

CHANGES IN OWNERSHIP MAY HAVE PPP FORGIVENESS IMPLICATIONS

On October 2, 2020, the Small Business Administration (SBA) released SBA Procedural Notice Control No. 5000-20057, addressing entities with a change in ownership after receiving PPP funds. With the issuance of this Procedural Notice, the SBA clarifies that if a (i) change of ownership of at least 20%, (ii) an asset sale of at least 50% or (iii) a merger occurs, **the PPP borrower remains responsible for the performance of all obligations under the PPP loan.** This includes certifications made in connection with the PPP loan application, as well as obtaining, preparing, and retaining all required PPP forms and supporting documentation.

For purposes relating to PPP loans, the SBA defines a change in ownership occurs when:

- "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, including to an affiliate or an existing owner of the entity,
- "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
- "A PPP borrower is merged with or into another entity."

It is important to note that **transfers via gift and related-party sales or other transfers (e.g., transfer of ownership interests to a revocable trust) may fall within the definition of "change in ownership."**

In the event of a change in ownership, the PPP borrower must obtain approval from the lender and may also be required to obtain SBA approval prior to the closing of the change in ownership. SBA approval is required if more than 50% of the ownership interest is transferred or if more than 50% of the entity's assets are transferred. When SBA approval is required, the SBA has sixty (60) days to either approve or deny the change in ownership. Borrowers may avoid the SBA approval requirement by paying off

the PPP loan in full or submitting the PPP forgiveness application and setting up an interest bearing escrow account for the full amount of the PPP loan balance.

It is also important to note that even if the definition of "change in ownership" is not met for purposes of the SBA under this Procedural Notice, a borrower's PPP loan documents may contain other requirements or restrictive covenants with respect to a change in ownership. All lender specific restrictions and covenants must be followed in addition to the SBA requirements. An ownership change that violates lender requirements could result in default, triggering the lender's ability to call the full amount of the loan before forgiveness is established with the SBA.

Although the Procedural Notice was released on October 2, 2020, the terms of a borrower's PPP loan documents may contain provisions causing the guidelines issued by the SBA to apply to changes in ownership that have already occurred.

We recommend reaching out to your contact at Frost if you have questions or concerns regarding ownership changes as it relates to your PPP loans.



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