

## 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.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

---

## Key Contacts

Alfred Browne Boston	abrowne@cooley.com +1 617 937 2310
Danielle Naftulin Palo Alto	dnaftulin@cooley.com +1 650 849 7118
Ryan Naftulin London	rnaftulin@cooley.com +44 (0) 20 7556 4540
Peter H. Werner San Francisco	pwerner@cooley.com +1 415 693 2172

---

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.