



*Memorandum*

To: Members of the NMFA Oversight Committee  
From: Marquita D. Russel, CEO  
Re: Approval of Rules Governing the Administration of a Capital Access Program Pursuant to the Federal State Small Business Credit Initiative

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**Item:**

Recommendation to approve Rules Governing the Administration of a Capital Access Program Pursuant to the State Small Business Credit Initiative (“SSBCI”) Established under the Federal Small Business Jobs Act of 2010 and amended by the American Rescue Plan Act (“ARPA”).

**Background on SWEDFA and SSBCI:**

Enacted in 2003, the Statewide Economic Development Finance Act (“SWEDFA”) established the Economic Development Revolving Fund (“EDRF”) and authorized the NMFA to issue bonds, make loans, and provide loan and bond guarantees for non-profit and for-profit entities from the EDRF. Similar to the NMFA Act, SWEDFA requires that rules governing authorized programs be approved by the NMFA Oversight Committee and NMFA Board of Directors.

The federal State Small Business Credit Initiative (“SSBCI”) was established in 2010 to help increase the flow of capital to small businesses. Congress recently reauthorized and expanded SSBCI through ARPA (“SSBCI 2.0”) and provided \$10 billion to states to support small businesses and technical assistance as the country emerges from the pandemic.

In early 2022 the New Mexico Economic Development Department (“NMEDD”) applied to the US Department of Treasury (“Treasury”) for the State’s allotment of SSBCI 2.0 for two specific programs: venture capital/equity fund program and a collateral assistance program, with initial targets of \$65.4 million and \$9 million, respectively. On September 1, 2022, NMEDD entered into an Allocation Agreement with Treasury for a total potential allocation of \$74.4 million to be disbursed in three tranches based upon performance.

In May 2023, NMFA Board of Directors approved a Memorandum of Agreement with NMEDD to manage the venture capital portion of the allocation. Given additional capital available at NMFA for alternative venture capital investments, NMEDD and NMFA have agreed to collaborate on a revised application to Treasury to reallocate approximately \$50 million in SSBCI 2.0 funding to other eligible credit support programs to be administered by NMFA.



The attached rules were presented to the Board at its September 2023 Board meeting. The Rules have been updated to:

- Change the maximum amount of participation per borrower to \$1.5 million (from the SSBCI program maximum of \$5 million) and to clarify the maximum NMFA contribution is therefore \$105,000 per loan
- Reflect the addition of a Deposit Account to be created at each PFI which will allow for efficient transfer of funds as loans are enrolled
- clarify how interest earnings in the Deposit Account and Loan Loss Reserve Account will be credited and to outline the transfer of the interest earnings quarterly to the NMFA
- allow NMFA to limit a PFI's participation in the program based upon capacity of the PFI
- provide that certain terms will be determined in policy
- provide clarity on how excess claims will be determined
- provide for required reporting

**Recommendation:**

The Rules were presented to the NMFA Board at its October meeting. Staff recommends the approval of the attached Rules Governing the Administration of a Capital Access Program.



## **Establishment of a Capital Access Program**

The Capital Access Program is an economic development tool that provides small businesses with needed financing to expand their businesses, to make facility and technology upgrades, and for working capital when previously they could not get financing. The program helps mitigate losses on small loans by building loan loss reserve account at each participating financial institution (“PFI”). The loan loss reserve account accumulates funds on a loan-by-loan basis with the SSBCI money matching contributions made by the lender and borrower, with a total minimum contribution of 2% and a total maximum contribution of 14%. The loan loss reserve fund increases with each loan enrolled and the balance can be used to reimburse losses on any enrolled loan that defaults.

An NMFA-sponsored capital landscape report found that one of the greatest unmet capital needs for small businesses in New Mexico is for loans between \$100,000 and \$250,000 as these were larger than most microlenders were able to support and smaller than many banks are able to provide. Of the eligible SSBCI programs, the Capital Access Program has the greatest potential to serve these needs in New Mexico. The Department of Treasury has reported that the Capital Access Program was effective in the first SSBCI program in supporting loans to smaller businesses. Key to the program’s success was an efficient process and minimal documentation while providing sufficient risk mitigation to increase loans to these targeted businesses.

NMFA is proposing a structure based upon Texas’ program that requires the return of capital at the end of the program. Many states allow participating lenders to keep the contributed capital and its interest earnings, however NMFA’s program will require NMFA’s capital to earn interest and to have the interest earnings distributed to NMFA during the life of the investment.

