



SBA Procedural Notice

TO: All SBA Employees and Paycheck Protection Program Lenders

CONTROL NO.: 5000-20057

SUBJECT: Paycheck Protection Program Loans and Changes of Ownership

EFFECTIVE: October 2, 2020

The purpose of this Notice is to provide information concerning the required procedures for changes of ownership of an entity that has received Paycheck Protection Program (PPP) funds (a “PPP borrower”).

For purposes of the PPP, a “change of ownership” will be considered to have occurred when (1) at least 20 percent of the common stock or other ownership interest of a PPP borrower (including a publicly traded entity) is sold or otherwise transferred, whether in one or more transactions,¹ including to an affiliate or an existing owner of the entity, (2) the PPP borrower sells or otherwise transfers at least 50 percent 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.

Regardless of any change of ownership, the PPP borrower remains responsible for (1) performance of all obligations under the PPP loan, (2) the certifications made in connection with the PPP loan application, including the certification of economic necessity, and (3) compliance with all other applicable PPP requirements. 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 or lender servicing the PPP loan (referred to as the “PPP Lender” in this Notice) or to SBA upon request.² SBA reserves

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 borrower must be aggregated.

² If the buyer or the seller (or both) has an outstanding PPP loan, and the change of ownership transaction is financed in whole or in part with a 7(a) loan, all SBA Loan Program Requirements, as defined in 13 CFR 120.10, must be met. In addition, if an escrow account is required under the procedures set forth in this Notice, the 7(a) loan that finances the change of ownership cannot be used to finance the escrow account.

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SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

all rights and remedies available under the law in the event of fraud, false statements, and/or unauthorized uses of PPP loan proceeds.

Prior to the closing of any change of ownership transaction, the PPP borrower must notify the PPP Lender in writing of the contemplated transaction and provide the PPP Lender with a copy of the proposed agreements or other documents that would effectuate the proposed transaction.

There are different procedures depending on the circumstances of the change of ownership, as set forth below. In all cases, the PPP Lender is required to continue submitting the monthly 1502 reports until the PPP loan is fully satisfied.

1. **The PPP Note is fully satisfied.** There are no restrictions on a change of ownership if, prior to closing the sale or transfer, the PPP borrower has:
 - a. Repaid the PPP Note in full; or
 - b. Completed the loan forgiveness process in accordance with the PPP requirements and:
 - i. SBA has remitted funds to the PPP Lender in full satisfaction of the PPP Note; or
 - ii. The PPP borrower has repaid any remaining balance on the PPP loan.
2. **The PPP Note is not fully satisfied.** If the PPP Note is not fully satisfied prior to closing the sale or transfer, the following applies:
 - a. ***Cases in which SBA prior approval is not required.*** If the following conditions are met for (i) a change of ownership structured as a sale or other transfer of common stock or other ownership interest or as a merger; or (ii) a change of ownership structured as an asset sale, the PPP Lender may approve the change of ownership and SBA's prior approval is not required:
 - i. **Change of ownership is structured as a sale or other transfer of common stock or other ownership interest or as a merger.** An individual or entity may sell or otherwise transfer common stock or other ownership interest in a PPP borrower without the prior approval of SBA only if:
 - a) The sale or other transfer is of 50% or less of the common stock or other ownership interest of the PPP borrower³; or
 - b) The PPP borrower completes a forgiveness application reflecting its use of all of the PPP loan proceeds and submits it, together with any required supporting documentation, to the PPP Lender, and an interest-bearing

³ In determining whether a sale or other transfer exceeds this 50% threshold, all sales and other transfers occurring since the date of approval of the PPP loan must be aggregated.

escrow account controlled by the PPP Lender is established with funds equal to the outstanding balance of the PPP loan. After the forgiveness process (including any appeal of SBA's decision) is completed, the escrow funds must be disbursed first to repay any remaining PPP loan balance plus interest.

In any of the circumstances described in a) or b) above, the procedures described in paragraph #2.c. below must also be followed.

