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**National Association of Federally-Insured Credit Unions**

February 12, 2021

Small Business Administration  
Third Street SW  
Washington, DC 20416

**RE: Business Loan Program Temporary Changes; Paycheck Protection Program – as Amended by Economic Aid Act (Docket No. SBA-2021-0001); Second Draw Loans (Docket No. SBA-2021-0002); Loan Forgiveness Requirements and Loan Review Procedures (Docket No. SBA-2021-0006)**

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 (IFRs) regarding First and Second Drawn Paycheck Protection Program (PPP) loans implementing the *Economic Aid Act*. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small business financial service products. Throughout the past year, credit unions across the country rose to the occasion and provided necessary capital for our nation's small businesses. NAFCU appreciates the SBA's efforts to continue the PPP as small businesses continue to feel the economic impacts of the COVID-19 pandemic. NAFCU has continued to support legislative efforts to fund the PPP and appreciates the agency's dedicated processing window for credit unions under \$1 billion. NAFCU urges the SBA to reduce loan forgiveness review times, focus reviews on larger and riskier loans, and provide consistent processing, as this is a continued source of frustration for both credit unions and borrowers. In addition, NAFCU asks the SBA to provide clarification on the timing of supporting documentation for Second Draw revenue reductions and guidance on remediating errors. Lastly, additional guidance on PPP loan increases is necessary so credit unions may start processing applications and tax implications.

**General Comments**

The *Economic Aid Act*, as part of the *Consolidated Appropriation's Act, 2021* (CAA) extended the First Draw PPP program with added flexibilities and created the Second Draw PPP loan program. NAFCU members report a continued demand for both First and Second Draw PPP loans with most of the demand for Second Draw applications. NAFCU appreciates the SBA's commitment to providing necessary capital and we urge the agency to continue to work with Congress to reevaluate the necessity of the PPP upon its expiration in March because America's small businesses are the lifeblood of our economy.

In general, credit unions have reported a more streamlined and smoother rollout compared to the initial waves of PPP funding; however, they are still encountering difficulties. Credit unions must grapple with simultaneously processing loan forgiveness applications and originating First and Second Draw PPP loans. Some credit unions are again shifting staff to accommodate both functions, while others have had to bring on temporary staff to help assist them through the remainder of the PPP program. Stretched resources are a concern as credit unions face a backlog of forgiveness applications to process. The SBA should remain cognizant of the issues facing credit unions and other lenders and work towards improving the overall forgiveness process and provide flexibilities wherever possible.

NAFCU appreciates the SBA's efforts to enhance the technology utilized for PPP loans and credit unions report that the Platform is more user-friendly than E-Tran to upload borrower applications. Although credit unions are experiencing delays when the Platform is subject to updates. The SBA should provide credit unions with prior notice before these updates occur and a description of the update so they can better utilize resources and ensure their systems align with any Platform updates. A recurring issue that credit unions experienced in the initial waves of funding and continues to be an issue is the lack of guidance or timely answers from the agency. As with the initial waves of funding, credit unions adapt as quickly as possible to the changing rules but borrowers have expressed confusion and frustration with a different set of rules to abide by. To mitigate borrower frustrations over a changing regulatory landscape, the SBA should arm credit unions with clear guidance.

Credit unions report reaching out to the SBA and field offices via the appropriate channels and not receiving answers for a week or longer. Some credit unions have reported field offices taking as long as a month to get a response. While other field offices have encouraged credit unions to not contact their local SBA representative. Obtaining answers to questions regarding the PPP is vital and time-sensitive and the current turnaround times are unacceptable. The SBA must ensure that the turnaround time in answering lender questions is reminiscent of the initial waves of funding which were typically a one-day turnaround. As the window for the First and Second Draw PPP loans expires on March 31, 2021, it is imperative that lenders have timely information to assist borrowers in processing applications expeditiously. Moreover, it is important that lenders receive consistent and knowledgeable support, as some lenders have experienced individuals unfamiliar with the PPP and process through the support channels including the email inboxes and 1-800 number. NAFCU asks that the SBA continue to provide timely and accurate information to credit unions.

