§ 120.535 Standards for Lender and CDC loan servicing, loan liquidation and debt collection litigation.

(a) Service using prudent lending standards. Lenders and CDCs must service 7(a) and 504 loans in their portfolio no less diligently than their non-SBA portfolio, and in a commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements. Those Lenders and CDCs that do not maintain a non-SBA loan portfolio must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee.

(b) Liquidate using prudent lending standards. Lenders and Authorized CDC Liquidators must liquidate and conduct debt collection litigation for 7(a) and 504 loans in their portfolio no less diligently than for their non-SBA portfolio, and in a prompt, cost-effective and commercially reasonable manner, consistent with prudent lending standards, and in accordance with Loan Program Requirements and with any SBA approval of either a liquidation or litigation plan or any amendment of such a plan. Lenders and CDCs that do not...
§ 120.536 Servicing and liquidation actions that require the prior written consent of SBA.

(a) Actions by Lenders and CDCs. Except as otherwise provided in a Supplemental Guarantee Agreement with a Lender or an Agreement with a CDC, SBA must give its prior written consent before a Lender or CDC takes any of the following actions:

1. Increases the principal amount of a loan above that authorized by SBA at loan origination.
2. Confers a Preference on the Lender or CDC or engages in an activity that creates a conflict of interest.
3. Compromises the principal balance of a loan.
4. Takes title to any property in the name of SBA.

(b) Actions by CDCs only (other than PCLP CDCs). SBA must give its prior written consent before a CDC, other than a PCLP CDC, takes any of the following actions with respect to a 504 loan:

1. Alters substantially the terms or conditions of any Loan Instrument.
2. Releases collateral having a cumulative market value in excess of 10 percent of the Debenture amount or $10,000, whichever is less.
3. Accelerates the maturity of the note.
4. Compromises or releases any claim against any Borrower or obligor, or against any guarantor, standby creditor, or any other person that is contingently liable for moneys owed on the loan.
5. Purchases or pays off any indebtedness secured by the property that serves as collateral for a defaulted 504 loan, such as payment of the debt(s) owed to a lien holder or lien holders with priority over the lien securing the loan.
6. Accepts a workout plan to restructure the material terms and conditions of a loan that is in default or liquidation.

(7) Takes any action for which prior written consent is required by a Loan Program Requirement.

(c) Documentation requirements. For all servicing/liquidation actions not requiring SBA’s prior written consent, Lenders and CDCs must document the justifications for their decisions and retain these and supporting documents in their file for future SBA review to determine if the actions taken by the Lender or CDC were prudent, commercially reasonable, and complied with all Loan Program Requirements.

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