## **Highlights of the Capital Access Program:**

- Banks, Credit Unions and Community Development Financial Institutions (CDFI) may apply to NMFA to become a Participating Financial Institution (PFI) under the program. The Rules provide that NMFA will impose for each PFI a maximum amount of participation based upon NMFA’s assessment of a financial institution’s:
  - Financial strength
  - Loan underwriting capabilities, including staffing and geographic coverage of the underwriting team
  - Alignment with SSBCI objectives
  - Anticipated loan volumes for eligible loans
  - Loan servicing, monitoring and operational back-office capabilities



- Once approved, NMFA and the PFI will enter into a Lender Agreement which outlines the terms of the programs and the maximum amount of Program participation in a PFI's Loan Loss Reserve.
- Upon the execution of the Lender Agreement, NMFA will create a separate Deposit Account at each PFI or, in the case of a CDFI at a financial institution selected by NMFA, where NMFA will hold deposits made in advance of the PFI enrolling loans. NMFA will make initial deposit determined by NMFA and detailed in the Agreement, but in no event greater than \$500,000. Subsequent deposits shall be made at the NMFA's sole discretion and upon the PFI meeting Program objectives, monitoring and reporting requirements as required by NMFA.
- PFIs will originate and underwrite loans as they otherwise would, subject to certain federal limits, and will request permission to enroll loans. NMFA will ensure the proposed loan and borrower meet the terms of the program and will authorize the enrollment of the loan and the transfer of the requisite funds from the Deposit Account to the Loan Loss Reserve Account.
- Each Borrower and PFI must pay into the PFI's Loan Loss Reserve Account a total amount not to exceed 7% of the principal amount of the Enrolled Loan to be covered by the respective Loan Loss Reserve Account, with a minimum borrower contribution of .5% and a maximum borrower contribution of 3.5%. The bank contribution must not be less than the borrower's contribution. NMFA will match 1:1 the total contribution using the federal Capital Access Funds, not to exceed 7%.
- PFIs will report quarterly on the performance of the Enrolled Loans. PFIs will report at least annually on the businesses supported by Enrolled Loans.
- Loan requirements and conditions include, but are not limited to:
  - Loan enrollment must cover the entire amount of the loan, with a minimum of \$10,000 and a maximum of \$1.5 million
  - A borrower may not have more than an aggregate of \$1.5 million in outstanding principal in enrolled loans at one or more PFIs
  - Interest rate may not exceed the National Credit Union Administration's ("NCUA") interest rate ceiling for loans made by federal credit union and set by the NCUA Board (SSBCI requirement)
  - Loan may not include up-front fees (application, origination and/or documentation fees) in excess of \$750 for loans less than \$25,000 or #% for loans \$25,000 or greater (SSBCI requirement)



- Borrower may not be an officer, director or principal of the PFI or a member of the immediate family of such a person
- At the time of loan obligation, borrower is not delinquent in any taxes owed the State and is in good standing with the Secretary of State
- Loan may not be used for
- Refinancing a loan that is not an enrolled loan
- Passive real estate
- Purchase of owner-occupied housing or construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower
- Non-owner occupied operations
- Purchase of real property that is intended for resale and not used for the business operations of the Borrowers

The attached rules have been refined to reflect a program that balances operational efficiency and mission impact. Specifically the rules:

- Incorporate SSBCI guidelines and restrictions
- Delineate program application procedures
- Provide that two accounts are created by NMFA; assets are owned and controlled by NMFA and stay on NMFA's books
  - Deposit Account which will hold initial deposits in advance of loans being enrolled
  - Loan Loss Reserve Account which holds the borrower contribution and matching contributions from lender and NMFA
- Establish procedures for enrolling Qualified Loans
- Provide that loans may range from \$10,000 to \$1.5 million
- Provide that a Borrower may not have more than \$1.5 million in total enrolled loans
- Set out procedures for making a claim for reimbursement of a charged off enrolled loans
- Establish procedures for payment of claims by NMFA and recovery on loans post-NMFA claim payment
- Provide for voluntary and involuntary withdrawals from the Program

