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May 4, 2020

The Honorable Steven Mnuchin
Secretary
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

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

Dear Secretary Mnuchin and Administrator Carranza,

On behalf of NFIB, the nation's leading small business advocacy organization, I write to request that the Department of Treasury (Treasury) and Small Business Administration (SBA) promptly issue guidance on loan forgiveness for the PPP that provides maximum flexibility for small business owners. Specifically, NFIB requests flexibility regarding the "covered period" loan forgiveness timeline and re-hiring requirements due to the economic uncertainty caused by government shutdowns responding to the COVID-19 pandemic.

Most small business owners are planning to take full advantage of loan forgiveness rather than using the funds as a low interest loan over 2 years. About half of small business owners who submitted a PPP application expect the entire loan to be forgiven after the 8-week "covered period" window, and another 27% expect to have at least 75% of the loan forgiven.¹

The Interim Final Rule (IFR) for the PPP was posted on April 2, 2020. NFIB submitted the attached comments requesting increased flexibility and protections for small business owners. The IFR also stated, "SBA will issue additional guidance on loan forgiveness."² This guidance has not yet been issued, but is urgently needed as an increasing number of small business owners are receiving PPP loan disbursements and have specific questions about how PPP funds may be used to maintain forgiveness. NFIB requests SBA issue an Interim Final Rule on forgiveness as soon as possible to provide answers to these questions. To assist

¹ Holly Wade, *Covid-19 Small Business Loans (PPP and EIDL)*, NFIB Research Center, April 20, 2020, <https://www.nfib.com/assets/Covid-19-survey-loans-2.pdf>.

² *Business Loan Program Temporary Changes; Paycheck Protection Program, Interim Final Rule*, 85 *Federal Register* 20814, U.S. Small Business Administration, April 15, 2020, <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>.

with the urgently needed guidance, NFIB is offering recommendations for more frequently asked questions received from small business owners.

The *CARES Act* defines the term “covered period” as the 8-week period beginning on the origination date of a covered loan. Treasury and SBA issued Frequently Asked Questions that said, “The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower.”³ Unfortunately, neither of these timelines coincide with commonly-used payroll periods. NFIB recommends that that 8-week “covered period” for forgiveness coincide more seamlessly with payroll periods. For example, if a small business receives a loan on a Friday, the “covered period” would begin when the next payroll period begins on Sunday. Alternatively, the “covered period” could account for accrued payroll that will be paid to employees.

NFIB also encourages Treasury and SBA define statutory terms to maximize employer flexibility. For example, NFIB recommends “covered rent obligation” should include lease payments for tools, equipment, or vehicles, as long as the leasing agreement was in force before February 15, 2020. “Covered utility payment” should have a broad definition for certain terms such as transportation and gas distribution payments. Also, small business owners require a clear and easily comprehensible definition for “full-time equivalent employee.”

NFIB recommends a good faith effort safe harbor for re-hiring employees by June 30, 2020. NFIB is hearing from small business owners who are having difficulty re-hiring employees due to expanded unemployment insurance, most particularly the \$600 Federal Pandemic Unemployment Compensation payments that last until July 31, 2020. While small business owners can hire new individuals to meet the requirements, this same issue will persist. Additionally, regarding forgiveness reductions relating to salary and wages, the *CARES Act* uses a 12-week base period (“most recent full quarter”) to compare to the 8-week covered period. NFIB recommends providing clarity regarding the proportional reduction comparison.

On Thursday, April 30, the IRS issued Notice 2020-32, which disallows the deductibility of forgiven expenses.⁴ This regulatory decision limits the benefits of the PPP and increases complexity for small business owners, who will have to separate payroll and business expenses for certain weeks during the “covered period.” IRS Notice 2020-32 is also contrary to Congressional intent. Further, this decision was made after many small business owners received loan disbursements. NFIB encourages Treasury and SBA to overturn IRS Notice 2020-32, and clarify that forgiven expenses can still be treated as deductible business expenses.

³ Question 20, *Paycheck Protection Program Loans Frequently Asked Questions*, Department of Treasury and Small Business Administration, April 8, 2020, <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>.

⁴ Notice 2020-32, Internal Revenue Service, April 30, 2020, <https://www.irs.gov/pub/irs-drop/n-20-32.pdf>.

The PPP is an essential forgivable lending arrangement for small businesses during this unprecedented public health and economic crisis. However, small business owners continue to search for added clarity on exactly how loan forgiveness rules will be implemented, and exactly how employee re-hiring rules will be implemented. Small business owners should not be penalized due to the current lack of regulatory clarity. Thank you for continued efforts to help America's small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Close". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

Brad Close
President
NFIB