

Diana Seaborn
Director, Office of Financial Assistance
Office of Capital Access
U.S. Small Business Administration
409 3rd Street SW, Suite 8200
Washington, DC 20416

Re: 2022-23167 “Affiliation and Lending Criteria for the SBA Business Loan Programs”

Dear Ms. Seaborn,

Thank you for the opportunity to comment on the proposed rule on Affiliation and Lending Criteria for the SBA Business Loan Program.

Cooperatives exist and thrive across all sectors of our economy. One in three Americans is a member-owner of at least one cooperative business, but membership is unevenly distributed across types of cooperatives and sectors of the economy. This is in large part due to a policy scaffolding around each sector. For example, 125 million member-owners access safe, affordable financial services through their local credit union. Products produced by farmer cooperatives are household names like Organic Valley, Cabot Creamery, Ocean Spray, and Sunkist. Every year, U.S. food co-ops exceed \$2.4 billion in combined sales, with 38 percent of revenue from grocery co-ops spent locally. And more than 20 million households, businesses, and schools receive electricity as member-owners of the electric cooperatives that serve 92 percent of persistent poverty counties. Worker cooperatives are small businesses owned, controlled, and governed by employees and make up a small yet fast-growing portion of the 65,000 cooperative businesses in our nation.

There are an estimated 1,000 worker cooperatives in the United States. Workers clearly have an interest in forming these types of businesses, but this potentially exponential growth is hindered because of a lack of access to capital. Consumer-owned cooperatives are also stable, secure, legitimate businesses that have staying power. For example, consumer food co-ops provide access to locally produced and healthy foods for residents and increase access to markets for our nation’s small and mid-sized producers. They improve communities’ economic resiliency and ultimately reduce the prevalence of food deserts and food insecurity. Cooperatives are a tool for driving locally led solutions and building wealth, especially in communities of color and low-income communities. Lack of access to capital—and, importantly, lack of access to U.S. Small Business Administration loan guarantees—is a central reason there are not significantly more of these businesses. Despite the presence and success of cooperatives for more than 100 years in the United States, the SBA has failed to incorporate its products and services to include the cooperative business model.

We recognize and appreciate the intent behind the proposed rule on SBA’s business lending programs and the inclusion of the provision that would allow borrowers to use 7(a) loans *“to purchase a portion of or the entirety of an owner’s interest in a business, or a partial or full purchase of a business itself.”* However, this provision does not sufficiently address the lack of access to capital for member-owned cooperatives. The proposed rule fails to address SBA’s personal or equity guarantee requirement within 7(a) lending programs.

A defining feature of the cooperative business model is shared ownership by the members and a governance structure that provides one vote for each member. For this reason, no single member owns

more than a 20 percent stake in the overwhelming majority of cooperatives. The agency's previous claims that the personal guarantee ensures owners are invested in the business' viability is redundant when applied to cooperative businesses. Cooperatives, necessarily being 100 percent member-owned, means that all owners already have skin in the game as each individual has personally invested their own money and resources. **SBA should ensure that cooperatives are eligible for 7(a) loans without undue burden by removing the requirement to provide a personal guarantee.**

Within the Federal Register notice, SBA states that the intent behind the proposed rule is to *“assist small businesses and expand pathways to ownership”* and that the agency believes the regulations *“can better position the Agency and participating lenders to meet the needs of America's small businesses, create jobs, assist with recovery from the COVID-19 pandemic, and grow the economy, fueling American entrepreneurship...and will enable SBA to provide capital in the form of 7(a) and 504 loans to more small businesses.”* The rule's failure, however, to address the prohibitive personal or equity guarantee requirement is the antithesis of meeting the needs of thousands of cooperatively owned small businesses across the entire country. Additionally, the proposed rule fails to meet the statutory directives for SBA within the 2018 Main Street Employee Ownership Act (P.L. 115-232 Sec. 862), which states:

“It is the sense of Congress that cooperatives have a unique business structure and are unable to access the lending programs of the Administration effectively due to loan guarantee requirements that are incompatible with the business structure of cooperatives.”

