(3) The ALP-CDC must be aware that SBA counsel will review for legal sufficiency, all legal documents prepared for SBA's signature. An ALP-CDC may want to consult its own counsel, if appropriate, before submitting such documents to SBA, in anticipation of such review by SBA counsel.

15. What servicing actions may the Premier Certified Lenders Program (PCLP) CDC approve with unilateral Authority?

a. In the Regulations, 13 CFR §120.536 identifies certain servicing and liquidation actions that require the prior written consent of SBA for PCLP CDCs.

b. PCLP CDCs must adhere to the same prudent lending standards for loan servicing followed by commercial lenders on loans without a government guarantee when servicing 504 loans in their portfolio. (see 13 CFR §120.535)

c. PCLP CDC Servicing Policy.

(1) PCLP CDCs are required to take all "unilateral" servicing actions without prior SBA approval for all loans in its portfolio. PCLP CDCs must:

(a) Have SBA's prior written approval for all non-unilateral actions;

(b) Notify SBA of any action taken under its unilateral authority that would require a change in SBA's database or in the 504 loan authorization; and

(c) Document the justifications for its decisions and retain these and supporting documents in its file for future SBA review to determine if the action taken by the CDC was prudent, commercially reasonable, and complied with all loan program requirements.

(2) If a PCLP CDC does not have a satisfactory SBA performance, SBA may withdraw the CDC's unilateral authority until the CDC's performance is satisfactory. The PCLP CDC's risk rating and its performance on its risk management benchmarks in the CDC Management Report, among other factors, will be considered in determining satisfactory SBA performance.

d. Actions that require SBA's prior written approval are as follows.

(1) Increasing the principal amount of a loan above that authorized by SBA at loan origination.

(2) Conferring a preference (or the appearance of a preference) on a CDC (or any employee of the CDC) or with a third party lender (or associate of the third party lender).

(3) Engaging in any activity that creates a conflict of interest (or the appearance of a conflict of interest) with a CDC (or any employee of the CDC) or with a third party lender (or associate of the third party lender).

(4) Compromising the principal balance of a loan or releasing a guarantor for less than the full amount owed.

(5) Taking title to any property in the name of SBA.

(6) Taking title to environmentally contaminated property, or taking over operation and control of a business that handles hazardous substances or hazardous wastes.

(7) Transferring or selling any loan(s).

(8) Taking any servicing action that is in conflict with SBA's regulations in effect at the time of the action.

(9) Selling the operating company where the EPC retains ownership of the project collateral.

(10) Approving a subordination:

(a) When SBA is being asked to subordinate its lien position to a loan that allows an increase in the third party loan.

(b) When SBA is being asked to subordinate its lien position to a loan that provides funds to the assumptor to pay the seller for the business (cash out subordination), or

(c) When the third party lender has not executed a third party lender agreement in accordance with the 504 Authorization.

(11) Approving the release of the total project collateral without paying off the entire 504 loan/debenture.

(12) Approving a release of any portion of the project property unless:

(a) When the property is sold, all net proceeds of the sale of that portion of the project property are applied to the third party lender's loan.

(b) When the property is not sold, funds equating to the fair market value are paid to the third party lender's loan to reduce the balance, or

(c) When the property is not sold, additional collateral with a comparable fair market value is provided to secure the loan.

(13) Approving an assumption:

(a) To an ineligible business,

(b) When it includes subordinations that provides for an increase in the third party lender's loan,

(c) When it includes cash out subordinations, or

(d) When the sale involves a contract for deed. A contract for deed is prohibited. A contract for deed exists when the seller retains the title to the property until an agreed amount is paid by the buyer. After the agreed amount is paid, the seller conveys the property to the buyer.