



U.S. Small Business
Administration

Lender Service Provider Agreements

Refresher



- **Definitions**
- **Agent** means an **authorized representative**, including an attorney, accountant, consultant, packager, **lender service provider**, or any other person representing an applicant or **participant** by conducting business with SBA. (13 CFR 103.1(a))
- A **Lender Service Provider** (“LSP”) is an **Agent** who carries out **lender functions** in originating, disbursing, servicing or liquidating a specific SBA business loan or loan portfolio for compensation from the Lender. 13 CFR §103.1(d) and SOP 50 10 5(J), Subp. B, Ch. 3, Para. IX.A.3.

(All references to the SOP hereinafter will be to SOP 50 10 5(J), Subp. B, Ch.3)

Lender Service Provider Agreements

- A lender must have a continuing ability to **evaluate, process, close, service, liquidate and litigate** small business loans. (13 CFR 120.410)
- A lender **may** contract with a third party (Lender Service Provider (LSP)) to **assist** the lender with one or more of these functions.
- The **lender itself**, not the LSP, must be able to demonstrate that it **exercises** day-to-day **responsibility** for evaluating, processing, closing, disbursing, servicing, liquidating and litigating its **SBA portfolio**.

Lender Service Provider Agreements



- An LSP Agreement may **not** grant the LSP power of attorney to act on behalf of the Lender.

Lender Service Provider Agreements



- If the Lender plans to engage an LSP to handle its SBA borrower payments, the funds must be held in an **account in the Lender's name**, and not in the name of the LSP.
 - The LSP may be permitted access to the account in order to process payments.
 - For those loans where the guaranteed portion has been sold on the secondary market, the account must be titled in accordance with SBA Form 1086 “Secondary Participation Guaranty Agreement”.
- LSPs may not net their fees out of any borrower payments or other funds collected on the Lender's behalf.

Lender Service Provider Agreements

Where Do LSP Agreements Come From?



- SBA does not provide a form of LSP Agreement, but expects Lenders and LSPs to negotiate the terms of the contracts to meet the needs of the Lender.

Lender Service Provider Agreements

Ingredients of an LSP Agreement



- **Identification** of both parties, including full legal name, Trade name or dba (if any); address; contact person's name, address, phone number and email address. Also the Lender's **Location ID**.
- The **services to be provided** must be specifically identified.
- There must be a statement that **the Lender bears full responsibility** for all aspects of its 7(a) loan operation, including, but not limited to, approvals, closings, disbursements, servicing actions, and due diligence.

Lender Service Provider Agreements



- If the Lender has authorized the LSP to access SBA's **Capital Access Financial System (CAFS)**, including **E-Tran and SBA One**, on the Lender's behalf, the Lender must acknowledge that it is responsible for all entries and certifications made into CAFS by the LSP.

Lender Service Provider Agreements



- **Compensation:** The compensation must be specifically explained as to what will be charged for each type of service, and must state that the fees are for services **actually performed**.
 - Fees related to assisting the Lender with packaging, processing or underwriting **cannot be contingent on whether the loan is approved or closed**.
 - The contract must state that all compensation paid to the LSP will be paid by the Lender, and that the **Lender and the LSP are prohibited from charging the Applicant for the same services**.

Lender Service Provider Agreements



- The Lender and the LSP cannot share in any **Secondary Market premium**. (13 CFR § 120.222)
- The billing for loan packaging or other loan processing services must identify the Applicant's name.

Lender Service Provider Agreements



- The full **term** of the contract, including **renewal options**, must be stated.
- The contract must identify terms and conditions satisfactory to SBA that permit either party to **terminate the contract** prior to its expiration.

Lender Service Provider Agreements



- The contract must also contain the following statements or disclosures:
 - The Lender and the LSP will not engage in the sharing of Secondary Market premium.
 - The LSP will not assume a portion of the risk of the unguaranteed portion of any loan.
 - Disclosure by the LSP of any affiliations with other financial institutions, commercial lenders, CDCs, CUSOs, CUs other LSPs or loan brokers. (See 13 CFR § 121.103 re: “Affiliation”.)

Lender Service Provider Agreements



- Disclosure of any prior or existing relationship, other than the contractual one created by the Agreement, **or** a statement that no such relationship exists.
- The agreement is subject to all applicable laws, regulations, and policies including all SBA Loan Program Requirements.
- In the event this LSP Agreement conflicts with any other contract or agreement between the parties, now or in the future, this LSP Agreement will control with respect to Lender's SBA loan portfolio.

Lender Service Provider Agreements

➤ **No longer required** is the sentence:



This agreement is binding on any affiliates and successors of the Lender and the LSP.

Lender Service Provider Agreements



The new disclosures and statements must be incorporated into **all** LSP Agreements, including those that were approved prior to January 1, 2018.

Lender Service Provider Agreements



- All participating **Lenders** must submit each LSP Agreement to the **LGPC** for review.
- Lenders may **submit** the agreements to LSPAgreements@sba.gov.
- If there are any changes to an LSP Agreement after review by the SBA, the **Lender** must submit the revised Agreement to SBA for review.

Lender Service Provider Agreements



- As always, we ask that all documents submitted bear a **descriptive title and subject line** (e.g., “**LSPA – [lender name] and [LSP name]**”). This greatly reduces the possibility of errors on our part in a high volume environment.
- We cannot accept **encrypted** documents.
- When and if either party **terminates** the Agreement, **let us know!**

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A little more on fees



- Subject to the prohibition on splitting premiums, lenders have **reasonable** discretion in setting compensation for Lender Service Providers. **However such compensation may not be directly charged to an Applicant or borrower.** (13 CFR § 103.5(c))

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