

Treasury Issues New Interim Final Rule Re PPP Loan Forgiveness

May 26, 2020

On May 22, Treasury issued a new Interim Final Rule (“IFR”) regarding Small Business Administration (“SBA”) Payroll Protection Program (“PPP”) loan forgiveness. Much of the IFR repeats information previously published by Treasury and SBA in the loan forgiveness form application and accompanying instructions. See March 19, 2020 [Buchalter Client Alert COVID-19: Treasury Issues Application for SBA PPP Loan Forgiveness](#). However, in the new IFR, Treasury explains some processes for determining loan forgiveness, and clarifies some key points:

- For forgivable non-payroll costs (rent, mortgage interest, utilities), if a payment was incurred before the 8-week forgiveness period or the alternate 8-week forgiveness period (“8-week period”) but not paid until during the 8-week period, that prior-due amount is forgivable.
- Forgivable costs incurred during the 8-week period are forgivable if paid on or before the first regular payment date after the 8-week period.
- Mortgage interest not due until after the 8-week period but prepaid during the 8-week period is not forgivable.
- In calculating Full Time Equivalent (“FTE”) employee headcount for forgiveness reduction calculations, an FTE is based on working 40 hours per week.
- An individual employee who works more than 40 hours a week is still counted as one (1.0) FTE.
- FTE for part time employees may be counted in one of two ways. The borrower may calculate the actual number of hours for an employee. Thus, if an employee worked an average of 30 hours a week, that is 0.75 FTE. Alternatively, the borrower may count all part time employees as each being 0.50 FTE. The borrower must utilize the same methodology for all part time employees.
- The calculation of forgiveness reduction based on reductions in salary or hourly wages is done on an individual employee basis, not in the aggregate.
- To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to FTE reduction.
- A borrower can avoid a reduction in loan forgiveness if it restores reductions made to employee salaries and wages or reductions in FTE headcount by not later than June 30, 2020.
- A borrower’s loan forgiveness amount will not be reduced if an employee is terminated for cause, voluntarily resigns, or voluntarily requests a schedule reduction.

A copy of the new IFR can be found [HERE](#).

Buchalter's team of SBA PPP experts can help you understand these ever-changing program requirements.



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