



June 30, 2020

Jovita Carranza
Administrator
Small Business Administration
409 3rd St, SW
Washington DC 20416

RE: SBA-2020-032

Dear Ms. Carranza:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. We are pleased to have the opportunity to provide comments in response to the interim final rule titled "Business Loan Program Temporary Changes: Paycheck Protection Program – Requirements – Loan Forgiveness."

The members of NAHU work daily to help millions of individuals and employers of all sizes purchase, administer and utilize health insurance coverage. Many of our members are small-business owners, and their professional expertise is in the technicalities of health-plan purchasing and administration. Since the start of the COVID-19 pandemic, NAHU members have been working tirelessly to assist companies with employment and benefit-plan issues related to the economic downturn.

Our members and their business group clients share a goal: Everyone wants to keep American employees insured. However, the financial realities of the current health crisis have sadly forced many businesses into layoffs and furloughs, thereby jeopardizing employee health insurance coverage. These businesses are often the very type of companies ideally suited to the PPP, so NAHU members have spent countless hours assisting employer group clients with the health coverage expenditure documentation needed for PPP loan applications and the loan-forgiveness process. At the same time, with unemployment on the rise and private health insurance coverage rates dropping, the COVID-19 crisis is causing many NAHU members to experience a steep loss in business income. Therefore, in addition to helping other types of businesses obtain and facilitate PPP loans, some of our business-owner members are PPP borrowers themselves.

The members of our association appreciate the clarifications the interim final rule provides about the PPP loan-forgiveness process. However, as the SBA works to finalize this regulation, and develop additional guidance to implement the PPP and the forgiveness process, NAHU members believe that there are other areas where PPP borrowers and employee benefit professionals could use clarification.



The interim final rule provides an overview of the loan-forgiveness process and timeframe. However, it does not include some crucial details that borrowers need. For example, based on the volume of NAHU member inquiries, borrowers need more information about the loan-forgiveness timeframe and notification process. The interim final rule is clear that lenders have 60 days from the date that the borrower applies for loan forgiveness to determine the borrower's approved forgiveness amount and send the borrower's completed application to SBA. The interim final rule also specifies that lenders must inform borrowers of their decisions relative to loan forgiveness, but it does not specify when. Nor does it specify what the process might be if the borrower disagrees with the lender's assessment of the amount of loan funds that may be eligible for forgiveness. Additional information on these topics would be appreciated.

Concerning payroll expenditures for forgiveness purposes, NAHU members appreciate the specification in the interim final rule that qualified loan borrowers may elect to define the start of the covered forgiveness period as the first day of the first payroll cycle following loan fund disbursement. This option is called the "alternative payroll covered period." However, the interim final rule limits eligibility for the alternative payroll covered period to borrowers with a biweekly or more frequent payroll cycle. NAHU members believe that this stipulation is prejudicial to those who pay employees monthly or through another schedule. All employers will ultimately pay employees for the time worked, just over more extended periods, so we believe that all employers should start their covered period on the first day of the start of their next pay period. Borrowers also should be permitted to count all funds paid to workers for duties performed during the covered period, even if that payment occurs after the conclusion of the loan-forgiveness period.

Several other issues have emerged for borrowers concerning forgivable payroll expense documentation. The first concerns health insurance premium bills for newly reinstated workers. Typical health insurer business practices do not provide for immediate billing of newly added or reinstated employees. After an employee is added or reinstated, it often takes two or three billing cycles or up to 13 weeks for the employer to receive a bill that reflects the accurate employee count, with premiums paid in arrears. Therefore, premiums for employees that apply over the eight-week forgiveness window, even a 24-week window, may not be paid until months later. Health insurer billing departments not equipped to handle pre-payment before billing either. As such, we request clarification for borrowers and lenders on this issue, as well as relief to borrowers concerning these premium costs, provided that they are able produce accurate documentation.

