



July 26, 2020

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

RE: SBA-2020-038

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 respond to the interim final rule titled "Business Loan Program Temporary Changes: Paycheck Protection Program – Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules" published in the *Federal Register* on June 26, 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, like helping group benefits clients obtain and facilitate PPP loans. Their work includes helping their clients through the loan-forgiveness process, particularly when it comes to documentation of group health insurance expenses.

Simultaneously, 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. Some of our business-owner members are PPP borrowers themselves.

The members of our association appreciate the clarifications the new interim final rule provides about the PPP loan-forgiveness process, given the changes to the loan program caused by the passage of the Paycheck Protection Program Flexibility Act (PPPFA). 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.

Loan-Forgiveness Process



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. Based on the volume of NAHU member inquiries, borrowers need more information about the loan-forgiveness timeframe and notification process. NAHU members reviewed the timeline information provided by your agency in this and other interim final rules. Using it, we have developed the following chart outlining the steps borrowers and lenders need to take during the loan-forgiveness process. Our association has identified additional information that borrowers and their advisors need to complete each defined step in the process.

Loan-Forgiveness Process	Additional Information Needed
<p>Business submits its loan-forgiveness application to the lender within 10 months of the covered period.</p>	<p>How the lender confirms receipt of the application. <i>NAHU members suggest written notification to the borrower within five business days of receipt that the applicant has either: 1) submitted a complete application and documentation, including the date received; or 2) needs to provide additional information, with written specification about what is required, and how and when to submit it. The lender's 60-day clock to send a decision to the SBA begins as soon as the lender has a "complete" application, or once the lender gets all of the additional information needed from the borrower. So the lender should send a new notification to the borrower within five business days of receipt of a complete application and documentation, including the date received.</i></p>
<p>A business fails to submit a forgiveness application within 10 months of the end of the covered period.</p>	<p>How a lender will notify its borrowers that the 10-month mark is approaching, the deferral period is ending and payments are coming due. How the lender will notify the borrower when the first payment is due, the amount, and where and how to submit payments. <i>NAHU members suggest a requirement for written notification to the borrower from the lender sent no later than nine months following the end of the covered period. This notification should explain that the borrower still has until the specified date to apply for forgiveness. Or, if the borrower does not apply by that date, payment will be due. The letter should</i></p>



<p>The lender makes a forgiveness decision and submits forgiveness applications and requests for payment (if applicable) to the SBA.</p>	<p><i>include remittance details.</i></p> <p>The rules currently state that lenders must issue a decision to the SBA on each forgiveness application no later than 60 days of receipt of a complete application. That decision may be: (1) full approval; (2) partial approval; (3) denial; or (4) denial without prejudice pending SBA review of the loan. Lenders must inform borrowers of their decisions relative to loan forgiveness, but it does not specify when. <i>NAHU members suggest a requirement that the lender sends each borrower written notification of its decision at the same time that it submits the application to the SBA for review. This letter should include appeals-process information. The appeals process should cover ALL possible lender decisions regarding loan forgiveness.</i></p>
<p>A lender decides to deny a borrower's request for loan forgiveness (in full or in part).</p>	<p>The rules specify that if a lender decides to deny a borrower's forgiveness request in full, it must provide the SBA with a reason for the denial. However, the rule does not specify how and when a borrower learns of the decision, other to state that notification must be in writing. Also, the existing rules state a borrower may request reconsideration from the lender unless the SBA deems the borrower ineligible for a PPP loan. Still, they do not cover how the process works or when it occurs. Nor do the rules specify what the process might be if the borrower disagrees with the lender's assessment of a partial forgiveness amount, or how a borrower may appeal the amount of loan funds that may be eligible for forgiveness. <i>NAHU members suggest a requirement that the lender sends the borrower written notification of a full or partial denial of the loan-forgiveness amount, along with reasoning, at the same time notice is provided to the SBA. This letter should include appeals-process information. The appeals process should cover ALL possible lender</i></p>



<p>SBA decides to review the borrower’s loan or loan application.</p>	<p><i>decisions regarding loan forgiveness.</i></p> <p>The interim final rules note that the SBA will require lenders to inform borrowers that their loan is under review, but does not specify a process or a timeline. It indicates that the SBA may contact borrowers as well, particularly if they need additional information from the agency for the review process. Finally, the rules state, “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 on a borrower to respond but does not include information about when or how the SBA will require the response. <i>NAHU members suggest that the SBA, rather than the lender, send the borrower written notice that their loan has been selected for review. The SBA should notify affected borrowers in writing if they need additional information for the review process, with written specifications about what is required, and how and when to submit it.</i></p>
<p>The borrower requests the SBA review its loan.</p>	<p>The rules state that within 30 days of receiving notice from the lender about their loan determination, borrowers may notify their lender that they request that the SBA review their loan. Within five days of receipt of the notice, the lender must inform the SBA of the review request. The lender will tell the borrower if the SBA denies the petition for review and notify them when payment is due. If the SBA accepts the review request, it will notify both the borrower and the lender. If the SBA denies forgiveness in whole or in part, the lender must then inform the borrower of payment due. What is missing from this process is a clear timeline and specification of notification methods. <i>NAHU suggests that a final rule and related sub-regulatory guidance include a written notice</i></p>



