Small Business Administration

§ 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 maintain a non-SBA loan portfolio must adhere to the same prudent lending standards followed by commercial lenders that liquidate loans without a government guarantee. They are also to operate 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.

(c) Absence of actual or apparent conflict of interest. A CDC must not take any action in the liquidation or debt collection litigation of a 504 loan that would result in an actual or apparent conflict of interest between the CDC (or any employee of the CDC) and any Third Party Lender, associate of a Third Party Lender, or any person participating in a liquidation, foreclosure or loss mitigation action.

(d) SBA rights to take over servicing or liquidation. SBA may, in its sole discretion, undertake the servicing, liquidation and/or litigation of any 7(a) or 504 loan. If SBA elects to service, liquidate and/or litigate a loan, it will notify the relevant Lender or CDC in writing, and, upon receiving such notice, the Lender or CDC must assign the Loan Instruments to SBA and provide any needed assistance to allow SBA to service, liquidate and/or litigate the loan. SBA will notify the Borrower of the change in servicing. SBA may use contractors to perform these actions.

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