

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220



TO: [redacted], Office of Information and Regulatory Affairs

FROM: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records

SUBJECT: Justification for Emergency Processing: Interim Final Rule and Capital Program Reporting Guidance for the State Small Business Credit Initiative (SSBCI)

Pursuant to the Office of Management and Budget (OMB) procedures established at 5 C.F.R. § 1320.13, the Department of the Treasury (Treasury) requests emergency processing of the following new information collection request for the State Small Business Credit Initiative (SSBCI).

Description of New Information Collection

The American Rescue Plan Act of 2021 (ARPA) amended the Small Business Jobs Act of 2010 (SBJA) to reauthorize and provide \$10 billion to fund the SSBCI as a response to the economic effects of the COVID-19 pandemic.¹ SSBCI is a federal program administered by Treasury that was created to strengthen and expand the programs of eligible jurisdictions that support private financing to small businesses. Eligible jurisdictions include states, the District of Columbia, territories, Tribal governments, and eligible municipalities. SSBCI is expected to create tens of billions of dollars in lending to, and investments in, small businesses.

The SSBCI statute, 12 U.S.C. § 5706, requires participating jurisdictions to submit to Treasury quarterly and annual reports. These reports must contain certain data elements set forth in § 5706(a) and (b). Treasury also has authority under § 5709 to issue other guidance to establish additional reporting requirements that are necessary to carry out the purposes of SSBCI. Issuing guidance requiring additional reporting requirements enables Treasury to collect not only the quarterly and annual information required under § 5706, but also more detailed information about the participating jurisdictions' SSBCI-supported programs.

The Capital Program Reporting Guidance sets forth the SSBCI reporting requirements for all participating jurisdictions beyond the required demographics-related data elements set forth in the SSBCI interim final rule. Participating jurisdictions must provide quarterly reports and annual reports to Treasury. The quarterly report from a participating jurisdiction must include basic information about the jurisdiction's SSBCI-supported programs and program-level information on the use of the jurisdiction's SSBCI funds. The annual report must include information about the jurisdiction's SSBCI-supported program providers, its SSBCI-supported loans and investments, the specific terms of its SSBCI-supported loans and investments, and the performance of its SSBCI-supported loans and investments.

¹ ARPA sec. 3301, codified at 12 U.S.C. § 5701-10. SSBCI was originally established in Title III of the SBJA.

The interim final rule (IFR) is the underlying legal authority for capital program reporting requirements and forthcoming technical assistance program reporting requirements related to demographics for those who own or control small businesses that participate in an SSBCI capital or technical assistance program. Specifically, each jurisdiction that participates in an SSBCI capital program must provide an annual report to Treasury that includes the following data: demographics-related self-certified socially and economically disadvantaged individual (SEDI)-owned and controlled business status; minority-owned or controlled business status; women-owned or controlled business status; veteran-owned or controlled business status; and the race, ethnicity, gender, and veteran status of principal owners. For the quarterly report from jurisdictions that participate in an SSBCI capital program, Treasury is collecting the total amount of SSBCI funds used in SSBCI-supported loan and investment transactions involving demographics-related self-certified SEDI-owned and controlled businesses. Treasury intends to require jurisdictions that participate in SSBCI technical assistance programs to report similar information.

The mechanics of the data reporting are as follows. SSBCI data reporting requirements are imposed at the level of the participating jurisdiction (i.e., state, the District of Columbia, territory, Tribal government, or municipality). A participating jurisdiction may have a direct capital program, where the jurisdiction itself runs the program and would directly engage in the collection of data for purposes of SSBCI reporting. However, for many programs, participating jurisdictions may work with program providers (i.e., those entities making loans or investments with SSBCI funding) that implement the capital programs in order to collect the data. In these instances, the program provider would request the information that the participating jurisdiction is required to report, through a form that the borrower or investee would be asked to complete at or around the time it applies for a SSBCI-supported loan or investment. Treasury's Capital Program Reporting Guidance would impact the contents contained in such a form. In the scenario where a participating jurisdiction works with a program provider to collect information for reporting, the information collection would flow to Treasury as follows: Borrower or investee → Program provider (e.g., bank) → Participating Jurisdiction → Treasury.

The goal of the Capital Program Reporting Guidance is to provide notice to participating jurisdictions and program providers as to the type of information participating jurisdictions will be required to report to Treasury, and ultimately, the type of information the participating jurisdictions or program providers will need to collect from the small business borrowers or investees who receive SSBCI money. Treasury expects the participating jurisdictions and program providers to use the Reporting Guidance to put in place systems and processes for the collection of data set forth in the guidance, and for reporting such information to the SSBCI participating jurisdiction, which will report this information to Treasury.

One goal of the IFR is to help facilitate eligible jurisdictions' interactions with their contracted entities that help implement the program with regards to collecting demographics-related data of those who own or control small businesses that participate in SSBCI. This is because there may be legal restrictions on lenders and other financial entities on collecting such demographics-

related data; the IFR provides a regulation that will provide certain entities with the legal authority they need to obtain this information.²

Why Treasury is Requesting Emergency Processing

Eligible jurisdictions need to know what the reporting requirements are in order for them and their program providers (e.g., lenders and other financial entities) to build and modify their data collection systems to obtain this information. Lenders and other financial entities need to know what the requirements are before agreeing to partner with eligible jurisdictions to implement their SSBCI capital programs.

The information collection of small business data will begin very quickly after Treasury approves an eligible jurisdiction's capital program application and enters into an Allocation Agreement with that jurisdiction. This could be as soon as May 19, 2022, as Treasury has begun approving applications and jurisdictions have executed the Allocation Agreements. Thus, Treasury would like to get approval under the Paperwork Reduction Act (PRA) for this information collection by May 25, 2022, to provide jurisdictions and their financial entity partners ample time to prepare for the collection of information set forth in the Capital Program Reporting Guidance and IFR. To provide an opportunity for public input, Treasury has collected comments, including on the IFR's PRA analysis, for 30 days after the effective date of the IFR. If Treasury identifies any appropriate changes to the IFR based on the public comments, Treasury will revise the rule accordingly. Jurisdictions and their financial entity partners cannot commence their capital programs after approval from Treasury without knowing what information must be collected.

As mentioned above, SSBCI was reauthorized under ARPA, which was enacted in March of 2021 to address an unprecedented historic public health and economic crisis. The reauthorization included several new allocations, including allocations related to SEDI-owned and controlled businesses (SEDI-related allocations). In May and June of 2021, federal courts imposed preliminary injunctions on certain coronavirus relief programs that involved race-based policies.³ These cases necessitated extensive collaboration between Treasury, the Department of Justice, and others to determine an appropriate approach related to the structuring of SSBCI. Only after those issues were resolved could Treasury focus on regulations and guidance related to reporting and compliance related to such allocations.

² For example, under the Equal Credit Opportunity Act and Regulation B, creditors are generally prohibited from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. See 12 CFR § 1002.5(b). However, a creditor may obtain information required by a regulation. See 12 CFR § 1002.5(a)(2).

³ See *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021); Decision and Order Granting Plaintiffs' Motion for a Temporary Restraining Order, *Faust v. Vilsack*, Case No. 21-C-548 (June 10, 2021).