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National Association of Federally-Insured Credit Unions

April 1, 2020

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

RE: Expansion of Eligible Recipients Under the CARES Act

Dear Administrator Carranza:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in regard to the Paycheck Protection Program offered to small businesses in 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 nearly 120 million consumers with personal and small business financial service products. Access to small business lending is vital in ensuring our local small businesses continue to survive and provide jobs during the uncertainty of the COVID-19 pandemic.

NAFCU applauds the Small Business Administration's (SBA) efforts made to ensure that our nation's small businesses can obtain capital and continue paying their employees during this time of hardship. In addition, NAFCU appreciates the SBA's early response to the COVID-19 pandemic challenges with the SBA's Economic Injury Disaster Loans and Information Notice providing guidance to lenders on loan deferments. To provide all small businesses across America with relief during this unprecedented time, NAFCU requests the SBA expand access to all federally-insured credit unions (FICUs), as eligible recipients, under the new Paycheck Protection Program created by the CARES Act.

The SBA Should Redefine "Any Business Concern"

A majority of FICUs themselves qualify as "small businesses" as defined by the SBA industry-based size standards. Currently, section 1102 of the CARES Act includes small business concerns, any business concern, and non-profits, as defined in section 501(c)(3) of the Internal Revenue Code (IRC) and exempt from taxation under section 501(a), as eligible recipients for the Paycheck Protection Program.

Credit unions do not fit the definition of a small business concern as defined in SBA regulations as credit unions are not organized as "for-profit." However, the CARES Act further expands eligibility of the program to "any business concern." "Any business concern" is not defined in the CARES Act and credit unions could be eligible as borrowers under the term "any business concern."

Any business concern should encompass all non-profits, as it is the intent of Congress to assist all small businesses during the COVID-19 pandemic. Moreover, the CARES Act does not delineate when an applicant may fall into more than one category of applicant, such as a small business and organized as a non-profit. The CARES Act is open to interpretation on whether the standard 7(a) eligibility requirements apply given that certain non-profits are eligible recipients under the Paycheck Protection Program. Nothing in section 1102 of the CARES Act provides that all other eligibility requirements of the 7(a) program apply. Given this silence, the SBA should clarify that the definition of an eligible recipient includes FICUs.

SBA Has Previously Included Credit Unions as Non-Profits

It is evident that Congress intended to provide small businesses with relief by expanding eligible recipients to include non-profits; however, the language currently takes a narrow interpretation of non-profit, including only certain organizations exempt from taxation under section 501(a) of the IRC. The SBA's Economic Injury Disaster Loan (EIDL) program is available to a myriad of eligible recipients, including non-profit and not-for-profit organizations under sections 501(c) of the IRC. Accordingly, all FICUs are eligible to participate in the EIDL program. This broad interpretation of an eligible recipient of an EIDL loan bolsters the position that the interpretation of non-profit should have been broader under the Paycheck Protection Program to include all entities organized under 501(c) and exempt from taxation under 501(a).

EIDL loans are only available in exigent circumstances, similar to the Paycheck Protection Program loans. The terms are limited for both SBA lending programs and the borrower must show that they face a financial hardship because of the disaster. Similar to EIDL loans, which were only offered due to the COVID-19 pandemic, the Paycheck Protection Program is a limited loan program available only during this time. Thus, the same eligible recipients for EIDL loans should be able to take advantage of Paycheck Protection Program loans. Moreover, it is the Sense of Congress, as stated in section 1112, that relief payments by the SBA are appropriate for all borrowers.

Credit Unions Provide a Public Benefit

Non-profits deemed to be 501(c)(3) organizations are included in the Paycheck Protection Program because they offer public benefit and are adversely impacted by COVID-19. FICUs also offer public benefits and face the same impacts and challenges as non-profits included in the CARES Act. Many credit unions hold charters specifically to serve underserved areas.

Many FICUs have had to shut down branch operations or minimize operations due to various state declarations capping the number of individuals that may physically be present together in a room. Therefore, just as any other small business, FICUs are facing difficult staffing and payroll decisions. Given the White House's recent announcement extending their social-distancing guidance through April 30, all small businesses continue to face uncertainty. As a result, these staffing and payroll challenges will be exacerbated and could lead to further consolidation in the credit union industry. The loss of FICUs due to payroll constraints would be devastating for some

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geographical areas, especially underserved and rural areas, where a FICU may be the only financial institution offering products and services to individuals affected by the COVID-19 pandemic.

Conclusion

NAFCU encourages you to fulfill the intent of Congress by providing relief to as many small businesses across America as possible. The Paycheck Protection Program should be offered at an interest rate that covers the cost of making the loan. The stated interest rate of 0.5 percent for loans under the Paycheck Protection Program may provide a disincentive for some lenders to offer these loans. Although FICUs are not interested in profiting from these loans, it is important that the SBA work with the U.S. Department of the Treasury to ensure credit unions will not face economic hardship if they choose to offer these loans. This is especially true for those loans where there is an amount over and above the forgiveness threshold that would remain on FICUs' books for two years until maturity. The CARES Act allows an interest rate of up to 4 percent, so NAFCU encourages the SBA to offer an interest rate commensurate with the costs associated of servicing the loans.

Thank you for your attention to this matter. 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". The signature is stylized with a large initial "B" and a long, sweeping underline.

B. Dan Berger
President and CEO

Cc: The Honorable Steven T. Mnuchin, Secretary, U.S. Department of the Treasury