



May 15, 2020

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

RE: SBA-2020-001

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," published in the Federal Register on April 15, 2020.

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 over the last six weeks helping thousands of employers document their group benefit costs for PPP loan applications.

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 applicants themselves.

The members of our association appreciate the explanations included in the interim final rule. The FAQ format makes the guidance approachable for PPP applicants and their advisors. 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 Coronavirus Aid, Relief and Economic Security (CARES) Act text and the interim final rule both specify payroll costs may include "payment for the provision of employee benefits consisting of group healthcare coverage, including insurance premiums and retirement." NAHU members report some confusion by PPP borrowers and their advisors about some of these terms. First, "group healthcare coverage" is not defined. However, other parts of the CARES Act and the Families First Coronavirus Response Act (FFCRA) that provide for federal reimbursement of group health coverage costs cite the definition of "group health plan" under Section 5000 (b)(1) of the IRC. Our association requests clarification as to whether or not this definition applies to the PPP requirements. If not, please provide more detailed parameters as to what kinds of benefits represent "group healthcare coverage."

It is unclear if an employer should include employee contributions (pre- or post-tax) when determining insurance premium amounts for payroll cost purposes. While not specified directly, the rule seems to imply the employer does include the total amount paid for group health insurance premiums. There is a list of specific exclusions in the calculation of payroll costs, and employee contributions to group health coverage and retirement benefits are not listed. Furthermore, other sub-regulatory guidance concerning the various federal payroll tax credit programs created by the CARES Act and FFCRA directs employers to include employer contributions to group health plan costs and employee pre-tax contributions. NAHU members and their employer group clients would appreciate clarification of this point in any final rule or supplementary guidance.

Two other terms where a clear definition is needed as soon as practicable are full-time employees and transportation. Provisions of the CARES Act related to the retention tax credit direct employers to use definitions and counting methods related to full-time employees outlined in section 4980(h) of the Internal Revenue Code. Should PPP borrowers use this familiar definition and methodology, which also applies to the Affordable Care Act's employer shared responsibility provisions, or should another definition apply? The term transportation in terms of payroll costs also needs clarification, in order to make loan forgiveness calculations.

Payroll costs are defined to include "payment for the provision of employee benefits consisting of group healthcare coverage, including insurance premiums and retirement." However, interestingly, when outlining acceptable uses of PPP loan funds, in addition to payroll costs, the rule separately notes "costs related to the continuation of group healthcare benefits during periods of paid sick, medical or family leave and insurance premiums." Our association would appreciate more information as to why there are these two separate stipulations and if there are any differences between "group healthcare coverage, including insurance" and "costs related to the continuation of group healthcare benefits" for loan-forgiveness purposes.



Concerning PPP loan forgiveness and the acceptable loan uses for forgiveness purposes, the interim final rule specifies that employer needs to spend 75 percent of their loan funds on payroll costs. Additionally, concerning loan forgiveness, the interim final rule makes it clear that borrowers have 56 days beginning on the day of loan disbursement to spend any funds that will be considered for forgiveness purposes. As PPP borrowers have started to use their funds, our members have noticed some real-world challenges and obstacles. The 75% salary requirement is proving to be a hard bar for many employers to meet, particularly quickly. Many PPP borrowers have suspended all or part of their operations for the past two months. They may need time to acquire new inventory, supplies, safety gear and other essentials before reopening and bringing employees back to the workspace. To help them, could hazard pay or return-to-work bonuses fall under the definition of payroll costs? What about the cost of providing protective equipment? These businesses may have deferred rent and utilities to pay, which could represent a disproportional share of expenses. NAHU members appreciate the intent of the requirement but note that more flexibility is needed.

Concerning the 56-day timeframe, our members appreciate how the PPP intends to get people back to work quickly. Unfortunately, some businesses shuttered due to government orders encounter difficulty bringing people back to work immediately. Some employees and employers, particularly in public-facing businesses, cite real safety concerns. Employees with high-risk medical conditions or those who have been sick themselves may not be able to return to work as they once did. Some business owners and many workers now have children at home, with no school or childcare options available. Other businesses are not legally able to operate as intended and are finding that previously laid-off or furloughed employees do not want to return to a reconfigured employment situation, particularly when they can access unemployment insurance. There may not be as much work for employees to do or any customers to serve. Some businesses feel compelled to operate sooner than they think is prudent to be able to spend their PPP money quickly. Even a few extra weeks would allow for greater workplace safety and time for shuttered businesses to gear up as government orders allow.

Another timing issue where clarification and guidance are needed involves costs incurred during the 56-day window versus paid. For example, the 56 days may not align well with an employer's existing payroll cycle. If different employers pay people monthly, biweekly or weekly, the amount they each can expend on payroll during 56 days will vary. Still, each will ultimately pay employees for the time worked, just over more extended periods. Similarly, health insurance premium bills for newly reinstated workers will not come right away. 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. Therefore, premiums for employees that apply over the eight-week forgiveness window may not be paid until months later. Health insurer billing departments are not set up to handle pre-payment before billing either. Unless there are clarifications and grace given to borrowers, there will be administrative chaos. Similar issues will occur, although perhaps with a less



chaotic effect, concerning rent, mortgage and utility payments, which are often billed and paid long after they are incurred.

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. We hope that your agency will continue to release more information for borrowers and lenders quickly, as businesses are making economic decisions right now that depend on your guidance.

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