

# M|J|B BANKING LAW TODAY

## 10 Things Every Bank Should Know About the PPP Loan Program

- ❖ Loans must be disbursed within 10 calendar days after loan approval, which is defined as the time the loan is assigned a loan number by SBA.
- ❖ Lenders must electronically upload SBA Form 1502 within 20 calendar days after a PPP loan is approved.
- ❖ Banks will receive essentially an administration fee of 5% for loans up to \$350,000, 3% for loans from \$350,000-\$2,000,000 and 1% for loans above \$2,000,000.
- ❖ SBA shall make payment to the lender of the administration fee within 5 days after disbursement of the loan.
- ❖ A business seeking loan forgiveness needs to submit the following to the lender:
  - (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates including (A) payroll tax filings, and (B) State income, payroll, and unemployment insurance filings;
  - (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments; and
  - (3) a certification that essentially states all information was accurate.
- ❖ A lender shall issue a decision on any forgiveness application within 60 days.
- ❖ Within 90 days after the date that forgiveness is determined, the SBA shall remit to lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.
- ❖ A lender may report to the SBA an “expected forgiveness amount” on a covered loan or on a pool of covered loans up to 100% of the principal of the covered loans. The SBA shall purchase the expected forgiveness amount from the lender within 15 days. “Expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the 8-week period after loan origination on: (1) payroll costs; (2) interest payments on mortgage obligations; (3) payment on rent obligations; and (4) utility payments.
- ❖ A lender is held harmless by the SBA if it has received the required documentation, along with a verification from the applicant that they accurately reported information.
- ❖ A lender can sell a PPP loan into the secondary market after the loan is fully disbursed.

*-Matthew J. Bialick, Esq.*

---

# Outside Insights



A Forum for Thoughts and Articles from  
Sources Outside of the M|J|B Law Firm

---

## Agricultural Economic Analysis in a Post COVID-19 World

*An Article by Tom Walker, Jr. of Praeaxis Business Labs*

Our economic landscape was already well-sown with mines just awaiting the right pressure to detonate. To a volatile situation we have added SARS-CoV-2, which will certainly fuel debates and reams of papers and books evaluating which was worse, the crisis or the response or the crisis generated by the response.

It is already palpably affecting agribusiness in Minnesota, and although food is a staple of life not easily substituted, the disruption of dining choices and supply chains, not to mention impact on ethanol production due to a severe curtailment of transportation (and the Russian/Saudi oil drama), is dramatic.

If we look at the change in prospects for crop farms in Minnesota, limiting ourselves to the southern half of the state for the sake of relative homogeneity in crop mix and cost structure, the shift is dramatic. As of the end of the year 2019 data plus a plausible forecast of 2020 might have looked like this:

Reported Results, Reasonable Forecast as of 1/1/20

	2019	2020 forecast
CORN		
Yield	181	195
Price	\$3.53	\$3.50
SOYBEANS		
Yield	50	50
Price	\$8.11	\$8.00
Insurance	\$45,278	\$0
Government Programs	\$61,437	\$61,437
NET INCOME	\$52,747	\$54,032
Working Capital	\$195,382	\$226,765

These are not strong numbers—2019 return on assets, at 4%, is less than the cost of borrowing going forward. Despite the positive bottom line, a firm that returns less on assets than the cost of funds is losing ground.

Prices have changed drastically since then. Isolating that impact on old and new crop, this is the picture:

Updated for Market Conditions as of 4/30/20

	2019	2020 forecast
CORN		
Yield	181	195
Price	\$2.60	\$2.80
SOYBEANS		
Yield	50	50
Price	\$7.70	\$7.80
Insurance	\$45,278	\$0
Government Programs	\$61,437	\$61,437
NET INCOME	\$52,747	(\$85,701)
Working Capital	\$195,382	\$87,032

The drastic change in net income in 2020 would reflect both the loss of topline on 2020 crop as well as the lost value on 2019 crop sold at current prices vs. prices in January. As always, there are layers of assumptions in these scenarios that could be better-than-hoped or worse-than-feared. Old crop, and new, may have been already priced against ensuing market drops; markets might come back; growers may have made deeper cuts to operating expenses (although at what cost to future production remains a question).