RULES  
GOVERNING THE NEW MEXICO FINANCE AUTHORITY  
ADMINISTRATION OF  
THE CAPITAL ACCESS PROGRAM (CAP)  
UNDER THE STATE SMALL BUSINESS CREDIT INITIATIVE (SSBCI)  
ESTABLISHED UNDER THE FEDERAL SMALL BUSINESS JOBS ACT OF 2010,  
AS AMENDED BY THE AMERICAN RESCUE PLAN ACT OF 2021  
AS  
ADOPTED  
ON \_\_\_\_\_  
BY THE  
BOARD OF DIRECTORS  
OF THE  
NEW MEXICO FINANCE AUTHORITY  
AND APPROVED BY THE  
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE  
ON  
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## **SECTION 1. MISSIONS AND GOALS.**

These Rules governing the New Mexico Finance Authority (as further defined below, “NMFA”) administration of the Capital Access Program (“CAP”) under the State Small Business Credit Initiative Act (as further defined below, “SSBCI”) (hereafter, the “Rules”) are adopted by the NMFA pursuant to the Statewide Economic Development Finance Act, NMSA 1978, Sections 6-25-1 to -28, and SSBCI.

SSBCI provides funds and authorization pursuant to a federal program administered by the United States Department of the Treasury (the “Treasury Department”) to expand access to capital, promote income resiliency, jobs and increase economic opportunity while focusing on expanding opportunities in underserved communities lacking capital and building financing ecosystems that support entrepreneurs and small businesses. The State of New Mexico through the New Mexico Economic Development Department (“NMEDD”) submitted an application to the Treasury Department and received a total allocation of seventy-four million, four hundred eighty-eight thousand eight hundred and five dollars (\$74,488,805) from the American Rescue Plan Act of 2021 (“ARPA”) codified at 2 U.S.C. § 5701 et seq, from its SSBCI funding.

The NMEDD and the Treasury Department have entered into that certain Allocation Agreement dated September 8, 2022 and amended on August 25, 2023 (as further defined below and as amended or supplemented, the “Allocation Agreement”). As memorialized in the Allocation Agreement, the Treasury Department has allocated up to \$74,488,805 under SSBCI to the State where the NMEDD shall act as the Implementing Entity and NMFA as a Contracted Entity. Pursuant to the Memorandum of Agreement dated June 15, 2023 between NMEDD and NMFA, the NMFA shall administer the New Mexico Growth Fund (as established by the NMEDD) through the development of programs to carry out the SSBCI assistance provisions of ARPA (as defined below), through funding opportunities for applicants in accordance with these Rules, particularly for projects serving historically underserved communities, populations, and business owners as determined jointly by NMFA and NMEDD and articulated in Policies adopted by NMFA.

SSBCI gives NMEDD and NMFA the opportunity to build upon or create successful models for state small business programs for the purpose of stimulating economic development in New Mexico including CAP and Other Credit Support Programs (“OCSP”) which may include collateral support programs, loan participation programs, loan guarantor programs and equity/venture capital programs. These Rules govern the SSBCI Capital Access Program and do not apply to other programs established by the NMFA.

## SECTION 2. DEFINITIONS.

The following words and terms, when used in these Rules shall have the following meaning, unless the context clearly indicates otherwise:

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

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

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

D. “Board” means the NMFA Board of Directors;

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

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

G. “Eligibility Requirements” means those certain criteria in the Policies for the SSBCI Cap Program approved by the Board and made available by the NMFA;

H. “Enrolled Loan” means a Qualified Loan enrolled in the Program;

I. “Financial Institution” means an insured depository institution (including depository CDFIs), federally insured credit union (including CDFI credit unions), or Community Development Financial Institutions (excluding insured depositories and credit unions), as each of those terms is defined in 12 U.S.C. § 4702;

J. “Fund” means the SSBCI Cap Program subaccount in the Economic Development Revolving Fund;

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

L. “Loss” means any principal amount due and not paid and not more than the enrolled amount of the Qualified Loan plus reasonable out-of-pocket expenses. In the event



only a portion of a Qualified Loan was enrolled, the NMFA limits reimbursement of out-of-pocket expenses to the ratio of the enrolled portion to the total loan amount;

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

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

O. “OCSP” means the Other Credit Support Programs as provided in the SSBCI;

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

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

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

S. “Principal of a PFI ” means:

1. if a sole proprietorship, the proprietor;
2. if a partnership, each partner; and
3. if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity;

