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National Association of Federally-Insured Credit Unions

November 17, 2020

Small Business Administration
Third Street SW
Washington, DC 20416

RE: Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules (Docket No. SBA-2020-0052)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing concerning the Small Business Administration's (SBA) interim final rules (IFR) implementing section 1106 of the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 122 million consumers with personal and small business financial service products. NAFCU appreciates the SBA's efforts to simplify the forgiveness process for truly small businesses with loans under \$50,000. NAFCU reiterates the call for the SBA to consider automatic loan forgiveness for loans under \$150,000 and support any legislative efforts. In addition, NAFCU asks the SBA to support legislative efforts to amend the CARES Act to exclude Economic Injury Disaster Loans (EIDL) advance amounts from the calculation of loan forgiveness under the Paycheck Protection Program (PPP). In the interim, NAFCU asks that the SBA amend the applications and instructions to put borrowers on notice of the deduction of EIDL advances from PPP loan forgiveness amounts. Lastly, NAFCU urges the SBA to amend the forgiveness IFRs and allow for a longer period to respond to PPP loan review requests.

SBA Form 3508S

NAFCU has advocated for a simpler forgiveness application from inception of the PPP. We appreciate the SBA's continued commitment to streamlining the PPP forgiveness process, with the initial 3508EZ form and the newly created 3508S form for loans under \$50,000. An analysis of the SBA's PPP data shows that credit unions made PPP loans in amounts much lower than the national average, with an average of \$50,000. The IFR reduces the need for lenders to perform a "good faith review" of the borrower's calculation for borrowers able to submit a Form 3508S. This will reduce a part of the burden on lenders currently processing PPP loan forgiveness applications.

Credit unions continue to work with their members to assist them with the current loan forms; however, the complexity of the forgiveness and various applications continues to cause confusion and other challenges for many small business borrowers. Borrowers are still concerned about the expiration date on the Form 3508S, thinking they need to file the application prior to October 31,

2020; although this was clarified in Question 4 of the SBA's FAQs, credit unions and other lenders often times have to disseminate this information to their members. It is in the best interest of both borrowers and lenders for the SBA to indicate the date when borrowers need to apply on the application and in the corresponding instructions.

Currently, some credit unions are accepting PPP loan forgiveness applications, while others are choosing to wait. Many credit unions have employed third-party vendors to assist with processing PPP loan forgiveness applications; however, vendors have reported that they are currently inundated with requests and are not accepting Form 3508S applications at this time, or they are temporarily not accepting applications under a certain dollar amount. This depends on the vendor and some report that they will be accepting Form 3508S applications starting in November. As credit unions begin processing Form 3508S applications and working with vendors, NAFCU asks that the SBA provide additional guidance and clarification, as necessary.

The SBA Should Support Automatic Loan Forgiveness

NAFCU members are supportive of further efforts to provide relief, including automatic loan forgiveness for PPP loans of \$150,000 and lower. Credit unions remain concerned about the staffing levels necessary to process all loan forgiveness applications without negatively impacting the credit unions' ability to approve new loans quickly. As the pandemic endures, small businesses are still in need of capital to weather the storm.

According to NAFCU's October 2020 *Economic & Credit Union Monitor Survey*, over 87 percent of respondents noted that available staff and time to process, as well as responding to member questions is the biggest challenge anticipated in handling loan forgiveness requests. Over 75 percent of respondents highlight the cost of accessing the SBA's forgiveness portal as another challenge in handling forgiveness requests. These costs are separate from the costs of utilizing a third-party vendor to free up staff resources. The projected amount of resources necessary to process PPP loan forgiveness applications will likely continue to increase as more borrowers begin applying for forgiveness and as we near the expiration of the 10-month deferral period.

NAFCU again urges you to utilize available flexibilities within the CARES Act allowing for de minimis exemptions or other authorities to provide this relief for small businesses as quickly as possible. NAFCU has previously made this ask in our comment letter dated July 1, 2020. Alternatively, NAFCU requests the agency support a legislative fix that would allow automatic forgiveness of loans of \$150,000 and lower.

