RESPONSIBLE BUSINESS LENDING COALITION

April 24, 2020

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Waters,

The Responsible Business Lending Coalition (RBLC)[1] writes to support you and your colleagues on the House Committees on Financial Services in your work to protect and sustain underserved communities and small businesses. As a coalition of for-profit and not-for-profit lenders, investors and small business advocates, the RBLC works to promote policies and practices that ensure businesses have access to responsible capital. Promoting access to capital and responsible lending is particularly important now as you consider reauthorizing and revitalizing the State Small Business Credit Initiative (SSBCI) in upcoming COVID-19 response legislation. As Chairwoman of the Financial Services Committee, we know that you are deeply concerned with the devastating impacts that the COVID-19 pandemic has had on small businesses, and the families and communities they support. The RBLC believes strongly that if amended to include the following recommendations, a reauthorized SSBCI can deliver much-needed relief to struggling small businesses:

- Non-depository, state licensed and regulated lenders should be eligible to participate in the program if they abide by the responsible lending practices outlined in the Small Business Borrowers' Bill of Rights[2] (BBoR).
- Community development financial institutions (CDFIs) and responsible non-depository, state licensed and regulated lenders should be exempt from state-specific domicile requirements.
- SSBCI funding should be set aside in three categories: 1) funds for CDFIs 2) loans under $50,000 or to businesses with less than 20 employees and 3) loans above $50,000 or to businesses with 20 to 100 employees to ensure support reaches the smallest and most vulnerable small businesses.

SSBCI Impact and the Credit Needs of Underserved Businesses

After the Great Recession, the SSBCI provided nearly $1.5 billion to state-led small business financing programs with significant flexibility that met local market needs. The program supported nearly $8.4

[1] The mission of the Responsible Business Lending Coalition is to drive responsible practices in the small business lending sector. RBLC members include Accion Opportunity Fund, The Aspen Institute, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Opportunity Fund, Small Business Majority and Street Shares.

[2] The Small Business Borrowers' Bill of Rights. http://www.borrowersbillofrights.org/bill-of-rights.html

billion in new small business loan capital and investments which allowed each public dollar to be leveraged with more than $5.6 billion in private sector capital.[3] It also provided capital to very small and young businesses and allowed states to design programs that addressed the capital needs of low- and moderate-income (LMI) communities. Reauthorizing the program with improvements allows states and responsible lenders to better serve more of the most vulnerable small businesses as our economy recovers, especially those hardest hit by the COVID-19 pandemic.

According to the New York Federal Reserve's 2019 Small Business Credit Survey, only half of all small businesses were able to secure the level of financing they needed. For historically underserved businesses that are disproportionately located in LMI communities, credit access has proved even more challenging; 43% of women-owned businesses, 31% of Hispanic-owned businesses, and 28% of Black-owned businesses received sufficient funding.[4] Bank lending alone will not fill this gap. More than a decade after the financial crisis, Oxford Economics found that less than one percent of U.S. banks' balance sheets consist of small business loans.[5] Due to limited credit offerings from banks, small businesses are increasingly seeking and receiving financing from non-depository online lenders. In 2018, 32% of U.S. small businesses seeking financing turned to online providers, up from 19% two years prior. Online lenders approve more than 80% of applicants, while small banks approve 70% and large banks approve less than 60% of applicants.[6] As the small business lending landscape continues to evolve away from banks and toward the growing online lending marketplace, it is crucial, now more than ever, that we leverage online lenders' ability to deliver needed capital while implementing commonsense responsible lending standards.

Promoting Access to Responsible Capital Through SSBCI

As currently written, the SSBCI program permits only "insured depository institutions, insured credit unions, or [CDFIs] as defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994" to participate. Amending SSBCI eligibility criteria to include responsible, non-depository, state licensed and regulated lenders will increase access to responsible, affordable capital, especially those small businesses that are currently underserved. We believe that the SSBCI program should include the highest standards of borrower protections, and therefore recommend that the program only admit non-depository, state licensed and regulated lenders that abide by the BBoR. The BBoR is the nation's gold standard for responsible small business lending, detailing that lenders must provide small businesses transparent pricing and terms, non-abusive products, responsible underwriting, inclusive credit access, and engage in fair collection practices. Non-depository lenders should attest their compliance with the BBoR in order to participate in SSBCI (an example BBoR lender attestation form is attached to this letter).

