11, 14.

[225] Ibid., pp. 16-17.

[226] Ibid.

[227] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Tennessee's Use of Federal Funds for its Venture Capital Program*, August 20, 2014, pp. 1-2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14012.pdf.

The OIG found that Tennessee had appropriately used all $13.5 million in SSBCI funds that were reviewed but that "investor use-of-proceeds assurances were missing for all 20 transactions reviewed, and investor sex offender assurances had not been executed prior to the transfer of SSBCI funds for 12 of the transactions."[228] As a result, the OIG determined that the state had inaccurately certified that it was in compliance with all SSBCI requirements in several quarterly reports.

With the OIG's consent, Treasury provided Tennessee a draft copy of the OIG's findings. Tennessee indicated that it "was made aware of possible inadequacies in their assurances after attending the SSBCI annual training conference in 2012, and has since corrected their process to ensure that assurances meet program guidelines." The state claimed that "its assurances are now 100% complete."[229]

The OIG found that all of Tennessee's sampled administrative expenses were reasonable, allowable, and allocable to the program.[230]

North Dakota Mandan Consortium

Treasury's OIG examined a sample of 15 SSBCI loans made by the Mandan consortium's Loan Participation Program, totaling $8.6 million of the $8.9 million obligated or spent as of March 31, 2014. The sampled loans were made between August 31, 2012 (the signing of the consortium's SSBCI allocation agreement), and March 31, 2014. The OIG also reviewed the consortium's $194,101 in SSBCI administrative expenses.[231]

The OIG found that the Mandan consortium used all of the loan funds it reviewed appropriately. The OIG also determined that the consortium's administrative expenses were reasonable, allowable, and allocable to the program.[232]

Rhode Island (Slater Technology Fund)

At the request of Treasury SSBCI program officials, the OIG audited Rhode Island's Slater Technology Fund. Treasury had informed the OIG that the Slater Technology Fund was potentially in noncompliance with SSBCI program rules. A separate audit of Rhode Island's second capital venture program (Betaspring) is underway and will be reported at a later date.[233]

The OIG examined all six investments made by the Slater Technology Fund, totaling $1.5 million in SSBCI funds, made between the signing of the allocation agreement on September 6, 2011, and December 31, 2012. The OIG found that the Slater Technology Fund "properly used most of the $1.5 million in SSBCI funds it had expended as of December 31, 2012, but misused $350,000 on two investments by failing to comply with the investor capital-at-risk requirement."[234] As the

[228] Ibid., pp. 3, 5-7.

[229] Ibid., p. 10.

[230] Ibid., p. 8.

[231] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: North Dakota Mandan Consortium's Use of Federal Funds for its Loan Participation Program*, August 29, 2014, pp. 1-2, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF14013R.pdf.

[232] Ibid., p. 7.

[233] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: Rhode Island's Use of Federal Funds for the Slater Technology Fund*, October 31, 2014, pp. 1-2, at http://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIGSBLF15001.pdf.

[234] Ibid., p. 2.

OIG explained, SSBCI's guidelines require venture capital funds and angel investor networks receiving SSBCI funds to have a "meaningful amount" of their own capital resources at risk. Treasury has determined that this requirement is met when "private lenders or investors bear 20% or more of the risk of loss in any transaction."[235] As the sole investor on the two investments, Rhode Island's Slater Technology Fund, which funded the investments in stages, failed to invest any private capital over the course of the entire funding-commitment period for the first investment and did not inject private capital until the date of final payment for the second investment.[236] The OIG also found that the Slater Technology Fund did not obtain required investee and investor assurances for five of the six investments before the transfer of SSCBI funds.[237]

Treasury indicated that it would, as the OIG recommended in its audit, provide guidance to SSBCI participants that staged funding of a single investment requires that 20% of the capital-at-risk must be from a private source when SSBCI funds are invested. Rhode Island acknowledged that the private capital was not initially invested as required by Treasury guidelines but indicated that the state "has implemented measures to ensure future compliance."[238] Rhode Island also acknowledged that "certain investor and investee assurances were not timely obtained by Slater and will now require that such assurances be obtained prior to the release of funds."[239]