- ii. **Change of ownership is structured as an asset sale.** A PPP borrower may sell 50 percent or more of its assets (measured by fair market value) without the prior approval of SBA only if the PPP borrower completes a forgiveness application reflecting its use of all of the PPP loan proceeds and submits it, together with any required supporting documentation, to the PPP Lender, and an interest-bearing escrow account controlled by the PPP Lender is established with funds equal to the outstanding balance of the PPP loan. After the forgiveness process (including any appeal of SBA's decision) is completed, the escrow funds must be disbursed first to repay any remaining PPP loan balance plus interest. The PPP Lender must notify the appropriate SBA Loan Servicing Center of the location of, and the amount of funds in, the escrow account within 5 business days of completion of the transaction.⁴
- b. **Cases in which SBA prior approval is required.** If a change of ownership of a PPP borrower does not meet the conditions in paragraph #2.a. above, prior SBA approval of the change of ownership is required and the PPP Lender may not unilaterally approve the change of ownership.

To obtain SBA's prior approval of requests for changes of ownership, the PPP Lender must submit the request to the appropriate SBA Loan Servicing Center. The request must include:

- i. the reason that the PPP borrower cannot fully satisfy the PPP Note as described in paragraph #1 above or escrow funds as described in paragraph #2.a above;
- ii. the details of the requested transaction;
- iii. a copy of the executed PPP Note;
- iv. any letter of intent and the purchase or sale agreement setting forth the responsibilities of the PPP borrower, seller (if different from the PPP borrower), and buyer;

⁴ To find the appropriate SBA Loan Servicing Center, see <https://www.sba.gov/document/sop-50-57-7a-loan-servicing-and-liquidation>, Chapter 2.

- v. disclosure of whether the buyer has an existing PPP loan and, if so, the SBA loan number; and
- vi. a list of all owners of 20 percent or more of the purchasing entity.

If deemed appropriate, SBA may require additional risk mitigation measures as a condition of its approval of the transaction.

SBA approval of any change of ownership involving the sale of 50 percent or more of the assets (measured by fair market value) of a PPP borrower will be conditioned on the purchasing entity assuming all of the PPP borrower's obligations under the PPP loan, including responsibility for compliance with the PPP loan terms. In such cases, the purchase or sale agreement must include appropriate language regarding the assumption of the PPP borrower's obligations under the PPP loan by the purchasing person or entity, or a separate assumption agreement must be submitted to SBA.

SBA will review and provide a determination within 60 calendar days of receipt of a complete request.

- c. ***For all sales or other transfers of common stock or other ownership interest or mergers, whether or not the sale requires SBA's prior approval.*** In the event of a sale or other transfer of common stock or other ownership interest in the PPP borrower, or a merger of the PPP borrower with or into another entity, the PPP borrower (and, in the event of a merger of the PPP borrower into another entity, the successor to the PPP borrower) will remain subject to all obligations under the PPP loan. In addition, if the new owner(s) use PPP funds for unauthorized purposes, SBA will have recourse against the owner(s) for the unauthorized use.

If any of the new owners or the successor arising from such a transaction has a separate PPP loan, then, following consummation of the transaction: (1) in the case of a purchase or other transfer of common stock or other ownership interest, 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.

The PPP Lender must notify the appropriate SBA Loan Servicing Center, within 5 business days of completion of the transaction, of the:

- i. identity of the new owner(s) of the common stock or other ownership interest;
- ii. new owner(s)' ownership percentage(s);
- iii. tax identification number(s) for any owner(s) holding 20 percent or more of the equity in the business; and

- iv. location of, and the amount of funds in, the escrow account under the control of the PPP Lender, if an escrow account is required.

PPP Loans Pledged in Paycheck Protection Program Liquidity Facility (PPPLF)

If a PPP loan of a PPP borrower associated with a change of ownership transaction was pledged by the PPP lender to secure a loan under the Federal Reserve's PPPLF, the lender is reminded to comply with any notification or other requirements of the PPPLF.

Questions:

Questions concerning this Notice may be directed to the Lender Relations Specialist in the local SBA Field Office, which can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Dianna L. Seaborn
Director
Office of Financial Assistance