

Are there prohibitions on combining a transaction supported with SSBCI funds with a loan guaranteed under the U.S. Small Business Administration (SBA) 7(a) or 504 loan programs or the U.S. Department of Agriculture (USDA) Business & Industrial (B&I) loan program?

Yes. If a borrower receives a loan guaranteed by the SBA's 7(a) or 504 loan programs or the USDA's B&I loan program, SSBCI funds may not be used as credit support to a loan or investment *for the same purpose* as the SBA- or USDA-guaranteed loan. For example, a borrower may not use a loan guaranteed under SBA's 7(a) program and an SSBCI-supported loan to purchase the same real estate, including land and improvements. In contrast, a borrower may receive two sources of Federal support in two separate loans *if the proceeds for the two loans are for different purposes*. For example, if a borrower receives a loan guaranteed under the SBA 7(a) or 504 programs or the USDA B&I program to purchase real estate occupied by the borrower, the borrower also may receive an SSBCI-supported loan to purchase equipment.

Participating States should maintain documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

Are there prohibitions on using SSBCI funds in combination with a transaction that generated tax credits, including a New Markets Tax Credit (NMTC) or Historic Preservation Tax Credit transaction?

Yes. An SSBCI-supported transaction cannot be used to increase the pool of funds that generates tax credits. An SSBCI-supported transaction can only be used outside the structure designed to leverage tax credits. For example, assume SSBCI funds support a loan to a community development entity (CDE). The CDE cannot then use the SSBCI-supported loan to make a qualified low community investment that generates tax credits for purposes of a NMTC transaction. If a given transaction supported with SSBCI funds meets program requirements, SSBCI funds may be used alongside a transaction that generates tax credits.

Are there prohibitions on enrolling the same loan or investment in more than one Approved State Program or using more than one Approved State Program to support multiple loans or investments for the same loan purpose?

Yes. One loan cannot be enrolled in more than one Approved State Program at the same time. In addition, a lender may not divide one loan into multiple agreements or notes, each enrolled in an Approved State Program, for the same loan purpose.

If, for example, a borrower receives two loans under separate Approved State Programs, the Participating State should maintain documentation showing that the borrower used the loan

proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

Under what circumstances may a financial institution lender use SSBCI funds to support a new extension of credit for the purpose of satisfying a prior obligation to the same financial institution or an affiliate?

Financial institution lenders are generally prohibited from refinancing an 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 financial institution (or an affiliate) into an SSBCI-supported CAP or OCSP. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or line of credit when all the following conditions are met:

- the new loan or line of credit includes the advancement of new monies to a small business borrower (excluding closing costs);
- the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay and a new approval by the lender/investor;
- proceeds from the new credit may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for an eligible business purpose, as defined by the SSBCI Policy Guidelines; and,
- the new credit has not been extended for the sole purpose of refinancing existing debt owed to that same financial institution lender.

SSBCI recommends that when a Participating State enrolls a loan that repays principal due under a loan previously made by the same financial institution or its affiliate, the Participating State or the financial institution lender should maintain documented substantiation that these four criteria were met.

The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an approved program and subsequently refinancing the same loan under any approved program. Additionally, the limitation also does not prohibit a financial institution lender from enrolling or refinancing previously made loans from another, non-affiliated financial institution into an approved program. ***When a Participating State uses SSBCI funds to purchase a loan from another, non-affiliated financial institution, the state must make a determination that the transaction is beneficial to the small business borrower.***

Are there any exceptions to the use of proceeds prohibition on passive real estate investment? What about an entity or trust that does not directly engage in business operations, such as a real estate holding company, receiving an SSBCI-supported loan or investment for the purposes of acquiring real property?

In consultation with the SBA, SSBCI does permit an exception to the prohibition on passive real estate investment if an eligible passive company acquires and holds real property using SSBCI-supported loan or investment proceeds where 100% of the rentable property is subsequently leased to one or more operating companies. An eligible passive company can take any legal form or ownership, but it is typically a small entity or trust which does not engage in regular and continuous business activity, and which leases real or personal property to an operating company for use in the operating company's business. An operating company is generally actively involved in conducting business operations that is currently or about to be located on real property owned by an eligible passive company, or using, or about to use in its business operations, personal property owned by an eligible passive company. To meet the exception identified above, the following criteria must also be met:

- Both the eligible passive company and the operating company are eligible small businesses that meet all borrower or investor criteria established by the SSBCI Policy Guidelines; While 100% of the rentable property acquired and held using proceeds from the SSBCI-supported loan or transaction to the eligible passive company must be leased to one or more operating companies, an operating company may subsequently sublease no more than 49% of the total rentable square footage (in the case of an existing building, or no more than 40% in the case of new construction) to one or more unaffiliated tenants;
- The operating company is a guarantor or co-borrower on the SSBCI-supported loan or investment to the eligible passive company;
- Both the eligible passive company and the operating company must execute the borrower use of proceeds certification and sex offender certifications covering all principals, as co-borrower or guarantor;
- Each natural person holding an ownership interest constituting at least 20 percent of either the eligible passive company or the operating company provides a personal guarantee for the SSBCI-supported loan or investment; and,
- The eligible passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan or investment, including options to renew exercisable solely by the operating company.

It is the responsibility of the Participating State to ensure that all of the above requirements are met. SSBCI-supported loans or investments that do not provide documentary substantiation to all of the requirements related to the eligible passive company exception to the passive real estate investment prohibition on use of proceeds will be determined ineligible.