May 14, 2020

The Honorable Jovita Carranza
Small Business Administration
409 Third Street SW
Washington, DC 20416

RE: Comments in Response to SBA Notice of Interim Final Rules "Business Loan Program Temporary Changes; Paycheck Protection Program," SBA-2020-0015 (April 15, 2020)

Dear Administrator Carranza:

I write on behalf of Colorado Nonprofit Association and its 1,400 nonprofit member organizations to comment on this rule on the Paycheck Protection Program (PPP). Colorado Nonprofit Association's mission is to lead, serve, or strengthen Colorado's nonprofit community to improve the quality of life throughout our state.

Colorado's 23,000 nonprofit organizations ordinarily contribute $40 billion to the state's economy and accounts for 9% of Colorado's workforce in direct and indirect jobs. More than 80% of Colorado's nonprofits have budgets less than $1 million.

Even though nonprofits tend to be small and resilient, COVID-19 is tasking nonprofits to do much more with even less. Demand for services has skyrocketed as Coloradans turn to nonprofits for help with meeting basic needs, finding work, accessing physical and mental health services, practicing their faith, and more.

At the same time, nonprofits are coping with financial losses due to closures of public spaces and offices, cancelled fundraising events, and a sudden economic downturn. Moreover, keeping employees working, safe, and healthy is the primary concern for nonprofit leaders.

The PPP will likely be a lifeline for many nonprofit organizations and we appreciate the extraordinary effort by the SBA in getting more than $650 billion to small nonprofit and for-profit businesses alike. However, our comments pertain to bringing clarity and addressing concerns about the guidance provided by the SBA to date, so that nonprofits can successfully leverage these funds to continue serving the needs of their communities.

We ask that the SBA make the following changes as the final version of this rule is completed:

Eliminate the requirement under Rule (2)(O) for 75% of loan funds to be spent on payroll expenses. Although we appreciate the intent of the SBA in conserving and devoting finite appropriations to payroll expenses, this arbitrary ratio prevents loan recipients from using funds to meet their particular operational needs within the requirements of the CARES Act.

The goal of keeping employees on the payroll is unlikely to be met if nonprofits are unable to use loan funds under the 25% limitation to pay necessary expenses to keep their offices and facilities open. This challenge is compounded if a nonprofit is unable to have the loan forgiven due to employees who decline offers to be rehired following a furlough.

In spite of the low interest rate on PPP loans, we are also concerned that being required to pay back up to 25% of the loan principal over the next two years would be a burden for nonprofits facing precarious financial circumstances. This requirement should also be eliminated because nonprofits may not have been aware of the 75/25 ratio when applying, as this ratio is not part of the language of the CARES Act.

We have concerns about the requirement under Rule (2)(T)(ii) that nonprofits certify that this assistance is necessary to ensure continued operations. Although this is similar to language in the CARES Act, we have concerns this could hold nonprofits to a strict one size fits all interpretation of "necessary to support the ongoing operations of the applicant."

Nonprofits are seeking PPP funds for a variety of circumstances that are essential to carrying out their missions, retaining their staff, and ensuring resources to sustain operations beyond the course of the pandemic and economic recovery. This includes resuming programs after a nonprofit's facilities have been closed to the public, maintaining or increasing levels of service in response to increased demand, helping and addressing employees unable to work due to COVID-19, adapting to an entirely virtual workplace, addressing expected drops in donations, delays in reimbursements in government grants, replenishing exhausted reserves, and more.

Although these circumstances would not necessarily result in nonprofits immediately ceasing operations, any one of these could result in a nonprofit being unable to sustain operations before or after the economic disruption of the pandemic has passed. Conversely, if a nonprofit's circumstances improve during the period of the loan from the time of application (e.g. new grant funding), then SBA should not penalize the borrower by considering the loan to be no longer necessary or worthy of loan forgiveness despite the nonprofit's good faith certification.

We understand that SBA has recently issued FAQ (#46) to deem borrowers, together with their affiliates, to have made a good faith certification of the necessity of the loan request if the principal amount of the loan is less than $2 million, The FAQ states that "…borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans."

This guidance will certainly help most nonprofits applying for PPP loans by exempting them from being audited. However, it is unclear how this would affect nonprofits that requested more than $2 million and have liquid assets that have been spent down or have substantially dropped in value during the pandemic. SBA should consider additional safe harbors for businesses that lack access to adequate liquidity because their total liquid assets are less than the amount of the loan request (e.g. 5 times the loan request), have experienced large drops in the value of their assets during the pandemic, or they do not have shareholders.