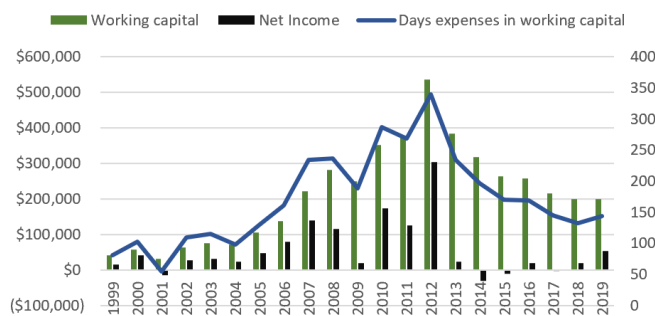
Also: averages hide both good news and bad. We can all call to mind farmers in excellent financial position. Some merely inherited it, but many created it through

MJB Law Firm, PLLC  
952-239-3095; matthew@mjbblawmn.com  
www.mjbblawmn.com

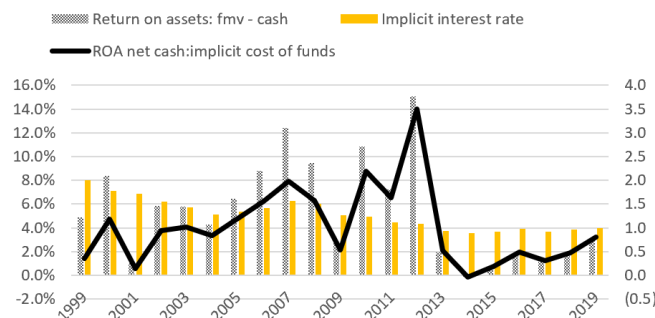
years of good management. Others in worse shape are especially worrisome in that their financial domino might have enough mass to knock into others who otherwise would have remained standing.

We can take some comfort in the still-positive working capital in 2019 and modest debt-to-asset ratio of 32% (it was nearer 40% in the early 2000s). It suggests there are resources, if much diminished, to weather a storm--and also, time to make necessary adjustments.

The trends are worrisome, however, both for their persistence and also, for their hint that we are too slow to make adjustments. Here we can see both the cyclical nature of farming, but also, the duration of our current unhealthy trend, by watching the decline of profit and working capital:



Even adjusting for increased costs of production--which is the point of charting "days expenses" on the right axis--working capital remains stronger than it was 20 years ago. But the persistence of low-to-zero profit is anomalous, and the dramatic decline in working capital dollars does not jibe easily with the cumulative breakeven from 2013-2019. For broader economic perspective on mere "profit" we use return on assets, which relates net profit before interest to total assets. Generally, a business whose ROA is positive but lower than the cost of borrowing is going broke slowly.



An ROA/cost of funds ratio of 1 would imply economic breakeven. Farming is cyclical and volatile, but also, often very remunerative. However, the ratio has remained under 1 since 2013, and see above, 2020 is signaling far worse.

What is next? There is little here that is news to you, I expect, and little reward for exhaustively documenting the many ways that things are going poorly.

The good news is that our clients grow *food*. The need is not going away, and the US, by its (relatively) free economy, its infrastructure, and its climate, remains imminently well-suited to continue on that path. The challenge for the bankers, the people charged with directed the capital to those who need it and are most suited to managing it (and therefore mostly likely to pay it back with interest), is judging whom and what it will take.

It is likely that working capital and solvency will continue to weaken before they get better. Moreover, as we contemplate the need for yet more refi work to keep working capital positive, the question of the underlying value of *those* assets is in question. Land is sitting on our collective balance sheets (all data, again, courtesy of FINBIN) at \$5,800. A return to the historic relationship between gross income, land rents, and ROI on land would force land rents of \$175/acre (down from \$204 in 2019) and render land values, according to capitalized earnings, in the vicinity of **\$3,000/acre**.

The bad news to the balance sheets and the collateral is good news to the bottom line. Our analysis of well-managed operations shows a return to growth-rate ROA (1.5X the cost of funds) is possible over a five-year period of adjustment with—

- a partial retracement of rents and crop inputs to historical norms relative to crop revenues
- background growth trends in yields
- corn/soybeans of **\$2.50/\$7.00 per bushel**.

Whether this is what recovery looks like is unknowable in advance. It does, however, demonstrate that good management is possible, that a return to profits is plausible, and that liquidity and solvency still on the balance sheets is enough to see us there.

-Thomas Walker, Jr., *Agricultural Economist with Praeaxis Business Labs*, 651-999-9970

# Troubled Asset Primer – Receivership 101

*An Article by Bob Bayer of KW Commercial Midwest*

With the outbreak of COVID-19 and the economic turmoil that is likely to follow, it is important for banks to understand that a Court-appointed receivership can be just what is needed to secure the bank's interest in collateralized asset(s).

