

# PPP UPDATE: CHANGES IN OWNERSHIP

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# ➤ PPP Change in Ownership

1.  $\geq 20$  percent of the equity in a PPP borrower is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity

OR

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.

Note: All transactions from the onset of the PPP loan are aggregated.

## Which of these may constitute a change in ownership?

- Traditional M&A transaction
- Estate planning (e.g. gift or sale to relative)
- Death of owner
- ESOP or management buyout
- Transfer of assets to an affiliate (e.g. HoldCo)
- Bankruptcy/liquidation of assets
- Capital raise or stock buyback

# ➤ Three Situations at Time of Transfer or Sale

PPP Note is Fully Satisfied – No Restrictions

Repaid the PPP Note in full  
OR  
Completed loan forgiveness process (loan fully satisfied by SBA and borrower)

PPP Note is Not Fully Satisfied – SBA Approval Not Required

Sale/transfer of equity or merger  
Sale/transfer ≤50 percent of equity  
OR  
Completed forgiveness application and required documentation to lender AND interest-bearing escrow account controlled by Lender is established for the amount of the loan

Change in ownership structured as an asset sale  
Completed forgiveness application and required documentation to lender AND interest-bearing escrow account controlled by Lender is established for the amount of the loan

PPP Note is Not Fully Satisfied – SBA Approval Is Required

Does not meet any of the above criteria  
Likely to occur when insufficient cash at closing  
SBA has 60 calendar days

Significant non-cash consideration (e.g. earnout, seller note, buyer stock)  
Gifting or estate administration  
Tax planning  
Bankruptcy/liquidation

## ➤ Submission to SBA

- Request to SBA Loan Servicing Center, including:
  - the reason that the PPP borrower cannot fully satisfy the PPP Note (green box) or escrow funds (yellow box);
  - the details of the requested transaction;
  - a copy of the executed PPP Note;
  - 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;
  - disclosure of whether the buyer has an existing PPP loan and, if so, the SBA loan number; and
  - 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.
- $\geq 50$  percent asset sales which require SBA approval:
  - Purchasing entity must assume all of the PPP borrower's obligations under the PPP loan, including responsibility for compliance with the PPP loan terms.
  - Definitive agreement must include appropriate language regarding the assumption of the PPP borrower's obligations under the PPP loan by the purchaser, or a separate assumption agreement must be submitted to SBA.

## ➤ PPP Borrower Remains Liable Post-Transaction

- 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 or to SBA upon request.

## ➤ What if the Purchaser has its own PPP Loan?

- If purchaser or succeeding owner has a PPP loan they are responsible for segregating and delineating PPP funds and expenses and providing documentation to demonstrate compliance with PPP requirements for each of the loans.

# HAVE QUESTIONS OR WANT TO LEARN MORE?

- Contact your RKL advisor
- Visit RKL's [Business Recovery Resource Center](#) for more updates and guidance

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