



ALERTS

SBA Issues Procedural Notice On PPP Loans And Simple Forgiveness Application For Small Loans

October 13, 2020

Highlights

The Small Business Administration issued its long-awaited procedural notice regarding the treatment of PPP loans in change of ownership transactions

Most transactions will require that the amount of the PPP loan proceeds be placed into escrow with the PPP lender pending a determination on forgiveness

The SBA separately introduced a new, streamlined forgiveness application for PPP loans of \$50,000 or less

Lenders of Paycheck Protection Program (PPP) loans have been faced with many questions related to borrowers' change of ownership transactions and whether the change constituted a default. As a result, on Oct. 2, 2020, the Small Business Administration (SBA) issued a long-awaited [procedural notice to PPP lenders](#) that guides them through the process required for consenting to borrowers' change of ownership transactions.

Then on Oct. 8, the SBA issued an [interim final rule simplifying the forgiveness process](#) for PPP borrowers with loans of \$50,000 or less

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(unless, together with its affiliates, the borrower has received \$2 million or more).

Notice Addressing Change of Ownership Transactions

Most PPP loan documents deem a change of ownership without the lender's consent an event of default. SBA regulations require that the lender consent to a change of ownership and that there is SBA approval of the lender's consent. Many borrowers engaged in transactions were uncertain as to what approval was required in order to avoid defaulting on their PPP loans.

The notice first clarifies what is meant by a "change of ownership" for purposes of the PPP and states a "change of ownership" will be considered to have occurred when 1) at least 20 percent of the common stock or other ownership interest of a PPP borrower is transferred, 2) the PPP borrower transfers at least 50 percent of its assets (measured by fair market value), or 3) a PPP borrower is merged with or into another entity.

Any PPP borrower engaged in a change of ownership transaction must, prior to closing, provide the PPP lender with written notification of the transaction and provide a copy of the proposed purchase or merger agreement. The SBA will not require that lenders obtain its approval of a change of ownership transaction if the borrower submits its forgiveness application and places the PPP loan amount in an interest bearing escrow account with the PPP lender until it is forgiven.

If no escrow account is established, prior SBA approval of the PPP lender's consent is required. If the change of ownership transaction is structured as a sale of assets, the SBA will require that the buyer assume the PPP loan and responsibility for compliance with the PPP loan terms. The SBA will have up to 60 days to respond to a request for approval.

In any case, the PPP lender must notify the SBA of the location and amount of the escrow account within five business days after closing of the change of ownership transaction. If the change of ownership transaction is a sale of stock or merger, the PPP lender must notify the SBA of the identity, ownership percentages, and tax identification numbers (of owners with 20 percent or more of the equity) of the new owners.

Although these rules provide some guidance, they leave open other questions that may need to be addressed in the structuring and implementing any given M&A transaction involving companies with PPP loans.

Simple Forgiveness Applications for Small Loans

After receiving pressure from lenders and Congress, the SBA issued an interim final rule regarding the forgiveness process for PPP borrowers with loans of \$50,000 or less (unless, together with its affiliates, the borrower has received \$2 million or more). The new interim final rule exempts those PPP borrowers from any reductions in forgiveness based on reductions in full-time equivalent employees or reductions in employee salary or wages.

To implement this rule, the SBA issued an additional application for

forgiveness, [SBA Form 3508S](#), which consists of one page of required information from the borrower.

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