



Lender Service Providers

What You Need to Know!

Mid-America Lenders Conference
April 8-10, 2019

“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

Instructors



Lisa Preston
President



Linda Rusche
Sr. Consultant

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



“You Perform, We Perfect”[®]

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!**

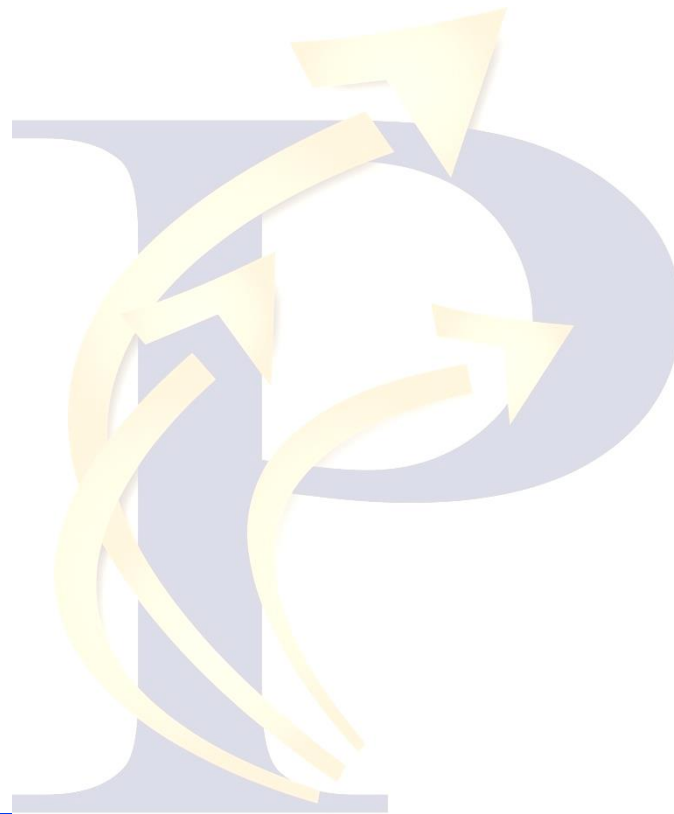


Options

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



Using an LSP



“You Perform, We Perfect”[®]

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**



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

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**

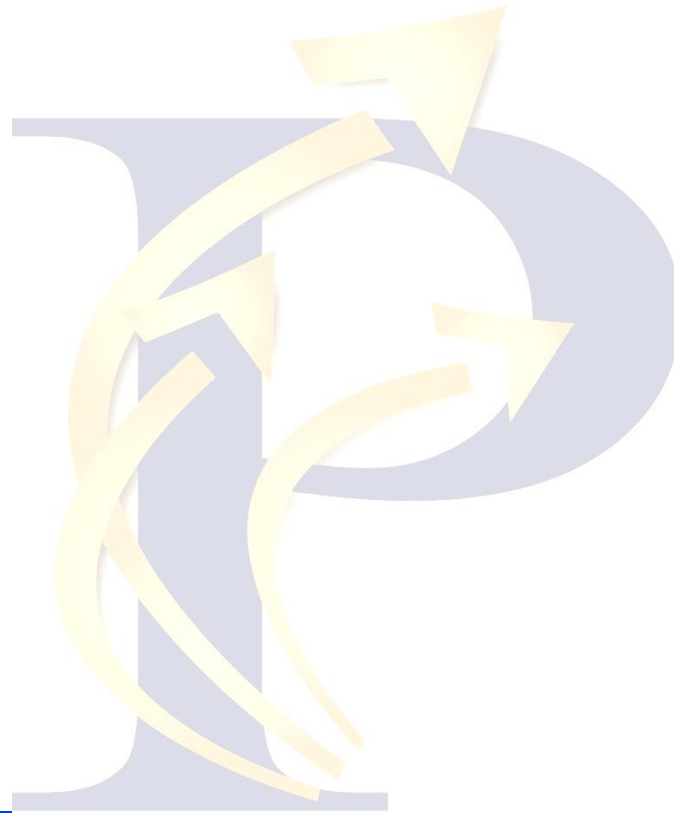


. . . SBA Restrictions

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



LSP Agreements



“You Perform, We Perfect”[®]

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!



“You Perform, We Perfect”®

Character / Reputation

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

Know who is representing you!



