March 13, 2020

Bethany J. Shana
Office of Credit Risk Management
Office of Capital Access
Small Business Administration
409 Third Street SW,
Washington, DC 20416

Re: NASCUS Comments on RIN 3245-AH04 – SBA Supervised Lenders Application and Review Process and Capital Requirements

Dear Ms. Shana,

The National Association of State Credit Union Supervisors (NASCUS)[1] submits the following comments in response to the Small Business Administration's (SBA) proposed changes to its regulations applicable to SBA Supervised Lenders.[2] SBA's proposal would amend 12 CFR § 120 in part by requiring Non Federally Regulated Lenders (NFRLs) to employ qualified full time professional management staff, restrict NFRLs to originating loans only in the state where their primary state regulator is domiciled, establish minimum capital requirements for NFRLs, require SBA Supervised Lenders to submit written Lender Assessment Plans (LAPs) as part of the application process, and codify the existing SBA policy requiring written approval of the SBA before any SBA Supervised Lender undergoes a change of ownership or control.

NASCUS opposes the application of the proposed changes to SBA Supervised Lenders that are supervised by state credit union regulators. The SBA clearly lacks a comprehensive understanding of the state regulatory system and the role state regulators play supervising credit unions, including federally insured credit unions. For the reasons discussed in detail below, we recommend SBA exempt non-federally insured credit unions and other entities supervised by state credit union regulatory agencies from the proposed rule.

<u>State Regulatory Agencies</u>

The SBA asserts the rule is necessary to mitigate the "increased risk" presented by NFRLs.[3] Furthermore, with respect to the proposed requirement to limit NFRLs to originating loans in their home state, SBA states that "SBA is concerned that state regulators may not have sufficient resources or capacity to adequately supervise, regulate and examine NFRLs with a business plan to make or acquire 7(a) loans outside of their state, and SBA does not have the

[1] NASCUS is the professional association of the nation's 45 state credit union regulatory agencies that charter and supervise over 2,100 credit unions.
[2] 85 Fed. Reg. 1783 (January 13, 2020).
[3] Id. 1784.

resources necessary to fill in the gaps in oversight and enforcement."[4] Plainly stated, there are no "gaps" in oversight with respect to NFRLs supervised by state credit union regulators.

State credit union regulatory agencies supervise credit union NFRLs in the same manner, with the same personnel, as they do the federally insured SBA credit union participants. State regulators also use the same examination platform and risk rating system as the federal credit union regulator. The state regulators supervising the credit union NFRLs are members of the same regulatory network with primary supervisory authority over the nation's two thousand state-chartered credit unions holding nearly half of the over $1 trillion in credit union assets. Together, state regulatory agencies supervise institutions with lending portfolios many magnitudes larger than the SBA's lending exposure in the NFRLs supervised by the states.

In addition, nothing about a regulated entity making loans outside of its state is a matter of first impression for state regulatory agencies. Because of the "once a member, always a member" principle of the credit union system, credit unions serve their members all over the country. Furthermore, some credit unions may have entire branch networks across multiple states. State regulatory agencies are familiar with those operations and have years' worth of experience supervising cross-border activities of their chartered entities.

With respect to the SBA proposals regarding capital requirements, change in control, and professional management, we note that the NFRLs supervised by state credit union regulators are already subject to similar requirements specifically designed for financial institutions. Credit union NFRLs are all managed by executives and overseen by boards of directors that are subject to bonding requirements and a robust regulatory framework. All financial institutions, including credit union NFRLs are subject to regulatory and supervisory capital requirements. Finally, no credit union, federally insured or otherwise, can merge, convert, dissolve, or otherwise change control without the approval of its state regulatory agency.

NASCUS appreciates the opportunity to submit comments on the SBA's proposed changes to its supervised lender program. We understand SBA's attention to the safe and sound management of its lending program and agree that supervisory due diligence is essential as part of sound regulatory oversight. In the case of SBA program participants supervised by a state regulatory agency, it is evident that a regulatory and supervisory framework is already in place that obviates the need to apply these proposed changes to credit union NFRLs.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Executive Vice President & General Counsel

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[4] Ibid.