### **The SBA Should Reduce Loan Review Times and Ensure Timely and Consistent Loan Forgiveness Processing**

NAFCU appreciates the recent amendments to the loan forgiveness rules including the expedited application process for loans under \$150,000, and the removal of Economic Injury Disaster Loans (EIDL) advances from the total loan forgiveness amount. Both changes will help assist numerous borrowers. However, a primary source of frustration continues to stem from the SBA's ongoing requests for additional documentation for loan forgiveness applications under review, regardless of loan size. Credit unions report forgiveness review requests for PPP loans as small as \$1,400 and

reports of review requests for loans under \$10,000 are not uncommon. As credit unions continue processing backlogs of loan forgiveness applications, the SBA's volume of review requests has held up the process and the agency should focus its reviews on larger and higher risk loans.

Given the significant resource demands that loan forgiveness reviews present for the SBA, lenders, and borrowers, NAFCU asks the SBA to use its discretion to focus its reviews on larger and higher risk loans. A focus on larger loans is consistent with the SBA's approach to other aspects of the PPP including the exemption from loans reductions for loans under \$50,000, and the simplified forgiveness process for loans under \$150,000. Moreover, as the SBA has previously stated that they agency's approach to reviewing the necessity of loan requests is based on larger loans as "this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns."<sup>1</sup> Adopting this approach to forgiveness reviews will conserve the SBA's resources and allow the agency to efficiently allocate them to more efficiently allocate their finite resources to those PPP loans that warrant additional review.

As the SBA is aware, credit unions face numerous reviews and audits of PPP loans when a borrower submits a forgiveness application. Credit unions upload the requested supporting documentation required under the IFRs but they continue to get requests for documentation beyond what was originally requested. Once the SBA moves loans to "review" status, credit unions report receiving, on average, two additional documentation requests. Moreover, the documentation requests from the SBA are often repetitive of previous requests and the credit union has already uploaded the requested documentation, or the request is inconsistent with and unnecessary for the use of PPP funds.

To illustrate, borrowers who utilized PPP funds solely for payroll are subsequently required to upload supporting documentation for utility bills and cancelled checks. Or sole proprietors with no employees are subsequently required to upload supporting documentation regarding employees. Businesses that were not existent during certain time periods are required to upload tax documents during those time periods. Uploading this additional information is unnecessary given the use of PPP funds and type of business; however, credit unions work with their borrowers to obtain the requested information or provide an explanation to the SBA to move the loan forgiveness process along. This is time consuming for lending departments to review and attempt to rectify errors that are not in fact errors.

The SBA must take a holistic review of the PPP loans and determine whether there is an indication or risk of fraud and determine the applicable additional documentation that will help the review versus arbitrarily reviewing loans and asking for documentation based on checklists that do not pertain to the loan. To also simplify the process, the SBA should make efforts to provide proactive guidance on additional documentation credit unions should submit with the loan forgiveness application. Proactively updating supporting documentation would reduce the time and burden in

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<sup>1</sup> Small Business Administration, Paycheck Protection Program Loans Frequently Asked Questions (FAQs), Question 46 published May 13, 2020, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

processing the forgiveness applications for both credit unions and the agency and provide a more seamless experience for the borrower.

Additionally, credit unions report that once they upload the requested documents, the agency takes an excessive amount of time to complete its review or come back with additional questions. Credit unions work to get supporting documentation to the agency as required by the existing guidance, but the total review time has taken several months for some loans, including small dollar loans. Forgiveness applications submitted in September 2020 are still pending with multiple requests for additional documentation. Understandably, the SBA likely wants to ensure that the agency completes a thorough forgiveness review and protects the integrity of the program, but the communication between the agency and the credit union depends on the SBA contractor working the file under review. Credit unions are receiving inconsistent answers or follow-up requests depending on the reviewer. NAFCU urges the SBA to make every effort to respond quickly and timely to credit unions as they work to rectify errors and upload additional documentation for reviews and ensure that SBA contractors are providing consistent information regarding the process.

Credit unions need the SBA to respond more quickly to forgiveness reviews, as the extension of these reviews is having a trickle-down effect when a borrower seeks out a Second Draw PPP loan. As Procedural Notice 5000-20083 indicates, a Second Draw PPP loan that involves an “unresolved borrower” of a First Draw PPP loan will be placed in “research” status where the credit union may then upload documentation to resolve outstanding issues. NAFCU appreciates the SBA processing Second Draw PPP loans in “research” status and asks that the SBA continue to provide transparency and proactive communication during this process.