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[3] Program Evaluation of The US Department of Treasury State Small Business Credit Initiative. https://www.treasury.gov/resource-center/sb-programs/Documents/SSBCI%20Program%20Evaluation%202016%20-%20Full%20Report.pdf

[4] The Federal Reserve 2019 Small Business Credit Survey. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

[5] Decade after financial crisis, American small businesses move on from 'bank first' approach to financing. https://www.fundingcircle.com/us/resources/decade-after-financial-crisis-american-small-businesses-move-on-from-bank-first-approach-to-financing/

[6] The Federal Reserve 2019 Small Business Credit Survey. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

A second important amendment would further reflect ways which the small business lending landscape has changed since the Great Recession. Small businesses are increasingly seeking financing from CDFIs and non-depository lenders that may not be located in their communities but offer more attractive and responsible products that meet their needs. Responsible CDFI and non-depository lenders seeking to participate in the program should not be restricted to the state in which they are physically headquartered or licensed and should be exempt from state-specific domicile requirements.

Lastly, to ensure that underserved small businesses receive their fair share of resources during the economic recovery, we propose that SSBCI funding should be set aside in three categories 1) funds for CDFIs 2) loans under $50,000 or to businesses with less than 20 employees and 3) loans above $50,000 or to businesses with 20 to 100 employees to ensure support reaches the smallest and most vulnerable small businesses. Given that a majority of Paycheck Protection Program funds have gone to the larger of small businesses who already have credit relationships with banks, it is clear that without targeted efforts, the smallest and most vulnerable small businesses that lack banking relationships will be left out of the federal COVID-19 small business relief programs.

In conclusion, we encourage the Committee to pursue SSBCI reauthorization that expands the list of eligible lenders while adding strong borrower protections, removes state-specific domicile requirements, and sets aside funds to support the most underserved businesses. The RBLC believes that our proposed changes will strengthen the SSBCI program and ensure that more of America’s most vulnerable small businesses will receive access to responsible, affordable capital.

Thank you for your continued efforts to provide critical relief to vulnerable small businesses and communities impacted by COVID-19.

Sincerely,

The Responsible Business Lending Coalition

Cc:
The Honorable Nancy Pelosi
The Honorable Kevin McCarthy
The Honorable Patrick McHenry

Small Business Borrowers' Bill of Rights (2.0 Update)

Attestation Form and Attestation Worksheet for Lenders and Marketplaces

In order for a lender or marketplace to become a signatory of the Small Business Borrower's Bill of Rights 2.0, its chief executive must attest that it abides by all practices described in the Small Business Borrowers' Bill of Rights by completing both the **Attestation Form** and the **Attestation Worksheet** below, and, if requested, promptly provide additional documentation evidencing compliance with any or all of the enumerated practices (the "**Supporting Documents**") and the Supporting Documents shall be in a form acceptable to the Responsible Business Lending Coalition. Once completed, the Attestation Form, Attestation Worksheet and, if applicable, any Supporting Documents should be emailed to info@borrowersbillofrights.org.

Small Business Borrowers' Bill of Rights (2.0 Update)
Attestation Form for Lenders and Credit Marketplaces

Summary of Attestation

By checking the boxes below, I affirm that my organization actively supports and adheres to the *Small Business Borrowers' Bill of Rights (2.0 Update)* and abides by all of the practices described in the attached Attestation Worksheet:

- ❑ The Right to Transparent Pricing and Terms
- ❑ The Right to Non-Abusive Products
- ❑ The Right to Responsible Underwriting
- ❑ The Right to Inclusive Credit Access
- ❑ The Right to Fair Collections Practices

Note: You must be able to truthfully check all five boxes to be deemed a Signatory of the Small Business Borrowers' Bill of Rights and thereby eligible to have your organization's logo appear on the Small Business Borrowers' Bill of Rights website, www.BorrowersBillofRights.org.

Terms of this Attestation

a. I have read and understand the *Small Business Borrowers' Bill of Rights (2.0 Update).*

b. I have completed the attached Attestation Worksheet, indicating in writing that my organization abides by *all* of the enumerated practices.

c. If requested by the Responsible Business Lending Coalition, I have provided or will promptly provide (as the case may be) all Supporting Documents (as such term is defined on the cover page of this Attestation Form) in a form acceptable to the Responsible Business Lending Coalition.

d. By completing this Attestation Form and attesting that my organization abides by *all* of the enumerated practices in the attached Attestation Worksheet, I consent to having this Attestation Form and my organization's logo posted on the Small Business Borrowers' Bill of Rights Website.

e. I understand that this Attestation Form and my organization's logo may be removed from the Small Business Borrowers' Bill of Rights website if (i) my organization does not complete and submit a satisfactory updated Attestation Form within one calendar year from the date of my signature below, and (ii) each successive year thereafter, or (iii) if my organization ceases to abide by this Attestation or (iv) if, after receiving a request from the Responsible Business Lending Coalition, my organization fails to promptly provide any Supporting Documents or provides inadequate Supporting Documents (as applicable).

f. I agree, on behalf of my organization, that my organization assents to and will be bound by the Terms of Use for the Small Business Borrowers' Bill of Rights website.

g. Anyone with questions for my organization regarding this Attestation Form completed by my organization can contact the following individual (include name, title, email address, and phone number):

h. I attest that the information above is accurate and represents the standard practices for all financing products and services offered through my organization to small businesses. Furthermore, I hereby certify that I am authorized to sign this Attestation Form on behalf of my organization.

Organization Name

Chief Executive Signature

Chief Executive Name

Date

Small Business Borrowers' Bill of Rights (2.0 Update)
Attestation Worksheet for Lenders and Marketplaces

In order for an organization to become a signatory it must attest that it abides by the Small Business Borrowers' Bill of Rights (2.0 Update) by having its chief executive complete this worksheet by checking each box below indicating that his or her organization abides by each of the practices set forth below.[1] Questions regarding the form can be directed to info@borrowersbillofrights.org.

The Right to Transparent Pricing and Terms

□ Transparent Rate
- Disclose the Annual Percentage Rate (APR) and the annualized interest rate if one is used.

□ The disclosure of APR is an addition of this 2.0 Update. The previous version of the Small Business Borrowers Bill of Rights required disclosure of annualized interest rates. An organization that is not already disclosing APRs may nonetheless complete this Attestation by agreeing, by checking this box, to begin disclosing APRs as described here within 180 days of signing this Attestation. The organization agrees to provide evidence of disclosure of APRs within that time to info@borrowersbillofrights.org.
- Interest rate is defined as the scheduled or periodic financing cost, other than an upfront cost, expressed as a percentage of the outstanding principal and annualized.
- APR is the annual rate that is charged for borrowing, expressed as a single percentage number. It includes fees as well as interest rate and represents the actual yearly cost of funds.
- Interest rates and APR are a percentage of outstanding principal balance, not of the original financing amount.
- For lines of credit or other open-ended types of financing, rates must be calculated with reasonable assumptions about use, including assuming that the borrower draws the full amount on the origination date, and makes the minimum payments required.
- If a rate is promotional or introductory, the term sheet or its equivalent should clearly state this, and how the rate could change in the future.

[1] The term "loan" and related terms used here such as "lending" are intended to be interpreted in the broadest sense possible so as to include loans, lines of credit, merchant cash advances, and similar products offered and provided to U.S. small businesses, whether or not such credit products are characterized legally or otherwise as loans. Similarly, the terms "lender" and "borrower" are intended to be interpreted in the broadest sense possible so as to include, in the case of lenders, credit marketplaces that facilitate loans on behalf of lenders, cash advance providers, and all manner of persons providing loans to U.S. small businesses or evaluating the creditworthiness of such small businesses in connection with providing a loan, and, in the case of borrowers, all U.S. small businesses who seek or obtain a loan.

□ No Hidden Fees
- Disclose all upfront and scheduled charges.

□ Plain-English Terms
- Describe all key terms in an easy-to-understand manner, including the loan amount, total amount provided after deducting fees or charges, payment amount and frequency, total monthly payment amount if payment frequency is other than monthly, collateral requirements, and any prepayment charges.

□ Clear Comparison
- Present all of these pricing and other key terms clearly and prominently, in writing, to the borrower when the loan offer is summarized for the borrower and whenever a term sheet, offer summary, or equivalent is provided.

