

September 25, 2023

The Honorable Roger Williams
Chairman
House Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Nydia Velázquez
Ranking Member
House Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Williams and Ranking Member Velázquez:

As the leading organizations representing the majority of online small business financing providers in the United States, we are writing to you to share our perspective on how to increase competition in the 7(a) market, expand access to capital for underserved small businesses and to ensure proper safeguards to protect the integrity of the program.

Our members are focused on providing small businesses access to loans under \$500,000. While we aim to serve as many businesses as we can without a government guarantee, there are creditworthy small businesses that we can only serve through the 7(a) program. We are encouraged by many of the SBA's recent changes that modernized and streamlined the requirements of the program, specifically for 7(a) Small Loans under \$500,000 which will make it more cost effective for lenders to offer these loans profitably and at scale.

We understand Congress has expressed concerns with some aspects of the SBA's changes and are considering legislative changes to the program. Collectively, we wanted to identify specific policies that Congress should consider in any legislation. Therefore, we respectfully request that you consider the following:

- No statutory cap on number of SBLC licenses

Instituting a statutory cap on licenses only ensures a government guaranteed oligopoly and reduces competition in the marketplace as it has done for the last 40+ years and for the foreseeable future. We encourage the committee to instead ensure the agency has the proper resources to oversee as many lenders that wish to participate in the program as possible.

- Preferred Lender Program (PLP) & Delegated Authority

The SBA has a longstanding policy and procedure for lenders to qualify and apply for PLP status which apply to all SBA lenders. Congress should not create a new process for only three new to be licensed SBLCs and exempt existing SBLCs as well as every other SBA lender. We urge the Committee(s) to refrain from applying program rules and regulations unfairly and unevenly and to not fix what is not broken.

- Annual Stress Testing

We are supportive of regulations that are appropriate for the actual risk posed. However, more than 60 SBLCs have participated in the 7(a) program over the last 40 years without issue and certainly none that warrant the need for annual stress testing as a condition of participating in the 7(a) program. Under the Federal Reserve's 2019 Tailoring Rule, only the largest banks, over \$100 billion assets or above, are subject to supervisory or company-run stress tests¹. Requiring 17 SBLCs to subject themselves to stress testing annually while exempting thousands of banks, credit unions and CDFIs in the 7(a) program is another example of applying rules and regulations unevenly and putting one set of lenders at a competitive disadvantage. We urge the Committee to remove this requirement and instead study whether stress testing is necessary for this program and what lenders, if any, should be subject to it based on activities and the actual risk posed.

- Collateral

For loans under \$500,000, it is not necessary or industry practice due to the costs and complexity for lenders to take a first lien on real estate assets of the business or its owners. However, it is common and prudent for lenders to take a first lien blanket security interest in all of the assets of the borrower excluding real property. With that said, we recommend maintaining the existing SBA regulation permitting lenders to follow the written collateral policies and procedures that it has established and implemented for its similarly-sized, non-SBA guaranteed commercial loans for loans under \$500,000 as this ensures the most economically effective strategy for recovering from borrowers.

- Special Supervisory Authorities Related to Small Business Companies

SBA should continue to measure lender performance through its long standing PARRiS framework. Congress should resist efforts to apply different sets of rules and regulations to SBLCs vs other lenders.

- Loan Criteria

We encourage the Committee to only reinstate prescriptive lending criteria for loans over \$500,000 and to leave in place the SBA's new rules for loans under \$500k that allow lenders to use their same policies and procedures for 7(a) loans as they do their similarly-sized, non-SBA guaranteed commercial loans including credit scoring. While we agree guardrails should be in place to protect the integrity of the program, the changes SBA made to the 7(a) Small Loan program are in line with industry standards for originating commercial loans under \$500,000.

- SAM Exclusions

SOP 50 10 7 requires that SBA Lenders are responsible for consulting the System for Award Management's Exclusions (SAM Exclusions) or any successor system to determine if the small

¹ See Federal Reserve, "Requirements for Domestic and Foreign Banking Organizations." Tailoring Rule visual, (October 10, 2019), *available at* <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-visual-20191010.pdf>.

business applicant or its beneficial owners have been suspended, debarred, revoked, or otherwise excluded by SBA or another Federal agency. SBA lenders must retain evidence in each loan file of a SAM Exclusion search for each small business applicant and its beneficial owners of 20% or more. This search is only able to be conducted manually by the lender, which typically means that individual screenshots are retained in loan files to demonstrate compliance with this requirement. However, this process can and should be automated through the Form 1919 process, ultimately saving lenders considerable time and resources. SBA should first harmonize beneficial ownership equity threshold requirements with the Financial Crimes Enforcement Network's beneficial ownership equity requirements (as dictated by the *Corporate Transparency Act*), help ensure that the government verifies the information in FinCEN's beneficial ownership registry and then leverage APIs to check submitted beneficial owner information against both FinCEN's registry and the Sam.Gov database as part of its eligibility determination process. We urge Congress to require these three agencies to build a solution that satisfies this requirement without the need for SBA lenders to be involved.

- IRS Tax Transcript/Verification of Financial Information

SBA Lenders must document confirmation of collection of business tax returns and verification and reconciliation of the Applicant's financial data against income tax data received in response to IRS Form 4506-C or IRS Form 8821 prior to submitting the closing documents to SBA counsel. This process introduces significant friction in the application process forcing small businesses to interact directly with the IRS and the Income Verification Express Service (IVES) program as a condition of receiving a 7(a) loan. We urge Congress to require the IRS to return user authentication to the responsibility of financial institutions and to expand the data made available in the transcript to include necessary business tax return data that are necessary for underwriting and fraud prevention.

Our trade associations look forward to continuing to work with Congress throughout the legislative process, representing the commercial financing industries' perspective on the best way to serve America's underserved small businesses. Supporting small businesses is our business and our members stand ready to assist in ensuring that access to capital is expanded and the SBA's 7(a) program reaches those that truly need it. Thank you for your consideration of the priorities and concerns raised in this letter.

Sincerely,

Electronic Transactions Association (ETA)

Financial Technology Association (FTA)

Innovative Lending Platform Association (ILPA)

Small Business Finance Association (SBFA)