



January 3, 2023

Dianna Seaborn
Director, Office of Financial Assistance, Office of Capital Access
U.S. Small Business Administration
409 3rd St, SW.
Washington DC 20416

Re: RIN 3245-AH92—Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization

Dear Ms. Seaborn:

On November 7, 2022, Volume 87, No. 214 of the Federal Register contained a Notice of Proposed Rulemaking on *Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization* (87 FR 66963).¹ The proposed rule, if implemented, will lift the moratorium on licensing new Small Business Lending Companies (SBLCs), add a new type of entity called a Mission-Based SBLC, and remove the requirement for a Loan Authorization.

The African American Alliance of CDFI CEOs (the Alliance) is pleased to provide the following comments in response to the Proposed Rulemaking, 87 FR 66963. The Alliance is a membership-driven intermediary organization that aims to: build the capacity of member organizations; build bridges to economic stability, well-being, and wealth for Black individuals, families, and communities; and build power in Black communities by challenging and influencing financial sectors to operate more equitably. Since launching in 2018, the Alliance has established a network of 72 CEOs of Black-led Community Development Financial Institutions (CDFIs), which includes loan funds, credit unions, and venture capital funds. Alliance members reach historically underserved communities in all 50 states by providing financial services in the small business, affordable housing, and commercial real estate development sectors.

SBLC Moratorium Rescission

The SBA Proposed Rule lifts the moratorium on licensing new SBLCs and creates a new type of SBLC, the Mission-Based SBLC, to fill identified capital market gaps and provide targeted financial assistance to underserved markets.² The Alliance generally agrees with the intent of the Proposed Rule, as it purports to afford vulnerable entrepreneurs in markets historically overlooked by traditional financial institutions an opportunity to obtain critical financing on non-predatory terms. However, we urge SBA to provide additional clarification around some of the key pieces of the Proposed Rule, particularly as it relates to the conversion of existing Community Advantage lenders to Mission-Based SBLCs.

¹ Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization, 87 Fed. Reg. 66,963 (Nov. 7, 2022).

² *Id.* at 66,964.

1. Lack of Specificity Around Certain Aspects of the Proposed Mission-Based SBLC Designation

Costs Associated with Obtaining Mission-Based SBLC Status

The Small Business Act authorizes SBA to charge a fee for conducting safety and soundness examinations of SBA-Supervised Lenders. As such, prospective SBLCs – both regular and Mission-Based – will be subject to a minimum \$10,000 initial safety and soundness examination at the time of application and at least once every two years thereafter.³ Additionally, SBA will conduct targeted reviews of loan files in between the regularly scheduled safety and soundness exams, at a biennial cost of \$50,000 to \$150,000 per SBLC depending on the size of its loan portfolio.⁴

Currently, each SBLC that makes or acquires a 7(a) loan must maintain at least unencumbered paid-in capital and paid-in surplus of at least \$5 million, or 10 percent of the aggregate of its share of all outstanding loans, whichever is greater.⁵ SBA considered extending the \$5 million capitalization requirement to prospective Mission-Based lenders but ultimately determined that such a requirement would limit the number of entities that would be eligible for an SBLC license.⁶ Instead, per the Proposed Rule, “a Mission-Based SBLC must maintain a minimum amount of capital at the discretion of the Administrator in consultation with SBA’s Associate Administrator for SBA’s Office of Capital Access (AA/OCA), to ensure sufficient risk protection for SBA and lenders while not burdening smaller lenders with large capital requirements.”⁷ The costs associated with safety and soundness examinations and targeted reviews compounded by the ambiguity surrounding Mission-Based SBLC capital requirements concerns the Alliance. We urge the SBA to avoid the adoption of any Mission-Based SBLC capital requirements that would dissuade institutions, including existing Community Advantage lenders, from pursuing a Mission-Based SBLC designation.

Mission-Based Lending Requirements

Per the Proposed Rule, Mission-Based SBLCs will be subject to all the requirements imposed on regular SBLCs and SBA Supervised Lenders.⁸ In addition to those requirements, the Proposed Rule requires that a certain percentage of a Mission-Based SBLCs loans be dedicated to filling an identified capital market gap.⁹ However, in lieu of a uniform mission-based lending requirement applicable to all Mission-Based SBLCs, SBA will determine on a case-by-case basis the minimum acceptable percentage of loans that a Mission-Based SBLC must make in identified capital market gaps, maximum loan size, geographic area of operation, and capitalization. The Alliance has strong concerns that the lack of specificity around key concepts of the Proposed Rule (i.e., types of capital market gaps that will be sufficient to satisfy Mission-Based SBLC requirements, percentage of loans that must be made to fill identified capital market gaps, maximum loan size, application process, etc.) makes it difficult for existing Community

³ Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization, 87 Fed. Reg. 66,968 (Nov. 7, 2022).