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

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

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

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

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

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

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

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

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

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

CC. “Very Small Business” or (“VSB”) means a Small Business that employs fewer than 10 employees.

### **SECTION 3. PROGRAM APPLICATION PROCEDURE.**

A. A Financial Institution seeking to participate in the Program must submit a completed application to the NMFA using forms provided by the NMFA. Application forms will request information the NMFA will utilize to assess the Financial Institution’s:

1. financial strength;
2. loan underwriting capabilities including staffing and geographic coverage of underwriting team;

3. alignment with Program objectives particularly with respect to SEDI persons and/or SEDI owned or controlled businesses and VSB's;
4. anticipated loan volumes that may be eligible to enroll in the Program;
5. loan servicing, monitoring and operational back-office capabilities.

B. Upon request, a Financial Institution must provide any additional information the NMFA determines is necessary on or before the fifth business day after the Financial Institution receives the request for information from the NMFA. The NMFA may reject an application if a Financial Institution fails to provide the additional information requested under this Subsection.

C. The NMFA shall determine the Financial Institution's eligibility to participate in the Program based on the application submitted under Subsection B of this Section and any other information the NMFA determines is necessary and requests pursuant to Subsection B of this Section. The NMFA has no obligation to authorize a Financial Institution's participation in the Program.

D. A Financial Institution the NMFA determines is eligible to participate in the Program must enter into an Agreement with the NMFA in a form approved by the NMFA and as set forth in Section 4, below. Otherwise-eligible Financial Institutions that have not entered an Agreement with the NMFA in a form approved by the NMFA shall not participate in the Program.

E. The NMFA will limit PFI to a maximum limit in their respective Loan Loss Reserve Account based on the Financial Institution's financial strength, underwriting capabilities and alignment with the objectives of the Program as assessed during the application process. Limits will be detailed in the Agreement between the PFI and NMFA.

#### **SECTION 4. AGREEMENT.**

To participate in the Program, a Financial Institution must enter an Agreement with the NMFA in a form approved by the NMFA that includes, but is not limited to, all lender assurances, permitted uses, restrictions, monitoring and reporting requirements under SSBCI and parameters for the establishment, maintenance and closure of the Loan Loss Reserve Account.

#### **SECTION 5. ESTABLISHMENT OF A DEPOSIT ACCOUNT AND A LOAN LOSS RESERVE ACCOUNT.**

A. After entering an Agreement with the PFI, NMFA shall establish a Deposit Account to hold SSBCI funds in advance of transferring funds SSBCI contributions to the Loan Loss Reserve Account.

B. Each Deposit Account shall be:

1. a restricted account solely for the purpose of holding deposits from NMFA that may be drawn as matching premium payment contributions on Enrolled Loans; and
2. established in a money market fund in a Financial Institution and at an interest rate as specified in its Agreement; and
3. capitalized by NMFA with an initial deposit determined by NMFA and detailed in the Agreement, but in no event greater than \$500,000. Subsequent deposits shall be made at the NMFA's sole discretion and upon the PFI meeting Program objectives, monitoring and reporting requirements as required by NMFA.

C. After entering an Agreement with the PFI, NMFA shall establish an account at a Financial Institution that will serve as a Loan Loss Reserve Account to receive the premium payments described in Section 9 of these Rules from the Borrower and the PFI for each Enrolled Loan, and the NMFA's matching contribution as described in Section 11 of these Rules.

D. Each Loan Loss Reserve Account shall be:

1. a restricted account solely for the purpose of collecting premium payments from the Borrower, PFI and NMFA on Enrolled Loans in the Program and interest income on the account balance; and
2. used by the PFI only to cover Losses arising from a charge off of an Enrolled Loan as provided by its Agreement as authorized by NMFA; and
3. established in a money market fund in a Financial Institution and at an interest rate as specified in its Agreement.

## **SECTION 6. OWNERSHIP, CONTROL, INVESTMENT OF DEPOSIT ACCOUNT AND LOAN LOSS RESERVE ACCOUNT.**

A. All money in the Deposit Account and Loan Loss Reserve Account established under the Program is property of the State.

B. The State is entitled to all interest income earned on the total deposits made by NMFA to the Deposit Account and fifty percent of the total contributions made by the NMFA, each Borrower and each PFI to the Loan Loss Reserve Account.

C. In accordance with each Agreement, the NMFA may quarterly withdraw interest income earned from funds in the Deposit Account and in the Loan Loss Reserve Account.

