



Lender Service Providers

What You Need to Know!

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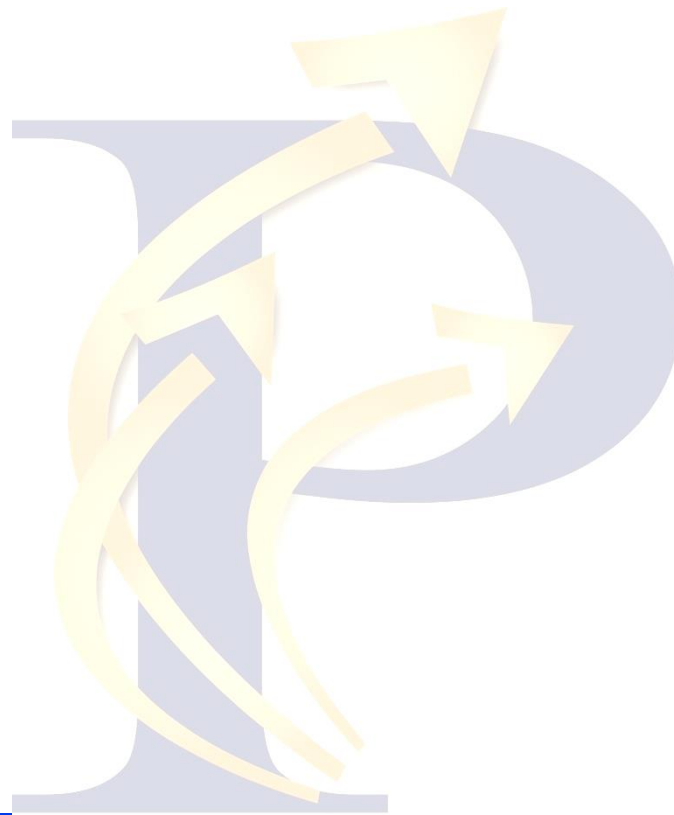
Course Objectives

❖ Lender Service Providers

- ✓ Decision to Use / Not to Use
- ✓ Using an LSP
- ✓ LSP Agreements
 - Professional Services Contracts
- ✓ LSP Compensation
- ✓ Risk Mitigation / Oversight
- ✓ Final Thoughts



Decision to Use / Not to Use



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Identification

- **Identify what ultimate goal is**
- **Determine form & function**
- **Determine cost of people**
- **Identify internal knowledge level**
- **Make decisions**



. . . Identification

- Identify if management amenable to outside vendor assistance**
- How much emphasis placed on security of PII & SII**
- How well does management work with others? Do you play well in a sand box or are you definite / set in ways?**



People

- **Teamwork is absolute necessity**
- **Difficult for 1 person to do SBA lending & be successful / complicated endeavor**
- **Absolutely need internal controls either way you go!**