	<p>requirement and a clear timeframe for all notifications. Also, if the SBA denies forgiveness, in whole or in part, the written notification to the borrower and lender should include an explanation of the decision.</p>
<p>Following an SBA loan review, it will notify the lender of the remittance amount within 90 days.</p>	<p>The rules currently state that once the lender gets the SBA's decision within 90 days, the lender must notify the borrower of the forgiveness amount (or that the SBA has determined no amount of the loan is eligible for forgiveness) and the due date of the borrower's first payment (if applicable). If the SBA determines the full loan amount may be forgiven, the lender must mark the loan as "paid in full." However, the rules do not indicate when or how the lender must provide this information to the borrower. <i>NAHU members suggest a requirement that the lender sends each borrower written notification of the SBA's decision and the forgiveness amount, if applicable, within five business days of their receipt of a decision from the SBA. This letter should include information about when the first payment is due, the amount, and where and how to submit payments. Also, it should include appeals-process information. The appeals process should cover ALL possible decisions regarding the loan-forgiveness amount.</i></p>

In addition to the timeline of notifications suggested above, NAHU requests the following information in any final rule. We also recommend 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 their lender's administrative issues, the 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 during the process.



5. A dedicated website address that borrowers may reference for additional information, including FAQs about the loan review process.

Payroll Costs Eligible for Loan Forgiveness

NAHU members appreciate the interim final rule's specification 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 that pay employees monthly or through another alternative 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 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 is health insurance premium bills for newly reinstated workers. Typical health insurer business practices do not provide for immediate billing of freshly 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 are not equipped to handle pre-payment before billing either. As such, we request clarification for borrowers and lenders on this issue and relief to borrowers concerning these premium costs, provided that they can produce accurate documentation.

Another concern that PPP borrowers are raising with our association regarding forgivable payroll expenses is how to account for employees who are paid by commission in addition to 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, then pay it out later. Others may pay commissions on a nearly immediate basis. Commission payments may come monthly, quarterly, annually or at different points in time linked to a specific corporate marker. How are borrowers expected to account for these costs when the time incurred and paid 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 timelier sub-regulatory guidance.

Caps on Loan Forgiveness Amounts for Owner-Employee and Self-Employed Individual Compensation



The revised interim final rules specify limits on owner-employee compensation replacement to prevent unexpected financial windfalls that Congress did not intend. The limits are either eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period, excluding any FFCRA paid leave. The rule also specifies that for self-employed individuals who get a PPP loan, compensation limited to eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period per owner in total across all businesses.

NAHU members understand that the purpose of the PPP was generally to keep smaller businesses operation during the economic crisis and to ensure income for employees. As such, we see your agency's perspective in limiting the amount owners, including sole proprietors, may claim for replacement income. However, NAHU members would like to confirm that income limits and changes made to the forgiveness principles that apply to the income earned by self-employed individuals do not also apply to any employees a self-employed individual may have. It is unclear if those individuals who also have employees and have used PPP loan funds to pay them during their covered period may apply the payroll cost terms for general loan borrowers to those individuals. These include salary, wages and tips of up to \$100,000 of annualized pay per employee (for 24 weeks, a maximum of \$46,154 per individual or, for eight weeks, a maximum of \$15,385 per individual), as well as covered benefits for employees (but not owners), including healthcare expenses, retirement contributions and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums). NAHU members believe that self-employed individuals with employees should be entitled to the same treatment concerning the forgiveness of employee payroll expenses as other loan borrowers. We would appreciate clarification of such in any final regulation.

Reduction of Loan-Forgiveness Amounts

The PPPFA allows for specific changes in the loan-forgiveness amount based on reductions in full-time-equivalent employees or employee salary and wages, provided that the borrower eliminates the cuts by December 31, 2020. The PPPFA also adds exemptions from reductions in the forgiveness amount based on employee availability and business activity. NAHU appreciates how, through these revisions to the interim final rules, the SBA has updated its regulatory guidance about how the statutory forgiveness formulas will work. NAHU also supports the SBA's decision to allow borrowers to exclude employees who refuse a written offer of rehire from their full-time employee reduction count for forgiveness purposes. 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. More information about how borrowers should do this and document it is needed. Many state unemployment offices are currently overwhelmed, and many borrowers are already in this 30-day window, or it may have even passed. Therefore, our association requests instructions for borrowers as soon as possible.



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 that reads "Janet Stokes Trautwein". The signature is fluid and cursive, with a large loop at the end of the last name.

Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters