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National Association of Federally-Insured Credit Unions

April 25, 2023

The Honorable Ben Cardin
Chairman
Committee on Small Business and
Entrepreneurship
United States Senate
Washington, DC 20510

The Honorable Joni Ernst
Ranking Member
Committee on Small Business and
Entrepreneurship
United States Senate
Washington, DC 20510

Re: Tomorrow's Hearing: "Oversight of SBA's Implementation of Final Rules to Expand Access to Capital"

Dear Chairman Cardin and Ranking Member Ernst:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts on issues of importance to credit unions ahead of tomorrow's hearing, "Oversight of SBA's Implementation of Final Rules to Expand Access to Capital." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. We would like to thank you for this opportunity to share our concerns about the Small Business Administration's (SBA) final rules to expand its lending networks.

As champions of financial inclusion, credit unions have been at the forefront of efforts to increase access to personal and small business financial services for underserved communities. Credit unions have grown their overall business lending portfolio by more than 20 percent this past year, which is nearly identical to the growth rate over the past five years. At the same time, NAFCU has worked tirelessly to ensure that non-depository financial institutions such as fintechs operate on a level playing field with credit unions to protect consumers and small businesses. Unfortunately, we are concerned that two recent actions by the SBA may end up running counter to these efforts by opening the programs to unregulated competition.

On April 10th and April 12th, 2023, the SBA published two final rules: (1) Amending regulations governing SBA's 7(a) Loan Program and 504 Loan Program, including regulations on use of proceeds for partial changes of ownership, lending criteria, loan conditions, reconsiderations, and affiliation standards; and (2) Amending its business loan program regulations to lift the moratorium on licensing new Small Business Lending Companies (SBLCs) and add a new type of lending entity called a Community Advantage SBLC, in effect allowing fintech lenders that are only supervised by the SBA's Office of Credit Risk Management to participate in the 7(a) Loan Program. While these are two separate rules, they will have the combined effect of loosening 7(a) lending standards at the same time as opening that program to entities already proven to be more susceptible to fraud than traditional depository institutions overseen by federal prudential regulators. It may be appropriate to reduce 7(a) lending standards for institutions

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Page 2 of 2

already bound to follow underwriting requirements set by their prudential regulator, but any newly licensed SBLCs will have no such requirements. Fintechs will be participating in an unfamiliar-to-them lending program with few established standards to follow, and subject only to oversight from the SBA that does not include supervision for compliance with Bank Secrecy Act and anti-money laundering requirements, concentration caps, safety and soundness parameters, stress test parameters, and other regulatory criteria to promote prudent lending.

Allowing fintechs to participate in 7(a) lending on those grounds will place credit unions and other traditional lenders at a severe competitive disadvantage. Non-depository SBLC lenders implementing less stringent underwriting requirements, and with significantly less regulatory compliance cost, will expend fewer resources to offer SBA loans and will therefore be able to offer these loans at more favorable terms. Small businesses will likely gravitate toward these riskier lenders, reducing demand for SBA loans from depository institutions and gradually reducing the number of depository institutions participating in SBA lending. With a greater reliance on fintech lenders, SBA lending programs will be at increased risk of fraud, credit losses, and reputational risk. This risk was clearly demonstrated in the early stages of the pandemic when fintechs participating in the Paycheck Protection Program experienced much higher levels of fraud compared to regulated financial institutions.

The bottom line is that credit unions continue to be a safe, secure, and reliable lender that provides access to personal and small business financial services for underserved communities, and these SBA rules will only create more unregulated competition. We oppose allowing fintechs to participate in SBA lending programs without sufficient regulatory oversight. The new Affiliation and SBLC Rules combine to give unregulated fintech lenders an unfair competitive advantage and put consumers, small businesses, and SBA programs themselves at risk of fraud, credit losses, and reputational risk. We urge Congress to use its oversight authority to step in and bring about changes.

We thank you for the opportunity to share our thoughts and look forward to continuing to work with you on improving the SBA's lending programs. Should you have any questions or require any additional information, please contact me or Amber Milenkevich, NAFCU's Senior Associate Director of Legislative Affairs, at (703) 402-2330 or amilenkevich@nafcuh.org.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the U.S. Senate Committee on Small Business and Entrepreneurship