“You Perform, We Perfect”®

PrelnSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

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**



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

PSC Requirements

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

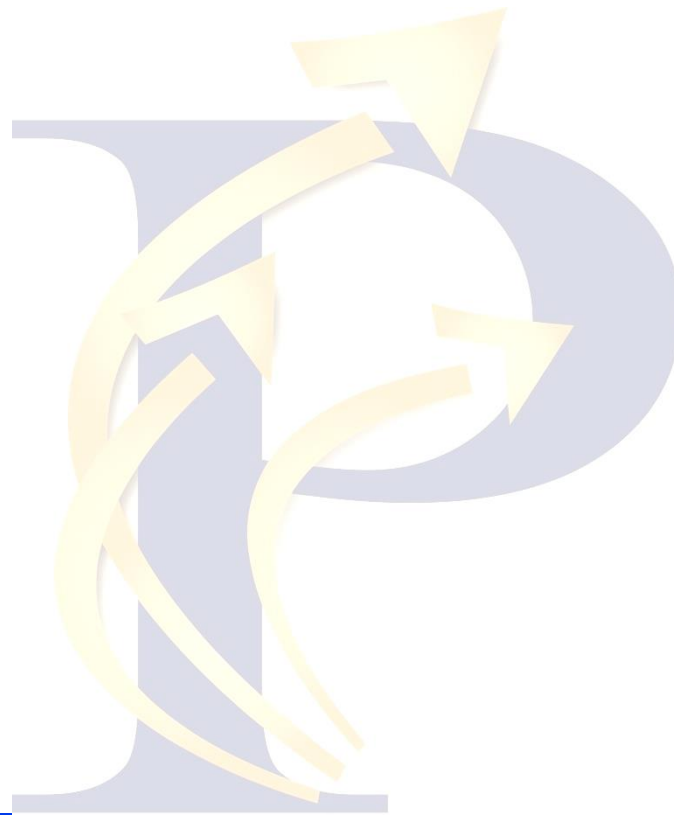


... PSC Requirements

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



LSP Compensation



“You Perform, We Perfect”[®]

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**



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

... 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!



“You Perform, We Perfect”[®]

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!



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

... LSP Compensation / CAREFUL

Question:

If LSP is Broker / obtaining referral fees from applicant

&

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



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

... LSP Compensation / CAREFUL

Answer:

Let's talk about it!



"You Perform, We Perfect"®

PrelnSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

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



“You Perform, We Perfect”[®]

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!



“You Perform, We Perfect”®

Performance Assessments

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



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**

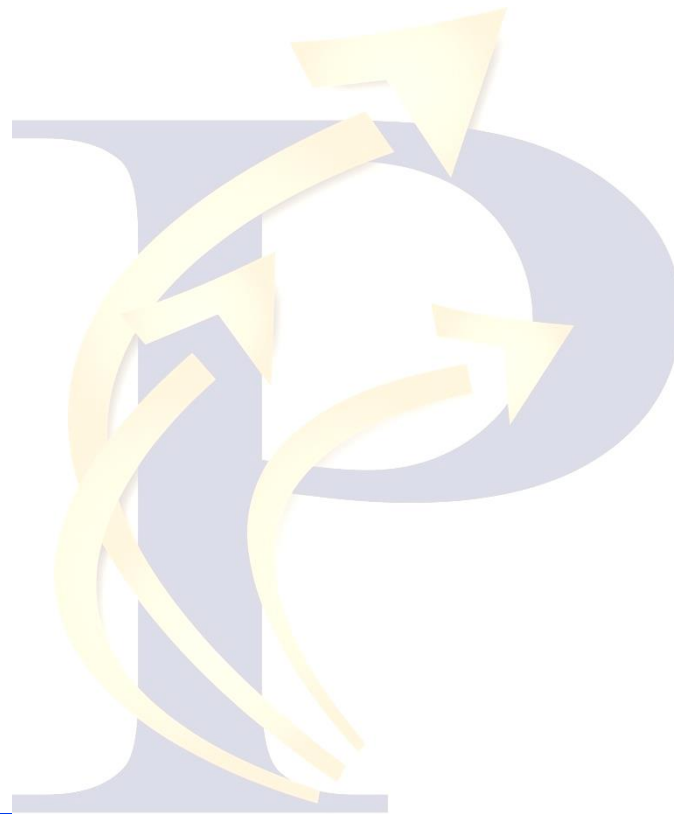


Beware of “Associates”

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



Final Thoughts



“You Perform, We Perfect”[®]

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!



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

. . . Remember

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

Identify Risk to Impress SBA!



“You Perform, We Perfect”®

PreInSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.

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!

The Preston Group, LLC

281.534.8603

Lisa Preston

lpreston@the-preston-group.com



“You Perform, We Perfect”®

PrelnSTRUCT²™ Version: 1.9 Copyright 2019, The Preston Group, LLC - All Rights Reserved.

This document shall not be used or reproduced in whole or in part without the express written consent of The Preston Group, LLC.