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National Association of Federally-Insured Credit Unions

July 1, 2020

Small Business Administration
Third Street SW
Washington, DC 20416

RE: Business Loan Program Temporary Changes; Paycheck Protection Program (Docket No. SBA-2020-032); (Docket No. SBA-2020-0033); (Docket No. SBA-2020-0035); and (Docket No. SBA-2020-0038).

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 120 million consumers with personal and small business financial service products. NAFCU appreciates the SBA's guidance thus far and asks that the agency continue to provide the tools and resources necessary for credit unions to make accurate PPP loan forgiveness determinations. NAFCU asks the SBA to consider a loan forgiveness calculator to assist borrowers with the application process, provide additional guidance and resolve ambiguities in the loan forgiveness IFRs, and account for changes made by the *Paycheck Protection Program Flexibility Act* (H.R. 7010). NAFCU also asks the SBA to support automatic loan forgiveness for loans of \$150,000 and under.

General Comments

Credit unions have made every effort to offer PPP loans to their members and more importantly ensured that they were following the intent of the CARES Act by providing PPP loans to our nation's small businesses. According to the SBA's publicly released data, as of June 6, 2020, the average PPP loan size is \$113,000 for both rounds of funding. According to a NAFCU survey, credit union respondents reported approving an average of 250 PPP loans, with an average loan amount of \$67,000. NAFCU members continue to serve small businesses in need of funding during this pandemic. Further, NAFCU members reported that 98 percent of the PPP loans went to businesses with 50 or fewer employees, with 32 percent of the loans going to self-employed individuals or gig workers. Additionally, 87 percent of NAFCU members reported providing PPP loans to new members and businesses that were turned away by other lenders and came to their credit union to apply for a PPP loan.

The SBA has continued to provide FAQs and guidance as the industry identifies issues. As lenders adapt as quickly as possible to ensure loan forgiveness applications are processed, NAFCU asks that the SBA continue to provide timely and updated FAQs and guidance as issues arise during

this process. NAFCU appreciates the SBA's continued commitment to ensuring our nation's small businesses receive vital lending during these uncertain times, including the re-instatement of Lender Match linking borrower to CDFIs, MDIs, and small traditional financial institutions.

Loan Forgiveness Application Process

NAFCU has continued to advocate for a forgiveness application that is simple and easy for borrowers to understand and appreciates the SBA's responsiveness to the industry and Congress' inquiries with the release of the more streamlined and EZ loan forgiveness applications. The EZ application supports self-employed borrowers who do not have in-house resources that other small businesses may have to assist in completion of the forgiveness application. Additionally, the EZ application assists those small businesses that do not need to make any loan forgiveness reductions, providing them with a more efficient and expediated process.

Although lenders are not responsible for filling out the forgiveness application, nor are they responsible for the forgiveness calculations, credit unions are member-focused and expect that they may be asked to assist their small business members in filling out the forgiveness application. To best assist both borrowers and lenders, the SBA should consider providing a forgiveness calculator tool on its website. A forgiveness calculator could mitigate the chances of miscalculations. This is especially germane to the forgiveness reduction calculations, as applicable. Although third-party calculators are available, these tools are not from the SBA or the U.S. Department of the Treasury and borrowers may not rely on them for fear of miscalculations.

In addition, the IFRs state that a lender equivalent form may be used to assist with automation of the process. NAFCU members have reported that the loan forgiveness application does not match documents in their core processing systems resulting in re-drafting of forms as well as programming updates to the systems. The re-drafting of forms and program updates results in additional burden in terms of cost and time to credit unions. Many NAFCU members have invested in programs to assist them with the forgiveness process. NAFCU asks that the SBA focus on operational burdens on lenders and provide flexibilities when possible.

The SBA Should Provide Additional Guidance Regarding Ambiguities in the IFRs

NAFCU appreciates the SBA's IFRs regarding PPP loan forgiveness; however, there are several ambiguities that the agency should address to provide a seamless forgiveness application process for borrowers and lenders. The SBA can best address these ambiguities by providing additional explanations in the existing FAQ document. NAFCU members appreciate the SBA's responsiveness in providing lenders and borrowers with FAQs as questions arise, and we ask that the SBA continue to do so as the industry identifies future issues with loan forgiveness.

