

Today's VIEWPOINT

A MarshBerry Publication

As the insurance brokerage landscape changes daily, you need relevant insight to today's marketplace as seen through the eyes of MarshBerry's experts.

Our commitment is to share our views and offer our expertise to help you make informed decisions. MarshBerry is here for you with as strong of a commitment as ever to help you navigate these complicated times.

Today's Topic: COVID-19 Financial Rescue Package

SBA Loans: Financial Peace of Mind...or Jail Time?

Like so many other organizations, MarshBerry applied, was approved, and received a Small Business Act ("SBA") loan. In the MarshBerry Pulse survey this week we found responding firms with less than <\$9.9M in annual revenue, 92% applied for the Paycheck Protection Program (PPP).

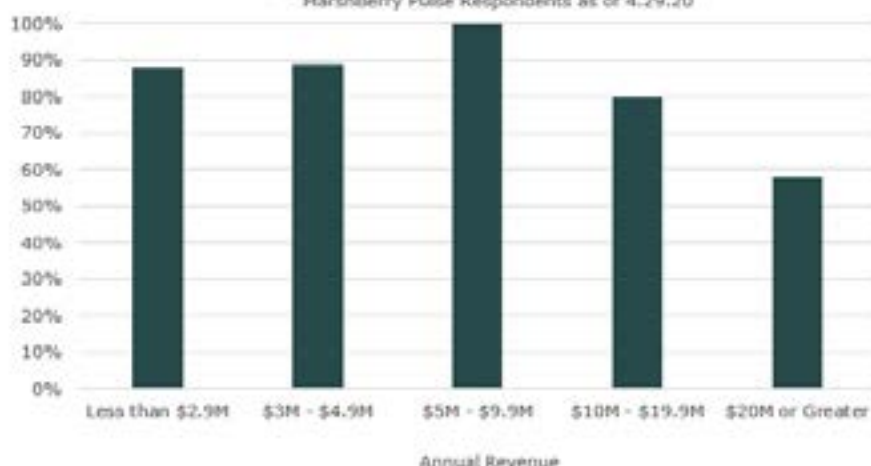
<\$9.9M Annual Revenue
MarshBerry Pulse Respondents as of 4.29.20



■ Applied for PPP ■ Did Not Apply for PPP

There is fine print in this COVID-19 financial rescue package that you should consider. Specifically, C-Level executives of the borrowers were required to certify that SBA loans were necessary to support payroll expenses due to unforeseen liquidity issues resulting from the economic shutdown.

Applied for PPP Program Loan
MarshBerry Pulse Respondents as of 4.29.20



Language from the SBA's April 28, 2020, PPP Loans [Frequently Asked Questions \(FAQ\)](#) publication asks:

“31. Question: *Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?*

“Answer: *In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), **borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”** Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. Lenders may rely on a borrower’s certification regarding the necessity of the loan request. **Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.**”*

The clarifying language above suggests that “current economic uncertainty” is a requirement for qualifying on the PPP. The term “current” may be problematic for certain insurance brokerages. For instance, in certain cases, carriers have agreed to defer premium payments for up to 60 days. In other cases, carriers have agreed to return a certain percentage of auto premiums as total miles driven is down substantially. The resulting hit to cash flow for an insurance broker may not become evident for several months. Does this lag in reduced cash flow constitute a “good faith” determination of “current economic uncertainty?”

MarshBerry will not opine on an answer here; it is a question for a broker’s legal counsel, lending institution and/or SBA representative. Having said this, Question 9 under the PPP’s [FAQ](#) section might suggest that the government is defining “current economic uncertainty” narrowly.

“9. Question: *My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business’s operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?*

“Answer: *In evaluating a borrower’s eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.”*

Upon first blush, it would appear that there is some flexibility with regard to when the eight-week test period can be measured. However, it does not necessarily suggest that the “current economic activity” standard can be pushed out several months.

[These PPP loans also come with severe penalties for knowingly making false statements](#), including fines that range from \$5,000 - \$1,000,000 and jail time that ranges from two - thirty years. It would appear that getting the “current economic uncertainty” standard right is really important!

MarshBerry strongly suggests that those who are concerned that they may not qualify for these loans should seek further guidance. The PPP specifically states that any loans returned by May 7 will be deemed to have met the good faith requirement. In fact, MarshBerry has spoken with a few clients that are considering returning their loans. Some of these clients believe they may not qualify under this newly issued guidance. At least one other MarshBerry client, who may actually qualify for these loans, is considering returning the loan just to avoid any reputational issues that could result from the perception that they applied for the loan when they did not actually need the liquidity.

...So much for a “no-strings attached” business continuity loan...

As we keep our eye firmly focused on the industry and actions within it, we are eager to know what you are experiencing. [Take a quick 3-minute MarshBerry Pulse survey](#) to help us gauge the industry’s response and outlook as the country moves towards “open for business” from the anticipated loosening of stay-at-home orders.

If you have questions about Today’s ViewPoint, or would like to learn more about our interpretation of actions and reactions during the pandemic, please [email](#) or call **Gerard Vecchio, Senior Vice President** at 212.972.4886.

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