INDEPENDENT COMMUNITY
BANKERS of AMERICA®

January 5, 2023

Ms. Dianna Seaborn
Director
Office of Capital Access
Small Business Administration
409 3rd Street SW
Washington, DC 20416

Re: Small Business Lending Company Moratorium Rescission and Removal of the Requirement for a Loan Authorization

Dear Ladies and Gentlemen:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to comment on the proposed rule titled "Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization" ("Proposal"). This Proposal is designed to both lift the moratorium on the licensing of new small business lending companies ("SBLCs") and create mission based SBLCs to fill identified gaps in capital markets lending. With this Proposal the Small Business Administration ("SBA") would require that mission based SBLCs make a certain percentage of government guaranteed loans in the identified capital markets gap. SBA in its sole discretion would determine the appropriate capitalization, along with most other critical details and performance metrics for new mission based SBLCs.

ICBA, along with the firms representing virtually all of the thousands of lenders participating in the SBA 7(a) loan program, recognize that the SBA's Office of Credit Risk Management ("OCRM") lacks the resources, staff, and infrastructure to effectively expand SBLC lending beyond what exists today with the

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[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly $5.9 trillion in assets, over $4.9 trillion in deposits, and more than $3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at *www.icba.org*.

SBLCs in existence[2]. SBA's well-known and highly successful community bank lending programs, most notably providing guarantees of small business loans to businesses that lack access to capital in their local market in a competitive manner, have created important partnerships with community bank lenders where these institutions can quickly and efficiently deploy capital in small and underserved communities to promote sound business ventures.

The Proposal is a departure from that success and could result in failure simply because SBA cannot bring liquidity to underserved areas utilizing newly formed, lightly regulated, inexperienced lenders without suffering significant losses. SBA should continue its long tradition of achieving success by seeking common sense, prudently underwritten, and highly effective lending opportunities for small businesses through community bank lending programs. Look no further than the success of these programs with community bank partners and the communities they serve to bring confirmation that existing programs should be celebrated and not circumvented through new unproven government endeavors.

The Proposal

SBA proposes to lift the current moratorium on the licensing of new SBLCs as a remedy to the existence of predatory lending in the capital markets. Additionally, SBA seeks to create mission based SBLCs that exist as non-profit organizations with the role of filling the existing capital markets gap. Mission-based SBLCs will be licensed for the sole purpose of making 7(a) SBA guaranteed loans under the Small Business Act. The licensing is designed to replace an existing community advantage pilot lending program where mission-oriented lenders make SBA loans in underserved markets to promote economic development.

SBA acknowledges its own difficulties in overseeing current SBLCs and plans to supervise just three new additional SBLCs. However, since there is no requirement that SBA limit the number of new SBLCs, SBA may eventually approve an unlimited number of new entities. SBA plans to allow current community advantage lenders in its pilot lending programs to be approved as mission based SBLCs if they are in good standing.

Mission-based SBLCs will be required to make a certain percentage of loans in their identified capital market gap. The minimum percentage of loans required to be made will be based on each SBLC's target market, risk tolerance, and financing needs based on their proposed business plan. SBA plans to approve mission based SBLCs that are not well capitalized if they are deemed to target a highly underserved area. At the discretion of the SBA administrator, SBA plans to license mission based SBLCs that do not meet SBA's current minimum capital requirements.

[2] See letter from the Independent Community Bankers of America, American Bankers Association, Consumer Bankers Association, Credit Union National Association, National Association of Federal Credit Unions, and National Association of Government Guaranteed Lenders to the United State Senate Committee on Small Business & Entrepreneurship and United State House of Representatives Committee on Small Business dated December 2, 2022

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ICBA's Comments

ICBA recognizes the need for financial services products to be available to as many small businesses as possible on terms that allow the lender to price for risk and the borrower to operate efficiently and soundly without fear of predatory loan terms. Community banks for generations have been central to the need to deploy healthy amounts of working capital to consumers and small businesses as they are the organic job creators in the domestic economy, especially in small, rural, and underserved areas. This is why community banking partnerships with SBA have historically been so beneficial as government resources have been properly and prudently made available to increase small business lending where it otherwise would not exist. Community banks know all too well the difficulties small businesses face when trying to find daily liquidity and long-term tools for expansion and growth. Community banks partner with SBA principally to provide these services efficiently for their customers in the communities they serve across the spectrum of small businesses that help to make up the fabric of the economy.

