

ALBANY BUSINESS REVIEW

PPP loan forgiveness rules keep changing. Here's the latest guidance from 5 experts.



Enlarge. Colin Comstock, owner of Arsenal Mediaworks, is working to reinvent his business after receiving a Paycheck Protection Program loan. ARSENAL MEDIAWORKS



By [Jeff Blumenthal](#) – Reporter, Philadelphia Business Journal
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Hundreds of thousands of Philadelphia-area business owners are breathing sighs of relief after being notified that their Paycheck Protection Program applications have been accepted. But the hard part might just be getting started.

Because the U.S. Department of Treasury and the Small Business Administration rushed the massive loan program out in a matter of weeks to help cash-starved businesses, there were not a lot of specifics provided on the front end about how PPP would work. The SBA is making up for that now, adding items to [its online FAQ sheet](#) for the program on a daily basis. That means if you thought you understood the rules one day, they could change the next. The piecemeal distribution of guidance has led to some confusion and often resulted in changes that could impact whether a business receives loan forgiveness.

“I do think forgiveness is going to be a much more complex process than many originally thought,” said [Thomas Nicolosi](#), a Deloitte principal who heads the firm’s

banking compliance risk management industry group. “Everything you do has to be backed by documentation. And you have to be agile because they are still adding requirements as they go along.”

The Philadelphia Business Journal spoke with five experts from accounting and consulting firms to get some tips for what business owners can do to avoid problems with bankers and the federal government while putting themselves in the best position possible to receive forgiveness on their PPP loans. Here’s what they had to say:



Thomas Nicolosi is a Deloitte principal who heads the firm’s banking compliance risk management industry group. RACHEL BECK

Use the loan for its intended purpose

According to PPP rules, recipients must spend 75% of the loan on payroll costs within eight weeks to be eligible for loan forgiveness – and that clock starts ticking as soon as the money lands in their bank account. Payroll is defined as salary, health care insurance and retirement benefits. Businesses are also allowed to include certain state and local taxes assessed to employees. The other 25% can be used for utilities, rent or mortgage interest. But [Jordan Kendall](#), a tax partner at [Marcum](#), said it is not quite that simple. For example, if a business receives a \$100,000 loan and payroll needs are only 70% of that, you might not be eligible for forgiveness. So you could apply for 93% forgiveness and the remaining \$7,000 would be a loan to be paid back over two years with 1% interest.

Track and record

Make sure you document everything your business does during the eight-week period the bank and the SBA will use to determine whether you deserve loan forgiveness. Kendall said that could include copying invoices and placing them in separate e-folders. To make that process easier, it’s best practice to establish a second account at your bank exclusively for your PPP loan proceeds. Nicolosi said that will make it less difficult to track and verify usage of the money to validate forgiveness and avoid potential confusion from the co-mingling of funds.



Jordan Kendall is a tax partner at Marcum. MARCUM

Tap into experts

While it might be seen as self-serving on the surface, all five experts said business owners should be speaking with their accountants on at least a weekly basis. The same goes for your lawyer. And if your business uses a payroll processing provider, contact them and make sure they know you will need detailed payroll cost reports for the eight weeks in question. Your accountant and banker should have a spreadsheet that can serve as a checklist of things you will need to track. [Ren Cicalese](#), managing shareholder of Cherry Hill's [Alloy Silverstein](#), said make sure to ask your banker what they will require because it will ultimately fall to the lender to recommend to the SBA whether the loan should be forgiven.

"I've worked with 50 different banks on this program and each of them have different requirements," Cicalese said. "Some ask for tons of info and some for very little. So you have to ask them exactly what they want."

Be ready to adjust on the fly

If you thought you understood all of the PPP rules, think again. The aforementioned FAQ sheet updates are providing key program changes virtually every day. For example, Kendall said he had one client who is the only employee in his business. When those types of businesses were first allowed to apply for PPP on April 10, the rules for forgiveness were similar to other businesses. But an FAQ sheet update said solo businesses and independent contractors were not eligible to receive forgiveness for health care and retirement benefits. So the client had to redo his application and the loan was for \$45,000 instead of \$125,000.

[Mitchell Gerstein](#) of Isdaner & Co. said that the SBA is being much harder on larger loan recipients, partly due to the blowback when publicly-traded companies such as Ruth's Chris Steakhouse, Autozone and Shake Shack received funding in the first round of PPP. During the second round, the SBA said the average loan size has shrunk from over \$200,000 to under \$80,000. Gerstein said many larger companies that received funds have become unnerved after a recent FAQ addition said that the SBA would

conduct an audit on any business that received a PPP loan of \$2 million or more “in addition to other loans as appropriate.”

