

**Capital Access Program (CAP) Notice and Waiver Form**

Lender Institution: \_\_\_\_\_ (the "Lender")

Loan #: \_\_\_\_\_

Borrower's Current Number of Employees: Full Time \_\_\_\_\_ Part Time \_\_\_\_\_ Seasonal \_\_\_\_\_

Borrower's Estimated Jobs Retained: Full Time \_\_\_\_\_ Part Time \_\_\_\_\_ Seasonal \_\_\_\_\_

Borrower's Estimated Jobs Created: Full Time \_\_\_\_\_ Part Time \_\_\_\_\_ Seasonal \_\_\_\_\_

The average number of hours per week that a part time employee works: Hours \_\_\_\_\_

The average number of hours per year that a seasonal employee works: Hours \_\_\_\_\_

The undersigned borrower (the "Borrower") acknowledges and understands:

- a. that the loan to be made by \_\_\_\_\_ to the Borrower in the total principal amount of \$\_\_\_\_\_ will be filed for enrollment by the Lender in accordance with the requirements of the Capital Access Program (the "Program"), a program established by the Business Finance Authority of the State of New Hampshire (the "Authority"), an agency of the State of New Hampshire;
- b. that as a condition of having the loan filed for enrollment in the Program, the Borrower is required to make a non-refundable payment to the CAP Reserve Fund, which CAP Reserve Fund is established by the Authority to help cover losses that the Lender may sustain on any loans enrolled in the Program; and
- c. that the Borrower's non-refundable payment will be collected by the Lender for transmittal to the CAP Reserve Fund, and that other payments or transfers will be made to the CAP Reserve Fund by the Lender and the Authority.

The Borrower acknowledges the foregoing and hereby represents and warrants that it has no, and has not been promised or told by anyone that it has any, legal, beneficial or equitable interest in the aforementioned non-refundable payment or any other funds credited to the CAP Reserve Fund and hereby waives any right, claim or interest to any and all such funds paid or credited to the CAP Reserve Fund from time to time.

It is important to emphasize that the loan is a private transaction between the Lender and the Borrower. While the program may assist the Lender in being able to take more risk than normal, it is important to understand that it is still the Lender that is bearing the risk of the loan. The Authority is not a party to the loan and plays no role at all in the Lender's decision regarding whether or not to make the loan, or in the setting of the interest rate, fees, duration, or any other terms or conditions of the loan. The lender's rights and remedies are delineated in the loan instruments and in law applicable to any Lender financing. The Authority plays no role in any decision by the Lender with respect to enforcing the Lender's rights under the loan contract. Accordingly, the undersigned borrower hereby waives any and all claims against the Authority arising from the making, servicing or collection by \_\_\_\_\_ of the loan to the Borrower.



While the program is intended to assist the Lender in providing you with access to Lender financing, you should understand that it is likely to be more expensive for the Borrower than would be the case with a conventional Lender loan. Not only does the Borrower make a payment to the reserve, but it is expected that the Lender may, in some manner, recover from the Borrower the cost of the Lender's payment into the reserve.

The borrower has completed and signed the Borrower Certifications which are attached hereto.

**BORROWER SIGNATURE(S):**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Borrower Use of Proceeds and Conflict of Interest Certification**

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of borrower: \_\_\_\_\_

The borrower hereby certifies the following to the lender:

1. The loan or investment proceeds will be used solely for a business purpose.
  - a. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).
2. The loan or investment proceeds will not be used to:
  - a. repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
  - b. repay taxes held in trust or escrow (e.g., payroll or sales taxes);
  - c. reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
  - d. purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The borrower is not:
  - a. a business engaged in speculative<sup>1</sup> activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;
  - b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
  - c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

- d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business’s intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;<sup>2</sup> or
- e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business.<sup>3</sup> For purposes of Tribal SSBCI programs, “gaming activities” includes only “class II gaming” and “class III gaming” as these terms are defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

4. The borrower is not:
- a. an executive officer, director, or principal shareholder of the lender;
  - b. a member of the immediate family of an executive officer, director, or principal shareholder of the lender; or
  - c. a related interest or immediate family member of such an executive officer, director, or principal shareholder of the lender.