D. The NMFA may withdraw from a PFI's Loan Loss Reserve Account all interest earned in the Loan Loss Reserve Account and all contributions made by the NMFA to the Loan Loss Reserve Account that relate to an Enrolled Loan if the NMFA discovers, after enrollment, that the Enrolled Loan involves a Borrower whose business activities violate or are contrary to the Eligibility Requirements or State or federal law or policies.

E. NMFA will withdraw all remaining balances in the Deposit Account and Loan Loss Reserve Account upon the Program's termination and as further detailed in the Agreement.

## **SECTION 7. QUALIFIED LOAN ELIGIBILITY AND APPROVAL.**

A PFI may request to enroll a Qualified Loan under the Program if the PFI determines the Qualified Loan:

- A. Is for an amount equal to or between \$10,000 and \$1,500,000;
- B. is compliant with minimum national customer protection standards as outlined under SSSBCI including but not limited to:
  - 1. at an interest rate that does not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions and set by the NCUA board.
  - 2. does not include confessions of judgment, double-dipping of fees or up-front fees including application, origination and documentation preparation fees in excess of \$750 for loans less than \$25,000 or 3% for loans \$25,000 or greater;
- C. Is provided to a Borrower who is not an executive officer, director, or Principal of the PFI, or person with comparable capacity with or significant ownership in the PFI, or a member of the immediate family of such a person;
- D. Is not for a business enterprise in which a person described in Subsection B of this Section has a shared ownership, investment, or other significant pecuniary interest;
- E. Is being provided to a Borrower that is a Small Business that:
  - 1. is not engaged in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade unless those activities are incidental to the regular activities of the business and are part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;
  - 2. does not earn more than half of its annual net revenue from lending activities unless the Borrower is a Community Development Financial Institution that is not a

depository institution or a bank holding company or a tribal enterprise lender that is not a depository institution or a bank holding company;

3. is not engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

4. is not engaged in activities that are prohibited by state law, federal law, or other applicable laws in the jurisdiction where the business is located or conducted;

5. at the time of loan obligation, is not delinquent in any taxes owed the State, and is in good standing with the State Secretary of State; and

6. does not derive any of its gross annual revenue from gambling activities; and

F. The Borrower and the Qualified Loan both otherwise meet the criteria established in the Act, the SSBCI Guidelines and Program Policies.

## **SECTION 8. ELIGIBLE AND RESTRICTED USES OF PROGRAM LOAN PROCEEDS.**

A. Borrowers must use loan proceeds for a business purpose and in a manner consistent with the Eligibility Requirements. Business purposes include, but are not limited to:

1. start-up costs;
2. working capital;
3. franchise fees; and

4. 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.

B. Enrolled Loan proceeds shall not be used for any purpose prohibited under the Eligibility Requirements nor for:

1. acquiring or holding passive investments in real estate;
2. the purchase of owner-occupied residential housing;

3. the construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower;

4. the purchase of real property that is intended for resale or not used for the business operations of the Borrower;

5. refinancing the balance of an existing loan that is not an Enrolled Loan, but the portion of the loan that is in excess of the balance of an existing loan that is not an Enrolled Loan may be eligible for enrollment if it otherwise meets the Eligibility Requirements and the requirements of Section 7 of these Rules;

6. the purchase of securities;

7. lobbying activities;

8. the purchase of good will;

9. inside bank transactions;

10. repayment of delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority with respect to such delinquent taxes;

11. repayment of taxes held in trust or escrow;

12. reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

13. purchase of any portion of the ownership interest of any owner of the Borrower, such as the acquisition of shares or member interests of a company or the partnership interest of a partner when the proceeds of the Enrolled Loan will go to any existing owner or partner of the Borrower;

14. refinance any portion of a loan enrolled in another state or federal credit enhancement or credit insurance program;

15. a loan in which any Principal of a Borrower has been convicted of a sex offense against a minor as such terms are defined under 34 U.S.C. 20911; or

16. a loan that is contrary to federal or State law or policy.

17. any additional prohibited uses in the SSBCI Capital Program Policy Guidelines as amended.

