

**NOTICE OF
PUBLIC HEARING AND
INTENT TO ADOPT REVISIONS TO THE
RULES FOR THE JOB TAX CREDIT PROGRAM**

Notice is hereby given that the Department of Community Affairs will hold a public hearing in accordance with the Administrative Procedures Act, O.C.G.A. §50-13-1, et seq. The hearings will afford all interested persons reasonable opportunity to provide data, views, or arguments regarding proposed revised rules for the State Small Business Credit Initiative (SSBCI 1.0) program (Rules of the Georgia Department of Community Affairs, Chapter 110-31-.01, et seq.).

A public hearing will be held virtually on October 19, 2023 at 1:00 PM. The link to this public hearing is contained below, as well as being placed on the website of the Department of Community Affairs in the “Announcements” section of the agency’s website. Please contact Mr. John Kingery with questions. Access to the meeting can be gained through the following link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzdINzRjMDUtNTRINy00YzdmLWFiYzEtYTgwMjA0Nzc4YTIj%40thread.v2/0?context=%7b%22Tid%22%3a%22dc9db449-fad6-4fcd-8990-14394088d4ec%22%2c%22Oid%22%3a%2264743902-ac73-4795-9b7a-5b50e2cb95f4%22%7d

Any party wishing to provide data, views, or arguments regarding the proposed revised rules in writing may also do so by submitting them to: State Small Business Credit Initiative, Community Development and Finance Division, Georgia Department of Community Affairs, 60 Executive Park South, N.E., Atlanta, Georgia 30329, or by emailing comments to John.Kingery@dca.ga.gov. These written comments should be received no later than 12:00 P.M. on Monday, November 6, 2023.

Notice is hereby given that a Board meeting will be held at 1:00 PM on November 15, 2023 in the Charles H. Kirbo Regional Center, Southern Regional Technical College Campus, 2500 Shotwell Street, Bainbridge, GA 39819. The Board of the Georgia Department of Community Affairs intends to consider and adopt the revised rules of the State Small Business Credit Initiative, Chapter 110-31-.01, et seq.

A complete copy of these proposed revised rules is available for public inspection in the Community Development and Finance Division, Georgia Department of Community Affairs, 60 Executive Park South, N.E., Atlanta, Georgia 30329, between the hours of 8:30 a.m. and 4:30 p.m., each Monday through Friday (excluding State holidays). A complete copy of each of the proposed rules can also be obtained by contacting John Kingery at (John.Kingery@dca.ga.gov) or by accessing it on the Department’s website at <https://dca.ga.gov>.

This 3rd day of October 2023.

Christopher Nunn, Commissioner



Synopsis of Proposed Revised Rules Adoption Georgia's State Small Business Credit Initiative (SSBCI 1.0)

The Georgia State Small Business Credit Initiative (SSBCI 1.0) originated from the Small Business Jobs Act of 2010 and was designed to help increase credit availability for small businesses. In November of 2011, U.S. Department of Treasury approved Georgia's application which ultimately resulted in \$47,808,507 in SSBCI coming to the state of Georgia for deployment to small businesses.

By March 31, 2017, Georgia had deployed all funds allocated to the state and was able to operate the program with recycled SSBCI funding without U.S. Department of Treasury oversight. At that time, the Department limited the use of SSBCI funds to two existing programs.

In the midst of the COVID-19 pandemic, U.S. Department of Treasury made available funding under a similarly modeled program, termed SSBCI 2.0. The Department has submitted an application to U.S. Department of Treasury, which has been approved, which mirrors the remnant SSBCI 1.0 programs, but also adds two venture capital programs.

Changes are proposed to the SSBCI 1.0 program rules to align with the recently approved SSBCI 2.0 application by U.S. Department of Treasury. The Department seeks to align the two programs in order to maintain maximum flexibility and consistency between the two programs.

In November 2023, the Department of Community Affairs board intends to adopt the revised State Small Business Credit Initiative (SSBCI 1.0) program rules.

