



WASHINGTON, D.C.
99 M Street SE
Suite 300
Washington, D.C. 20003-3799
Phone: 202-638-5777
Fax: 202-638-7734

May 15, 2020

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

Re: Docket Nos. SBA-2020-0015
 SBA-2020-0019
 SBA-2020-0020
 SBA-2020-0021
 SBA-2020-0022

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Small Business Administration (SBA) in response to the request for comment regarding the implementation of the Payroll Protection Program (PPP). CUNA represents America's credit unions and their 115 million members.

Because of the unique nature and compressed timeframe in which the PPP was created and implemented, the SBA issued five interim final rules providing additional information and answering questions. Since the interim final rules are all related, CUNA will provide a single comment letter for all of SBA's interim final rules.

We thank the SBA and its staff for their diligent work in putting together a new lending program in record time. Credit unions welcomed the opportunity to help Americans by making PPP loans to small businesses that desperately needed help. We understand that rolling out this unique lending program was challenging for the SBA and clearly the product was still being developed as credit unions and other lenders were originating loans. Unfortunately, as was expected, the compressed timeframe in which the PPP was enacted and implemented resulted in many challenges for our member credit unions in making, processing, and disbursing loans. Questions and concerns have morphed as the program is now almost 45 days old.

As noted in our April 3, 2020, letter to the SBA, CUNA's chief concern was the compressed timeline for the program's implementation and publishing of guidelines. On Day 1 of PPP, these concerns were mainly operational and focused on the process of making loans. Now, our concerns encompass issues extending to the loan forgiveness process, purchase of loans, and liability to our member credit unions for making loans. As the program continues to mature, and possibly get an extension by Congress, we strongly urge the SBA to be forward-looking and to

make adjustments to the program to protect lenders from looming threats. We do not believe that credit unions or any lender that made a good faith effort to adhere to the limited guidance offered for the program should suffer any financial loss or legal liability from PPP. Thus, the SBA should protect the lenders that are implementing its program.

Although money did flow to small businesses through PPP, the launch and relaunch of PPP after the second round of funding was difficult for both borrowers and financial institutions, as there were many problems with the process. Credit unions have seen incremental fixes to initial issues that challenged the lending process and vexed borrowers. But now, with funds still available, it appears that businesses are reluctant to borrow. Some reasons for this might be confusion over aspects of the program, such as loan forgiveness, which still are not sufficiently developed.

We remind the SBA that credit unions are a vital component to the delivery of financial services to many Americans and that credit union members should have equal access to PPP just as those that choose to borrow from large banks. At times during the initial phase and start of the second phase of PPP, access was not uniform across all financial institutions, which may have frustrated Americans that accessed PPP loans through smaller financial institutions. Loan processing speed is not usually a problem with most lending products, but with the race to lend what was a finite amount of funds, speed of approval was the difference between a business or individual receiving a loan that saves them or their employees from hardship or being left with no assistance. As PPP will likely run out of funds again, the SBA must further refine its process to ensure equal access by borrowers regardless of the financial institution they choose as their lender.

Operational Issues

CUNA understands that SBA and its staff were given a difficult task in developing the PPP within a short time period and we appreciate the effort. Nevertheless, credit unions have indicated that getting general questions answered and access to the SBA lending platform have at times been challenging. The SBA must actively support lenders by providing necessary support. Lack of support can derail a lending program, leading to frustrated lenders and borrowers. SBA should work to bolster its mechanisms for answering technical and operational questions and supporting lenders.

The SBA needs to clarify that all credit unions, including privately insured state-chartered credit unions, are eligible to be PPP lenders. The CARES Act (Pub. L. 116-136) signed by the president on March 27 included a definition for credit union that excluded privately insured state-chartered credit unions from the definition of depository institutions that were eligible lenders. The Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139) signed into law on April 24, 2020 updated that definition of credit union to include privately insured state-chartered credit unions as eligible lenders. We request that SBA clarify that state-chartered credit unions are eligible lenders in an interim final rule or final rule. Furthermore, Lender Agreement (Form 3506) should be updated to include this amendment as well.

Lender prioritization of borrowers was an initial problem with PPP which resulted in large businesses with separate subsidiaries being approved for many large loans. These borrowers were given priority treatment by large lenders, which contributed to the rapid depletion of the original \$349 billion allocated by Congress. Although not currently a problem as there are funds available under the second allocation, the SBA should address lender prioritization of borrowers and discretion in choosing borrowers throughout the process. At this point, it is difficult to

predict whether loan demand will spike again, but the guidance should address this issue moving forward so that borrowers are treated fairly.