In Minnesota law, a **receiver** is a person appointed by the court to take possession of property and to manage and/or dispose of that property and any income the property produces. There are two types of Receiverships: **General Receiverships** and **Limited Receiverships**.

**General receivership** means a receivership over all, or substantially all of the assets of a respondent (debtor) for the purpose of liquidation and/or distribution to creditors or other parties in interest.

## Advantage

A General Receivership can be an extremely cost-effective way to liquidate a business, as opposed to a Chapter 7 Bankruptcy or a liquidating Chapter 11 Bankruptcy, which can both be very expensive. Instead of forcing a respondent into an involuntary Chapter 11 or Chapter 7, the creditors can petition the court for the appointment of a receiver to identify, marshal, manage the assets, and prepare them for sale. Cash received from the sale of secured assets is paid to the party holding the security interest.

**Limited Receivership** means a receivership other than a *General Receivership*.

A *Limited Receivership* typically takes the form of a foreclosure of a mortgaged commercial property where the debtor is in default of some portion of the mortgage agreement: Failure to make mortgage payments on time; failure to make real estate tax payments; failure to keep the property insured; failure to keep the property in good repair; allowing a mechanics lien to be filed against the property.

In such cases, the *Limited Receiver* is put in place to take control of all aspects of managing the property or assets (but, not all the assets of the owner of the property). Any cash or receivables generated by the property are under the Receiver's charge; and the receiver should make efforts to secure the funds and receivables, and make sure that the owner does not interfere with the collection of rents, receivables and bank accounts of the property under the Receiver's charge.

Limited Receiverships are especially advantageous when the borrower stops communicating with the bank and it is unclear to the bank as to whether the borrower has paid insurance, real estate taxes or is performing necessary maintenance on the collateral asset.

## Advantage 1

When a receiver is appointed by the court (a process that is typically begun by the lender), the court orders the receiver to take possession of the asset (collateral of the loan, bank accounts, and accounts receivable) and the operations thereof, assuring both the lender and the borrower that the asset is insured, taxes are paid, and regular maintenance is done.

## Advantage 2

Since the receiver does not have to make a mortgage or loan payment, cash can be accumulated (unless the asset is non-revenue producing; i.e., a vacant rental property). The cash that is accumulated is frequently used to bring real estate tax payments current or to perform maintenance, which often has been deferred by the borrower.

## Advantage 3

The receiver is not responsible for the liabilities incurred by the borrower prior to the receivership (with the exception of real estate taxes). This means the receiver is not encumbered by past due and accumulating utility, insurance, supplies, maintenance bills incurred prior to the

receivership. The receiver has a fresh start and must pay all expenses incurred on a go-forward basis.

#### **Advantage 4**

A receiver's chief function is to protect and preserve the asset. The receiver is given the authority to collect revenues, honor the rights of tenants with leases, and safeguard the health and welfare of residents and guests; and relieves the bank of potential liability issues.

#### **Advantage 5 – Limited Receivership:**

A receiver has an obligation to make timely reports to the court, the lender, the borrower and their respective attorneys (parties-in-interest). Receiver's reports should include all activities pertaining to the operation of the collateral-asset. Such reports also include budgets, balance sheets, statements of income and expenses, cash flow statements and operational write-up of receiver's actions. This information is critical for the bank in decision-making.

#### **Advantage 6 – Limited Receivership:**

The receiver is responsible for all of the day to day issues concerning the collateral-asset. Some bankers, seeking to save money by managing their own

troubled assets, are overwhelmed with calls from tenants, vendors and neighbors, all of which have emergent issues. A receiver, who is a professional asset manager, takes these headaches away from the bank.

#### **Receivership Expense:**

Receiverships don't have to be expensive. Banks need to negotiate with prospective receivers to get the best asset manager at the lowest price. Since most receivers are paid hourly, banks should negotiate with receivers and get the receivers to cap their fee on a monthly basis if possible. In this way, the bank knows exactly how much of the operating income will be paid to the receiver. While many receivers will not cap their fees, because there can be too many unknowns, some will cap fees if the court order is drafted in such a way as to allow for the receiver to collect additional fees with notice to the parties-in-interest and with permission of the court upon the occurrence of an unforeseen event. This way, additional fees can be paid to the receiver in an appropriate circumstance, but said fees would require prior approval.

*-Bob Bayer is the Director of Commercial Real Estate Solutions Team at KW Commercial .651-895-3943*



MJB Law Firm, PLLC  
952-239-3095; matthew@mjbblawmn.com  
www.mjbblawmn.com