

SBA Issues Guidance for Borrower Changes of Ownership

October 5, 2020

The CARES Act established the Paycheck Protection Program (PPP) administered by the Small Business Administration (SBA) as part of the broader SBA 7(a) loans program. One of the 7(a) loan servicing limitations is that lenders cannot unilaterally approve changes of ownership of borrowers within the first 12 months following disbursement without SBA's prior consent. Many PPP loan notes likewise provided that any change of ownership without the lender's consent would result in an event of default. However, what constituted a qualifying change of ownership for purposes of the SBA consent requirement and the associated consent procedures remained largely undefined.

On October 2, SBA issued [guidance](#) addressing these questions. For purposes of PPP loans, changes of ownership include (1) the sale or transfer of 20% or more of the common stock or other ownership interest of the borrower, (2) the sale or transfer by a borrower of at least 50% of its assets and (3) a merger of a PPP borrower with or into another entity. Prior to closing any such transaction, the borrower must notify its PPP lender in writing and provide a copy of the transaction documents. If the PPP loan is fully satisfied prior to closing, no restrictions apply.

If the PPP loan remains outstanding, SBA approval is not required for stock sales or mergers if the sale or transfer involves 50% or less of the borrower's ownership interest, or the borrower submits its completed forgiveness application and establishes an escrow account with its PPP lender with funds equal to the balance of the PPP loan. In the case of an asset sale, SBA approval is not required if the latter escrow condition is met. The funds in the escrow account would be released only after the forgiveness process (including any appeal of SBA's decision) is completed, and then the escrowed funds must be disbursed first to the lender to repay any remaining PPP loan balance plus interest before any funds are disbursed to the PPP borrower (with respect to any amounts forgiven). In both cases, the lender may unilaterally approve the change of ownership. In all other cases, SBA must provide its consent to the change of ownership as well through a request with specific information submitted to the appropriate SBA loan servicing center. SBA will process such requests within 60 calendar days of receipt.

While some questions remain, the guidance provides much needed information to borrowers contemplating corporate transactions. Additionally, borrowers should continue to consider whether the terms of their PPP loan agreements require their lender's consent to a corporate event, as the new guidance only addresses the circumstances in which SBA consent is necessary in advance of a borrower's change of ownership.

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