



# SBA Procedural Notice

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**TO:** All SBA Employees and Paycheck Protection Program Lenders

**CONTROL NO.:** 5000-821918

**SUBJECT:** Extension of and Update to Guidance Related to Paycheck Protection Program Loans and Changes of Ownership

**EFFECTIVE:** October 26, 2021

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On October 2, 2020, SBA issued [SBA Procedural Notice 5000-20057: Paycheck Protection Program Loans and Changes of Ownership](#), which provided guidance concerning the required procedures for changes of ownership of an entity that has received a Paycheck Protection Program (“PPP”) Loan.

The purpose of this Notice is to extend that guidance through October 1, 2022, and to clarify that the guidance applies to entities that have received First and Second Draw PPP Loans (a “PPP Borrower”). In the event that a PPP Borrower was the recipient of both a First Draw PPP Loan and a Second Draw PPP Loan and obtained the loans from different PPP Lenders, the seller is responsible for notifying and coordinating with both of the respective PPP Lenders, as well as SBA and the buyer, and may be required to set up separate escrow accounts, as prescribed, below. In addition, this Notice provides guidance on changes of ownership when the individual PPP Borrower or an owner of the PPP Borrower is deceased.

SBA continues to encourage PPP Borrowers to submit their application(s) for forgiveness as soon as they have used the funds during their covered period(s), including through the Direct Forgiveness Portal ([www.directforgiveness.sba.gov](http://www.directforgiveness.sba.gov)) for loans of \$150,000 and under. In the event that a PPP Borrower engaging in a change of ownership has not applied for and received forgiveness, or has received only partial forgiveness, the procedures set forth in this Notice are applicable.

## **Definition-“Change of Ownership”**

For purposes of the PPP, a “change of ownership” will be considered to have occurred when:

- (1) at least twenty percent (20%) 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,<sup>1</sup> including to an affiliate or an existing owner of the entity;

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<sup>1</sup> 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) a PPP Borrower sells or otherwise transfers at least fifty percent (50%) of its assets (to be measured by fair market value), whether in one or more transactions; or
- (3) a PPP Borrower is merged with or into another entity.

### **Borrower Responsibilities**

**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;
- (3) obtaining, preparing and retaining all required PPP forms and supporting documentation;
- (4) providing all required PPP forms and supporting documentation to the PPP Lender(s) or the Lender(s) servicing the PPP Loan(s) (referred to as the “PPP Lender(s)” in this Notice), or, upon request, to SBA<sup>2</sup>; and
- (5) compliance with all other applicable PPP requirements.

**Prior to the closing of any change of ownership transaction**, the PPP Borrower must:

- (1) notify the PPP Lender(s), in writing, of the contemplated transaction; and
- (2) provide the PPP Lender(s) with a copy of the proposed agreements or other documents that would effectuate the proposed transaction.

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

### **Procedures**

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

#### **1. When the PPP Note(s) is(are) 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(s) in full; or
- b. Completed the loan forgiveness process for the PPP Loan(s) in accordance with the PPP requirements and:
  - i. SBA has remitted funds to the PPP Lender(s) in full satisfaction of the PPP Note(s); or
  - ii. the PPP Borrower has repaid any remaining balance on the PPP Loan(s).

#### **2. When the PPP Note(s) is(are) Not Fully Satisfied.**

If the PPP Note(s) is(are) not fully satisfied prior to closing the sale or transfer, the following applies:

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2 If the buyer or the seller (or both) has an outstanding PPP Loan(s), 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.

a. **Cases in Which SBA Prior Approval is Not Required.**

If the following conditions are met for Sections 2.a.i. or 2.a.ii., below, the PPP Lender(s) 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 fifty percent (50%) or less of the common stock or other ownership interest of the PPP Borrower<sup>3</sup>; or
- b) for each outstanding PPP Loan (whether First Draw or Second Draw), the PPP Borrower completes a forgiveness application, reflecting its use of all of the PPP Loan proceeds, and submits the application(s), together, with any required supporting documentation to the PPP Lender(s); and for each outstanding PPP Loan (whether First Draw or Second Draw), an interest-bearing escrow account, controlled by the PPP Lender(s), is established with funds equal to the outstanding balance of the PPP Loan(s). After the forgiveness process (including any appeal of SBA's decision) is complete, the escrow funds must, first, be disbursed to repay any remaining PPP Loan balance(s), including any accrued interest.

