

Paycheck Protection Program Loans and Changes of Ownership

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On October 2, 2020, the SBA issued a procedural notice addressing when SBA consent to a “change in ownership” of a PPP borrower is required. A “change in ownership” is deemed to be (a) a sale of 20% or more of the common stock or other ownership interests of the borrower, (b) a transfer of 50% or more of the borrower’s assets, or (c) a merger between the PPP borrower and another entity. The guidance is available here: <https://www.sba.gov/sites/default/files/2020-10/5000-20057-508.pdf>

Under the guidance, SBA consent to a change of ownership is not required if:

1. The PPP loan is repaid in full, and the borrower has completed the process for forgiveness, and the SBA has remitted funds to the PPP lender to satisfy the PPP loan.
2. If the PPP loan is not fully satisfied prior to the change in ownership and the transaction is structured as a sale of equity interests, if: (a) less than 50% of common stock or other ownership interests are transferred, or (b) the PPP borrower completes its forgiveness application and establishes an interest-bearing escrow account controlled by its PPP lender and funded with the full amount of the outstanding PPP loan.
3. If the PPP loan is not fully satisfied prior to the closing and the transaction is structured as an asset sale, if: (a) the PPP borrower completes its forgiveness application, and (b) establishes a fully funded escrow account with the PPP lender as noted above.

If none of these circumstances are applicable, then the SBA must consent to the change in ownership. The SBA has up to 60 days from receipt of a consent request to make its decision. If the SBA is not required to consent to a change in ownership, then the PPP lender may unilaterally approve the change in ownership.

The guidance does not specify how transactions closed prior to the issuance of this guidance will be treated. However, this guidance provides some much-needed clarity as the volume of transactions increases as the economy continues to reopen.