The Department of Community Affairs developed the proposed revised rules to govern the operation and oversight of the Small Business Credit Initiative program. The proposed revised rules seek to establish the following:

- **AMEND LANGUAGE TO ADD ELIGIBLE PROGRAMS TO SSBCI 1.0**
Distinguishing SSBCI 1.0 from SSBCI 2.0 and adding the names of two new venture capital programs.
- **IDENTIFYING TWO NEW VENTURE CAPITAL PROGRAMS**
Identifying the two new venture capital programs by name and generally defining their intent
- **STIPULATING VENTURE CAPITAL PARAMETERS**
Add parameters for the Georgia Venture Capital Program and the Georgia Equity Direct Program



Synopsis of Proposed Revised Rules Adoption Georgia's State Small Business Credit Initiative (SSBCI 1.0)

PROPOSED REVISIONS	PAGE
Chapter 110-31-.01 This section distinguishes that these program rules are specifically for what is known as SSBCI 1.0 and adds the names of two new venture capital programs.	2
Chapter 110-31-.02 This section identifies the two new venture capital programs and generally defines their intended purpose.	2-4
Chapter 110-31-.03 This section adds parameters for the new Georgia Venture Capital Program and the Georgia Equity Direct Program	6-8



Georgia Department of Community Affairs

State Small Business Credit Initiative

Regulations

**RULES
OF
GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS**

**CHAPTER 110-31
GEORGIA STATE SMALL BUSINESS CREDIT INITIATIVE 1.0
LOAN PROGRAM DESCRIPTION**

TABLE OF CONTENTS

110-31-.01 Name
110-31-.02 General Scope and Purpose
110-31-.03 Eligible Applicants and Activities
110-31-.04 Terms and Conditions

110-31-.01 Name

The name of this program is the Georgia State Small Business Credit Initiative 1.0.~~This program is now divided into four sub-programs as follows: the Georgia Small Business Credit Guarantee Program, and the Georgia Loan Participation Program, the Georgia Venture Capital Program, and the Georgia Equity Direct Program.~~

Authority O.C.G.A. §§ 50-8-3, 50-8-8.

110-31-.02 General Scope and Purpose

The Small Business Jobs Act of 2010 (Act), designed to help increase credit availability for small businesses, created the State Small Business Credit Initiative (SSBCI) and appropriated \$1.5 billion to be used by the United States Department of the Treasury (U.S. Treasury) to provide direct support for states for use in assisting private lenders to increase access to credit for small businesses. Pursuant to the Act, Treasury initially allocated \$47,808,507 to the State of Georgia for the initiative. Treasury allocated an additional \$216,241 in December of 2016, bringing the total allocation to \$48,024,748 for the State of Georgia.

On November 29, 2011, Treasury approved the State's application, which included proposals for the Georgia Capital Access Program, the Small Business Credit Guarantee, and the Georgia Funding for Community Development Financial Institutions. On June 6, 2013, Treasury approved a modification request to add a fourth sub-program to the Georgia State Small Business Credit Initiative, the Georgia Loan Participation Program. Consequently, the Georgia Department of Community Affairs (DCA) through the Georgia Housing and Finance Authority's (GHFA)¹ economic development powers planned to utilize its \$47,808,507 in SSBCI funds (the Allocated

¹ The Department of Community Affairs (DCA) was created as a department of the executive branch of state government. The Georgia Housing and Finance Authority is an instrumentality of the State of Georgia and a public corporation performing an essential governmental function. The GHFA is assigned to DCA, and all operations are performed by the personnel of DCA. DCA is required to make all funds it administers on behalf of GHFA to be made available for the use of GHFA. GHFA is listed as the Contracting Entity on the Georgia SSBCI Application.

Funds) in four state-administered SSBCI ~~P~~programs as originally approved by U.S. Treasury: the Georgia Capital Access Program (GCAP), to which \$2 million was directed; the Georgia Small Business Credit Guarantee Program (SBCG), to which \$17,808,507 was directed; the Georgia Funding for Community Development Financial Institutions, (GA Funding for CDFIs), to which \$20 million was directed; and, the Georgia Loan Participation Program (GA LPP), to which \$8 million was directed. The allocation amounts to the four programs were adjusted throughout the life of the program depending on usage, which were approved by Treasury.

Operation of the four initial programs under the Georgia State Small Business Credit Initiative was subject to the U.S. Treasury Guidelines for SSBCI, the Treasury-approved Georgia SSBCI application, and the SSBCI Allocation Agreement.

Upon termination of the Allocation Agreement with Treasury on March 31, 2017, Georgia ~~will initially allocated~~ the post-Treasury recycled SSBCI funds between two programs: the Georgia Small Business Credit Guarantee, to which \$10.8 million will be directed, and the Georgia Loan Participation Program, to which \$17.2 million will be directed. Actual amounts in the two programs will be reduced by administrative costs and losses incurred. The allocation amount between ~~these~~ the two loan programs may be adjusted ~~throughout the life of the program~~ depending on usage if approved by DCA. Funds may also be directed into the two venture capital programs (Georgia Venture Capital Program and Georgia Equity Direct Program) if approved by DCA.