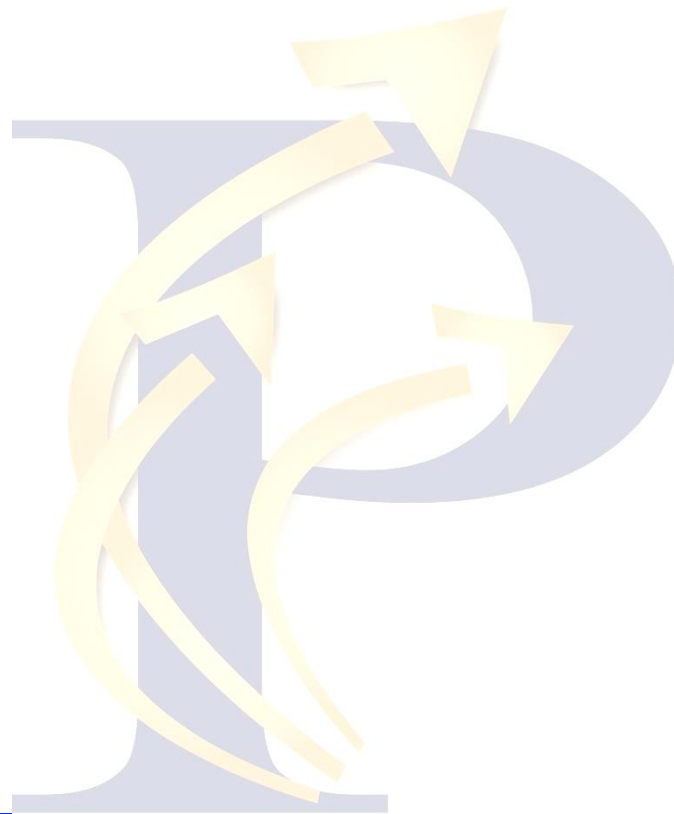


Options

- **Internal process with assistance from other departments**
- **Internal process with assistance from outside LSP**
- **Internal process through stand alone SBA Department**



Using an LSP



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Lender / CDC Responsibility

Have a continuing ability to market, package, evaluate, process, close, disburse, service, liquidate and litigate small business loans

- **7(a) - 13 CFR § 410**
- **CDCs – §120.826**



Agents

- **Conducts business with SBA**
- **On behalf of**
 - **Applicant**
 - **Participant; or**
 - **Lender**
 - **CDC**



Conducting Business with SBA

- **Preparing / submitting an application**
- **Acting as LSP**
- **Anything else SBA reasonably determines**
- **+ + + not an exhaustive list**



Agent Types

Agents

- **Lender Service Providers**
- **Professional Services Contracts**
- **Referral Agent / Broker**



... Agent Types

Agents

- **Attorney**
- **Accountant**
- **Consultant**
- **Packager**



Lender Service Providers

- Lender may contract out one or more functions
- Augments lender staff functions
- Lender must still demonstrate day-to-day “continuing ability”
- SBA has final determination “who” is an LSP



Potential LSP Functions

- **Market**
- **Package**
- **Process**
- **Tax Transcripts**
- **Underwrite**
- **Close**
- **Disburse**
- **Sell**
- **Service**
- **Negotiate**
- **Liquidate / Litigate**
- **Workout**
- **Guaranty Packages**
- **Wrap-Up**



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Some Benefits

- **Assistance with SBA activities**
- **Provide knowledgeable people**
- **Offer an established process / framework**
- **Accentuate training efforts**



Some Disadvantages

- **Trusting actions of others**
- **Potential liability**
- **Lack of control**
- **Potential dependency on others**
- **Personality / communication conflicts**



Absolute NOs

- **Make final credit decision**
 - **Execute Credit Approval Memorandum**
- **Execute Lender's Application for Guaranty document**
 - **SBA Form 1920 / SBA Form 1244**



SBA Restrictions

- **Lender must retain day-to-day responsibility for loan functions**
- **LSP may not act as power of attorney for Lender**

