



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 – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities."

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, including the Paycheck Protection Program (PPP) loan application and forgiveness processes.

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 review process for borrowers and lenders. However, NAHU members have identified several



areas addressed in this rule where we believe more guidance and information for borrowers is warranted. As the SBA works to finalize this regulation and develop additional guidance to the PPP loan process, NAHU members hope that you take our suggestions into consideration. We have organized our suggestions by topic, according to the order presented in the interim final rule.

### **Borrower Response to SBA Review**

NAHU members appreciate the assurance the interim final provides about the opportunity borrowers will have to respond, should the SBA elect to review their loan. However, borrowers would benefit from clearer parameters and timeframes associated with an SBA loan review. First of all, the interim final rule notes that the SBA will require lenders to inform borrowers, but does not specify a process or a timeline. It goes on to indicate that the SBA may contact borrowers as well. Finally, the rule states, "Failure to respond to SBA's inquiry may result in a determination that the borrower was ineligible for a PPP loan or ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower." This language places complete responsibility for a borrower to respond, but does not include information about when or how the SBA will require the response. To make this process clearer for borrowers, NAHU suggests that any final rule include a clear and reasonable timeframe for responses by the lender, the borrower and the SBA. We also ask that your agency post such a timeline online via sub-regulatory guidance authority as soon as possible,

In addition to the timeline, NAHU requests the addition of the following information in any final rule. We also suggest that it be made more immediately in sub-regulatory guidance:

1. To streamline the notification process, a specification that the SBA will notify both the lender and the borrower that the loan is under review in all cases.
2. To address potential scams and fraud attempts, a specification that the SBA will always notify both lenders and borrowers in writing.
3. Since borrowers may be subject to administrative issues of their lender, inclusion of language to hold borrowers harmless, should their lender fail to respond according to the SBA-required timeframe.
4. A publicly available telephone number and e-mail address that borrowers may contact or reference for additional information at any point during the process.
5. A dedicated website address that borrowers may reference for additional information, including FAQs about the loan review process.

To help set reasonable expectations for all parties concerning loan reviews, NAHU asks the SBA to consider adopting the practice similar to the one the Internal Revenue Service used when it began enforcing the provisions of IRC §4980H, colloquially known as the Affordable Care Act's employer mandate requirements. At that time, the IRS released a great deal of information to applicable large employers, employee benefit professionals, tax professionals and other advisors to ensure that all parties involved knew what type of contact to expect during a review of their case, and the processes and



timeframes involved. Now that IRC §4980H enforcement has been going on for several years, the process is more mainstream, but the IRS still has information available about what kinds of communication applicable employers can expect [both initially](#) and as the [process moves forward](#), including information about various outcome scenarios. We encourage you to review and emulate these materials when developing materials for lenders and borrowers.

To provide clarity for all, NAHU suggests giving instructions as to how a borrower should respond to the SBA review, including a method and timeframe for submitting additional information, and an outline of the next steps in the review process, including:

1. Indication of how and when the SBA will respond to the borrower to advance the review process. For example, if a borrower's loan is selected for review, make it clear that the borrower will receive a form letter from the SBA that looks like X within 30 days of the lender submitting their forgiveness application to the SBA.
2. Indication of how and when borrowers should respond should they receive SBA letter X. For example, Letter X could specify that the borrower must respond within 15 days by contacting the SBA in a specific way.
3. Specification of the types of outcomes in the review process letter X could outline various outcomes a borrower might encounter once they respond to an SBA review request. For example, outcome one could be that the borrower participates in a loan-review call with the SBA within a certain number of days. Another could be that the borrower provides additional documentation to the SBA within a certain number of days.
4. Information about the contact borrowers should expect in the case of each review outcome, and details about what will be expected of borrowers in the case of different review outcomes. For example, if a borrower needs to participate in a call with the SBA, an outcome might be that the loan is resolved following the call and the borrower will receive formal verification of the resolution within 15 days in the form of Letter Z from the SBA.

### **Appeal of SBA Decisions**

NAHU members appreciate the indication that there will be a process available to borrowers to appeal any decisions by the SBA regarding loan eligibility and forgiveness. We look forward to the additional rulemaking that will govern these appeals, and we hope that its release will be in the near-term future, as some borrowers are already in the midst of the forgiveness process. Additionally, we hope that further rulemaking will give greater specificity to the process of appeals of lender decisions regarding loan forgiveness.

### **Lender's Review Responsibility**

NAHU members support the clarification in the interim final rule that the lender is merely responsible confirming receipt of the borrower's documentation to support forgiveness, reviewing it for completion



and numerical accuracy and performing a good-faith review of the materials presented to them by the borrower in a timely fashion. Our members are already experiencing varying degrees of loan review and requirements from lenders, and we believe greater standardization in the lender-review process would be beneficial for all. The initial PPP loan application, the loan-forgiveness application and prior rulemaking and PPP FAQs from your agency are very clear that it is incumbent on the borrower to present information and documentation accurately and attest to its truthfulness. As such, we appreciate the specification that the lender should work with the borrower to correct any minor errors or obtain more complete documentation if necessary, but should primarily rely on the borrower's certification of their loan and forgiveness information and amounts.