## **SECTION 9. CONTRIBUTIONS TO LOAN LOSS RESERVE ACCOUNT.**

A. When making a Qualified Loan for which a PFI will seek enrollment under the Program, the PFI must require the Borrower to pay a premium payment that is at least 0.5 percent but not more than 3.5 percent of the principal amount of the Qualified Loan as further delineated in the Program Policies. SEDI-owned businesses and VSBs may have premium requirements that are lower than premium requirements for Borrowers that do not meet the definitions of a SEDI-owned business or VSB.

B. The PFI must submit a premium payment at least equal to the premium payment made by the Borrower under this Section. The PFI may not charge the Borrower a fee to recover its contribution under this Subsection.

C. The PFI shall deposit the premiums specified in Subsections A and B of this Section in the respective Loan Loss Reserve Account created under Section 5 of these Rules.

D. If a Qualified Loan is enrolled, the premiums specified under Subsection A of this Section are nonrefundable.

E. Notwithstanding Subsection D of this Section, if a Qualified Loan is not enrolled under this Section or is unenrolled because the NMFA determines, in its sole discretion, that the loan in question is not eligible for the Program, the NMFA shall refund the Borrower and PFI premiums deposited under this Section to the requesting Qualified Business and PFI as soon as practicable.

## **SECTION 10. PROCEDURE FOR ENROLLMENT OF A QUALIFIED LOAN.**

A. A PFI may enroll a Qualified Loan by:

1. submitting a Qualified Loan enrollment application as specified in its respective Agreement;
2. making required certifications as to the eligibility of the Qualified Loan with respect to the Eligibility Requirements, its respective Agreement, and Sections 7 and 8 of these Rules; and
3. providing documentation to the NMFA establishing that the premiums required by Section 9 of these Rules have been deposited in the respective Loan Loss Reserve Account.

B. The NMFA shall notify a PFI of any deficiencies in an enrollment application submitted under Subsection A.1 of this Section. The PFI may amend the form to resolve any deficiencies or withdraw the Qualified Loan in question from consideration under the Program.



If the PFI fails to cure the deficiencies in the enrollment form, the NMFA may reject the enrollment of the Qualified Loan in question. The NMFA has sole discretion in determining whether a PFI has failed to cure deficiencies.

C. Upon receipt of documentation satisfying the requirements in Subsection A of this Section and the resolution of any deficiencies noted under Subsection B of this Section, the NMFA may enroll the Qualified Loan if:

1. the NMFA is satisfied the Qualified Loan is eligible to be enrolled under these Rules, including Sections 7 and 8;

2. based on the information provided at the time the PFI requests the Qualified Loan's enrollment, the NMFA is satisfied the Qualified Loan does not violate predatory lending laws or other state or federal laws, policies, regulations, or guidance;

3. sufficient funds are available from the Deposit Account to meet the NMFA's contribution obligations under Section 11 of these Rules;

4. enrollment would not result in the Qualified Business having more than \$1,500,000 in one or more active Enrolled Loans in the Program, as determined by the NMFA in its sole discretion;

5. enrollment would not result in a single loan being enrolled in more than one approved program associated with the SSBCI at the same time, as determined by the NMFA in its sole discretion; and

6. the NMFA, in its sole discretion, has not otherwise determined the Qualified Loan in question may not be enrolled.

D. The NMFA shall, within a reasonable time after receipt of the information required by this Section, notify the PFI whether the Qualified Loan in question is enrolled.

E. After notifying the PFI that the Qualified Loan has been approved for enrollment, the NMFA shall transfer from the Deposit Account to the respective Loan Loss Reserve Account a contribution detailed in Section 11 of these Rules.

F. Notwithstanding any provision to the contrary, the NMFA shall unenroll any loan it determines, in its sole discretion, was enrolled in error because such loan did not meet the requirements of these Rules, the PFI failed to disclose a material fact or factor about the nature or purpose of such loan in its request to enroll such loan, if the nature of use of such loan changed after enrollment, or other good cause.

G. Without regard to the terms of the Qualified Loan, the term of enrollment in the Program shall not exceed the Program termination date.

#### **SECTION 11. STATE CONTRIBUTIONS TO LOAN LOSS RESERVE ACCOUNT.**

A. Subject to Subsections B and C of this Section, for each Enrolled Loan, the NMFA shall transfer from the Deposit Account into its respective Loan Loss Reserve Account an amount equal to the premiums deposited into that Loan Loss Reserve Account by the respective PFI and Borrower under Section 9 of these Rules, but in no event shall the PFI deposit into such Loan Loss Reserve Account more than 7 percent of the respective Enrolled Loan.