Since passage of the 2018 legislation, Congress has further clarified its intent for SBA to make structural changes in its lending programs that would provide cooperatives with access to capital and for the agency to fully implement the requirements within the legislation. This has been made clear through numerous House Small Business Committee hearings and, most notably, in the House Financial Services and General Government Committee's [FY 2022 Appropriations Report](#) (P.L. 117-103).

Addressing the Seller Guarantee Requirement

In addressing another component of concern within the proposed rule, SBA currently requires that sellers guarantee the buying loan.¹ For many business owners who wish to retire or would otherwise close their small business, they may no longer be involved in future business operations once a conversion to a cooperative model has taken place. This requirement is another prohibitive barrier that would disincentivize small business conversions and instead incentivize selling the business to an out-of-town buyer instead of preserving what was once a community-based and locally owned entity. This includes scenarios where small businesses are increasingly absorbed by large corporations, private equity firms selling a business for parts or immediate liquidation.

Because of their structure, cooperatives are more resilient, innovative, and sustainable. With each member having an equal stake in the cooperative, there is no singular owner entirely on the hook. It is the shared risk among member-owners that makes the business significantly less likely to fail than other types of business models.

Alternatives to the personal guarantee requirement

¹ [2019 SBA Report on Cooperative Lending](#)

The cooperative sector has been working for decades with the SBA to implement practical alternatives to the personal guarantee, and we were hopeful that the Main Street Employee Ownership Act would be a catalyst for change. We were disappointed that the SBA hearings by the House Small Business Committee in March 2019 and September 2021 did not result in policy changes that would remove the personal guarantee requirement and provide member-owners fair access to SBA loan products. While the current proposed rule was intended to be a step toward making access to capital more equitable for member owned businesses, it reinforces the inaccessibility of SBA loan programs to a huge swath of the small business community.

Within the federal government, other departments, such as the U.S. Department of Agriculture, recognize the value and strength of the cooperative model by outlining requirements to ensure that cooperative businesses may equally participate in its guaranteed lending programs. In the case of co-ops with five or more people, USDA does not require individuals to fulfill a personal guarantee requirement. As a result, cooperatives across sectors have a rich presence in rural communities across the country that have helped rural residents expand and retain access to necessary goods and services and create new economic opportunities. Of note, the SBA also provides waivers to the requirement on guarantees for 7(a) loans to ESOPs.

Additionally, the private sector recognizes the unique and successful business model of cooperatives. Generally, cooperative lenders, who are eager to finance more cooperative businesses, require collateral on loans to cooperatives, but in recognition of the cooperative model, they do not require personal guarantees. Rather, there are numerous ways in which lenders prudently administer these loans. We understand that SBA needs to balance the potential risk associated with the removal of the personal guarantee requirement. Cooperative lenders and member-owners alike agree that taxpayer dollars should not be associated with risky or unviable loans. We believe, however, that there are other, more reasonable ways to manage this risk.

Conclusion

Cooperative models offer a solution not only to address the tide of baby boomer business owners who will soon retire but also to build wealth, especially in communities of color and low-income communities. To help people capture this opportunity, we strongly believe the most important thing SBA can do is ensure that cooperatives have access to its lending programs.

Again, thank you for the opportunity to submit public comments. The cooperative community stands ready to support your work on this critical issue.

