SBA clarifies how to handle outstanding PPP loans amidst mergers and acquisitions

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As merger and acquisition activity continues to pick up within seniors housing after a significant drop-off during the COVID-19 pandemic’s earliest days, some buyers and sellers have been struggling with how to structure transactions when one or both are recipients of still-outstanding Paycheck Protection loans. Loan forgiveness on the $525 billion pandemic relief plan began only this week, so many senior living and care borrowers are likely to have loans outstanding if a proposed transaction were to arise soon.

In response to this confusion, the Small Business Administration recently issued a procedural notice that provides information around changes of ownership for entities that have received PPP funds. According to guidance developed by the public accounting firm Marcum, LLP, the notice has three big takeaways for businesses:

- Borrowers will most likely be required to escrow a portion of the purchase price related to the outstanding PPP loan amounts until a loan determination is received;
- Borrowers may be able to defer taxes on the escrowed funds using the installment sale method; and
- Borrowers are required to notify their lenders and the SBA when there is a change in ownership and there is an outstanding PPP loan.

To receive SBA approval for the change in ownership, the borrower’s PPP lender must provide information on the reason the borrower cannot satisfy the PPP note or the escrow funds, details of the proposed transaction, a copy of the executed PPP note and a letter of intent and the purchase or sale agreement. The lender must also disclose whether the buyer has their own existing PPP loan and provide a list of all owners of 20% or more of the purchasing entity.

Regardless of whether the sale requires SBA prior approval, the PPP borrower, or successor to the PPP borrower in the event of a merger, remains liable and subject to all obligations under the PPP loan agreement, noted Dawn Minotas, managing director of outsourced managed services at Marcum.

The PPP lender must also notify the SBA within five business days of the completion of the transaction, Minotas said.