Forgiveness Eligibility of Expenses Not Indicated on Borrower Application

NAFCU asks that the SBA clarify whether borrowers are limited to seeking loan forgiveness for only those expenses they indicated in the borrower application, or if borrowers may apply for loan forgiveness for expenses that are otherwise eligible but were not initially indicated in the borrower

application. As the needs of small businesses have shifted during the COVID-19 pandemic, borrowers may have ultimately needed to allocate PPP funds to otherwise eligible expenses for which they had not originally sought funds. Small businesses have re-invented themselves to survive during the uncertainty and offered products and services in a manner different than their normal operations. In the borrower application form, the borrower does not have to attest that they are using the funds specifically for the box they originally checked as the “purpose of the loan.” Instead, the attestations require the borrower certify that funds will be used for those eligible expenses as specified under the “Paycheck Protection Program Rule.” It appears that so long as the borrower uses funds for eligible purposes and provides supporting documentation, they may include those expenses in the forgiveness application. Some borrowers may miscalculate the amount of loan forgiveness because they ultimately used PPP funds for a purpose other than what they checked in their application. The IFRs do not address this situation and NAFCU asks that the SBA clarify this point.

Eligibility of Mortgage Interest Now in Forbearance

The IFRs provide that non-payroll expenses are eligible for forgiveness if the borrower proves that the obligation existed before the required date and the expense was paid during the covered period. In addition, the IFRs exclude the prepayment of mortgage interest as an eligible expense because it would constitute an advance payment. Many borrowers face severe economic hardships and may have entered into a loan forbearance agreement resulting in no mortgage interest payment during the covered period. Therefore, a debt obligation existed but the borrower did not have to make any payments of interest during the covered period or part of the covered period. NAFCU members have reported borrowers attempting to make payments of accrued interest during the forbearance period and then seeking forgiveness of this expense on their application. NAFCU asks that the SBA clarify whether this constitutes an advance payment, excluded from the forgiveness calculation.

Application Denials and Appeals Process

NAFCU understands that the SBA will publish an additional IFR regarding an appeals process. In general, NAFCU asks the SBA to clarify the lender’s role in any appeals process and whether a borrower will deal directly with the SBA or their lender. According to the IFRs, a lender may deny an application for loan forgiveness and the borrower can appeal the decision to the SBA. In the case of a denial, a lender must notify the borrower in writing of the decision to deny the application; however, there is no guidance on any required language for notification purposes. Lenders want to ensure that they are providing sufficient notification. NAFCU asks that the SBA provide sample language or a model denial form for lender use. Consistent language across all PPP lenders will ensure that borrowers are put on notice of their right to appeal a denial decision and the applicable process requirements.

Next, the SBA should clarify whether there is a clawback of lender processing fees in the case of a proper denial determination by a lender. For instance, consider the case of a denial based on the borrower’s inability to produce required supporting documentation. Currently, the IFRs provide

that processing fees are subject to clawback if the SBA determines that a borrower is ineligible or a lender does not fulfill their document collection and retention requirements as required in SBA Form 2484 and the obligations under section III.3.b. of the IFR (SBA-2020-0015). These references do not provide for this scenario, and NAFCU asks the SBA to clarify whether the agency will seek a clawback of processing fees of a proper denial determination made by a lender.

In addition, lenders remain concerned about liability due to errors made in a denial determination. Again, credit unions will need to devote a significant amount of resources to process forgiveness applications within the required timeframe. Some NAFCU members did not make commercial loans before the PPP program and a large population were not SBA lenders prior to the PPP program. Credit unions will do everything possible to ensure timely and accurate forgiveness determinations are made; however, there must be some margin for error. There must be an opportunity afforded to lenders to cure any errors made in a forgiveness determination. NAFCU suggests that the future IFR on the appeals process includes guidance and the ability to cure errors.

Additional Guidance Related to the Implementation of H.R. 7010

While H.R. 7010 amended key provisions of the CARES Act, providing greater flexibilities for borrowers, the legislation left several unanswered questions in terms of its application to existing PPP loans. NAFCU understands that the SBA will issue an IFR to revise the existing forgiveness IFRs to account for changes made by H.R. 7010, and asks the SBA to include guidance in that IFR related to the issues outlined below.

Extended Maturity Date

H.R. 7010 provided an extended maturity date for PPP loans made after June 5, 2020, with the option for lenders and borrowers to mutually agree on an extension for any loan made before June 5, 2020. Subsequently, the SBA revised the IFRs to reflect this automatic and optional extension; however, the updated IFR (SBA-2020-0035) provided minimal instruction for lenders and borrowers who wish to mutually agree on the maturity extension. Additional guidance for lenders regarding all required updated documentation, as well as updates and submissions in the E-Tran system will reduce borrower frustrations and incomplete or inaccurate submissions for SBA review. NAFCU asks the SBA to provide further guidance on the amendment process for loans made prior to June 5, 2020.