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

ii. **Change of Ownership is Structured as an Asset Sale.**

A PPP Borrower may sell fifty percent (50%) or more of its assets (to be measured by fair market value) without the prior approval of SBA only if:

- a) for each outstanding PPP Loan (whether First Draw or Second Draw), the PPP Borrower completes a forgiveness application reflecting its use of all of the PPP Loan proceeds and submits the application(s), together, with any required supporting documentation to the PPP Lender(s); and
- b) for each outstanding PPP Loan (whether First Draw or Second Draw), an interest-bearing escrow account, controlled by the PPP Lender(s), is established with funds equal to the outstanding balance of the PPP Loan(s). After the forgiveness process (including any appeal of SBA's decision) is complete, the escrow funds must, first, be disbursed to repay any remaining PPP Loan balance(s), including any accrued interest.

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<sup>3</sup> 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.

The PPP Lender(s) must notify the appropriate SBA Loan Servicing Center of the location of, and the amount of funds in, the escrow account(s) within ten (10) business days of completion of the transaction.<sup>4</sup>

- b. **Cases in Which SBA Prior Approval is Required.** If a change of ownership of a PPP Borrower does not meet the conditions in Section 2.a., above, prior SBA approval of the change of ownership is required and the PPP Lender(s) may not unilaterally approve the change of ownership.

If a PPP borrower has a First and Second Draw Loan with different Lenders, each Lender must obtain SBA's prior approval of requests for changes of ownership. The PPP Lender(s) 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(s) 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(s);
- 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;
- v. disclosure of whether the buyer has an existing PPP Loan(s) and, if so, the SBA Loan Number(s); and
- vi. a list of all owners of twenty percent (20%) 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 fifty percent (50%) or more of the assets (to be 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(s), including responsibility for compliance with the PPP Loan(s) 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(s) by the purchasing person or entity, or a separate assumption agreement must be submitted to SBA. SBA will review and provide a determination within sixty (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.**

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

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(s). 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(s), 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 all PPP Loans.

The PPP Lender(s) must notify the appropriate SBA Loan Servicing Center, within ten (10) 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. ownership percentage(s) of the new owner(s);
- iii. tax identification number(s) for any owner(s) holding twenty percent (20%) or more of the equity in the business; and
- iv. if an escrow account(s) is(are) required, the location(s) of, and the amount of funds in, the interest-bearing escrow account(s), controlled by the PPP Lender(s).

### **Change of Ownership Where an Individual PPP Borrower or Owner of a PPP Borrower is Deceased**

If an individual PPP Borrower or an owner of a PPP Borrower dies before the PPP Loan(s) is fully forgiven or fully repaid, the PPP Lender(s) must notify the appropriate SBA Loan Servicing Center. The SBA Loan Servicing Center can provide the PPP Lender(s) with the next steps to take.

In the event of a change of ownership due to the death of the owner, the SBA Loan Servicing Center may take into account the following factors, among others:

- (1) the probate/estate laws with authority over the deceased owner and the business of the PPP Borrower;
- (2) the terms of and bequests made in the owner's will and/or trust, should either exist (e.g., relatives named as survivors/executors of the estate and whether the estate includes the business of the PPP Borrower);
- (3) the legal structure of the PPP Borrower (e.g., sole proprietorship vs. a corporation with multiple owners); and
- (4) whether the business is still operating.

**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(s) to secure a loan under the Federal Reserve's PPPLF, the PPP Lender(s) is(are) 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](#).

Dianna L. Seaborn  
Director  
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