On October 2, the SBA released Procedural Notice No. 5000-20057, establishing requirements for changes in control of PPP borrowers. Here are our key takeaways.

**W**hen does a change in control occur?
- 20% of ownership is sold or transferred, *including to affiliates or to existing owners*
- The borrower sells or transfers at least 50% of its assets or
- The borrower merges with or into another entity.

**W**hat does the borrower remain responsible for?
Regardless of the structure of the transaction, borrower remains responsible for:
- All PPP loan obligations and responsibilities
- PPP certifications made on the loan application
- Compliance with all other program requirements
- Retaining all required documentation
- In case of fraud, the SBA retains all recourse options with respect to the original borrower and owners.

**Post-Transaction Procedures in All Cases**
- The original borrower remains subject to all PPP obligations and responsibilities
- The successor (in case of a merger) is also subject to all obligations.
- If the new owners or successor uses funds for unauthorized purposes after close of the transaction, the SBA has recourse against the new owners.
- If other parties (buyer or successor) have a separate PPP loan,
  - If an equity sale, borrower and new owners must segregate funds and demonstrate compliance by each borrower, and
  - If a merger, the successor is responsible for segregating funds of each original PPP loan and demonstrate compliance by each borrower.

**Specific Procedures for Each Type of Change of Control Transaction Are on the Following Pages.**

Source: https://www.sba.gov/sites/default/files/2020-10/5000-20057.pdf

Please reach out to your KCoe representative or to discuss further.
PROcedures: Stock or Other Equity Sale

- Before the transaction: Notify the lender. Provide a written description of the transaction, and copies of all proposed documents that will be executed to effectuate the transaction.
- No other action is needed if:
  - The loan has been repaid in full, or
  - The PPP forgiveness process is complete and SBA has approved and sent forgiven funds (and, if applicable, the borrower has repaid any unforgiven amounts)
- Additional action required, but no SBA approval needed if:
  - The sale or transfer is 50% or less of the equity interests in the borrower, or
  - Escrow account:
    - Borrower submits their forgiveness application and
    - Creates an interest-bearing escrow account controlled by the lender containing the outstanding balance of the loan.
- SBA approval is required if the procedures above are not met. To get SBA approval, the lender must provide to the SBA:
  - The reason the borrower either can’t repay the PPP loan in full or cannot escrow sufficient funds to cover the outstanding balance
  - The details of the proposed transaction (provided to the lender above)
  - A copy of the PPP loan documents and promissory note, and
  - The documentation between the borrower and the seller/successor, setting out the responsibilities of the borrower, seller, and buyer relating to the PPP loan
  - Disclosure of whether the successor or buyer has an existing PPP loan
  - List of all 20%+ equity owners of the buyer
- Lender must notify the SBA within 5 days of close of:
  - The identity of new owners and ownership percentages
  - TINs of any owners with 20% or more equity
  - Location and amount of escrowed funds controlled by the lender (if escrow is required, see below)
PROCEDURES: MERGER

- Before the transaction: Notify the lender. Provide a written description of the transaction, and copies of all proposed documents that will be executed to effectuate the transaction.
- No other action is needed if:
  - The loan has been repaid in full, or
  - The PPP forgiveness process is complete and SBA has approved and sent forgiven funds (and, if applicable, the borrower has repaid any unforgiven amounts)
- Additional action required, but no SBA approval needed if:
  - The sale or transfer is 50% or less of the equity interests in the borrower, or
  - Escrow account:
    - Borrower submits their forgiveness application and
    - Creates an interest-bearing escrow account controlled by the lender containing the outstanding balance of the loan.
- SBA approval is required if the procedures above are not met. To get SBA approval, the lender must provide to the SBA:
  - The reason the borrower either can’t repay the PPP loan in full or cannot escrow sufficient funds to cover the outstanding balance
  - The details of the proposed transaction (provided to the lender above)
  - A copy of the PPP loan documents and promissory note, and
  - The documentation between the borrower and the seller/successor, setting out the responsibilities of the borrower, seller, and buyer relating to the PPP loan
  - Disclosure of whether the successor or buyer has an existing PPP loan
  - List of all 20%+ equity owners of the buyer
- Lender must notify the SBA within 5 days of close of:
  - The identity of new owners and ownership percentages
  - TINs of any owners with 20% or more equity
  - Location and amount of escrowed funds controlled by the lender (if escrow is required, see below)
PROCEDURES: ASSET SALE

- Before the transaction: Notify the lender. Provide a written description of the transaction, and copies of all proposed documents that will be executed to effectuate the transaction.

- No other action is needed if:
  - The loan has been repaid in full, or
  - The PPP forgiveness process is complete and SBA has approved and sent forgiven funds (and, if applicable, the borrower has repaid any unforgiven amounts)

- Additional action required, but SBA approval is not required if:
  - The borrower completes the forgiveness application and substantiates use of all PPP funds, and
  - Establishes an interest-bearing escrow account controlled by the lender containing the outstanding balance of the loan.

- SBA approval is required if the procedures above are not met. To get SBA approval, the lender must provide to the SBA:
  - The reason the borrower either can’t repay the PPP loan in full or cannot escrow sufficient funds to cover the outstanding balance
  - The details of the proposed transaction (provided to the lender above)
  - A copy of the PPP loan documents and promissory note, and
  - The documentation between the borrower and the seller/successor, setting out the responsibilities of the borrower, seller, and buyer relating to the PPP loan
  - Disclosure of whether the successor or buyer has an existing PPP loan
  - List of all 20%+ equity owners of the buyer
  - In the case of an asset sale, SBA will require the purchaser to assume all PPP liabilities and responsibility for compliance.

- Lender must notify the SBA within 5 days of close of:
  - The identity of new owners and ownership percentages
  - TINs of any owners with 20% or more equity
  - Location and amount of escrowed funds controlled by the lender (if escrow is required, see below)