April 10, 2020

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

Re: Docket SBA-2018-0009-4112

To Whom It May Concern:

The Campaign for Family Farms and the Environment (CFFE) is a joint effort by Dakota Rural Action, Iowa Citizens for Community Improvement, Land Stewardship Project, Missouri Rural Crisis Center, Institute for Agriculture and Trade Policy and Food & Water Watch. Our organizations work together as CFFE to change policies that promote consolidation in animal agriculture at the expense of independent family farms. We appreciate the opportunity to offer comments on the interim final rule "Express Loan Programs: Affiliation Standards."

Even before the economic disruption caused by the Covid-19 pandemic created tremendous demand for loans from the Small Business Administration, the criteria for determining who is eligible for these loans had serious impacts on the structure and function of livestock markets and farms that participate in these markets. The structure of the livestock industry in general and the poultry industry in particular demand attention when it comes to how guaranteed loans are provided. An investigation of guaranteed loans to contract poultry growers by the Small Business Administration's Office of Inspector General (OIG) found that the poultry industry is highly locally concentrated, and that large poultry companies exercise comprehensive control over the growers, calling into question what criteria are used to determine if these operations are affiliates of larger companies. Therefore, we appreciated the efforts by the SBA to revise the criteria for the affiliation standards.

We appreciate the newly expanded "identity of interest" regulations, which include businesses that are economically dependent through contractual relationships and agree that if a "small business Applicant derived more than 85 percent of its revenue from another business over the previous three fiscal years, SBA would find that the small business Applicant is economically dependent on the other business and, therefore, that the two businesses are affiliated."

We also appreciate that the interim final rule notes the unique relationship between poultry farmers and large poultry companies (integrators) and that this relationship necessitates a unique process to evaluate the appropriateness of guaranteeing a loan. The extreme level of control held by the integrator over a contract poultry operation, combined with high levels of debt held by the contract grower, demand special scrutiny to determine if these operations are truly independent small businesses.

In the poultry industry, there are a number of factors that contribute to extreme control of poultry farmers by integrators and, therefore, result in extreme affiliation between these two groups. The OIG report found that integrators exercise comprehensive control over poultry farmers through “contractual mandates and restrictions, management agreements, operating procedures, oversight, inspections and market controls” that make it virtually impossible for poultry farmers to manage their operation absent of integrator mandates.

The interim final rule’s provision to review contracts between poultry farms and integrators to determine whether “the buyer does not have control or the power to control the seller” is an important update to the SBA’s process for determining loan guarantees. The criteria outlined in the interim final rule appear to be consistent with the findings of the 2018 OIG evaluation report.

There are important factors that must be considered when poultry contracts are being evaluated on whether integrators have control or the ability to control. Due to the extreme level of consolidation in the poultry industry, integrators have extreme negotiating power, which results in one-sided contracts with extreme integrator control over contract growers. These contracts are “take-it-or-leave-it” to the point that poultry farmers are not capable of independently implementing farm management practices for fear of losing their contract and their means of loan repayment. Another aspect of this market power over contract growers is the pressure created by growers being required by the integrators to do expensive upgrades to their facilities, often requiring taking on more debt. These integrator specific upgrades required by their contracts make it nearly impossible for contract growers to escape debt and present an unreasonable burden to change contracting integrators.

More clarity is required for the second exception to the economic-dependence affiliation rule. Under the current second exception, SBA lays out six factors. While these factors are sufficient for determining a contracting integrator’s control or ability to control more clarity on how these factors will be weighted is necessary. SBA should extend to these factors the same concept of totality of circumstances that are noted in section 121.301(f)(6). Under the concept of totality of circumstance, no single factor would outweigh the control evident in other factors. While rationalizations can be made for the control evident under some factors the totality of control exercised under all factors should be considered when making a determination of affiliation.

Thank you for your consideration of these comments. If you have questions or need more information, please contact Patty Lovera at pattylovera20@gmail.com.

Sincerely,

Campaign for Family Farms and the Environment