B. The NMFA shall not deposit the amount specified in Subsection A of this Section if:

1. the Deposit Account does not contain an amount of money greater than or equal to the contribution;

2. the amount of money in the respective Loan Loss Reserve Account is greater than or equal to 100 percent of the aggregate amount of outstanding principal on all Enrolled Loans;

3. the contribution for the Enrolled Loan would be more than \$105,000; or

4. the contribution would not result in more than a total of \$1,500,000 from the Deposit Account to be contributed to the respective Loan Loss Reserve Account for a single Qualified Business during any 3-year period.

C. Upon opening each Deposit Account, the NMFA shall make an initial deposit from the Fund and will be credited for this initial deposit. Notwithstanding any provision to the contrary, the NMFA shall make additional deposits into the Deposit Account at its sole discretion.

#### **SECTION 12. PROCEDURE FOR MAKING A CLAIM FOR REIMBURSEMENT FOR CHARGING OFF OF AN ENROLLED LOAN.**

A. If a PFI charges off all or part of an Enrolled Loan because of a default by the Borrower, the PFI may claim reimbursement for all or part of the Loss incurred by requesting reimbursement for the charged off Enrolled Loan as provided in its respective Agreement. The NMFA may notify the PFI of any deficiencies in the PFI's claim for reimbursement.

B. The PFI must make the claim:

1. only after exercising due care and diligent efforts to liquidate the Enrolled Loan collateral, collect on the personal or other financial guarantees, or otherwise recover on the Enrolled Loan;
2. on or before the 180th day after charging off the Enrolled Loan; and
3. not before the first anniversary of the PFI's enrollment of the Enrolled Loan in the Program.

C. Subject to Subsection B.1 of this Section, a PFI may make a claim for reimbursement of a Loss prior to the liquidation of collateral, collection on personal or other financial guarantees, or otherwise recovering on the Enrolled Loan.

D. Notwithstanding Subsection B.2 of this Section, the NMFA may authorize the PFI to submit a claim after the 180th day after charging off the Enrolled Loan if, in the NMFA's sole discretion:

1. the PFI demonstrates it has consistently and actively undertaken activities to recover on the Enrolled Loan; or
2. shows other good cause.

E. The PFI shall retain documentation in its files substantiating all claims for a term commensurate with standard banking records retention practices but not less than 7 years after the date that the Enrolled Loan is terminated, either by repayment or the collection of the PFI's claim from the Loan Loss Reserve Account.

### **SECTION 13. PAYMENT OF CLAIMS BY THE NMFA.**

A. Subject to Subsection B of this Section, and in accordance with each respective Agreement, the NMFA shall reimburse a PFI for Losses claimed under the procedure described in Section 12 of these Rules.

B. The NMFA may reject a claim in full or in part if:

1. The NMFA, in its sole discretion, determines:
  - a. the representations and warranties provided by the PFI in the Agreement were false;
  - b. the representations and warranties provided by the PFI at the time of enrolling the Qualified Loan were misleading or false;

2. the PFI did not exercise due care and diligent efforts to liquidate the Enrolled Loan collateral, collect on the personal or other financial guarantees, or otherwise recover on the Enrolled Loan;

a. the documentation provided by the PFI does not substantiate the claim;

b. reimbursing the claim would violate state or federal law or policy;

c. other good cause exists or

3. the PFI:

a. fails to submit required information or documentation within the time period specified by the NMFA in the NMFA's notice of deficiency sent to the PFI; or

b. seeks reimbursement of more than the Loss, in which case the NMFA shall reimburse no more than the amount of the Loss.

C. If the respective Loan Loss Reserve Account does not contain sufficient funds to cover the total amount of a Loss claim, the NMFA shall pay an amount up to the available balance of that Loan Loss Reserve Account, less the interest earned on the account. This payment shall fully satisfy the claim and the PFI shall have no further right to receive any other amount with respect to such claim.

D. The NMFA shall review Loss claims in the order in which the NMFA receives them.

#### **SECTION 14. RECOVERIES ON LOANS SUBSEQUENT TO PAYMENT OF A CLAIM.**

If the PFI recovers on a debt from a Borrower after the NMFA reimburses a Loss pursuant to Section 13 of these Rules, the PFI shall promptly repay into the respective Loan Loss Reserve Account the amount the PFI recovered, not to exceed the amount of the reimbursement.