For the purposes of the above conflict of interest certification, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to the lender as the relationships described in 12 C.F.R. part 215.

- 5. The borrower is authorized to conduct business in New Hampshire, had prior year sales of less than \$5,000,000.00 and has 500 or less employees.
- 6. The borrower grants permission to the lender to share borrower’s loan records relating to any loan with the U.S. Department of the Treasury Inspector General, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 *et seq.*)

If an exception applies, it must be specified here:

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The undersigned is an authorized representative of the borrower and certifies that the information provided above is true, accurate, and complete as of the date hereof.

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

<sup>1</sup> A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.  
<sup>2</sup> See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: “Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.”  
<sup>3</sup> Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for a new gas station, for example, even if the Tribal enterprise’s revenues from gaming were greater than 33 percent.



**Sex Offender Borrower Certification (Loan/Credit Program)**

Under the State Small Business Credit Initiative (SSBCI), borrowers must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of borrower: \_\_\_\_\_

The borrower certifies the following to the participating jurisdiction:

No principal of the entity listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, “principal” means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

The undersigned is an authorized representative of the lender and certifies that the information provided above is true, accurate, and complete as of the date hereof.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Borrower Certification Related to Business Enterprises**  
**Owned and Controlled by Socially and Economically Disadvantaged Individuals**  
**(SEDI-Owned Businesses)**

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses).<sup>1</sup> This certification provides documentation that an SSBCI loan or investment supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable antidiscrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The borrower is not required to provide this certification. The borrower may identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

Legal name of borrower: \_\_\_\_\_

The borrower hereby certifies to the lender that it is a:

1. Business enterprise that is owned and controlled<sup>2</sup> by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
  - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
  - gender;
  - veteran status;
  - limited English proficiency;
  - disability;
  - long-term residence in an environment isolated from the mainstream of American society;
  - membership of a federally or state-recognized Indian Tribe;
  - long-term residence in a rural community;
  - residence in a U.S. territory;
  - residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
  - membership of another underserved community.<sup>3</sup>
  
2.  Business enterprise that is owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).<sup>4</sup>

Individual(s)' Address(es) in CDFI Investment Areas: \_\_\_\_\_



3.  Business enterprise that will build, open, or operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

Business Address in CDFI Investment Area: \_\_\_\_\_

The undersigned is an authorized representative of the borrower and certifies that the information provided above is true, accurate, and complete as of the date hereof.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>1</sup> SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

<sup>2</sup> The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

<sup>3</sup> “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

<sup>4</sup> Treasury has provided a mapping tool for the borrower to use to identify whether the relevant address is in a CDFI Investment Area at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-businesscredit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>. For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent.

### **SSBCI Form for Demographics-Related Data**

Legal name of borrower: \_\_\_\_\_

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, “participating jurisdictions”). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity.

Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information, or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application.

The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury’s implementing regulations at 31 C.F.R. part 23.

If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at [crcomplaints@treasury.gov](mailto:crcomplaints@treasury.gov).

PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

(FORM CONTINUES ON NEXT PAGE)



**Applicants are encouraged to answer all of the questions below.**

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

<b>1. Minority-owned or controlled business status</b>			
For purposes of this form, <u>minority individual</u> means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups.			
For purposes of this form, an applicant is a <u>minority-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by minority individuals; (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or (4) one or more minority individuals have the power to exercise a controlling influence over the business.			
<b>Is the applicant a minority-owned or controlled business?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
<b>2. Women-owned or controlled business status</b>			
For purposes of this form, an applicant is a <u>women-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by females; (2) if publicly owned, 51 percent or more of the stock is owned by females; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or (4) one or more individuals who are females have the power to exercise a controlling influence over the business.			
<b>Is the applicant a women-owned or controlled business?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
<b>3. Veteran-owned or controlled business status</b>			
For purposes of this form, an applicant is a <u>veteran-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by veterans; (2) if publicly owned, 51 percent or more of the stock is owned by veterans; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.			
<b>Is the applicant a veteran-owned or controlled business?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond

**Each principal owner of the applicant is encouraged to answer the questions below.**

This information is being collected to help ensure that communities’ small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

For purposes of this form, a principal owner of the applicant is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the applicant, indicate which of the following categories the principal owner identifies with. Submit a separate copy of this table for each principal owner of the applicant (up to four).

