

### § 103.31

### 25 CFR Ch. I (4–1–06 Edition)

and personal property used in the borrower's business or as collateral for the loan, and on all applicable payroll taxes;

(g) Assure, to the extent reasonably practicable, that all required insurance policies remain in effect, including hazard, liability, key man life, and other kinds of insurance, in amounts reasonably necessary to protect the interests of the borrower, the borrower's business, and the lender;

(h) Assure, to the extent reasonably practicable, that the borrower remains in compliance with all applicable Federal, State, local and tribal laws, including environmental laws and laws concerning the preservation of historical and archeological sites and data;

(i) Assure, to the extent reasonably practicable, that the borrower causes any construction, renovation, or demolition work funded by the loan to proceed in accordance with approved construction contracts and plans and specifications, which must be sufficient in scope and detail to adequately govern the work;

(j) Reserve for itself and BIA the right to inspect the borrower's business records and all loan collateral at any reasonable time;

(k) Promptly notify the borrower in writing of any material breach by the borrower of the terms of its loan, with specific instructions on how to cure the breach and a deadline for doing so;

(l) Participate in any probate, receivership, bankruptcy, or similar proceeding involving the borrower and any guarantor or co-maker of the borrower's debt, to the extent necessary to maintain the greatest possible rights to repayment; and

(m) Otherwise seek to avoid and mitigate any potential loss arising from the loan, using at least that level of care the lender would use if it did not have a BIA loan guaranty or insurance coverage.

#### **§ 103.31 What loan servicing requirements apply to BIA?**

Once a lender extends a loan that is guaranteed or insured under the Program, BIA has no responsibility for decisions concerning it, except for:

(a) Any approvals required under this part;

(b) Any decisions reserved to BIA under conditions of BIA's guaranty certificate or insurance coverage; and

(c) Decisions concerning a loan that the lender has assigned to BIA or to which BIA is subrogated by virtue of paying a claim based on a guaranty certificate or insurance coverage.

#### **§ 103.32 What sort of loan documentation does BIA expect the lender to maintain?**

For every loan guaranteed or insured under the Program, the lender must maintain:

(a) BIA's original loan guaranty certificate or insurance coverage approval letter, if applicable;

(b) Original signed and/or certified counterparts of all final loan documents, including those listed in § 103.17 (concerning documents required for loan closing), all renewals, modifications, and additions to those documents, and signed settlement statements;

(c) Originals or copies, as appropriate, of all documents gathered by the lender under §§ 103.12, 103.13 and 103.26 (concerning information submitted by the borrower in its loan application, and information supplied to BIA in the lender's loan guaranty or insurance coverage application);

(d) Originals or copies, as appropriate, of all applicable insurance binders or certificates, including without limitation hazard, liability, key man life, and title insurance;

(e) A complete and current history of all loan transactions, including dated disbursements, payments, adjustments, and notes describing all contacts with the borrower;

(f) Originals or copies, as appropriate, of all correspondence with the borrower, including default notices and evidence of receipt;

(g) Originals or copies, as appropriate, of all correspondence, notices, news items or other information concerning the borrower, whether gathered by the lender or furnished to it, containing material information about the borrower and its business operations;

(h) Originals or copies, as appropriate, of all advertisements, notices, title instruments, accountings, and

other documentation of efforts to liquidate loan collateral; and

(i) Originals or copies, as appropriate, of all notices, pleadings, motions, orders, and other documents associated with any legal proceeding involving the lender and the borrower or its assets, including without limitation judicial or non-judicial foreclosure proceedings, suits to collect payment, bankruptcy proceedings, probate proceedings, and any settlement associated with threatened or actual litigation.

**§ 103.33 Are there reporting requirements?**

(a) The lender must periodically report the borrower's loan payment history so that BIA can recalculate the government's contingent liability. Loan payment history reports must be quarterly unless BIA provides otherwise for a particular loan. These reports can be in any format the lender desires, as long as they contain:

- (1) The lender's name;
- (2) The borrower's name;
- (3) A reference to BIA's Loan Guaranty Certificate or Loan Insurance Agreement number;
- (4) The lender's internal loan number; and
- (5) The date and amount of all loan balance activity for the reporting period.

(b) If applicable, the lender must supply a calculation of any interest subsidy payments that are due, as indicated in § 103.23.

(c) If there is a transfer of any or all of the lender's ownership interest in the loan, the party receiving the ownership interest may be required to notify BIA, as indicated in §§ 103.28 and 103.29.

(d) If there is a default on the loan, the lender must notify BIA, as indicated in §§ 103.35 and 103.36.

(e) If the borrower ceases to qualify for a BIA-guaranteed or insured loan under § 103.25(b), the lender must promptly notify BIA even if the lender does not pursue default remedies under §§ 103.35 and 103.36. This notice allows BIA to eliminate the guaranty or insurance coverage from its active recordkeeping system.

(f) If the loan is prepaid in full, the lender must promptly notify BIA in

writing so that BIA can eliminate the guaranty or insurance coverage from its active recordkeeping system.

(g) If a lender changes its name, it should notify BIA in accordance with § 103.11(c).

**§ 103.34 What if the lender and borrower decide to change the terms of the loan?**

(a) The lender must obtain written BIA approval before modifying a loan guaranteed or insured under the Program, if the change will:

(1) Increase the borrower's outstanding principal amount (if a term loan), or maximum available credit (if a revolving loan).

(i) BIA will approve or disapprove a loan increase based upon the lender's explanation of the borrower's need for additional funding, and updated information of the sort required under §§ 103.12, 103.13, and 103.26, as applicable.

(ii) Upon approval by BIA and payment of an additional guaranty or insurance premium in accordance with §§ 103.8 and 103.19 and this section, the entire outstanding loan amount, as modified, will be guaranteed or insured (as the case may be) to the extent BIA specifies. The lender must pay the additional premium only on the increase in the outstanding principal amount of the loan (if a term loan) or the increase in the credit limit available to the borrower (if a revolving loan).

(iii) Lenders may not increase the outstanding principal amount of a loan guaranteed or insured under the Program if a significant purpose of doing so would be to allow the borrower to pay accrued loan interest it otherwise would have difficulty paying.

(2) Permanently adjust the loan repayment schedule.

(3) Increase a fixed interest rate, convert a fixed interest rate to an adjustable interest rate, or convert an adjustable interest rate to a fixed interest rate.

(4) Allow any changes in the identity or organizational structure of the borrower.

(5) Allow any material change in the use of loan proceeds or the nature of the borrower's business.

(6) Release any collateral taken as security for the loan, except items sold