



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

October 9, 2020

PPP Update: SBA Procedural Notice - Paycheck Protection Program Loans and Changes of Ownership

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On October 2, 2020, the U.S. Small Business Administration (SBA) released a Procedural Notice (the Procedural Notice) that provides a framework to determine whether SBA consent is required for various changes of ownership of an entity that has received Paycheck Protection Program (PPP) funds (each, a PPP Borrower). Although the Procedural Notice was addressed to all SBA employees and PPP lenders, the guidance will ultimately impact any PPP Borrower considering a potential change in control, as well as anyone contemplating acquiring control of a PPP Borrower. The key takeaways from the Procedural Notice are outlined below and a copy of the complete text of the Procedural Notice can be found [here](#).

- **Change of Ownership Defined:** For purposes of the Procedural Notice, a “change of ownership” is deemed to have occurred when: (1) at least twenty percent (20%) of the common stock or other equity interest of a PPP Borrower (including a publicly-traded entity) is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity; (2) a PPP Borrower sells or otherwise transfers at least fifty percent (50%) of its assets (measured by fair market value), whether in one or more transactions; or (3) a PPP Borrower is merged with or into another entity. [1]
- **Prior Notice of the Transaction:** Prior to closing any transaction involving a change of ownership, the PPP Borrower must provide written notice of the proposed transaction to the PPP lender along with a copy of the agreements effectuating the proposed transaction. Additionally, the PPP lender must notify the SBA within five (5) business days of the completion of a transaction and is required to continue submitting the monthly 1502 reports until the PPP loan is fully satisfied.
- **No Restrictions if PPP Loan Is Fully Satisfied:** There are no restrictions on a change of ownership if, prior to closing the sale or transfer, the PPP Borrower has: (1) repaid the PPP loan in full; or (2) completed the loan forgiveness process and either (a) the SBA has remitted funds in full satisfaction of the PPP Note or (b) the PPP Borrower has paid off any remaining amount of the PPP loan.
- **When SBA Approval Is Not Required:**
 - There are no restrictions on a change of ownership if, prior to closing the sale or transfer, the PPP Borrower has: (1) repaid the PPP loan in full; or (2) completed the loan forgiveness process and either (a) the SBA has remitted funds in full satisfaction of the PPP Note or (b) the PPP Borrower has paid off any remaining amount of the PPP loan.
 - If the PPP loan is not fully satisfied and the transaction is a stock sale: (1) in which the change of ownership is of fifty percent (50%) or less of

the ownership interests of the PPP Borrower; or (2) where the PPP Borrower completes and submits a forgiveness application and supporting documentation and creates an escrow account controlled by the PPP lender with funds equal to the outstanding balance of the PPP loan.

- If the PPP loan is not fully satisfied and the transaction is an asset sale: a PPP Borrower may sell fifty percent (50%) or more of its assets without prior SBA approval if the PPP Borrower completes and submits a forgiveness application and supporting documentation and creates an escrow account controlled by the PPP lender with funds equal to the outstanding balance of the PPP loan.
- **SBA Approval – When It Is Required and How It Is Obtained:** If a change of ownership of a PPP Borrower does not meet the requirements for exemption set forth above, prior SBA approval is required. To obtain such approval, the PPP lender must submit various documentation and disclosures to the SBA. The SBA must provide its determination within 60 calendar days of receipt of a complete request.
- **PPP Borrower Responsibilities:** The Procedural Notice states that, regardless of a change of ownership, the PPP Borrower will remain responsible for all obligations and requirements under the PPP loan, including the certifications made related to the PPP loan. Additionally, the PPP Borrower remains responsible for obtaining, preparing, and retaining all required PPP forms and supporting documentation and providing those forms and supporting documentation to the PPP lender, the lender servicing the PPP loan, or to the SBA upon request.
- **New Owner Responsibilities:** If any new owner or successor arising from a change of control transaction has a separate PPP loan, then, following consummation of the transaction(s): (1) in the case of a stock sale, the PPP Borrower and the new owner(s) are responsible for segregating and delineating PPP funds and expenses and providing documentation to demonstrate compliance with PPP requirements by each PPP Borrower; and (2) in the case of a merger, the successor is responsible for segregating and delineating PPP funds and expenses and providing documentation to demonstrate compliance with PPP requirements with respect to both PPP loans.

Robinson & Cole LLP has been tracking government relief programs being offered to help alleviate the economic impact of COVID-19 on businesses in the United States. The SBA, in consultation with the Treasury, has provided and continues to provide guidance in the form of [Interim Final Rules](#) and [Frequently Asked Questions](#) (FAQs) to address borrower and lender questions concerning the implementation of the Paycheck Protection Program (PPP), established by section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). For more information on the PPP, see our [Primer](#), [FAQ on the PPP](#), our [article on SBA affiliation rules](#), our [article on the Paycheck Protection Program and Health Care Enhancement Act](#), our [article on the "necessity certification,"](#) our [article on the PPP loan forgiveness application](#), our [article on The Paycheck Protection Program Flexibility Act](#), our [article on PPP Update: Loan Forgiveness FAQs](#), and our [article on Treatment Of Owners And Forgiveness Of Certain Nonpayroll Costs](#).

This alert is being issued as of October 9, 2020. Please note that future legislation, guidance and regulations could modify certain provisions of the topics discussed above.

FOOTNOTES

[1] For purposes of determining a "change of ownership," all sales and other transfers occurring since the date of approval of the PPP loan must be aggregated to determine whether the relevant threshold has been met. For publicly traded borrowers, only sales or other transfers that result in one person or entity holding or owning at least 20% of the common stock or other ownership interest of the PPP Borrower must be aggregated.

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