



Gauging Your Post-COVID-19 Business Sale: The Effect of PPP Funds

Selling a business requires significant effort on the part of a seller. Taking the reins during the pre-sale process to identify any potential issues can help prevent hiccups and minimize other issues through the process that are likely inevitable. Preparedness, in all regards, is one of the many keys to a smooth process. In the instance of exploring what a post-COVID-19 sale would involve and the ways in which you can ensure preparedness, the Paycheck Protection Program (PPP) and similar COVID-19-related loans must be considered.

The PPP should be familiar to any operator who took advantage of the financial support offered by the program during the pandemic, yet there are still crucial questions to be asked, namely: If I received PPP funds, how might that affect the sale of my business? More specifically, must the Small Business Administration (SBA) provide consent in the instance of change of ownership of a business that received PPP loans? Such a determination was previously left to overwhelmed operators, like yourself, whose loan forgiveness may likely still be working its way through. Moreover, and as is common in most loan documents, it is most likely that your PPP loan documents provide that the sale of your business is prohibited without SBA consent. However, the SBA has issued guidance that details the required procedures for changes of ownership of a business that received PPP funds. Such clarification, titled the Procedural Notice, may allow PPP borrowers to circumvent lender approval under certain conditions upon selling their business.

The below is intended to synthesize the guidance provided by the SBA. However, before selling your business, you should consult with your business professionals, including your lawyer, accountant, banker and anyone else on your team to ensure you are complying with any SBA requirements.

What is change of ownership?

According to the SBA, a change of ownership occurs when at least one of the following is true:

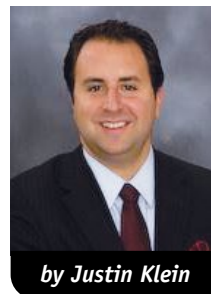
1. At least 20% of the common stock or other ownership interest of a PPP borrower is sold or transferred (whether in one or more transactions, including to an affiliate of the borrower);
2. the PPP borrower sells or transfers 50% or more of its assets (whether in one or more transactions); or
3. a PPP borrower is merged with or into another entity.

What must I tell my lender?

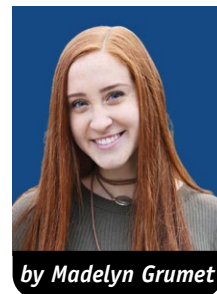
Prior to closing any change-of-ownership transaction, a PPP borrower must notify the PPP lender of the considered transaction in writing. The borrower also maintains the responsibility to provide the lender with a copy of any documentation that underpins the proposed transaction or agreements.

Are there exceptions to the SBA approval requirement?

The SBA lays out different procedures for instances in which a PPP loan has or has not been repaid in full. In the instance of full repayment, or if the borrower has paid any and all unforgiven portions of the loan succeeding a loan forgiveness determination from the SBA, there are no restrictions on an ownership change transaction.



by Justin Klein



by Madelyn Grumet

In the instance that the PPP loan has not yet been fully repaid or loan forgiveness has not yet been decided, a PPP lender may only approve the transaction in the absence of SBA approval if either:

a) The sale or other transfer is of 50% or less of the common stock or other ownership interest of the PPP borrower (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); or

b) The PPP borrower completes a forgiveness application reflecting its use of all the PPP loan proceeds and submits it, together with any required supporting documentation, to the PPP Lender, and an interest-bearing escrow account controlled by the PPP Lender is established with funds equal to the outstanding balance of the PPP loan. After the forgiveness process (including any appeal of the SBA's decision) is completed, the escrow funds must be disbursed first to repay any remaining PPP loan balance plus interest.

Ongoing obligations of PPP borrowers.

Notwithstanding a lender's approval of an ownership change, the borrower continues to be 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.


These borrower requirements remain constant until the PPP loan forgiveness.

When is SBA approval required?

If the above conditions have not been met, SBA approval is required. In order to receive such approval, an approval request must be presented with the following:

- i. The reason that the PPP borrower cannot fully satisfy the PPP note;
- ii. the details of the requested transaction;
- iii. a copy of the executed PPP note;
- 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 and, if so, the SBA loan number; and
- vi. a list of all owners of 20% or more of the purchasing entity.

Upon obtaining an approval request for ownership change, the SBA has 60 calendar days to review and provide a determination for the proposed ownership change.

Selling a business has many moving parts. It can be overwhelming to consider the amount of preparation that has to be accounted for and evaluated to guarantee a successful transaction. Taking heed of dealing with your PPP loan while contemplating a business sale can help to ensure your preparedness, which, in turn, will help lead to a smooth sales process. 

Justin M. Klein is a franchise and business attorney and a partner with the nationally recognized franchise law firm of Marks & Klein LLP, which represents Planet Fitness® franchise operators throughout the United States. You can contact Klein at justin@marksklein.com.

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