### **The SBA Should Make Efforts to Provide Second Draw PPP Loans Efficiently and Provide Clarifications Regarding Revenue Reductions**

Second Draw PPP loans serve as a crucial source of additional capital for small businesses, but credit unions are experiencing issues in providing these loans in an efficient manner. Credit unions report that the SBA is undertaking a more thorough review of Second Draw PPP loans, which is delaying the approval and disbursement dates. Credit unions understand that this round of funding has parameters put into place to conduct a more rigorous review of the loan on the front-end to alleviate review on the back end when a borrower applies for loan forgiveness. However, this delay is frustrating borrowers who the agency has deemed to be the “hardest-hit” borrowers and truly need funds as quickly as possible. Some borrowers have reported revenue reductions far exceeding the required 25 percent. Delays also seem primarily due to the SBA’s “hold” codes for errors. As previously stated, credit unions are receiving errors for items that are not in fact errors. A recurring example of this is an SSN/TIN mismatch error. NAFCU appreciates the SBA’s recent addition to error resolution processes and providing credit unions with the ability to certify resolution to error and hold codes on their own. NAFCU asks that the SBA quickly respond to credit unions requests for help in moving Second Draw PPP loan applications through the process through the other resolution methods that require SBA assistance. NAFCU asks that the SBA provide Second Draw PPP loans efficiently while also balancing the need for accuracy.

In addition, there is still confusion regarding the Second Draw IFRs, specifically as it relates to the revenue reduction requirement. The IFR states that the borrower must provide supporting documentation of the 25 percent revenue reduction, either at the time of the application or at the time of the forgiveness application. The IFRs do not expressly limit lenders from setting a policy to obtain this information at the time of application. Moreover, the SBA has publicly stated that it is a “best practice” to obtain this information from borrowers at the beginning of the application process. Ideally, obtaining this information at the outset will mitigate any issues for the borrower to receive loan forgiveness. Credit unions are running into borrowers refusing to provide this information at the time of application as the IFRs do not explicitly require this practice. Credit unions are attempting to follow the SBA’s advice for best practices to protect the integrity of the program but are concerned about ramifications of requiring borrowers to provide the information at the time of application. NAFCU asks the SBA to confirm whether a credit union may set a policy to require supporting documentation of the revenue reduction when a borrower applies for a Second Draw PPP loan.

### **Additional Guidance is Needed for PPP Loan Increases and Tax Implications**

Generally, some credit unions are hesitant to process loan increases given the limited available guidance issued by the SBA. Existing guidance is narrowly tailored to include a few types of borrowers. The SBA indicated in the IFRs that additional guidance from the agency was forthcoming and the agency provided a subsequent guidance document providing minimal help to credit unions. It is unclear whether the SBA plans to provide additional guidance. A lack of regulatory guidance has caused confusion for credit unions and the vendors they use. Credit unions report that both SBA field offices and vendors have no additional information on loan increases. NAFCU asks the SBA to provide additional guidance on eligibility and application process for PPP loan increases.

In addition, credit unions need clear and precise guidance on tax implications for borrowers. Previously, the Internal Revenue Service (IRS) required credit unions to issue 1099-MISC to any borrowers who received debt relief payments in 2020; however, earlier this year the IRS reversed course and appear to no longer require 1099-MISC. Based on this previous guidance, credit unions communicated certain information to borrowers and even mailed out 1099-MISC forms and now must retract this information. The retraction has created confusion for borrowers, and it would be helpful for both lenders and borrowers for the SBA to provide a clarification regarding the requirement of 1099-MISC forms.

### **Conclusion**

NAFCU appreciates the opportunity to share its members' views on this matter. As credit unions continue processing the backlog of loan forgiveness requests, NAFCU urges the SBA to reduce review times and provide consistent processing. In addition, the SBA should provide guidance clarifying the timing of supporting documentation for Second Draw revenue reductions, guidance on remediating errors related to Second Draw PPP loans, and guidance on PPP loan increases and

Small Business Administration

February 12, 2021

Page 6 of 6

tax implications. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcu.org](mailto:kschafer@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kaley Schafer', written in a cursive style.

Kaley Schafer

Senior Regulatory Affairs Counsel