Should I Return My Small-Business Loan?

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As we reported earlier this week, you now have until Thursday, May 14 to return your SBA Paycheck Protection Program (PPP) loan if you feel like the forgiveness guidance is too stringent or – as has been the case primarily with mid-size and large companies – you've unwittingly opened yourself up to possible audit or, worse, criminal inquiry.

To answer the pressing question of whether you should remand whatever stimulus the federal program bequeathed or use it as a launching pad to reopen your business, we spoke with Rachel Scava, COO of Ohio-based accounting and finance firm Fully Accountable, which works primarily with small-to-mid-sized businesses. Her advice? Well, it depends on host of factors, but the bottom line is: Don't rely on your lender or the government to light the path. The time to soul search about the future of your business is now. Here are edited excerpts from our conversation.

Was this extension a consequence of larger companies lobbying for time?

Definitely. My opinion on why they set the deadline is a couple of reasons. Number one is, with the way this process has worked in general, you have a group of people that probably applied before the May 7 deadline that still haven't received their loan and now is wondering: Am I actually a candidate? What do I do if I get my funds? There's a pretty arbitrary standard for this term "necessary" that the CARES Act is using. [Treasury Secretary Steve] Mnuchin has

repeatedly alluded to the fact that they are trying to dissuade people from taking the money if they don't actually need it, and by continuing to extend that, it's making people less wanting to jump in and go for the funds, because it is a bit of a fear tactic. The other piece of it is, we don't even have all the businesses open yet. For those people who got their money on May 8 or 9, and their clock of the eight weeks [to use the money to be eligible for forgiveness] has started ticking, maybe it's not in their best interest to have that money right now because they may not meet the requirements for forgiveness.

Even as more money gets returned, does applying for or accepting available funds become a catch-22?

So many businesses we work with made decisions based on claims that all this money was going to be available for everybody. The original $349 billion was based on a mathematical equation that said this would cover all small businesses, and then it ran out in 13 days. Then it took another week before it got back up and running, and this second wave is going considerably slower. We had a lot of people who wouldn't have done what they did business-wise had they not believed this money was going to be available to them – keeping staff members employed when the businesses were shut down to go in and clean and renovate and set up the social distancing. They spent that money, and now they don't have the cash and they're not getting the PPP fund. A lot of decisions were made based on the belief that it was a benefit, and it's just not turning out to be that.

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So should the mom-and-pop shop that received a $50,000 loan worry about whether they could be in legal trouble?

I think the evaluation that businesses needs to do is: Can I

afford to have a $50,000 loan on my books if this isn't forgiven? Let's go with the mom-and-pop restaurant. They're only going to be up and running at 25 percent capacity. They're not going to hit the payroll totals they need to for forgiveness, and they already operate on slim margins. So can they afford to have a $50,000 loan that has to be paid back in two years? Has this helped keep them open for two years and put a big debt on their books, or has this helped them stay in business and keep their people paid? Those are two very different questions.

Was this ultimately a failure of imagination or never really intended to serve its stated purpose?

The optimist in me wants to say, when you look at the original CARES Act and the four corners of that document, it was a benefit. And it feels like every week, there's another shoe that drops. And somewhere between interim rules and the departments all doing their own analysis and implementing what they believe are the standards, it's definitely gone from what was a real benefit to the businesses to more of a burden. When this came out, I don't think they could have anticipated that come mid-May, we would still be looking at a lot of the [public-health] precautions still out there. When is the uptick of people going to restaurants? So I don't know that all this eight-week, keep people employed – it's just not enough. If there were a little leeway and [it was] not so rigid on, "The day that you fund starts your clock" … It really should be the day you can go back into business operating at a capacity that can cover is when your clock starts ticking. If you read the act, that interpretation is there. The way that it read, it really looked like a good benefit, but I don't feel like it's panning out to be one.

If you personally owned a small business and received a modest loan, would you feel like it's more trouble than its worth or that it's the least the government can do and you'll find a way to maximize it?

There’s a couple of things I’m looking at. One, if you’re a mom-and-pop shop and don’t have access to capital or liquidity and you’re able to bring people back and open up your business, I’m not looking at it as the government owes me. I’m looking at it in this light: Am I keeping my business open for eight more weeks, and then I’m shutting it down? Or is this going to help me keep my business around for the next three, four, five years? If I’m answering this is a Band-Aid and I might have to pay some money back, I’m taking the loan for sure. The ability to get people back to working and keep good businesses that should be around open — I think the answer is it’s worth taking. If you’re only going to make it through those eight weeks and be out of money, I’m not sure it’s the right decision for you.

Is there any reason to assume the government might expand forgiveness?

They’ve already been stepping around this idea that we’re going to see more guidance on forgiveness before this May 14 give-back, so after that comes out, if the money is still available, I wouldn’t be shocked if we see another extension of that give-back period.

It’s primarily larger companies returning loans, but do some of them have a legitimate claim to these funds?

If you look at the number of large businesses already anticipating bankruptcy, that tells you they’re already needing money too, like J. Crew. The hard part was, when this came out, they said you don’t need to prove you don’t have other capital or that you can try to go to other resources. But now what they’re saying is, if you have that, it’s not necessary. So what’s the difference between this and getting an [SBA] 7(a) loan, other than the forgiveness piece?

But if a business is resourceful enough to file for Chapter 11, perhaps that indicates they don’t have the same need as a

much smaller operation simply trying to keep doors open for a few more weeks.

I agree with that. Those big businesses have teams of people that know how to go in and properly manage through a bankruptcy, and that's not available to a small business. They're just winging it and hoping for the best. Let's think about Ruth's Chris. They got annihilated, but you have to think that their counsel and CFO sat there and said, "We qualify, and we did this properly. We didn't make this CARES Act. Why are we being told we aren't eligible?" Just to play a little devil's advocate, they didn't really do anything wrong. Morally, perhaps they did, and they sleep with that burden at night. But when you go down the checkbox, they met the criteria. It's a tough environment, no matter what size business you are.

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Should lenders bear any responsibility to guide small-business borrowers through this process of determining whether to keep their loan?

The lender is not going to. Lenders have basically taken the stance of, "This is your company, this is your loan. Other than walking you through the process, we're taking no liability." I, on a personal stance, think if a lender is going to push through a loan, and if they've done their due diligence, they have a responsibility to make sure the loan is correct and accurate and the amount is an amount the company needs and is within the qualifications. That's their job. But it seems like that's been completely removed. Now, there's no personal guarantees, so maybe this is the way of holding the person getting the loan more responsible, but I do find it odd that there's no liability for the lenders at all. They're the middlemen.

Bottom line: How does a loan recipient make the calculation of whether their business has been proportionately impacted?

I think you say to yourself: What's been the impact to me? For some people, that's going to be a loss of customers. For some people, that's going to be completely shutting down. For some people, that's going to be my employees aren't coming back because of unemployment. I don't think there's a one-shoe-fits-everybody. You have to look at: Where was my business headed prior to February 15, 2020, and am I on track with where I saw myself going and what the numbers told me? And if your answer is yes, then you have to ask yourself why. If you think about health supplements, any company that sells any kind of immunity vitamin is probably doing very well right now. I don't think you're going to qualify to say, "I was really negatively impacted by this." But I think doctors were negatively impacted, because people haven't been going to the doctor like they should. As it keeps playing out, I don't think we're done seeing guidance, and I don't think the fight on forgiveness has stopped. There are some really good changes they can make that would turn this back in the right direction, so I keep my fingers crossed.

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