Credit unions and other lenders may have used a variety of forms through the lending process that were not developed or specifically approved by the SBA. Credit unions are concerned that the use of these forms could impact their ability to administer certain loan features or otherwise result in difficulties with the SBA as issues may arise with these loans. The SBA indicated to lenders that they, for example, were free to use non-PPP specific loan notes and loan authorization forms before an approved loan is disbursed. Because of the loan forgiveness feature and the other factors that make PPP loans unique among SBA loans, that assurance is falling short for credit unions. A final rule or guidance should formalize the policy that non-SBA forms will not impact lender or borrower rights under PPP.

The SBA should also develop guidance on the process that it will use to purchase PPP loans from lenders. As CUNA noted before, PPP loans were originated before many aspects of the lending program were developed. Questions that SBA should address include the proper forms that should be used, and the limitation on timing and methods for handling sold loans that become problematic or develop other issues.

The SBA's first interim final rule, posted April 2, 2020, outlined the information that a lender must provide in the report to the SBA requesting advance purchase of a PPP loan with the expected forgiveness amount. This report must include, in addition to the Forms 2483 and 2484, any supporting documentation, "a detailed narrative explaining the assumptions used in determining the expected forgiveness amount, the basis for those assumptions, alternative assumptions considered, and why alternative assumptions were not used; any information obtained from the borrower since the loan was disbursed that the lender used to determine the expected forgiveness amount, which should include the same documentation required to apply for loan forgiveness such as payroll tax filings, cancelled checks, and other payment documentation; and any additional information the Administrator may require to determine whether the expected forgiveness amount is reasonable." Credit unions are concerned that the process to complete these reports could present a significant burden without a template or form that clearly explains the level of detail required. Specific issues this template or guidance should address are how a lender must determine alternatives along with the number of alternatives.

Legal Issues

Credit unions expressed concern with liability stemming from PPP at the outset of the program. Nevertheless, credit unions charged ahead and made loans to desperate small businesses before many aspects of PPP were developed. Now, partially as a consequence of this planned concurrence, lawsuits are being filed to remedy perceived issues with aspects of PPP. The interim final rules provided little guidance on critical aspects of the program such as the documentation required to determine eligibility, the process for submission and approval of the loans by SBA, the collection of servicing fees, and the determination of funds to be forgiven. Historically, collection of SBA guarantees has proved challenging and, at times, frustrating. This lack of guidance shifts too much liability to the lender and, despite the guarantee, creates too much process risk relative to the limited interest rate.

Lawsuits have recently been filed over agent compensation and the denial of loans to certain types of business. It remains to be seen whether financial institutions even had impact over these and many other issues, but as the lenders, many will be dragged into lawsuits with little ability

to address risk prior to making PPP loans. The SBA must address lender liability or it will risk losing lenders willing to make PPP loans.

Loan Forgiveness

As you know, PPP loans essentially turn into a grant if certain criteria are met. The availability of loan forgiveness is likely the driving force behind the demand for PPP loans. Credit unions and other lenders need detailed guidance on all processes surrounding loan forgiveness as conflicting processes are likely to create problems and lead to litigation.

An example of confusing or unclear guidance is the amount of a loan that can be forgiven. Section 1106(d)(1) of the CARES Act provides that the amount forgiven “cannot exceed the principal amount” of the PPP loan. The third interim final rule states that “the full principal amount of the loans and any accrued interest may qualify for forgiveness.” The CARES Act and the third interim final rule appear to be in conflict making it impossible for a lender or borrower to feel comfortable in calculating the amount of a loan that can be forgiven. This discrepancy must be clarified so borrowers and lender can properly calculate and process loan forgiveness requests.

Credit unions are also concerned about the pacing mechanism used by SBA, and whether that will be used to handle loan forgiveness requests and loan purchase decisions. Furthermore, details on lender due diligence or validation lenders will be required to conduct on borrower submissions should be released soon so lenders can start the process of planning for forgiveness requests. This guidance should include methods on how financial institutions should calculate partial forgiveness requests when a borrower does not meet the 75% threshold for forgivable payroll costs.

Should you have any questions about CUNA’s comments, please feel free to contact me at 202.508.6705.

Sincerely,

A handwritten signature in cursive script that reads "Lance Noggle".

Lance Noggle
Senior Director of Advocacy and Counsel Senior Counsel for Payments and Cybersecurity