Another concern that PPP borrowers are raising with our association regarding forgivable payroll expenses are how to account for employees who are paid by commission in addition to a salary or instead of a salary. Many members of our association are paid at least partially on a commission basis, as are millions of other employees. There is very little standardization to how commission payments work, even



by industry. One company may account for a person earning a commission at a certain point in time, and then pay it out at a much later date. Others may pay commissions on a near immediate basis. Commission payments may come monthly, quarterly, annually or at a different point in time linked to a specific corporate marker. How are borrowers expected to account for these costs when the time incurred and paid likely will not match up well with either an eight-week or 24-week covered period? NAHU members request detailed clarification on this issue in any future final rule and via more timely sub-regulatory guidance.

Our association supports the SBA's position that payroll expenses for forgiveness purposes may include funds paid to employees who had to be furloughed. We also approve of the requirement that bonuses and hazard pay to workers shall count as forgivable payroll expenses, as long as those payments do not exceed the \$100,000 salary cap. These specifications are in line with the PPP's goal of keeping Americans employed, paid and insured. It also recognizes that many small-business owners have front-line operations and employees working under difficult and hazardous circumstances. Allowing payments made to compensate these employees as forgivable expenses shows support for the critical contributions these businesses and their employees are making to our country and economy.

Concerning forgivable costs that do not qualify as payroll expenses, NAHU members appreciate the stipulation that borrowers may include eligible costs paid and incurred during the covered period as forgivable nonpayroll expenses. However, to count, the rule also requires: (1) the cost must be incurred during the covered period; and (2) the expense must be paid on or before the next regular billing date. Unfortunately, sometimes rent, mortgage and utility payments are paid in arrears. Due to recent state business closure mandates, many borrowers discontinued utilities and negotiated delays to lease and mortgage payments. In these cases, billing cycles and statements may not be typical, and there may be cases where the costs for expenses incurred during the covered period do not appear on billing statements right away. As such, our members request relief in these instances, provided that the borrower can provide appropriate documentation.

The interim final rule uses a 40-hour or more workweek as the standard for a full-time employee (FTE). It also allows employers two options when accounting for the hours of part-time employees. Borrowers may either calculate the average number of hours a part-time employee was paid per week during the covered period and count them on a pro-rated basis, or they may elect to treat each part-time employee as .5 FTE. NAHU members appreciate the flexibility accorded to loan borrowers and believe that these options will help ease the administrative aspects of the loan-forgiveness-calculation process.

NAHU also supports the decision outlined in the interim final rule to allow borrowers to exclude employees who refuse a written offer of rehire from their full-time employee reduction count for forgiveness purposes. We appreciate the details in the regulation as to how borrowers must fully document such situations as well. However, the rule does require borrowers to inform the applicable



state unemployment insurance office of the employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer. A footnote in the regulation notes that more information about how borrowers should do this and document it will be available on the SBA's website. Many state unemployment offices are currently overwhelmed, and many borrowers are already in this 30-day window. Therefore, our association requests that instructions be made available to borrowers as soon as possible.

Similarly, NAHU members welcome the specification that when an employee of the borrower is fired for cause, voluntarily resigns or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period, there is relief for borrowers. Since an employer cannot control these employee actions, it may count any such employees at the same full-time-equivalency level before the FTE reduction event when calculating the employee reduction penalty.

Finally, the interim rule directs borrowers and others to the PPP loan-forgiveness application for all information about the documentation borrowers must produce for loan forgiveness. However, NAHU members request that your agency also detail the specifics in regulatory guidance. That way, it will be much easier to address borrower questions and prepare information in advance of beginning the formal forgiveness process.

The members of NAHU sincerely appreciate the opportunity to express our views about the implementation of the Paycheck Protection Program and what information and clarifications would be helpful for program participants and their professional advisors as they begin the loan-forgiveness process. If you have any questions about our comments or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Stokes Trautwein". The signature is written in a cursive style with a large, looping initial "J".

Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters