December 22, 2022

Dianna Seaborn
Director, Office of Financial Assistance
Office of Capital Access
Small Business Administration
409 Third Street SW
Washington, DC 20416

RE: Affiliation and Lending Criteria for the SBA Business Loan Programs, RIN 3245-AH87

Dear Small Business Administration:

The purpose of the Small Business Administration 7(a) Guaranteed Loan Program is to provide access to capital for small businesses that can be at a disadvantage, compared with other businesses, when trying to obtain access to sufficient capital and credit. It is considered SBA's flagship program, and the primary mechanism for improving small business access to capital. A major concern for the program is that funds are used in accordance with the SBA guidelines defining small business, and reserved for applicants with demonstrated need for credit that is unavailable otherwise, with assurance that the borrower is creditworthy with a reasonable assurance of repayment, and that loan proceeds are not used for unsound business purposes. In our experience, and documented in the March 2018 Office of the Inspector General Evaluation of SBA 7(a) Loans Made to Poultry Farmers, 7(a) loans to large-scale confinement livestock operations challenge the program in each of these important criteria.

Through their contracts with growers, large poultry corporations or "integrators" exercise comprehensive control over the growers; according to the SBA's OIG evaluation, integrators use "a series of contractual mandates and restrictions, management agreements, operating procedures, oversight, inspections, and market controls [to overcome] practically all of the grower's ability to operate their business independent of integrator mandates." Additionally, contract poultry facilities are single-use, single-market operations, which do not provide a feasible means of revenue diversification over time nor a feasible means of debt repayment other than contract poultry production. Growers have few, if any, protections against premature contract cancellation, suspension of flock delivery, changes to the contract terms, and/or unexpected and unaffordable capital investment requirements. As a result, there is significant evidence that poultry production contracts do not present a "reasonable assurance of repayment" due to the following issues:

1. According to USDA research, these operations are required to make continued investment in equipment upgrades and replacement (MacDonald, 2014). These continued investments often require repeated refinancing or extension of the loan term that prevents timely loan repayment.

2. The dependency of loan repayment on the continuation of the poultry contract with a specific integrator at full placement, housing grades, and density of flocks. In essence, there are no alternative uses for these facilities, or other farming enterprises, which generate sufficient revenues to service the associated level of debt should the borrower's contract be altered or terminated.
3. Clauses within typical poultry contracts create a great imbalance of power, allowing the integrator to alter the number of flocks, density of bird placement, payment mechanisms or rates, or cancel the contract without sufficient notice to the farmer.
4. The limited availability of alternative integrators in the event the farmer's contract is altered or terminated. According to USDA statistics, 51.9% of broiler-producing farms are in geographic locations with 2 or less integrators (MacDonald, 2014). Keeping this in mind, if a farmer's contract were terminated, or altered to make the business economically non-viable, then more than half of all broiler farmers in America would be in serious jeopardy of continuing their farming operation and repaying any debt they may hold.

In a normally functioning capital market, access to capital for these poultry operations would require poultry integrators to provide contracts with more balance and stability for the grower, and less risk for the lender. However, because of federal loan guarantees, normal scrutiny by lenders of the contracts that underlie these loans does not take place and the unsustainable poultry production model persists. In this way, we argue that the SBA 7(a) program program is underwriting and subsidizing the abusive contracting practices of the U.S. poultry sector, contributing to the economic distress that is common for poultry and other confinement livestock growers and the rural communities that depend on those operations as well.

In 2018, we applauded the Agency for taking proactive steps to correct some issues arising from the implementation of the SBA 7(a) program with regards to livestock and poultry production contracts. Most notably, we appreciated the Agency's attention to the definition of an affiliate and the Agency's rulemaking surrounding affiliation, specifically: 1.) the Agency's reintroduction of the concept of common investments and economic dependence in determining affiliation, 2.) the affiliation exception for start-ups and new businesses, with the provision of creating a feasible diversity plan to maintain exception eligibility, 3.) SBA's reintroduction of the totality of circumstances criteria, rather than relying on SBA-provided examples which themselves could be interpreted as rules and introduce confusion, and 4.) the introduction of a formal challenge procedure to appeal a size determination, allowing for businesses to state their case for affiliation determination.

We were disappointed that the 2018 rulemaking was never completed, and equally disappointed that the current SBA rulemaking does not address the SBA 7a program poultry lending concerns raised by the March 2018 SBA OIG report. Instead, this current rulemaking appears to go the other direction, by further diluting the "affiliation rule" standards. While it may be appropriate to consider relaxed affiliation rule standards when lending to small, disadvantaged businesses, we believe that the affiliation rule standards should be strengthened in the case of large poultry loans to operations that are controlled, through abusive contracts of adhesion, by very large poultry integrator firms. We urge the agency to address these concerns in the final rule, or through a separate rulemaking.

Thank you for your consideration of these comments.

Sincerely,

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Rural Advancement Foundation International - USA (RAFI-USA) is a nonprofit organization based in North Carolina that challenges the root causes of unjust food systems, supporting and advocating for economically, racially, and ecologically just farm communities. We envision a thriving, sustainable, and equitable food system: where farmers and farmworkers have dignity and agency; where they are supported by just agricultural policies; and where corporations and institutions are accountable to their community. We help farmers find markets, advocate for and with farmers who are experiencing financial crisis, convene a Farmers of Color Network (primarily in the Southeastern United States), work with farmers markets and rural faith communities to increase food access, provide infrastructure and emergency grants to farmers, and help coordinate a seed breeding cooperative. The following recommendations for addressing corporate consolidation within the food system emerge directly from this work. Our Challenging Corporate Power Program (formerly known as Contract Agriculture Reform program) has worked primarily with contract poultry growers for more than 30 years to fight for better treatment from, and regulation of, giant meatpacking corporations. In that time period we have seen the trend of corporate consolidation (both vertical and horizontal) within industrial animal agriculture continue unchecked. RAFI-USA now works with both contract and independent livestock and poultry producers to reverse the rampant negative effects of corporate concentration across the food system.