



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

May 14, 2020

Small Business Administration
Third Street SW
Washington, DC 20416

**RE: Business Loan Program Temporary Changes; Paycheck Protection Program
(Docket No. SBA-2020-0015)**

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 rule (IFR) implementing sections 1102 and 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. Access to small business lending is vital in ensuring our local small businesses continue to survive and provide jobs during the continued uncertainty of the COVID-19 pandemic. NAFCU thanks the SBA for its leadership in quickly establishing the Paycheck Protection Program (PPP). This unprecedented small business lending program has provided much-needed funding to small businesses across the country. NAFCU urges the SBA to continue to provide equitable access for smaller lenders, including dedicated submission windows. In addition, the SBA should provide transparent information regarding the pacing mechanism, and additional guidance for PPP lenders regarding loan forgiveness, reimbursement of lender fees, and the sale of PPP loans to the secondary market and the SBA. Credit unions urgently need additional guidance in order assist their members.

General Comments

Credit unions, at their core, operate on the principle of assisting their local communities. Despite some credit union members not offering commercial lending before the PPP, they acted quickly in implementing lending programs and obtaining approval by their Board members to provide PPP loans to their communities. Credit unions have moved as quickly as possible and made every effort to offer PPP loans to their members. While some credit unions were able to offer PPP loans successfully, numerous credit unions experienced challenges in implementing PPP programs or becoming approved lenders. Despite the expedited approval process for SBA-approved lenders, credit unions still faced challenges.

According to NAFCU April's *Economic & CU Monitor Survey*, over 44 percent of respondents were participating in the PPP lending program, with the average number of loans and dollar value varying. As of April 23, 2020, the SBA reported that roughly 600 credit unions were participating as PPP lenders out of a total of 5,000. Accordingly, credit unions represented just 12 percent of

PPP participating lenders. NAFCU conducted a separate PPP survey after the second round of funding opened up and respondents reported an average of 250 PPP loans were approved, with an average loan amount of \$67,000. Further, respondents 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 respondents reported that new members or businesses that were turned away by other lenders came to their credit union to apply for a PPP loan.

Upon the launch of the PPP program, credit unions suffered many challenges, including gaining PPP lender approval in a timely fashion and gaining access to lender portals before the first round of funding ran out. Many credit unions were hesitant to provide PPP loans until the SBA and the Treasury Department offered further guidance, particularly regarding loan forgiveness. This included current SBA lenders who were unsure if they could use their lending documents, including a promissory note. Some credit unions were uncertain of the liability risks posed given that the borrower needed to make certifications, including eligibility in the application. Moreover, credit unions were fearful of losing the SBA guarantee if there were inconsistencies with borrower certifications. Or, losing the SBA guarantee because the credit union made a decision based on guidance available at the time, but was later revised by subsequent guidance. The SBA should have explicitly stated in the IFR, from the outset, that credit unions would not lose the SBA guarantee if borrower certifications ended up being incorrect. More transparency and guidance at the outset would have provided credit unions with the security they needed in making the business decision on offering PPP loans. This lack of transparency from the beginning caused delays in providing vital PPP loans to members and frustrated the member experience.

More importantly, credit unions that were not already SBA-approved lenders were disadvantaged as the lender application was made available after the program rolled out. While credit unions waited for lender application approval, the PPP funds dwindled. Also, credit unions had little time to familiarize themselves with E-Tran quickly and suffered delays and portal outages due to the high volume of loan applications. Regardless of the challenges credit unions faced, they made every effort to provide PPP loans to small businesses in need and to serve their communities.

The IFR states that PPP loans are based on a first-come, first-served basis, and credit unions have adhered to this guidance. Since exhaustion of the first round of PPP funding on April 16, 2020, numerous media outlets have reported that big banks and other lenders were not adhering to the SBA's IFR in this regard. Due to the constraints credit union lenders experienced during the first round of PPP funding they were not able to serve many of the small businesses the PPP was designed to assist. Credit unions serve small business owners that might otherwise not be able to receive access to necessary credit. NAFCU appreciates the recent joint statement released by the SBA and the Department of the Treasury, declaring a review of PPP loans over \$2 before loan forgiveness. NAFCU stresses the importance of ensuring that the opportunity to assist small business members during this uncertain time is available to all credit union lenders.

The SBA Should Continue to Provide Equitable Access to Loan Submission for Smaller Lenders

NAFCU appreciated the SBA's decision to allow a dedicated submission window for lenders under \$1 billion. Credit unions often serve small businesses that are not otherwise able to obtain credit from other institutions and turned to their credit union when they were in need of a PPP loan. The dedicated submission window for smaller lenders assisted credit unions in overcoming the obstacles they have encountered with gaining approval and access to systems.

Moreover, this time frame allowed smaller credit union lenders to clear or work through their backlogs they were previously unable to successfully submit because of E-Tran outages or pacing issues. This also provided an opportunity for smaller credit union lenders to submit loans who could not avail themselves of the previous bulk submission process as they had well under 5,000 loans. NAFCU urges the SBA to ensure that if Congress appropriates future rounds of funding, the SBA will include a dedicated submission window for smaller lenders at the outset so that they may have the same opportunities to serve their small business members as larger lenders.

The SBA Should Provide Transparency Regarding Pacing of Loan Applications

The SBA announced during the second round of PPP funding the implementation of a pacing mechanism for loans input into the E-Tran system. Once a lender reached a certain undisclosed limit, the E-Tran system would kick them out. Understandably, the pacing mechanism provides lenders with a fair and equal opportunity to submit PPP applications; however, the mystery behind what constitutes the limit has caused operational delays and frustrations. Credit unions are unsure when they are kicked out of E-Tran if they are encountering an access error with the system, or if they are simply kicked out of the system because they have met their quota. NAFCU members reported submitting only a handful of loans, less than 20, before being kicked off the E-Tran system despite the media reports stating a cap at 350 loans per hour.

The SBA should be transparent about how the pacing mechanism works to ensure credit unions can communicate delays to borrowers. Small businesses and their employees are in need of funds quickly, and system delays that are out of the credit unions' control frustrate the lending experience for both parties. Transparency should include the cap on the number of loans a lender may submit before being temporarily unable to access E-Tran to allow for pacing. In addition, the SBA should be transparent about whether there is a time cut-off for pacing as many NAFCU members experienced being kicked out after inputting only a handful of loans. Lastly, the SBA should be transparent in whether loan forgiveness applications submitted will be subject to any pacing requirements or the same pacing requirements as the applications. Lenders need to be prepared to disseminate information related to any delays to borrowers.

The SBA Should Provide Additional Guidance for Lenders

As lenders have approved and disbursed PPP loans, there are several unanswered questions as lenders move into the next phase of the loan life cycle. Credit unions are unsure whether they need to indicate they are servicing the loan in E-Tran and whether monthly reporting is necessary until

the loan is forgiven, or if a balance remains after forgiveness. The SBA should confirm whether their standard operating procedures (SOPs) apply to PPP loans. As the PPP program evolves, it is not clear whether there is a blanket application of the usual 7(a) SOPs to PPP loans, or only where the SBA notates their application. NAFCU urges the SBA to promptly issue guidance on loan forgiveness, reimbursement of fees to lenders, and sales to the secondary market as well as the SBA.

Guidance on Loan Forgiveness

NAFCU appreciates the most recent interim final rule as it was beneficial for those lenders serving self-employed members such as sole proprietors and independent contractors. As lenders move into the forgiveness phase of PPP loans, additional guidance would be helpful. NAFCU members have expressed several concerns over the lack of guidance on the forgiveness provisions. Considering the time-sensitive nature of the PPP, the CARES Act provided the agency with thirty days to issue guidance and regulations implementing section 1106. Currently, the interim final rules and FAQs offer some context in terms of required borrower documentation to apply for forgiveness, but further clarity for all types of borrowers would ease credit union concerns. Moreover, additional clarity would assist credit unions in preparing their borrowers on tracking and documenting their use of the funds throughout the covered period, for an expeditious loan forgiveness process. The SBA's lack of guidance on this issue had caused numerous member frustrations and concern over whether their loans will be forgiven.

Credit unions are also unsure when they may begin accepting applications for forgiveness. Presumably, borrowers will want to apply as soon as possible for forgiveness and have begun inquiring with their respective lenders on the process. The CARES Act is silent on whether the application period is upon the expiration of the covered period or later. The SBA must clarify in further guidance whether borrowers must apply for forgiveness within a stated timeframe.

