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National Association of Federally-Insured Credit Unions

June 9, 2020

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 3rd St, SW
Washington, DC 20416

RE: Implementation of the *Paycheck Protection Program Flexibility Act*

Dear Administrator Carranza:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing concerning implementation of the Paycheck Protection Program Flexibility Act (H.R. 7010). 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 joint Small Business Administration (SBA) and Department of the Treasury press release informing the public of forthcoming procedures and forgiveness application, as well as clarifying initial ambiguities. Since enactment of H.R. 7010 on June 5, 2020, questions have arisen in terms of its application to existing Paycheck Protection Program (PPP) loans, thus updated guidance is necessary to assist PPP lenders and borrowers.

Specifically, NAFCU asks the SBA to clarify whether the lowered requirement that 60 percent of a borrower's loan proceeds be used for payroll costs applies to all loans whose forgiveness applications have not yet been approved or only loans approved after June 5, 2020. Moreover, the SBA's guidance should cover whether borrowers who have already applied for forgiveness may reapply given this amendment. This clarification is critical for those borrowers who obtained a PPP loan on April 3, 2020 when the program began and have already applied for loan forgiveness upon the expiration of the previous 8-week covered period. H.R. 7010's change to the required payroll costs may affect the amount of forgiveness and provide these borrowers with the ability to forgive a greater amount of non-payroll costs. To alleviate any disparity among borrowers, NAFCU asks the SBA provide clarification of this requirement in future guidance.

In addition, the SBA must ensure that the forthcoming guidance includes instructions for required borrower documentation for the new forgiveness reduction exemptions. H.R. 7010 provides two new exemptions that provide a safe harbor from any loan forgiveness reduction if (1) an employer reduces the level of full-time equivalent employees and is unable to return to the same level of business activity as before February 15, 2020, due to various compliance requirements, or (2) the employer is unable to rehire employees and similarly qualified employees by December 31, 2020. To assist both borrowers and lenders, the SBA must provide guidance regarding the required documentation an employer must provide to utilize one of the exemptions and explicitly provide

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that lenders may rely on the documentation for a forgiveness determination. Also, the SBA should clarify whether these reduction exemptions apply to all PPP loans approved before June 5, 2020 but have not yet applied for forgiveness, or if the exemptions are only applicable to loans approved after the enactment date. Further, the SBA should clarify whether borrowers who have already applied for loan forgiveness may reapply given the changes. To ensure there is no confusion, NAFCU asks the SBA to update all applicable FAQs and clarify whether borrowers may still use the exemption provided in paragraph 5.a. of interim final rule SBA-2020-0032 which provides an exemption for employers who make offers to rehire and an employee declines the offer.

Thank you for your attention to this matter and your continued partnership. We look forward to continuing to work with you on this important issue. If I may be of assistance to you in any way, please do not hesitate to contact me directly or Kaley Schafer, Regulatory Affairs Counsel at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Dan Berger', with a stylized flourish at the end.

B. Dan Berger
President and CEO