□ Fair Warning
- If referring a small business to a lender or broker who may offer a rate higher than 36% APR and is not a signatory of the Small Business Borrowers' Bill of Rights, the following warning is provided in writing prior to making the referral:

  "Warning: This lender or broker may offer you financing with an APR that is higher than 36%. Regretfully, some loans and cash advances can trap borrowers in cycles of high-cost debt. Before taking any financing, make sure you know the APR, the total payment amount you would owe monthly (even if payments are made daily or weekly), and whether you would owe financing charges even if you pay off early. Make sure you are confident you can afford to pay off any financing you take."

□ The provision of this "fair warning" statement is an addition of this 2.0 Update. An organization that is not already abiding by this requirement may nonetheless complete this Attestation by agreeing, by checking this box, to begin abiding by this requirement within 180 days of signing this Attestation. The organization agrees to provide evidence of abiding by this requirement within that time to info@borrowersbillofrights.org.

The Right to Non-Abusive Products

□ No Debt Traps
- If a borrower is unable to repay an existing loan, extend new credit only if due diligence indicates that the borrower's situation has changed, enabling them to repay a new loan.

□ No "Double Dipping"

Do not double-charge the borrower. When refinancing or modifying a loan with a fixed-fee as the primary financing charge, no fees are charged on the borrower's outstanding principal unless there is a tangible cost benefit to the borrower.

- ◻ No Hidden Prepayment Charges
  - If a borrower receives no savings, or limited savings, in early payoff, this information is disclosed in the original loan term sheet or offer summary, and again at the time of payoff. For financing with a fixed term, if a prepaying borrower owes a fixed repayment amount or a certain percentage of that amount regardless of when they pay off the financing, this information is disclosed as a prepayment charge. This charge is equal to the remaining financing charge owed at payoff, which is the cost the borrower is paying for the unused portion of the loan.

- ◻ Appropriate Product
  - Match loan product design and loan product use. If presenting a loan product as designed for one use, do not encourage borrowing behavior contrary to that use. For example, short-term products may be well suited for short term use, but not for long-term recurring use. Long-term products with prepayment penalties may be well suited for long-term use, but not for short-term needs.

- ◻ Pressure Free
  - Allow potential borrowers to consider their credit options free from pressure or artificial timelines.

- ◻ Prompt Prepayment Assistance
  - If a borrower seeks to prepay a loan, provide any information required for the prepayment within two business days of the borrower's request.

- ◻ Responsive Complaint Management
  - If a borrower complaint is submitted, provide a confirmation of receipt in writing within five days when possible, and research and resolve the issue in a timely manner.

The Right to Responsible Underwriting

- ◻ Believe in the Borrower
  - Offer financing only with high confidence that the borrower can repay its *entire* debt burden without defaulting or re-borrowing.

- ◻ Alignment of Interests
  - Lenders who receive repayment directly the borrower's gross sales must also verify, through documents, data from third parties, and/or due diligence, that the borrower can repay all debt and remain profitable, or that it has a credible path to profitability. Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid

- ☐ Right-sized Financing
  - Size loans to meet the borrower's need, rather than to maximize the lender's or broker's revenue. Seek to offer the borrower the size of loan that they need, rather than offering the maximum amount they qualify for.

- ☐ Responsible Credit Reporting
  - Report loan repayment information to major credit bureaus and consult credit data when underwriting a loan. Such reporting enables other lenders to responsibly underwrite the borrower and helps the borrower build a credit profile that may facilitate access to more affordable loans in the future. Lenders must inform the borrower and any guarantors if they intend to report loan repayment performance to guarantors' credit bureaus only in certain circumstances, such as after a default.

The Right to Inclusive Credit Access

□ Non-Discrimination

- Respect the letter and intent of fair lending laws, including the Equal Credit Opportunity Act. Do not discriminate against small business owners on the basis of race, color, religion, national origin, sex, marital status, age, sexual orientation or identity, or any other protected class. Lesbian, Gay, Bisexual and Transgender (LGBT) small business owners deserve the same protection when seeking or obtaining credit.

The Right to Fair Collection Practices

□ Fair Treatment

- Abide by the spirit of the Fair Debt Collection Practices Act and provide borrowers similar protections as described in that Act.

□ Responsible Oversight

- Diligently vet and oversee the collections practices of third-party collectors and debt buyers.
- Do not work with collectors or debt buyers who fail to treat borrowers fairly.

□ Accurate Information

- Transmit accurate, current, and complete information about the loan to third-party collectors and debt buyers.