<b>1. Ethnicity</b> <input type="checkbox"/> Hispanic or Latino/a <input type="checkbox"/> Prefer not to respond		<input type="checkbox"/> Not Hispanic or Latino/a			
<b>2. Race (select all that apply)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Asian (Other)				<input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Samoan <input type="checkbox"/> Pacific Islander (Other) <input type="checkbox"/> White <input type="checkbox"/> Prefer not to respond	
<b>3. Middle Eastern or North African Ancestry</b> <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Prefer not to respond				<input type="checkbox"/> Not Middle Eastern or North African	
<b>4. Gender</b> <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Nonbinary <input type="checkbox"/> Prefer to self-describe: _____		<b>5. Sexual Orientation</b> <input type="checkbox"/> Gay or lesbian <input type="checkbox"/> Bisexual <input type="checkbox"/> Straight, that is, not gay, lesbian, or bisexual <input type="checkbox"/> Something else <input type="checkbox"/> Prefer not to respond			
<b>6. Veteran Status</b> <input type="checkbox"/> Veteran <input type="checkbox"/> Prefer not to respond		<input type="checkbox"/> Non-veteran			

## SSBCI Privacy Notice and Privacy Act Statement

### **Privacy Notice:**

Information from this collection will be shared with the U.S. Department of the Treasury (Treasury). Treasury has published a Privacy and Civil Liberties Impact Assessment that describes what Treasury will do with the information your business provides in this application. It can be found on the Treasury [website](#). If you have any questions about this document, please email [Privacy@Treasury.gov](mailto:Privacy@Treasury.gov).

### **Privacy Act Statement for Sole Proprietorships:**

The Privacy Act of 1974 (Privacy Act) protects certain information that the federal government has about "individuals" (United States citizens and lawfully admitted permanent residents). The Privacy Act does not generally apply to businesses, but some federal courts have found that this law applies to sole proprietors (they are deemed "individuals" under the Privacy Act). If you, as the applicant, are a sole proprietor, you may have rights under the Privacy Act.

Authority: Small Business Jobs Act of 2010 (SBJA), Title III, 12 U.S.C. § 5701 et seq., *as amended by* the American Rescue Plan Act of 2021 (ARPA), section 3301; Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 25, 2021); and Interim Final Rule, State Small Business Credit Initiative; Demographics-Related Reporting Requirements, 87 Fed. Reg. 13628 (March 10, 2022).

Purpose: Information from this collection will be shared with Treasury. This information will be shared with Treasury so it can conduct oversight to ensure compliance with federal law, including requirements related to nondiscrimination and nondiscriminatory uses of federal funds. Treasury also receives this information (including any demographic information provided) to comply with reporting requirements under the authorities listed above and to advance fairness and opportunity in underserved communities in the allocation of federal resources.

Routine Uses: The information you furnish may be shared in accordance with the routine uses outlined in Treasury .013, Department of the Treasury Civil Rights Complaints and Compliance Review Files; Treasury .015, General Information Technology Access Account Records; and Treasury .017, Correspondence and Contact Information. For example, one routine use under Treasury .013 is to disclose pertinent information to appropriate agencies when Treasury becomes aware of a potential violation of civil or criminal law. Under this routine use, Treasury may disclose demographic information to the appropriate agencies if Treasury becomes aware of a violation of applicable antidiscrimination laws. More information about this and other routine uses can be found in the System of Records Notices (SORNs) listed above, which are posted on Treasury's [website](#).

Disclosure: Providing this information is voluntary. However, failure to furnish the requested information (except for the demographic information) may result in the denial of your application. Providing demographic information is optional. If you decline to provide this information, it will not adversely affect your application.