Even with all of this specification that borrowers are ultimately responsible for their application content, NAHU members believe that lenders need a more uniform way to review loan-forgiveness applications. Variability in lender judgements is not only unfair to all, but could harm the overall integrity of the PPP loan program. To ensure equal treatment by all, we recommend that the SBA publish, and require lenders to use a formal loan-review checklist. Such a checklist could include a listing of each forgivable expense component, verification that the borrower has included documentation for each applicable component, verification that the lender has reviewed each documentation component and determined that they have the complete scope of documentation for forgiveness review processing, and a verification that the lender has checked and approved each expense calculation. To assist with this process, we suggest that the SBA provide formal definitions of all forgivable expenses and examples so that lenders and borrowers are all clear on the scope of expenses to be reviewed.

### **Timeline for Decisions by the Lender**

The interim final rule specifies that the lender must issue a decision to the SBA about each loan-forgiveness application no later than 60 days after receipt of a complete application by the borrower. The interim rule does not address what is considered to be a complete application and if the 60-day clock resets or continues should a lender need to request additional documentation or information from the borrower during the loan-review process.

NAHU members believe the use of the checklist outlined above could help address any timeline confusion and inconsistency amongst lenders in applying the 60-day timeline. If a final rule and sub-regulatory guidance include a specification that lenders must use a uniform application checklist and refuse to accept an incomplete application, it will help the lenders and borrowers with consistency and expectations. If this is the standard, then the 60-day processing timeline for lenders could start once all checklist documentation components are received and checked off by the lender. Then, the lender will have 60 days to review calculations and documentation. The resulting consistency should make the forgiveness application process easier for all parties. Borrowers and banks can rely on a clear process without worry, and your agency will benefit from the uniformity and documentation a checklist and firm timeframe provide.



Another lender-decision issue we request that the SBA address, both in any final rule and via more timely sub-regulatory guidance, concerns borrower notification regarding loan status. The rule does not address how and when a borrower must be notified by the lender other than to state that a lender must inform a borrower if their loan-forgiveness application is denied by the lender in writing. Our association requests that as soon as the lender submits a forgiveness application to the SBA for review, they provide the borrower with a written status notification for every scenario. This would include not only denial of a forgiveness application, but also if the lender recommends partial forgiveness, full forgiveness or any other alternative. This notice should include the lender's rationale for their decision, and a borrower should get this written notice no later than 60 days after they submit a complete forgiveness application to their lender.

A related issue NAHU members have identified as of concern involves a request by the borrower that the SBA review their lender's forgiveness determination. According to the regulation, a lender may issue a loan decision to the SBA that may take the form of approval (in whole or in part), denial or (if directed by the SBA) denial without prejudice due to a pending SBA review of the loan. Only in the case of a denial without prejudice may a borrower later request that the lender review their loan-forgiveness application, unless the SBA rules the borrower is ineligible for a PPP loan. The rule includes no specificity as to how a borrower may appeal a lender's denial without prejudice. NAHU members request that any final rule include this information, and we ask that the SBA include details about lender appeals process, including initiation and notification procedures as well as timing, in its sub-regulatory guidance currently housed online.

In addition, we would appreciate more clarification about the denial without prejudice determination. Is this the status reserved for borrowers whose loan proceeds are \$2 million and above, as the SBA has previously indicated that all of these loans will be subject to agency review? Is there another reason for the denial without prejudice status? Why would a borrower need to request an additional lender review following the SBA review? Could an official loan-review checklist for lenders and borrowers serve as a methodology for eliminating some of these additional reviews?

Beyond that, we ask that borrowers be allowed to appeal all types of lender denials or partial loan forgiveness approvals at the lender level. Our membership anticipates that many lender denials or partial forgiveness decisions may be based on misunderstandings related to loan documentation and judgement calls. If this is the case, we believe borrowers should have the ability to request a review from a higher authority. In addition, we submit that ability for lenders and borrowers to review all decisions before the SBA is involved, and the use of a formal SBA checklist for lenders to use in the review process, would likely reduce the need for formal SBA appeals.



If a lender denies a borrower's forgiveness application, the interim rule states the lender must provide the SBA with detailed information about its decision and decision-making process and inform the borrower of its decision in writing. The rule does not specify when a lender must inform the borrower, nor does it indicate what type of information the lender must include in a loan-forgiveness-denial letter. NAHU members request that your agency clarify both of these points in your final regulation, as well as via sub-regulatory guidance. In addition, we ask that any final rule requires written notification by the lender to the borrower for all possible loan outcomes.

The regulation goes on to state that a borrower has 30 days from receipt of notification by a lender to request that the SBA review the lender's decision. The rule provides no detail about how a borrower should initiate or conduct this process, nor does it include information about what types of decisions may be appealed (all, or merely those without prejudice?). Furthermore, there is no clear timeframe provided for an SBA review of a lender's decision at the borrower's request. Is this also 90 days? NAHU and borrowers would appreciate clarification and direction on all of these points both in a final rule, and also more immediately via sub-regulatory guidance.

The members of NAHU sincerely appreciate the opportunity to express our views about the Paycheck Protection Program loan-forgiveness process for borrowers and lenders. We are also grateful for the change to provide information about what kinds of clarifications and additional guidance 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](mailto:jtrautwein@nahu.org).

Sincerely,

A handwritten signature in black ink, reading "Janet Stokes Trautwein". The signature is fluid and cursive, with the first name "Janet" being particularly prominent.

Janet Stokes Trautwein  
Chief Executive Officer  
National Association of Health Underwriters