

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.

WHEN 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.

WHAT 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.

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)