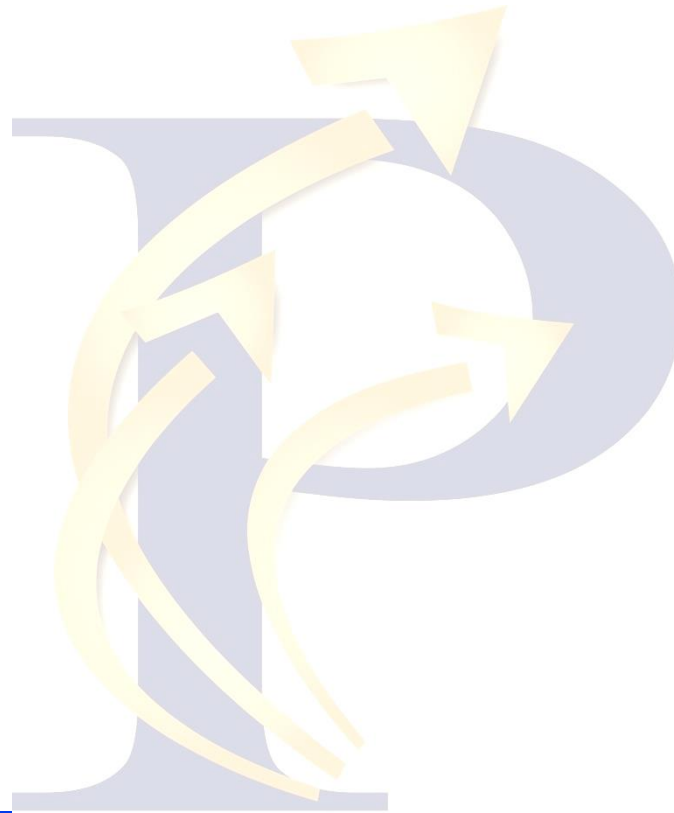


. . . SBA Restrictions

- **Lender retains responsibility for LSPs actions within SBA systems**
- **LSP cannot share in secondary market premiums**



LSP Agreements



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Agreement

- **Control relationship with written agreement**
- **Specify authorized functions**
- **Delegations of Authority**
- **Controls responsibilities**
- **Establishes fees paid for services**



Skills / Abilities

- **Lender / CDC is responsible for all actions of its LSPs**
- **Research qualifications / vendor management**
- **Ensure abilities match intended functions to be performed**

Interview to make sure good fit!



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Character / Reputation

- Investigate reputation before relationship begins
- Contact references
- Listen to SBA community
- Google
- Look for experience / determine level

Know who is representing you!



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SBA Required Debarment Checks

- **Suspended, debarred, revoked or otherwise excluded**
- **SBA or Government-wide status**
- **Check System for Award Management (SAM)**

<https://www.sam.gov/SAM/>
or successor system



SBA Agreement Requirements

Must:

- **Be written**
- **Contain accurate description of duties**
- **Restrict against sharing secondary market premiums**
- **Deny duplicate charges for same service**



. . . SBA Agreement Requirements

Must:

- **Not conflict with SBA Loan Program Requirements**
- **Identify compensation *NOT* directly chargeable to applicant/borrower**
- **Have SBA review**



Professional Services Contracts (PSC)

CDCs

Must identify:

- **Loan functions**
- **Management activities**
- **Allow for termination**
- **Must have SBA pre-approval before activity begins**



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PSC Requirements

- **Accurate description of duties**
- **Compensation must be paid by CDC**
- **No duplicate charging for same service**
- **No longer than 5 years**