#### **SECTION 15. WITHDRAWAL FROM THE PROGRAM; TERMINATION OF PARTICIPATION IN THE PROGRAM.**

A. The NMFA may terminate enrollment of Qualified Loans under the Program:

1. on the date specified in the NMFA's notice of termination to the PFI; or

2. upon 90 days' notice, or an earlier date if the balance in the Fund reaches zero or the NMFA anticipates that the balance in the Fund will reach zero.

B. If the respective Loan Loss Reserve Account has a zero balance, the NMFA, in its sole discretion, may terminate any Agreement.

C. A PFI may withdraw from the Program after giving written notice to the NMFA. After receipt of this notice, the NMFA shall withdraw from the respective Loan Loss Reserve Account the portion of any remaining balance attributable to that PFI's contributions into that Loan Loss Reserve Account.

#### **SECTION 16. EXCESSIVE ANNUAL CLAIMS RATE BY A PARTICIPATING FINANCIAL INSTITUTION.**

A. The NMFA may disallow a PFI from enrolling any additional Qualified Loans if the PFI demonstrates a default rate exceeding six (6) percent on its pool of Qualified Loans, or if the NMFA determines, in its sole discretion, that the PFI's practices do not meet Program standards or monitoring requirements.

B. The default rate of a PFI on Qualified Loans shall be calculated based on the PFIs total realized and anticipated losses on the pool of Enrolled Loans in the Program and as further detailed in the Agreement.

#### **SECTION 17. INSPECTION OF FILES.**

Upon reasonable notice to the PFI, the NMFA may inspect a PFI's files relating to Enrolled Loans at any time during normal business hours.

#### **SECTION 18. REPORTS TO THE NMFA.**

A. Each PFI shall provide quarterly and annual reports to the NMFA in accordance with that PFI's Agreement. Required reporting information will include loan sizes, types, uses of funds, borrower name and location, SEDI and VSB characteristics and repayment and delinquency status. The NMFA reserves the right to request additional information on any Enrolled Loan. Each PFI will be required to provide information sufficient to meet all federal compliance and reporting requirements of SSBCI.

B. The NMFA may suspend enrollment of future loans of a PFI that fails to comply with the reporting requirements prescribed in that PFI's Agreement or this Section.

#### **SECTION 19. ADMINISTRATIVE COSTS OF THE PROGRAM.**

The NMFA may charge actual and necessary administrative expenses in operating the Program to the Fund.

## **SECTION 20. ADMINISTRATION OF THE SSBCI ALLOCATION; OTHER FUNDS; REPORTING.**

A. Each Loan Loss Reserve Account shall be administered by the NMFA as a separate account but may consist of such subaccounts as the NMFA deems necessary to carry out the purposes of the Program.

B. Money from repayments of Loan Loss Reserve Account disbursements shall be deposited in that Loan Loss Reserve Account.

C. The NMFA shall establish additional funds and accounts as necessary to implement the Program.

D. The NMFA shall adopt a uniform accounting system for each Loan Loss Reserve Account and each other fund and account established by the NMFA, based on generally accepted accounting principles. Each Loan Loss Reserve Account shall be accounted for in compliance with the requirements of the Allocation Agreement.

E. The NMFA shall comply with the reporting requirements of the Allocation Agreement for the Treasury Department and all loan documents for an Enrolled Loan shall require Borrowers and PFI to provide NMFA with all information necessary to comply with the Treasury Department requirements.

## **SECTION 21. PREVAILING PROVISIONS.**

To the extent that the provisions of any of these Rules conflict with the terms of the SSBCI, the Allocation Agreement, or the Act, the terms of the SSBCI, the Allocation Agreement, or the Act, in that order of priority, shall prevail and control. In the event of a conflict between the terms of SSBCI, the Allocation Agreement, or the Act, the NMFA shall apply to the Treasury Department or the State Attorney General for guidance. In the event that any of the provisions of the foregoing Rules are provisions of the SSBCI that have been incorporated herein, whether such incorporation is expressly noted or not, in the event that the SSBCI is amended, such amendments shall automatically be deemed to be incorporated herein.

## **SECTION 22. AMENDMENT OF RULES**

These Rules may be repealed at any time by the NMFA and may be amended with the prior approval of the Oversight Committee.