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SBA Announces New Guidance on Consent Requirements for PPP Borrower Changes of Ownership

The Small Business Administration (SBA) released a procedural notice (the Notice) on October 2, 2020, that describes the process and requirements that Paycheck Protection Program (PPP) borrowers and lenders must follow when ownership of the PPP borrower is changing. The Notice provides a roadmap for how PPP borrowers and their prospective acquirers and investors may structure transactions to avoid the need to obtain a prior consent from the SBA.

Although the CARES Act did not require that PPP loans be documented on a particular form of promissory note, many PPP lenders utilized a promissory note based on the SBA's form of promissory note for other loans made under the SBA's 7(a) business loan program. This form provides that a PPP borrower is in default if the borrower "[r]eorganizes, mergers, consolidates, or otherwise changes ownership or business structure without Lender's prior written consent."

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