Additionally, with the extended maturity date, NAFCU members want to make sure they are aware of any additional servicing requirements. The SBA has provided guidance on required 1502 reporting on a recurring monthly basis until the loan is paid in full. Given that many PPP lenders are new to SBA requirements, NAFCU asks that the SBA clarify if there are any additional servicing requirements other than 1502 reporting, especially given the extended maturity dates of PPP loans.

Additional Forgiveness Reduction Exemptions

H.R. 7010 provides a new exemption from a reduction in PPP loan forgiveness if an employer is able to document the inability to rehire individuals who were employees of the eligible recipient on February 15, 2020 and an inability to hire similarly qualified individuals to fill those positions on or before December 31, 2020. Alternatively, the exemption applies if the employer is able to document the inability to return to the same level of business activity as the operating level at or before February 15, 2020 due to requirements or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during March 1, 2020 and ending December 31, 2020.

The revised loan forgiveness IFR (SBA-2020-0038) provides that borrowers must certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from COVID-19 requirements. Documentation of COVID-19 requirements and relevant borrower financial records must be provided to the lender. The language of the IFR regarding required documentation is vague and unclear as to what documentation is sufficient. To assist both borrowers and lenders, the SBA should provide guidance or clarification on what financial records are acceptable and the lender's responsibility in determining the veracity of any financial records.

The SBA Should Provide for Automatic Loan Forgiveness

NAFCU members are supportive of an automatic loan forgiveness for PPP loans of \$150,000 and lower. Given the complexity of the loan forgiveness rules and the fact that credit union PPP loans are lower than national averages, this warrants a mechanism for automatic forgiveness. NAFCU members report making PPP loans as low as \$400. A loan of only a few hundred or a few thousand dollars does not warrant the level of detail and review required by the current application and forgiveness rules.

Moreover, automatic forgiveness frees up human capital at a time when credit unions are short staffed due to the ramifications of COVID-19. NAFCU members re-allocated staff to assist with providing PPP loans to credit union members as expeditiously as possible. Credit unions will again need to devote significant resources to complete loan forgiveness applications. Despite the updated application and new EZ application, borrowers must still abide by complex loan forgiveness rules for very small loan amounts. Moreover, not all borrowers will be able to utilize the EZ application form. Additionally, many credit unions are weighing whether they need to invest in new software applications to assist with loan forgiveness determinations, which could put additional strain on already limited resources

Understandably, the loan forgiveness application is one mechanism to uncover fraudulent activity; however, low-dollar PPP loans are low risk and the SBA retains the right to review a borrower's loan documents for six years after the date the loan is forgiven or repaid in full. NAFCU members performed extra due diligence to mitigate fraudulent activity including collecting additional documentation over and above the SBA's requirements. The potential benefits of providing this

automatic forgiveness for small businesses are monumental compared to the minor risk. Automatic loan forgiveness would allow small businesses to focus on getting back up and running and assist in jumpstarting the economy after the required closures over the past few months.

According to the SBA data released on June 20, 2020, a threshold of \$150,000 would account for 86 percent of PPP loans but only 26 percent of the total funds disbursed by the SBA. This would leave the largest loans for review. In addition, the SBA's data provides that the top 15 PPP lenders provided tens of thousands and hundreds of thousands of PPP loans. Even the largest credit unions did not make more than a few thousand loans with the average volume being less than 1,000 total loans. Credit unions made PPP loans to small businesses in their communities carrying out the true intent of the CARES Act, assisting in providing lending to underserved markets, and often times providing loans to businesses that have otherwise been turned away from other financial institutions.

NAFCU 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. Alternatively, NAFCU requests the agency support a legislative fix that would allow automatic forgiveness of loans of \$150,000 and lower. As Congress contemplates additional COVID-19 relief measures, the SBA should voice its support for a legislative fix to explicitly grant it such authority and help America's small businesses begin to recover and revitalize their communities and the economy as a whole.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU asks the SBA to consider automatic loan forgiveness for loans under \$150,000. In addition, NAFCU asks that the SBA provide additional guidance and resolve ambiguities in the existing loan forgiveness IFRs and account for changes made by H.R. 7010. 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