

CLOSING TRANSACTIONS THAT INCLUDE A P.P.P. LOAN

Now that the six-month payment incentive provided by the C.A.R.E.S. Act is over, let's focus our attention back to closing a loan that has a P.P.P. attached to the business.

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Now that the six-month payment incentive provided by the C.A.R.E.S. Act is off the list of our items of immediate attention, our focus returns to closing transactions that include P.P.P. loans. If you have closed any SBA transactions to date that include a P.P.P. loan, then you may have experienced the chaos and confusion on the forgiveness aspect that many lenders, sellers, and attorneys currently struggle with. Today, I will attempt to explain the methods that we have seen be used to help close transactions during these current conditions.

PLEASE NOTE: We are not confirming that any of these methods are acceptable to SBA or will not cause a decline in forgiveness. These are only the ways we have witnessed these transactions close with P.P.P. loans in place.

The main concern is that if a seller retains the corporation and P.P.P. loan liability post-closing, then the buyer should have no exposure in the future (*in theory*). In most cases this would be true but what many are not considering is that this is the Federal Government and they can go past a transaction if they deem it invalid. Hence the surrounding concern and nervousness. I will not go into specifics on this today, but you should know there is some level of validity to the above concern.

The SBA held a lender conference call in August, and on that call, they explained how specific guidelines for acquisitions that included P.P.P. loans would be published and sent out to all lenders within days. Days soon became weeks and as of today no such publication has been circulated. With no actual guidelines, aside from the two letters we have secured from District Representatives, the lenders have been on their own in creating safeguards surrounding these P.P.P. loan liability exposures to help clients close acquisition transactions. Below, I will describe the top four methods lenders utilized to close loans since March.

Our top choice from an active lender of ours allows an addendum to be included in the APA which simply states the following: *“any Liabilities of the Seller or Principals associated with the Payroll Protection Program, including but not limited to any loans. Any Payroll Protection Program loan is and shall remain the exclusive obligation of Seller and Principals and is not being assumed by Buyer in this transaction.”* By adding this addendum, our lender allows all transactions to close. A simple solution that many lenders choose not to utilize.

A more popular method is based on a version of an SBA letter that was circulated that requires an escrow account be set up with the seller's P.P.P. lender matching the P.P.P. exposure amount, with deposits made using the seller's personal funds. This seems to be the most accepted work around

and another version of this makes it even easier. Some lenders will allow this escrow account to be held by an attorney until P.P.P. loan forgiveness is complete.

The least favorite of our available options, based off an SBA district letter, demands the P.P.P. loan be assumed 100% by the buyer and demands that the loan be processed GP. GP is when the entire loan package is sent directly to SBA's central processing center for a complete review and subsequent eligibility determination. Most lenders will avoid this whenever possible as utilizing their PLP status allows them to bypass this step. The SBA GP program typically adds between one and three weeks to the overall loan process, time that most transactions would prefer to not waste.

If you are handling a transaction that includes a P.P.P loan, be sure you explore the details of that loan to ensure the seller understands any concerns surrounding the forgiveness. If the buyer is securing an SBA loan for the acquisition of a business, be sure to address the same with the buyer's SBA lender. Understanding the lender's requirements and being sure all parties agree upfront will be critical to closing your deal and save you countless hours in the future.

The letters and documents mentioned above can all be found at [Easysba.com](https://easysba.com) by scrolling down to the bottom of the home page to the "Covid-19 & Webinar Resources" button.

As always, our highly skilled Diamond Financial staff is always here to answer any specific questions regarding SBA transactions at any time. For more specific answers on these or any other SBA rules, please contact us at askdiamond@easysba.com, a no cost, no obligation, email solution to answer all of your SBA questions.

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