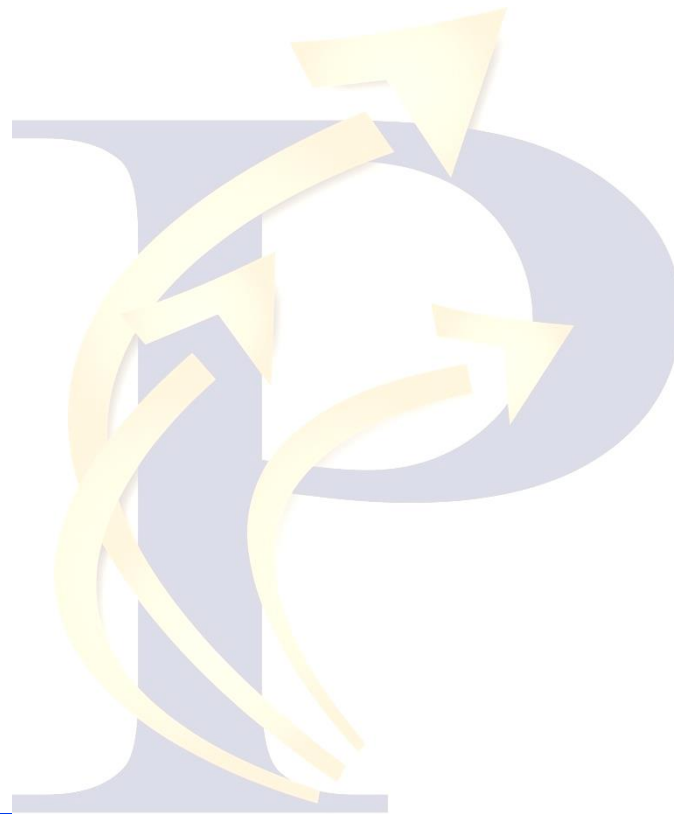


... PSC Requirements

- **Transition plan for phase-out**
- **No conflict with SBA Loan Program Requirements**
- **No conflict of interest / self dealing**
- **+ + + not an exhaustive list**



LSP Compensation



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LSP Compensation / Lender

- **Determined by Lender / LSP**
- **Specify in written agreement**
- **Must be for services actually performed**
- **Amount paid not determined by SBA**
- **Cannot be conditional on loan approval or closing**
- **Charges cannot be passed to applicant**



LSP Compensation / Borrower

3rd Party fees for packaging & other services:

- Provides assistance for preparing application documents
- Consulting on types of financing
- Broker / Referral fees



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... LSP Compensation / Borrower

3rd Party fees for packaging & other services:

- Fees must be reasonable / customary**
- Cannot charge flat fee**
- May be hourly or percentage basis**
- Percentage basis has stipulations**
- No limit if charged hourly**

Screams Complexity of Deal!



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LSP Compensation / CAREFUL

Consider:

- **What actions LSP actually performs for both sides of transaction**
- **Actions on both sides of transaction have potential to be contradictory**

Be Aware of Conflicts of Interest!



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... LSP Compensation / CAREFUL

Question:

If LSP is Broker / obtaining referral fees from applicant

&

**also underwriting loan for lender,
does conflict of interest exist?**



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... LSP Compensation / CAREFUL

Answer:

Let's talk about it!



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Unreasonable Compensation

- **SBA may determine charges are unreasonable**
- **SBA has authority to require applicant be reimbursed**



SBA Compensation Controls

- **No LSP compensation is allowed payable from Borrower loan payments; or from other LSP collections on lender's behalf**
- **Establish controls to ensure proper payment for proper work**

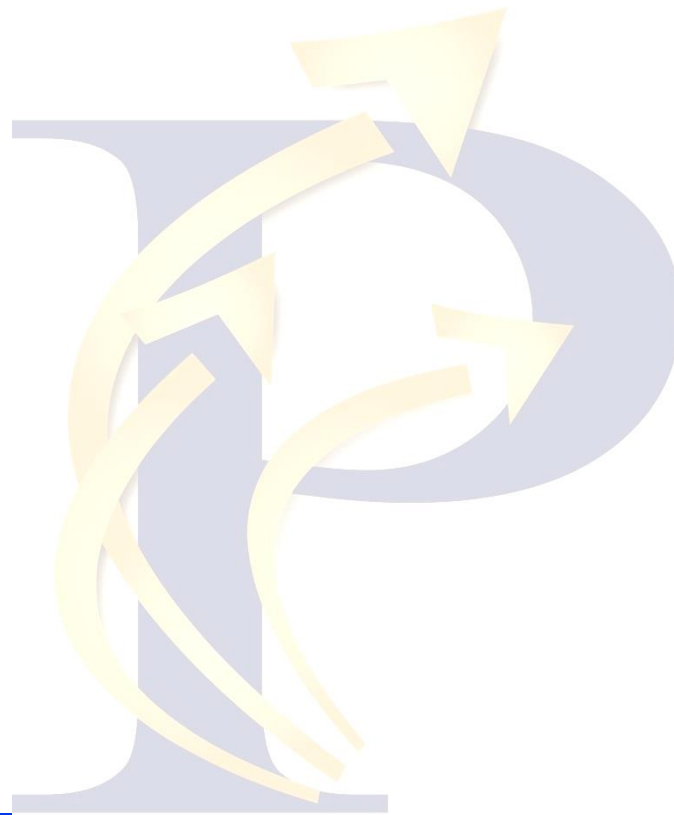


Compensation Reporting

- SBA Form 159 **NOT** required of LSPs for services performed for lender
- SBA Form 159 **Required** for LSP (3rd party) services performed for applicant
- Relationship / compensation governed by LSP Agreement or Professional Services Contract



Risk Mitigation / Oversight



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Policy for LSP Control

- **Lender / CDC should memorialize**
 - **Entrance strategy**
 - **Evaluation**
 - **Exit strategy**
 - **Internal controls**



Oversight Protocols

- **Establish on-going oversight**
- **Post closing review**
- **Periodic internal controls check**
- **Annual performance evaluation**

Trust But Verify!



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Performance Assessments

- **LSP performance metrics**
- **Turn-around timeframes**
- **Communication – internal / external**
- **Servicing Actions**
- **Defaults**
- **Repair / Denial**
- **Etc.**



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Funds Control

- **Lender titled accounts for all funds under LSP control**
- **Accounts for secondary market payments must also be properly titled (SBA Form 1086)**
- **No comingling of multiple Lenders' funds**
- **Potential insurance issues**

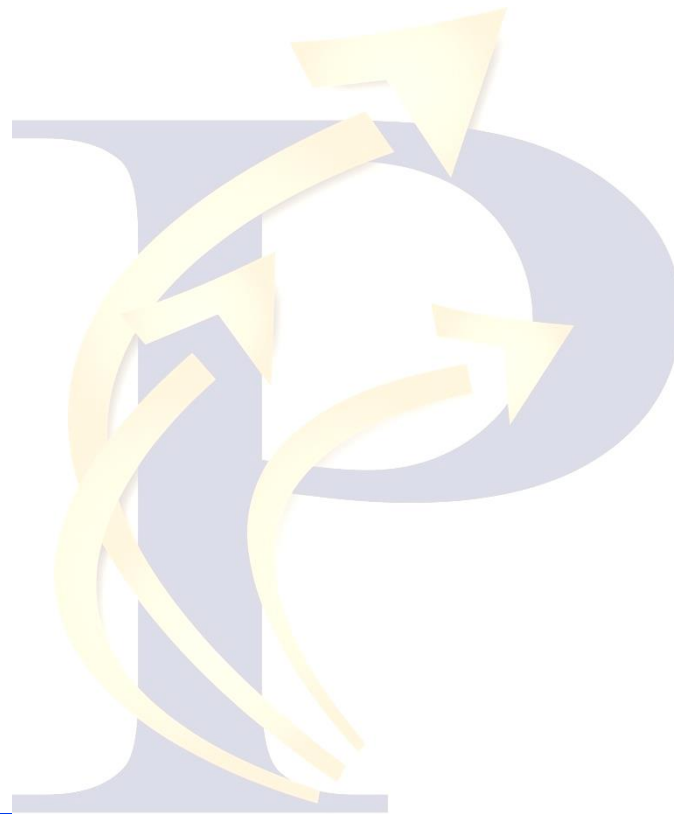


Beware of “Associates”

- **Conflicts of Interest – actual or apparent**
- **Less than arms length relationships**
- **Favored status**
- **Required use / compensation**



Final Thoughts



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Remember

- **LSP is extension of Lender / CDC**
- **Lender / CDC is responsible for all actions of LSP**
- **Communication is key**
- **LSP should have good reputation**

All Actions Reflect Upon You!



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. . . Remember

- **Oversight of people, process, & product**
- **Show SBA you are looking for & identifying risk with your LSP**

Identify Risk to Impress SBA!



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Lastly . . .

Situational Awareness

- **Ability to identify, process, and comprehend information about how to survive in an emergency situation**
- **More simply, knowing what is going on around you**
- **LSP works for you**
- **Lender / CDC does not work for LSP**



Questions





Thank You!

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