EIDL Advances Should Not be Deducted From PPP Loan Forgiveness

As the SBA is aware, EIDL advances provided small businesses with a grant of up to \$10,000 in the beginning stages of the pandemic. Numerous small businesses applied for both a PPP loan as well as an EIDL advance with the understanding that the EIDL advance was a grant that did not require repayment. Moreover, lenders were unaware of whether a borrower received an EIDL loan advance as these came directly from the SBA. The PPP program moved rapidly and there were many unknowns surrounding the PPP loan forgiveness process and related rules.

The IFRs on loan forgiveness and related lender responsibilities provided that EIDL advances would be deducted from any PPP loan forgiveness amount, as governed by the CARES Act. Lenders are concerned because many borrowers may have outstanding balances after seeking PPP loan forgiveness that they were not anticipating, and these will remain on credit union balance sheets. Additionally, PPP loans booked before the passage of the *Paycheck Protection Program Flexibility Act of 2020*, which comprises approximately 90 percent of all PPP loans, have a mandatory two-year maturity. Lenders anticipate that many – if not most – of those borrowers will seek to re-execute their loans and extend the maturity to five years. Lenders will need to continue servicing PPP loans and complete the 1502 reports until paid in full. Effectively, EIDL advances turn into loans that lenders did not underwrite. Moreover, borrowers are finding themselves in a position of owing a debt which may exacerbate their financial situation. Although a legislative change is necessary, as this is an explicit provision in the CARES Act, NAFCU asks that the SBA support legislative efforts, including *H.R. 8361*, the *EIDL Forgiveness Act* in rectifying this issue.

In the interim, the SBA should consider amending the loan forgiveness applications to put borrowers on notice of the reduction to PPP loan forgiveness amounts due to EIDL advances. Form 3508EZ states that if applicable, the SBA will deduct EIDL advance amounts from the forgiveness amount remitted to the lender. This language is vague and confusing for borrowers. Moreover, Form 3508S asks for the EIDL advance information in the application but does not address it in the instructions. The SBA's applications and instructions are likely the main sources of information for borrowers, therefore the SBA should include the EIDL reduction information in clear and unambiguous language in all borrower-facing materials.

The SBA Should Allow for More Time to Respond to Review Requests

Lenders face an impractical turn-around time with current SBA review standards set, and it is causing a strain on their already limited resources. The IFRs provide that the SBA retains the right to review any loan in any amount; however, lenders were not anticipating the volume of review requests for low-dollar amounts. Currently, lenders are required to transmit electronic copies of borrower documentation on file within five days of receiving the SBA's request letter, along with the written notification to the borrower of the review and a request for documents that the borrower was required to retain but not submit with their application. Lenders must submit documentation obtained from the borrower to the SBA within five days of receipt. NAFCU members are experiencing numerous challenges already with processing existing PPP forgiveness applications, answering borrower questions, and originating and servicing other small business loans. This resource strain is especially significant for smaller lenders.

The quick turn-around time has proven to be difficult, especially when lenders receive multiple review requests in a given day for low-dollar loans. Additional time is necessary to upload and transmit the correct documents to the SBA to ensure a borrower's forgiveness decision is not delayed or jeopardized. In addition, the SBA should provide guidance for lenders regarding a borrower's non-compliance with the request for retained documentation. NAFCU urges the SBA to amend the forgiveness IFRs and allow for a longer period to respond to PPP loan review requests.

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Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU reiterates the call for the SBA to consider automatic loan forgiveness for loans under \$150,000 and support legislative efforts. In addition, NAFCU asks the SBA to support legislative efforts to amend the CARES Act to exclude EIDL advance amounts from the calculation of loan forgiveness under the PPP. In the interim, NAFCU asks that the SBA amend the applications and instructions to put borrowers on notice of the deduction of EIDL advances from PPP loan forgiveness amounts. Lastly, NAFCU also urges the SBA to amend the forgiveness IFRs and allow for a longer period to respond to PPP loan review requests. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,



Kaley Schafer
Senior Regulatory Affairs Counsel