“I tell them that as long as they document everything and use the money the way it should be used, and they can demonstrate how Covid-19 impacted their businesses, they should be OK,” Gerstein said. “The only issue is that the SBA said more guidance would be coming on what that audit will entail. So things could change again. I think the important thing to realize is that this is not just about public companies anymore. They are looking at larger companies to see if they have other sources of liquidity.”

Another key change came last Thursday from the IRS. PPP loan forgiveness was supposed to be deductible in 2020 taxes for borrowers. But the IRS threw a monkey wrench into that plan when it said the amount forgiven would not be deductible. Legislation was introduced Tuesday in the Senate to overrule that IRS notice and clarify that ordinary expenses funded by PPP loans are deductible by taxpayers. The bill, the Small Business Expenses Protection Act of 2020, is currently in the Senate Finance Committee and is supported by the American Institute of CPAs (AICPA).



Mitchell Gerstein of Isdaner & Co. ISDANER & CO.

Rehire your employees ... if they want to come back

Businesses will need to rehire any laid-off or furloughed employees if they want to use 75% of the loan proceeds on personnel. But the requirements don't stop there. The forgiveness amount will be lowered if the company cuts pay for employees making less than \$100,000 a year by more than 25%. And when calculating a change in headcount, businesses can compare their current staffing level to either its full-time equivalent headcount in the first two months in 2020, or the same metric for Feb. 15, 2019 to June 30, 2019. If a business had been in growth mode prior to the pandemic, and its headcount was low last year, having the option will help. Business owners can also hire employees with new skill sets, rather than rehire those they laid off.

Some employees are refusing to return from unemployment, where they could possibly make more than if they were employed. The SBA's FAQ sheet states that if a business owner offers to rehire an employee for the same salary/wages and hours after receiving

PPP funds, and the employee refuses that offer, it will not impact the forgiveness amount. To qualify for this exception “the borrower must have made a good faith, written offer of rehire, and the employee’s rejection of that offer must be documented by the borrower.” The SBA also noted that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

And if not all employees choose to return, many businesses wonder if that extra money can be used to award bonuses to those that do come back. [Brian Palmer](#), senior accountant at Wipfli, said part of achieving loan forgiveness is establishing economic distress. And by giving out bonuses, that argument could be damaged beyond repair.

“Maybe you treat this program as a loan and not a grant,” Palmer said. “And keep in mind that there will be other programs coming.”

Forgiveness is not for every business

Many businesses are in a tough spot because they are closed due to being deemed nonessential or are operating at a severely diminished capacity. So they laid off some or all of their employees to compensate for the declining revenue. After receiving a PPP loan, the owner can rehire employees to reach the aforementioned 75% threshold. The only fly in that ointment is that under the stimulus program’s enhanced unemployment benefits, those workers could be making more by not working than they would on the job, and there is little work for them to do if they are rehired. So the business owner could forget about forgiveness and just look at PPP as a loan rather than a grant.

The risk there is that while 1% is a low interest rate, there is still a lot of uncertainty surrounding when businesses will reopen and what their revenue situation will look like when they do. In some circumstances, experts say it’s best to staff back up, but Cicalese believes not all should go that route.

“If you spend that money over the eight-week period like a drunken sailor, then in Week 9 you might not have any cash flow left to get you to 2021,” Cicalese said. “What good is doing all that if you are in danger of going out of business when the money is gone in two months.”

Reimagine your business in a post-coronavirus world

In addition to hiring employees with new skill sets, accountants say it makes sense to use some of the down time to reimagine what the best direction for your business will be when the economy reopens. [Colin Comstock](#), owner of Center City-based video production company Arsenal Mediaworks just received a PPP loan but has used the past six weeks while much of his existing business dried up to look forward. Arsenal has traditionally done most of its work on location, but that’s not possible now and it might not be as popular an option for clients moving forward. So Arsenal established a studio at its Bok Building offices where clients can come to them in a safe environment for video shoots. Comstock also plans to handle more livestreaming.

“It’s important to identify new revenue sources,” Gerstein said. “Because the world is going to be different than it was before.”



Colin Comstock, owner of Arsenal Mediaworks. ARSENAL MEDIAWORKS

Stick with your bank ... for now

All of the accounting and consulting experts said many of their clients have expressed a good deal of dissatisfaction with how they were treated by their banks during the PPP process. Lack of communication, poor customer service and perceived preferential treatment of larger customers have been frequent gripes that have many small business owners itching to switch banks.

“They just need to keep their mouths shut until forgiveness is decided,” Cicalese said. “Go on with your life. You got the money. My experience is that in eight or nine weeks, people’s memories tend to be short and they will forget about it.”

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