Under the SSBCI Loan Programs, credit facilities are extended to eligible small businesses in Georgia by lenders (banks, credit unions, CDFIs, and private lenders). Lenders will undergo a review process to ensure adequate commercial lending experience, financial and managerial capacity, and operational skills.

(1) Scope and Purpose of Small Business Credit Guarantee (SBCG) Program

Under the SBCG Program, credit facilities are extended to eligible small businesses by lenders that have entered into a Lender Program Participation Agreement (PPA) with GHFA EDFI.² The PPA provides that qualifying lenders may enroll a qualified credit to an eligible small business in the credit guarantee program for eligible business purposes that meet the eligibility criteria described in 110-31-03. The State will reimburse from SSBCI funds 50% of losses incurred on an enrolled credit by a lender that is not in material default of the PPA. Guarantee funds will generally be available to lenders on a first-come, first-served basis. The State will charge an initial guarantee fee in an amount equal to 2% of the guarantee amount, along with an annual fee in an amount of 0.5% of the outstanding guarantee for each subsequent year. The fee structure may be modified in response to program sustainability or market conditions.

(2) Scope and Purpose of the Georgia Loan Participation (GA LPP) Program

The Georgia Loan Participation Program is designed to increase lending to eligible small businesses by lenders to diversify their risk through shared exposure with the State. Lenders approved for participation in GA LPP will sign a Master Loan Participation Agreement with the Georgia Housing & Finance Authority Economic Development Financing, Inc.

² GHFA Economic Development Financing, Inc. (GHFA EDFI) is a wholly owned subsidiary of GHFA dedicated to economic development.

GA LPP will utilize SSBCI funds to purchase up to 25% of a loan originated by a participating lender to an eligible small business borrower. Underwriting is performed by the primary lender, then shared with the Department of Community Affairs (DCA) to streamline the approval process of the purchased participation. A written commitment letter is executed between the primary lender and GHFA EDFI; the lender closes the loan and sells the position to GHFA/DCA. The primary lender performs debt servicing and shares proportional debt payments with DCA. Interest rates, maturity, collateral and other loan terms are negotiated with the borrower and determined by the lender. GHFA/DCA will be in a subordinate lien position, and the primary lender will have first claim to all recoveries until its losses are covered. Primary lender has the unconditional right to repurchase the participation sold in the original loan to DCA at any time.

(3) Scope and Purpose of the Georgia Venture Capital Program (GA VC Program)

The GA VC Program will help grow venture capital for small businesses at the earliest stages of development, which Invest Georgia will operate as a multi-fund program. Invest Georgia is an instrumentality of the State of Georgia and has authority under O.C.G.A. § 10-10-10 to operate venture capital programs intended to increase the amount of private investment capital available for Georgia-based businesses. DCA/GHFA Economic Development Financing, Inc. executed a Memorandum of Agreement with Invest Georgia to operate the two venture capital programs. An objective of the GA VC Program will be to improve regional entrepreneurial and investment ecosystems that support economic growth, innovation development and job creation.

(4) Scope and Purpose of the Georgia Equity Direct Program

The Georgia Equity Direct Program will provide an attractive source of capital for investments in startups and eligible businesses. Investments will be made alongside diverse venture funds, non-profit seed funds, angel funds and other investors that present a compelling economic development case. Invest Georgia will manage the direct co-investment program, which will provide flexibility for supporting a diverse portfolio of small businesses.

Authority O.C.G.A. §§ 50-8-3, 50-8-8.

110-31-.03 Eligible Applicants and Activities

Georgia requires that each lender obtain an assurance from each borrower stating that the loan proceeds will not be used for an impermissible purpose under the SSBCI Program.

Lenders are prohibited from refinancing any existing outstanding balance or previously made loan, line of credit, extension of credit or other debt owed by a small business borrower already on the books of the same lender (or an affiliate) into a SSBCI-supported program.

Each lender must obtain an assurance from the borrower affirming:

(1) The loan proceeds must be used for a “business purpose.” A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction, renovation or tenant improvements of an eligible

place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

- (2) The loan proceeds will not be used to:
- a. repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or
 - b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
 - c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
 - d. purchase any portion of the ownership interest of any owner of the business.
- (3) The borrower is not:
- a. an executive officer, director, or principal shareholder of the financial institution lender; or
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or
 - c. a related interest of such an executive officer, director, principal shareholder, or member of the immediate family.
 - d. For the purposes of these three borrower restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.
 - e. The borrower is not:
 1. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, 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
 2. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a Community Development Financial Institution; or
 3. 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; or
 4. a business engaged in activities that are prohibited by federal or state law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
 5. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from state lottery sales.

(4) No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly

compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.”

Authority O.C.G.A. §§ 50-8-3, 50-8-8.

110-31-.04 Terms and Conditions

The following are the general terms and conditions of the ~~four-two~~ programs for the Georgia State Small Business Credit Initiative ~~1.0-~~

- (1) Small Business Credit Guarantee (SBCG)
 - a) A Lender Program Participation Agreement is executed between an approved participating lender and GHFA EDFI.
 - b) The SBCG Program will provide a 50% loan guarantee on a lender’s loan. Each loan covered under the SBCG Program will stand alone with a maximum guarantee of 50%.
 - c) Underwriting is performed by the primary lender and shared with DCA to streamline the approval process.
 - d) Lenders will pay a processing fee as determined by DCA for all loans submitted for enrollment.
 - e) Borrowers will pay an initial fee equal to 2% of the guarantee amount for loan funds advanced, along with an annual fee of 0.5% of the outstanding guarantee balance for each subsequent year. For all loans, the fee will be paid at the time of the loan closing and the beginning of each calendar year.
 - f) The maximum individual loan amount eligible for the SBCG guarantee is \$1,000,000.
 - g) Lender Concentration Limit – The maximum guarantees that may be set aside at any time with respect to a single lender will generally be \$5,000,000.
 - h) The maximum term for SBCG guarantee on lines of credit will generally be 24 months.
 - i) The maximum term for SBCG guarantee on amortizing loans will generally be 60 months.
 - j) The SBCG is a deficiency guarantee; lenders must first liquidate collateral before claiming the guarantee.
 - k) SBCG will target businesses with an average borrower size of 500 employees or less, but credit cannot be extended to businesses with more than 750 employees.

- (2) GA LPP
 - a) A Master Loan Participation Agreement is executed between an approved participating lender and GHFA EDFI.
 - b) The approved participating lender originates the loan, and Georgia through GA LPP may purchase up to 25% of the loan.
 - c) Underwriting is performed by the primary lender and shared with DCA to streamline the approval process of the purchased participation.
 - d) A written commitment letter is executed between the primary lender and GHFA EDFI.
 - e) The lender closes the loan and sells the position to DCA.
 - f) The lender keeps all its standard fees.

- g) Loan servicing is performed by the primary lender, which shares proportional debt payments with DCA.
- h) DCA will be in a subordinate lien position, and the primary lender will have first claim to all recoveries until its losses are covered.
- i) Rates, fees, and terms are determined by the primary lender. However, a nominal processing fee may be charged on applications submitted to use the GA LPP.
- j) DCA may provide a lower interest rate than the primary lender for a limited period of time in order to improve the borrower's debt coverage ratio.
- k) The primary lender has the unconditional right to repurchase the participation sold in the original loan to GHFA EDFI at any time.
- l) GA LPP will target businesses with an average borrower size of 500 employees or less, but credit cannot be extended to businesses with more than 750 employees. Average projected loan size is between \$100,000 and \$5,000,000. All loans over \$250,000 are subject to additional review and approval by GHFA EDFI. Maximum participation purchased is \$1,250,000.

(3) Georgia Venture Capital Program

- a) Invest Georgia is a contracted entity with the Georgia Department of Community Affairs and will operate the Georgia Venture Capital Program.
- b) The Georgia Venture Capital Program is a multi-fund program. A limited liability company created by Invest Georgia will invest directly as a limited partner in venture capital funds.
- c) Invest Georgia will target "seed" and "early stage" venture capital funds.
- d) Invest Georgia along with a consulting entity will perform due diligence and select the venture capital funds to invest and will monitor investments. Each separate fund will manage the full processes of investing in high-potential Georgia-based small businesses.
- e) SSBCI capital will be legally obligated to venture capital funds as a limited partner through contractual agreements (subscription agreements) prior to these funds expending capital with investments in small businesses.
- f) The minimum investment amount will be \$1 million with a maximum investment amount of \$3 million in private venture capital funds. At the discretion of DCA and Invest Georgia, investment amounts may be lowered or raised to no more than \$5 million to invest in larger venture capital funds or special opportunities.
- g) A single financing from other investors cannot exceed \$20 million. The \$20 million restriction applies to a single investment round that includes an SSBCI-funded investment and all classes of equity investments that close on or about the same date.
- h) SSBCI equity investments must comply with the venture capital program conflict of interest standards as set forth in U.S. Treasury Guidelines. Funds from the SSBCI Program cannot be used to make an investment in a business in which an SSBCI insider, or a family member or business partner of an SSBCI insider has a personal financial interest.
- i) SSBCI venture capital program investments may be used for most business purposes unless prohibited under U.S. Treasury Guidelines.
- j) Invest Georgia will take a seat on the Limited Partner Advisory Committee of each venture capital fund receiving an SSBCI investment.
- k) SSBCI capital investments will generally be limited to 10% of a venture capital fund.

(4) Georgia Equity Direct Program

Formatted: Indent: Left: 0.56", No bullets or numbering

- a) Invest Georgia is a contracted entity with the Georgia Department of Community Affairs and will operate the Georgia Equity Direct Program.
- b) The Georgia Equity Direct Program is a direct co-investment program.
- c) SSBCI funds will flow from DCA/GHEA Economic Development Financing, Inc. to Invest Georgia to a limited liability company (LLC) created by Invest Georgia. The LLC will be the equity owner in the eligible businesses.
- d) Invest Georgia will oversee due diligence on co-investment opportunities into high-potential Georgia-based businesses.
- e) A minimum 1:1 capital match from co-investors must be made at the business level with the initial SSBCI investment. SSBCI funds must be the “cause and result” of the private investment into the business, which must be documented.
- f) The minimum investment amount will be \$250,000 with a maximum investment amount of \$1 million alongside angel investors, non-profit seed funds, emerging funds, SEDI or rural funds and other investors.
- g) A single financing from other investors cannot exceed \$20 million. The \$20 million restriction applies to a single investment round that includes an SSBCI-funded investment and all classes of equity investments that close on or about the same date.
- h) SSBCI equity investments may be used for most business purposes unless prohibited under U.S. Treasury Guidelines. The stage of an equity investment will generally be Pre-Seed, Seed or Early Stage.
- i) SSBCI equity investments must comply with the venture capital program conflict of interest standards as set forth in U.S. Treasury Guidelines. Funds from the SSBCI Program cannot be used to make an investment in a business in which an SSBCI insider, or a family member or business partner of an SSBCI insider has a personal financial interest.
- j) The business receiving an SSBCI investment must agree to compliance and reporting requirements. Capital raised by the business post-SSBCI investment will be tracked for private leverage. Jobs created will be tracked for SSBCI reporting purposes.

~~4)~~ Terms and Conditions applicable to all Georgia SSBCI Programs

~~(3)~~(5) Terms and Conditions applicable to all Georgia SSBCI Programs

- a) The State must obtain an assurance from the lender affirming:
 - i. The loan has not been made in order to place under the approved State SSBCI Program a prior debt that is not already covered under the approved SSBCI Program and that is or was owed by the borrower to the lender or to an affiliate of the lender.
 - ii. The loan is not a refinancing of a loan previously made to that borrower by the lender or an affiliate of the lender.
 - iii. The financial institution lender will make available to the State of Georgia all books and records related to the use of SSBCI funds, subject to the Right to Financial Privacy Act (12 U.S.C. § 3401 et. seq.), including detailed loan records, as applicable.
 - iv. The financial institution lender is in compliance with the requirements of 31 C.F.R. § 103.121 related to verification of the identity of persons opening accounts.
- b) Monthly and Quarterly Reporting Requirements: All lenders in the Georgia SSBCI ~~P~~rograms are required to submit monthly and quarterly reports to DCA. Details on the deadlines and format of these reports are available from DCA directly.

Formatted: No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.31" + Indent at: 0.56"

- c) Lender Approval Criteria: Each lender seeking participation in the State of Georgia's SSBCI Programs will undergo a thorough review process by the State to ensure that the lender has the adequate commercial lending experience, financial and managerial capacity, and operational skills. Regulated financial institutions must meet certain criteria established by their regulators to maintain their charters. DCA will continue to work closely with the Georgia Department of Banking and Finance on the selection process for participating financial institutions including banks and credit unions. Principal evaluation factors of lenders will include capital adequacy, asset quality, management, earnings, liquidity and sensitivity to market risk.
- d) Georgia's SSBCI Programs may not enroll the unguaranteed portions of SBA-guaranteed loans. This prohibition also applies to the unguaranteed portion of other federally generated loans.
- e) Underserved Markets. Georgia's SSBCI Programs will strive to reach underserved markets (including women- and minority-owned businesses as well as small businesses in low- and moderate-income communities, in minority communities, and in other underserved communities through program outreach.) SBCG is anticipated to serve primarily smaller banks and credit unions. GA LPP is expected to increase access to capital to small businesses in all markets by enabling lenders to diversify their risk by sharing exposure with the State.

Authority O.C.G.A. §§ 50-8-3, 50-8-8.