Any expansion of SBLC lending, including the formation of mission based SBLCs is troubling on many fronts, but most importantly is certain to be challenged due to the lack of appropriate risk assessment, oversight, and sound regulation. Financial firms that are successful lenders to small business are very adept in assessing the risk profile of a commercial enterprise and how it will fit into the community. For example, when community banks underwrite a small business loan, the expertise of the personnel making key decisions is critical to determine viability, cash flows, growth prospects, track record, and overall positive impact to the enterprise and the community. For community banks, federal banking regulators demand this high-quality expertise and obtain comfort with the ability of the community bank to continue healthy capitalization based in part on the knowledge and experience of these key bank lenders. Community bank lending also requires strict recordkeeping and reporting requirements in compliance with the Bank Secrecy Act, which represents enhanced regulation that other nonbank lenders are not subject to.

In this Proposal, SBA has failed to provide any details regarding how new and existing SBLCs will be capitalized, what level of personnel will be required to make critical lending decisions, what types of lending will be appropriate and at what size loan amounts, how fraudulent activity will be detected and prevented, and how a capital markets gap will be identified. What tools and resources will be required by the SBLC so that they may appropriately identify the market forces that shape the local economies where the lending takes place? Which potential borrowers will be identified as suitable risk profiles and what minimal traits will those borrowers and their business plans possess? What loss mitigation techniques will lenders employ to protect the interests of the lender, borrower, and SBA? None of these critical questions are addressed in the Proposal, which leads to the conclusion that officials at SBA have not taken the appropriate steps to properly assess such an expansion of the current SBLC lending that exists today.

SBA itself acknowledges in the Proposal that it does not have the proper staffing or resources necessary to provide oversight to an expanded SBLC lending environment. There is nothing in the Proposal that

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gives anyone confidence that oversight challenges can be adequately addressed by SBA's OCRM within the current regulatory framework employed by SBA. ICBA fears that the agency will continue to add new lenders to its network of SBLC lenders as long as losses are minimal. However, losses generally are amplified at certain points in the credit cycle, with maximum loss amounts on bad loans not appearing for many years after a loan has seasoned**. SBA has failed to explain in the Proposal that it has the tools to enforce high quality loss mitigation strategies among new SBLC lenders in the manner required to minimize credit losses. Nor has the Proposal outlined the SBLC lender's responsibility in preventing fraudulent activities and minimizing credit losses.**

The Proposal discusses the need to fill a capital market gap in underserved communities but does not provide any evidence that such a gap exists, and if a gap does exist how SBLC lenders are prepared to address any existing gap. The Proposal also lacks any substantive discussion of the mission that newly created SBLCs will undertake. Who will determine whether the mission surrounding a newly formed SBLC is sound from both a beneficial perspective and the principles of a sound business model?

Before taking any action, SBA needs to provide evidence that an expansion of SBLC will support small business lending that is not met through current SBA lending programs through effective lenders like community banks. Furthermore, SBA must also be able to provide a metric to measure the effectiveness of new SBLC lenders' lending efforts in filling existing capital markets gaps.

Recent investigations by various law enforcement and investigatory agencies have uncovered expansive fraud in the Paycheck Protection Program ("PPP"), which was administered by the SBA[3]. Such misconduct by lenders was allowed to occur under SBA's watch with little to no attempt by the agency to stop such behavior. It's not clear that SBA attempted to conduct reasonable oversight of the PPP through the use of monitoring and fraud detection tools that would have prevented widespread fraud or at least raised suspicion regarding certain transactions with lender partners. What assurances can the SBA provide to acknowledge that it understands the fraud that occurred, how and why such fraud occurred, and why creating new SBLCs will not introduce new fraudulent activities**? ICBA recommends that SBA take no further action on SBLC formation until all federal, state, and local investigations on PPP fraud are complete.**

[3] See the press release issued December 1, 2022 by the United State House of Representatives Select Subcommittee on the Coronavirus Crisis titled "New Select Subcommittee Report Reveals How Fintech Companies Facilitated Fraud In The Paycheck Protection Program", *https://coronavirus.house.gov/news/press-releases/clyburn-fintech-fraud-ppp-doj-sba*

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ICBA appreciates the opportunity to provide comment on this Proposal and hopes that SBA will consider our observations. If you have any questions or would like additional information, please do not hesitate to contact me at james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting & Capital Policy

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