789 Sherman Street | Suite 240 | Denver, Colorado 80203 | (303) 832-5710 | (800) 333-6554 | ColoradoNonprofits.org

We have concerns that Rule (2)(S) could hold nonprofit board members personally liable for knowingly using PPP funds for unauthorized purposes. Certainly, it's appropriate for SBA to direct repayment and seek recourse from businesses that knowingly misuse funds. This rule indicates that shareholders, members, or partners would be held personally liable for misuse of PPP funds under the rule.

Although it is unclear if this rule also applies to board members, we do not believe that they should be held personally liable unless they knowingly approved a decision for the organization that misused PPP funds or knowingly misused PPP funds in their personal custody. Typically, decisions about use of funds are made at the organizational level and liability for knowing misuse of funds should fall on the organization or individual employees who knowingly engage in unauthorized use of funds in their custody.

Modify Rule (2)(N) to defer loan payments for one year rather than six months. Because the pandemic has lasted longer than initially projected and a second wave may occur, it will take longer for nonprofits to restore their operations. Deferring loan payments for a year will reduce chances of nonprofits defaulting on their obligations and is permitted by the CARES Act.

Modify Rule (2)(J) to increase the maximum maturity date at either or ten years or following a milestone of economic recovery. Given historic levels of unemployment and business closures, expecting most nonprofits to pay back the principal on PPP loans after two years seems unrealistic. Because it is unclear how long full economic recovery will take, the SBA should increase the maximum maturity date to ten years or base it on an objective standard of a return to economic activity prior to the pandemic.

Allow employers to borrow less than the maximum amount of the payroll formula under Rule (2)(E). Borrowers should be allowed to request loan amounts that are less than 2.5 times payroll for an 8-week period. Not only will this conserve resources for more loan applications to be supported by the PPP, it will encourage borrowers not to request more than they need and increase likelihood of loan forgiveness. We appreciate that SBA has provided this formula and other supplementary guidance to help nonprofits calculate maximum payroll costs.

Indicate that the Alternative Size Standard applies to nonprofits seeking PPP funds. Relevant to Rule (2)(A), SBA's March 27 FAQ states that a small business can still qualify for PPP if it meets both tests of the alternative size standard, meaning the net worth does not exceed $15 million and the average net income does not exceed $5 million. The SBA has also extended this standard to agricultural producers, farmers, and ranchers. We know of no compelling reason to treat charitable nonprofits differently if they meet the alternative size standard.

Clarify how nonprofits should report payroll expenses under Rule (2)(E) for positions covered by government funds. Many nonprofits have employees with positions funded exclusively or primarily by federal, state, or local government funds. Under some agreements, it may take as long as a year for a nonprofit to be reimbursed by a government for these wages. The rule is silent on how these positions should be included in the calculation of the maximum loan amount and determination of loan forgiveness.

Clarify how nonprofits should respond to questions on the PPP application related to ownership. In their corporate form, nonprofits have boards of directors to oversee their organizations but do not have private owners or shareholders. Questions on the application related to business owners are not applicable.

Clarify whether related business activities may be considered for separate loans under PPP. Charitable nonprofits often establish businesses to support their missions (such as preschools and food pantries) that operate independently but exist under the same single Employment Identification Number (EIN). The SBA should clarify whether multiple nonprofit businesses that share an EIN may be considered separately when applying for PPP loans.

Provide data specific to the nonprofit sector. The SBA has provided aggregate data on how many businesses have benefitted from the PPP by state and by industry. However, the industry categories provided do not distinguish how many recipients are nonprofit or for-profit within those categories. We request nonprofit-specific PPP data from the SBA in order to ensure nonprofits are benefitting equitably from this program.

Data related to charitable nonprofits should include the number of applications, dollar amounts awarded, application approval and disapproval rates, the duration of the application and approval process, and comparisons of this data to the experience of similarly sized for-profit businesses.

We thank you for considering these comments and recommendations, and stand ready to work with you to strengthen the Paycheck Protection Program and provide other supports that will help residents of our country get through this crisis and facilitate vibrant and equitable economic recovery. Please feel free reach out to us for guidance and clarification around nonprofit-specific issues.

Sincerely,

Mark Turner

Mark Turner
Senior Director of Public Policy