Also, credit unions are unsure whether all the loan funds need to be exhausted for forgiveness to be granted. Although approval for PPP loans is equal to an amount based on documented historical costs, some of these expenses may fluctuate. For example, if a borrower uses PPP loan funds for utilities, which in turn are less over the covered period, the documentation the borrower will provide will presumably show payments of expenses that are less than what was originally earmarked. This scenario is rare, but clarification on lender expectations in this situation would be helpful. Alternatively, NAFCU members are concerned how forgiveness is calculated for borrowers who were unable to use funds due to business closures as required by respective states.

In addition, credit unions have expressed concerns over relying on borrower documentation for forgiveness. Section 1106 provides that the lender may rely on the documentation and attestation from the borrower. Further, there is a hold-harmless provision that states that the lender will not be subject to any enforcement action or penalties. There are concerns over potentially fraudulent applications, despite the interim final rule covering this in some detail, and the SBA should include this in the guidance for loan forgiveness. The SBA should reiterate the hold harmless provision in any future guidance or rulemaking about PPP loan forgiveness so lenders can feel confident in

making loan forgiveness decisions. More importantly, the SBA must clarify what lender due diligence, if any, is needed in order to avail themselves of the hold-harmless provision.

Just as the calculation for a PPP loan for self-employed borrowers differed from that of other small businesses, the forgiveness calculation should be different. The SBA should provide customizable forgiveness calculations for each type of borrower based on their allowable expenses. Subsequent guidance related to forgiveness needs to provide separate and detailed calculations for the type of borrower, and the required documentation.

In conclusion, the SBA must provide guidance on the forgiveness application for borrowers, how they must calculate forgiveness, the process to submit those applications, timeframes for when applications must be submitted and approved, and the necessary documentation required for lenders to make a determination. Additionally, the guidance must include lender requirements after the loan forgiveness is made and a balance remains.

Reimbursement of Lender Fees

NAFCU members are seeking additional guidance on when and how the SBA will reimburse fees. The SBA has stated that this process will be similar to the current requirements of SBA-approved lenders, which means that credit unions who are newly minted PPP lenders must complete 1502 reporting. This will be a new process for many credit unions lenders, thus additional guidance from the SBA would be very helpful for those credit unions as well as provide reassurance to existing SBA-lenders. PPP lenders need instructions as soon as possible on accessing the platform to submit the reports, and detailed instructions on how to complete the 1502 reports and required timing for filing. Additionally, PPP lenders need guidance on whether 1502 reports are required after reimbursement is made and a loan balance remains.

Section 1102 of the CARES Act provides a fee schedule for the reimbursement of PPP loans. Further, the CARES Act also ensures that the SBA will provide reimbursement within five days of loan disbursement. The SBA has clarified in subsequent guidance that lenders must fully disburse PPP loans before reimbursement occurs. Some credit union lenders are facing and remain concerned about future liquidity issues; thus, it is imperative that they receive these fees as soon as possible to continue providing credit to members.

Sales of PPP Loans to the Secondary Market and the SBA

The SBA provided a procedural notice regarding participation sales to the secondary market; however, the SBA should provide additional guidance on the sales process for those lenders who are unfamiliar with the process. The procedural notice confirms that lenders may sell participating interests in PPP loans to other participating lenders according to existing regulations. Minimal information is provided in terms of required prior notice to the SBA, but no information was given in terms of required agreements between the seller and buyer.

Moreover, the IFR provides that a PPP lender may request that the SBA purchase some or all of the loan in advance at the end of week seven of the covered period. This deadline is fast

approaching, and lenders need more information. The IFR states that lenders must submit a report to the SBA requesting advance purchase with the expected forgiveness amount. The report must include *SBA Form 2483 and 2484*, supporting documentation submitted, a detailed narrative explaining the assumptions, and alternative assumptions used in determining the expected forgiveness amount. Credit unions need to know if the required report is an existing SBA form, or if the SBA will provide a new report form. Additionally, credit unions need to know where to file this report to request the purchase of PPP loans by the SBA and the timing of when the report must be filed. Lastly, for sales to the SBA, lenders must be aware of any continued legal obligations that are owed.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU encourages the SBA to provide transparency on the pacing mechanism and guidance on loan forgiveness, reimbursement of lender fees, and the sale of PPP loans to the secondary market and to the SBA. In addition, NAFCU requests that the SBA to continue to provide equitable opportunities for smaller lenders to serve their small business lenders. Further guidance will assist credit union lenders in continuing to aid small businesses during the COVID-19 pandemic. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcuhq.org.

Sincerely,



Kaley Schafer
Regulatory Affairs Counsel