

SBA Guidance on PPP Loans in M&A Context

On October 2, the Small Business Administration ("SBA") announced new requirements related to Paycheck Protection Program ("PPP") borrowers who experience a change in ownership prior to the determination of forgiveness of the PPP loan.

SBA clarified that all borrowers must notify their PPP lenders in writing prior to the closing of any covered change in ownership. A change in ownership is deemed to occur when: at least 20% of common stock or other ownership interest in a PPP borrower is sold or transferred; the borrower sells or transfers at least 50% of its assets; or the borrower merges with or into another entity. PPP borrowers must also provide their lender with a copy of the proposed agreement(s) or other documentation that would effectuate the proposed transaction.

PPP lenders may approve changes in ownership without seeking further approval from SBA in certain situations. This expedited procedure is detailed below:

If the change is a sale or transfer of common stock or other ownership interest or a merger, SBA's approval is not required if:

- The sale or transfer amounts to 50% or less of the ownership interest of the PPP borrower; or
- The borrower submits a PPP forgiveness application and an interest-bearing escrow account controlled by the PPP lender is established with funds to sufficient pay any outstanding PPP balance.

If the change is structured as an asset sale (i.e. 50% or more of the PPP borrower's assets by Fair Market Value), SBA's approval is not required if:

- The PPP borrower submits a PPP forgiveness application and an interest-bearing escrow account controlled by the PPP lender is established with funds to sufficient pay any outstanding PPP balance.

In all other cases, a PPP lender must submit a request for SBA approval to the appropriate SBA Loan Servicing Center. The Procedural Notice is silent as to what standards govern the PPP lender's discretion to approve a change in control.

Importantly, for sellers of stock or other equity interests in a PPP borrower, SBA has stated that the seller/PPP borrower will remain subject to all obligations under the PPP loan. Buyers will be responsible for any misuse of PPP funds after the closing of the transaction. Certain segregation rules apply post-closing.

[Click here](#) to read the complete text of the SBA Procedural Notice.

Contact Us

Fraser Stryker's business attorneys are here to help:



Mark L. Brasee

mbrasee@fraserstryker.com

(402) 978-5306



Neil P. Hassler

nhassler@fraserstryker.com

(402) 978-5374

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