
SBA Issues Guidance on Treatment of PPP Loans in Mergers and Acquisitions

Description

On October 2, 2020, the SBA issued guidance under a procedural notice (the "Notice") providing information concerning the required procedures for changes of ownership of an entity that has received a Payroll Protection Program ("PPP") loan (such entity, a "PPP Borrower").

Under the guidance, if a change of ownership occurs in a PPP Borrower, prior to closing the transaction causing the change of ownership the PPP Borrower is generally required to 1) complete a forgiveness application and place in escrow an amount of the PPP loan with the PPP lender, or 2) receive approval from the SBA for the change of ownership transaction. If the PPP loan was already fully paid, or the PPP Borrower has applied for forgiveness and the SBA has already remitted the funds to the PPP Lender to forgive the PPP loan, the PPP Borrower is generally not required to set up any escrow or obtain any approval from the SBA and is otherwise exempted from the requirements in the Notice.

A change of ownership is defined under the Notice as a transaction or series of transactions where one of the following occurs: 1) at least 20% of the ownership interests in the PPP Borrower are sold or otherwise transferred, 2) the PPP Borrower sells or otherwise transfers at least 50% of its assets, or 3) the PPP Borrower is merged with or into another entity. The Notice does not provide any guidance for an indirect change of ownership transaction.

The Notice requires a PPP Borrower to provide written notice about the transaction to the PPP Lender prior to the closing of any change of ownership transaction and provide the PPP Lender with a copy of the proposed transaction documents.

If the PPP Borrower is unable to establish an escrow and the PPP loan has not been paid off or fully forgiven by the transaction closing, the PPP Borrower is required to 1) apply to the SBA for approval detailing specific information requested by the SBA and 2) include in the transaction documents provisions requiring the purchasing entity to assume all the PPP Borrower's obligations under the PPP loan. The Notice indicates the SBA will provide a determination within 60 days of receipt of a completed request.

Since as of last week the SBA has yet to approve any forgiveness applications, the Notice generally will require any change of ownership transactions that are scheduled to close within the next couple of weeks to escrow the amount of any PPP loan with the PPP lender.

The Notice provides additional rules if the purchaser also has outstanding PPP loans.

[Click here](#) to view The Notice.

The [Business Law](#) and [Employment & Labor](#) attorneys at Partridge Snow & Hahn are ready to answer questions regarding the Notice or any other recently enacted changes attributable to COVID-19. For additional information and resources visit the firm's [COVID-19 Advisory Group](#) page.

Date Created

October 7, 2020