New York (Canrock Innovate NY Fund, LP)

The OIG audited Canrock Innovate NY Fund, LP, one of eight venture capital firms participating in New York's SSBCI venture capital program, called the Innovate Fund. The OIG found that the firm's SSBCI "investments in four of five beneficiary companies constituted a reckless misuse of approximately $1.63 million of SSBCI funds because the investments were prohibited related party interests of its general partner, Canrock Innovate Advisors, LLC."[240] The OIG noted that "through a related entity, the three managing members of Canrock Innovate Advisors, LLC had a controlling interest in each of the four beneficiary companies' voting shares, which violated the SSBCI Policy Guidelines, regarding conflicts of interest."[241]

The OIG recommended that Treasury recoup the $1.63 million. Treasury indicated that in lieu of recoupment, it would not disburse the remainder of New York's SSBCI allocation. Treasury had withheld the amount in question from New York's final disbursement pending the results of the OIG's audit. The OIG responded to Treasury's action by indicating that the withholding of the funds met the intent of its recommendation.[242]

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[235] Ibid.

[236] Ibid.

[237] Ibid., p. 3.

[238] Ibid., p. 4.

[239] Ibid.

[240] U.S. Department of the Treasury, OIG, *State Small Business Credit Initiative: New York's Use of Federal Funds for Other Credit Support Programs*, January 24, 2017, p. 2, at https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-17-035.pdf.

[241] Ibid.

[242] Ibid., pp. 6, 7.

Concluding Observations

The SSBCI was enacted as part of a larger effort to enhance the supply of capital to small businesses. Advocates argued that the SSBCI would help to address the recent decline in small business lending and create jobs. Opponents were not convinced it would enhance small business lending and worried about the program's potential cost to the federal treasury.

It is difficult to determine the full extent of the program's effect on small business lending. As mentioned earlier, as of December 31, 2016, states had spent or obligated about 88% of the $1.45 billion available ($1.27 billion of $1.45 billion), which is sufficient to provide some insight. For example, as mentioned earlier, Treasury has reported that SSBCI funds supported more than 21,000 loans and investments in small business amounting to over $10.7 billion, with more than 80% of the funds and investments made to small businesses with 10 or fewer full-time employees. Treasury has also reported that small businesses indicated that SSBCI funds helped them to create or retain 240,669 jobs (79,193 new jobs and 161,476 retained jobs).[243] But, as Treasury has also noted, determining the SSBCI's influence on small business lending is likely to be more suggestive than definitive because differentiating the SSBCI's effect on small business lending from other, exogenous factors, such as changes in the lender's local economy and changes in the demand for small business loans, is methodologically challenging, especially given the relatively small amount of financing involved relative to the national market for small business loans. As mentioned previously, the SSBCI's $1.5 billion in financing represents about 0.24% of outstanding non-agricultural small business loans.

Treasury's OIG's audits of 24 states' implementation of their SSBCI programs suggest that many states experienced difficulty reaching full compliance with the program's administrative requirements, which were designed to reduce the likelihood of loan defaults, investment losses, and fraudulent use of funds. The release of Treasury's "SSBCI National Standards for Compliance and Oversight" document on May 15, 2012, proved useful because it helped states become more familiar with, and accustomed to, the SSBCI's rules and regulations.[244] However, given the relatively large number of new small business investment programs receiving SSBCI funding, the relatively large number of entities involved in the program (state officials, hundreds of lenders and investment companies, and thousands of small businesses), and the termination of Treasury's role in SSBCI administration, SSBCI program oversight is likely to remain a congressional interest.

Author Information

Robert Jay Dilger
Senior Specialist in American National Government

[243] U.S. Department of the Treasury, *State Small Business Credit Initiative: A Summary of States' 2016 Annual Reports*, pp. 3, 15, at https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Summary%20of%20States%20Annual%20Report%202016_508%20Compliant.pdf.

[244] U.S. Department of the Treasury, "SSBCI National Standards for Compliance and Oversight," May 15, 2012, at http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx.

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