

November 14, 2023

Dianna Seaborn  
Director, Office of Financial Assistance  
U.S. Small Business Administration  
409 Third Street, NW  
Washington, DC 20416

***Re: RIN 3245-AI03, 2023-19183, Criminal Justice Reviews for the U.S. Small Business Administration's Business Loan Programs and Surety Bond Guaranty Program***

Dear Director Seaborn:

The undersigned organizations appreciate the opportunity to comment on the U.S. Small Business Administration's (SBA) proposed rule regarding eligibility requirements under specified loan programs. These long-overdue changes to criminal record restrictions will expand access to capital for entrepreneurs with prior justice involvement, while removing a significant barrier faced by one in three American adults. We therefore support these reforms and applaud the SBA for its leadership in this critical space.

Under current regulations, individuals seeking access to various SBA loan programs – including the 7(a) Loan Program, 504 Loan Program, Microloan Program, Intermediary Lending Pilot Program (ILP), Surety Bond Guarantee Program (SBG), and the Disaster Loan Program – may be deemed ineligible for loans if they are on parole, on probation, or otherwise have a criminal history record.

While the origins of these restrictions may have been well-intentioned, decades of records show there is little to no correlation between a qualified borrower's criminal record and their ability to repay borrowed funds. As the proposed rule's "Background Information" section points out:

*SBA understands the original intent of these restrictions was to protect the performance of SBA's capital programs against a presumed higher likelihood of default. Data and research, however, refute what may have animated SBA's initial rationale. Importantly, SBA reviewed the relevant research and found no evidence of a negative impact on repayment for qualified individuals with criminal history records in any American business loan program. This lack of data demonstrates that continuing to rely on this restriction for that purpose would contradict the available evidence and although the restrictions may have been originally put in place with the goal of protecting program performance, the lack of data suggests continuing to rely on this restriction would reflect an outdated, inaccurate structural bias against individuals with criminal history records.*

Critically, in addition to having virtually no effect on program performance, the SBA found that preventing justice-impacted individuals from accessing loan programs could increase the rate of recidivism among returning citizens while denying them an important and distinct avenue for economic stability, particularly given persistent stigma from employers who may decline to hire people with criminal history records.

In light of this evidence, the SBA's proposed rule takes the commonsense approach of eliminating certain criminal record restrictions in various federally guaranteed business and disaster loan programs, building on the agency's removal last year of "character" as a loan criterion in the 7(a) and 504 programs, among other changes. Furthermore, in upholding an existing restriction that "actually incarcerated" individuals remain ineligible, the proposed rule strikes an appropriate balance between ensuring program performance and eliminating needless and ineffective structural biases.

However, while the proposed rule represents a critical step towards expanding access to capital for entrepreneurs with prior justice involvement, we remain concerned that further regulations are needed to ensure participating lenders follow the SBA's lead. As the proposed rule reads: "Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws." We therefore urge the SBA to implement further guidance and clarity in its final rule that applies these modified restrictions to lending institutions.

In summary, we thank the SBA for its tireless efforts to ensure equity and fairness in its lending programs and stand ready to work with you to advance this important issue.

Sincerely,

Association for Enterprise Opportunity (AEO)  
Association of Women's Business Centers  
National Association for Self-Employed  
National Asian / Pacific Islander American Chamber of Commerce and Entrepreneurship  
(National ACE)  
National LGBT Chamber of Commerce  
National Urban League  
U.S. Black Chambers, Inc.  
Small Business Roundtable  
Women Impacting Public Policy