⁴ *Id.*

⁵ *Id.* at 66,965.

⁶ *Id.* at 66,969.

⁷ *Id.* at 66,965.

⁸ *Id.* at 66,965.

⁹ *Id.* at 99,964.



Advantage lenders and other prospective Mission-Based SBLC applicants to determine if conversion to a Mission-Based SBLC is a prudent option for their institution. The Alliance also finds it troubling that for-profit institutions seeking regular SBLC status, unlike their mission-based counterparts, will not be required to dedicate a certain minimum amount of lending to filling identified capital market gaps, as this runs counter to the underlying aim of the Proposed Rule – i.e., increased and targeted lending to underserved capital markets. Though the individualized approach outlined in the Proposed Rule affords Mission-Based SBLCs a certain level of operational flexibility and reduced risk exposure, the Alliance fears that the absence of similar guardrails for the three new regular SBLCs proposed by SBA will not result in increased access to financing in undercapitalized markets.

2. Proposed Rule Impact on Community Advantage Pilot Program

The Alliance’s general support of the SBLC proposal should not be construed as dissatisfaction with the Community Advantage Pilot Program. In fact, the Alliance was pleased to collaborate with SBA on the recent reforms to the Community Advantage Program adopted in 2022, including, but not limited to: (1) the extension of the pilot program through September 30, 2024; (2) the lifting of the four-year lender moratorium on new CA Lender participation applications; (3) the increase to the maximum CA loan size from \$250,000 to \$350,000; (4) the simplification of underwriting and collateral requirements for borrowers and lenders; (5) the allowance for lenders to make revolvers and lines of credit, interest-only periods, and other loan modifications that meet borrowers where they are to best serve their capital needs; and (6) the removal of restrictions that can keep individuals with criminal backgrounds from accessing the CA program.¹⁰

The Alliance firmly believes that the CA program can be a viable option for increasing lending volume in underserved markets. However, though the reforms of 2022 were greatly appreciated, the program must continue to evolve. Additional reforms to strengthen the CA program – e.g., the immediate extension of the program beyond the current program sunset of September 30, 2024; expansion of program eligibility to businesses owned and controlled by women and minorities; provision of technical assistance (TA) grants for CA lenders; reduction in the minimum CA program SBSS score from 140 to 130, etc. – will prove instrumental in attracting new lenders to the program to meet the growing demand for affordable capital in underserved communities. Ultimately, a strengthened CA program operating in concert with the proposed Mission-Based SBLC concept will result in a significant increase lending activity in underserved communities, particularly for the 51 percent of small employer firms with unmet financing needs.¹¹

* * *

¹⁰ “Biden-Harris Administration Expands SBA Pilot Program Targeting Access to Capital for Underserved Entrepreneurs.” *U.S. Small Business Administration*, March 30, 2022, www.sba.gov/article/2022/mar/30/biden-harris-administration-expands-sba-pilot-program-targeting-access-capital-underserved. Press Release.

¹¹ Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization, 87 Fed. Reg. 66,967 (Nov. 7, 2022).

Removal of Requirement for Loan Authorization

Currently, the 7(a) Loan Program, including the Community Advantage Pilot Program, and the 504 Loan Program require a Loan Authorization providing the terms and conditions under which SBA will make or guarantee business loans.¹² The terms and conditions of each loan are also submitted into E-Tran by the SBA lender through the submission of the loan application data and conditions.¹³ SBA proposes to remove the requirement for a Loan Authorization as a required document for 7(a) loans and instead rely on the use of the terms and conditions of the loan application as submitted by the SBA lender into E-Tran.¹⁴

The Alliance generally agrees with SBA's assertion that the current process to capture the loan terms and conditions through the Loan Authorization is time-consuming, cumbersome, and duplicative. However, we do not support the elimination of the Loan Authorization requirement at this time. Lenders have come to rely upon Loan Authorizations as a means of validating that they have satisfied all requirements at or prior to closing of the loan. As such, the elimination of the Loan Authorization requirement could potentially lead to increased instances of Lender non-compliance.

* * *

The Alliance shares SBA's goal to better meet the needs of America's small businesses, create jobs, assist with recovery from the COVID-19 pandemic, and grow the economy, fueling American entrepreneurship, particularly in communities of color served by Alliance members. The Alliance looks forward to continued dialogue with SBA to develop a long-term solutions to combat capital market gaps through a strengthened Community Advantage Program working in unison with SBLCs, both regular and Mission-Based.

Thank you once again for the opportunity to comment.

Sincerely,



Lenwood V. Long Sr.
President and CEO
African American Alliance of CDFI CEOs

¹² Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization, 87 Fed. Reg. 66,964 (Nov. 7, 2022).

¹³ *Id.*

¹⁴ *Id.*