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November 15, 2018

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

Attention: Kimberly Chuday or Thomas Heou

RE: Proposed Revisions to Express Loan Programs; Affiliation Standards; 13 CFR Parts 103, 120 and 121. RIN 3245-AG74

To Whom It May Concern:

I write on behalf of the Nebraska Bankers Association (NBA) to express our Association's opposition to the portion of the proposed rule regarding revisions to the "identity of interest rule" (rule). The NBA is a trade association representing 172 of the 180 commercial banks and seven savings associations in the state of Nebraska. We believe that the proposed rule will have a significant, adverse effect on agricultural producers, rural economics and future export opportunities.

Government guaranteed loans serve an important purpose in assisting banks that are providing financing to farmers and ranchers for their business operations and contribute to the vitality of the communities they serve. However, the proposed rule would severely restrict the ability of most agricultural enterprises to receive a Small Business Administration (SBA) guaranteed loan.

The proposed rule ignores the realities of today's marketplace for the sale, processing, and marketing of agricultural products. Our country has seen a massive consolidation in the food processing, marketing and distribution industries over the past 50-75 years. As a result, producers have limited options for the marketing and sale of their products.

Buyers of agricultural products have become increasingly concentrated in recognition of consumer demand for reasonably priced and highly consistent food products. Consolidation of food processing, marketing and distribution industries have resulted from the need to improve capital acquisition, capital allocation and to meet consumer demand.

The proposed rule would be devastating to the ability of many agricultural producers to obtain SBA guaranteed loans. The following underscores this reality:

Virtually all dairy farms sell 100 percent of their production to a single milk handler, processor, cooperative or bottler. These producers would be ineligible for SBA guaranteed loans because they derive more than 85 percent of their revenues from a single source. While the dairy farms may clearly be economically dependent on the “purchaser,” it is a fallacy to suggest that they are “affiliated” with the “purchaser.” This same analysis holds true for agricultural producers raising poultry, beef, pork, and other meat products for sale to the limited number of processors and packing plants which constitute virtually all of the processing and meat packing capacity in our country; those growing corn for sale to ethanol plants for conversion into ethanol for motor fuels; and those raising plants for sale to large, national retailers would also be subject to this proposed rule.

Specifically, with respect to small business contract poultry growers, we believe that they are independent and should not be considered to be an affiliate of their integrators for the following reasons:

- The small business contract grower is solely responsible for obtaining financing for the construction / purchase of the farm real estate.
- The small business contract grower is solely responsible for the supervision, management, direction and control of the day to day operations of the farm. This includes hiring, paying and managing hired labor if used on the farm.
- The small business contract grower solely owns the real estate and poultry growing facilities.
- The small business contract grower has a significant investment in the facilities. This is typical of independent contractor status.
- Independent contractors generally provide their own tools, materials and equipment while working. This is also the case in poultry businesses.
- The small business contract grower is solely responsible for the payment of all taxes.
- The small business contract grower is not a partner, agent or employee of the integrator.
- The small business contract grower is issued a 1099 from the integrator.

We also object to the proposed “totality of the circumstances test” which is vague at best, and would place agricultural producers at risk at being deemed to be “affiliated” with another entity even when no single factor is sufficient to otherwise constitute an affiliation.

The proposed rule will effectively take SBA out of the guaranteed loan business for agricultural producers, which is not in line with the mission of the SBA, nor would we hope that this is the intent of the proposed rule. Adapting to the impact of market consolidation is challenging enough for agricultural producers, without also having to move forward without the ability to access SBA guaranteed loans.

In recognition of the manner in which the food production industry is organized and has evolved, we would recommend that the proposed rule be withdrawn.

As always, we thank you for the opportunity to comment on the proposed rule.

Very Truly Yours,



Richard J. Baier
President & CEO

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