

PPP Borrowers May Need Prior SBA Approval for Change in Ownership Transactions

“Under new guidance from the Small Business Administration (SBA) issued through a Procedural Notice (Notice) on Oct. 2, 2020, certain PPP borrowers may be required to seek prior consent from the SBA for a change in ownership of equity or sale of assets. Notably, the Notice addresses a change in ownership interest of the PPP borrower itself, but does not specifically address changes in ownership at the level of the borrower’s affiliates. Absent additional guidance, presumably no SBA or lender approval would be required for a change in ownership at a borrower’s affiliate if the transaction did not have a bearing on the PPP borrower, its direct assets, or equity interests. The Notice establishes different categories of transactions, some of which may require prior approval of the SBA, and is effective for all transactions that close on or after Oct. 2, 2020,” writes Bryan X. Grimaldi, Barbara A. Jones, Carl A. Fornaris and Lee Ann Anderson in *The National Law Review*.

“Prior to the closing of any change of ownership transaction, a PPP borrower must notify its PPP lender in writing of the contemplated transaction and provide the PPP lender a copy of the proposed agreements or other documents that would effect the proposed transaction. The original loan documentation itself may contain covenants triggering lender consent to the transaction as well and should be reviewed accordingly, although compliance with the Notice requirements will still be required. The Notice states that, where SBA approval is required, the SBA will review and provide its decision within 60 days of receipt of a completed request. This up-to-60-day waiting period could result in a significant delay of the closing of the transaction. Accordingly, a determination of

whether prior approval is required should be made early in the transaction process.”

Read the article.