In cooperation,

A Slice of New York
Aligned Law
Amicus Solar Cooperative
Androscoggin Food Co-op
Appalachian Field Services
Austin Cooperative Business Association
Austin Design Cooperative, Inc.
Baltimore Bicycle Works

Banana Kelly Community Improvement Association, Inc.
Baum Ideas & Marketing
Big Hollow Food Co-op
Bodega x Comics
BriarPatch Food Co-op
California Association for Micro Enterprise Opportunity (CAMEO)
Capital Impact Partners
Carolina Common Enterprise
Cascade Mountain Ascents
Catalyst Miami
Chequamegon Food Co-op
Chico Natural Foods Cooperative
CoBank
CoLab Cooperative
Colmenar Cooperative Consulting
Columinate
Community Development Law Clinic, University of the District of Columbia
Community Food Co-op
Community of Urbana-Champaign Cooperative Housing
Community Reinvestment Fund, USA
Cooperacion Santa Ana
CooperationWorks!
Cooperative Development Foundation (CDF)
Cooperative Development Institute
Cooperative Development Services
Cooperative Fund of the Northeast, Inc.
Corrigan Consulting Services
CUNA Mutual Group
Custom Collaborative
David Halstead Sustainable Investment Fund
Delicious Democracy
Democracy at Work Institute (DAWI)
East End Food Co-op
Ember Cooperative
Employee Ownership Expansion Network
Family Village Cooperative
Federation of Southern Cooperatives/Land Assistance Fund
Franklin Community Cooperative
Fuerza Laboral
Gimme! Coffee Cooperative
Grand Rapids Food Coop
GROTEC Aquaculture, Inc
Hanover Co-op Food Stores of NH & VT
Happy Family Night Market

Home Care Associates
Honest Weight Food Co-op
Humble Hands Harvest
Hypha Collective
Illinois Center for Employee Ownership
Inclusiv
Kiddo Social Media Co-op
Liberty Graphics Employee Cooperative
Littleton Food Cooperative
Local Enterprise Assistance Fund (LEAF)
Monadnock Food Co-op
National Association of Housing Cooperatives
National Co+op Grocers
National Cooperative Bank
National Cooperative Business Association (NCBA CLUSA)
Neighboring Food Co-op Association
New Frameworks
New York Law School Nonprofit and Small Business Clinic
North Coast Small Business Development Center - Worker Owned Humboldt
North American Students of Cooperation (NASCO)
Northeast Organic Farming Association/Massachusetts Chapter
Obran Cooperative
Oneota Community Cooperative
Oregon New Economy Project
Ownership America
Oxbow Design Build Cooperative, Inc.
Pachamama Coffee Cooperative
Philadelphia Area Cooperative Alliance
Pioneer Valley Photovoltaics
PixelSpoke
Power in Numbers Bookkeeping, LLC
Project Equity
Raising Clarity
Redwood Roots Farm Cooperative
Regenerative Landscape Alliance, LLC
Rising Tide Co-op
River Market Community Co-op
River Valley Co-op
Roberts Enterprise Development Fund (REDF)
Round Sky Solutions
Rutland Area Food Co-op
Samamkaya Yoga Back Care & Scoliosis Collective
Sassafras Tech Collective, LLC
Shared Capital Cooperative

SymbiOp, Inc.
Sioux Falls Food Co-op
Small Business Majority
Sno-Isle Food Co-op
SOL Economics
Solarpunk Travel Co-op
Southern Exposure Seed Exchange
Sugar Beet Food Co-op
Syracuse Cultural Workers
Team Co-op, LLC
The Compost Cooperative, Inc.
The Cooperative Way
The Fund for Jobs Worth Owning
The Greylock Glass
The Parodneck Foundation
Three Rivers Market
Tootie's Tempeh
U.S. Federation of Worker Cooperatives (USFWC)
Urban Homesteading Assistance Board (UHAB)
University of Illinois at Chicago
Upper Valley Food Co-op
Urban Greens Co-op Market
Valley Co-operative Business Association
Viroqua Food Co-op
Voluntary Basic Income
WESPAC Foundation, Inc.
White Rabbit Farm
Wholehearted Bookkeeping, LLC
Willimantic Food Co-op
WORCS: Worker Ownership Resources and Cooperative Services
Worker-Owned Recovery California (WORC) Coalition