

§ 103.37

25 CFR Ch. I (4-1-06 Edition)

(2) The lender's failure to provide timely notice either:

(i) Has not caused any actual or potential prejudice to BIA; or

(ii) Was the result of the lender relying upon specific written advice from a BIA official.

§ 103.37 What must the lender do to collect payment under its loan guaranty certificate or loan insurance coverage?

(a) For guaranteed loans, the lender must submit a claim for its loss on a form approved by BIA.

(1) If the lender makes an immediate claim under §103.36(d)(1), it must send BIA the claim for loss within 90 calendar days of the default by certified mail (return receipt requested), or by a nationally-recognized overnight delivery service (signature of recipient required). The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan only through the date it submits the claim.

(2) If the lender elects first to liquidate the collateral securing the loan under §103.36(d)(2), and has a residual loss after doing so, it must send BIA the claim for loss within 30 calendar days of completing all liquidation efforts. The lender must perform collateral liquidation as expeditiously and thoroughly as is reasonably possible, within the standards established by this part. The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan only through the earlier of:

(i) The date it submits the claim;

(ii) The date the lender gets a judgment of foreclosure or sale (or the non-judicial equivalent) on the principal collateral securing the loan; or

(iii) One hundred eighty calendar days after the date of the default.

(b) For insured loans, after liquidating all loan collateral, the lender must submit a claim for its loss (if any) on a form approved by BIA. The lender must send BIA the claim for loss by certified mail (return receipt requested), or by a nationally-recognized overnight delivery service (signature of recipient required) within 30 calendar days of completing all liquidation efforts. The lender must perform collat-

eral liquidation as expeditiously and thoroughly as is reasonably possible, within the standards established by this part. The lender's claim for loss may include interest that has accrued on the outstanding principal amount of the loan through the earlier of:

(1) The date it submits the claim;

(2) The date the lender gets a judgment of foreclosure or sale (or the non-judicial equivalent) on the principal collateral securing the loan; or

(3) One hundred eighty calendar days after the date of the default.

(c) Whenever the lender liquidates loan collateral under §103.36(d)(2), it must vigorously pursue all reasonable methods of collection concerning the loan collateral before submitting a claim for its residual loss (if any) to BIA. Without limiting the generality of the preceding sentence, the lender must:

(1) Foreclose, either judicially or non-judicially, all rights of redemption the borrower or any co-maker or guarantor of the loan (other than BIA) may have in collateral under any mortgage securing the loan;

(2) Gather and dispose of all personal property pledged as collateral under the loan, in accordance with applicable law;

(3) Exercise all set-off rights the lender may have under contract or applicable law;

(4) Make demand for payment on the borrower, all co-makers, and all guarantors of the loan (other than BIA); and

(5) Participate fully in all bankruptcy proceedings that may arise involving the borrower and any co-maker or guarantor of the loan. Full participation might include, for example, filing a proof of claim in the case, attending creditors' meetings, and seeking a court order releasing the automatic stay of collection efforts so that the lender can liquidate affected loan collateral.

(d) BIA may require further information, including without limitation copies of any documents the lender is to maintain under §103.32 and all documentation of liquidation efforts, to help BIA evaluate the lender's claim for loss.

(e) BIA will pay the lender the guaranteed or insured portion of the lender's claim for loss, to the extent the claim is based upon reasonably sufficient evidence of the loss and compliance with the requirements of this part. BIA will render a decision on a claim for loss within 90 days of receiving all information it requires to properly evaluate the loss.

§ 103.38 Is there anything else for BIA or the lender to do after BIA makes payment?

When BIA pays the lender on its claim for loss, the lender must sign and deliver to BIA an assignment of rights to its loan agreement with the borrower, in a document acceptable to BIA. Immediately upon payment, BIA is subrogated to all rights of the lender under the loan agreement with the borrower, and must pursue collection efforts against the borrower and any co-maker and guarantor, as required by law.

§ 103.39 When will BIA refuse to pay all or part of a lender's claim?

BIA may deny all or part of a lender's claim for loss when:

- (a) The loan is not guaranteed or insured as indicated in § 103.18;
- (b) The guarantee or insurance coverage has become invalid under §§ 103.28, 103.29, or 103.36(e);
- (c) The lender has not met the standard of care indicated in § 103.30;
- (d) The lender presents a claim for a residual loss after attempting to liquidate loan collateral, and:
 - (1) The lender has not made a reasonable effort to liquidate all security for the loan;
 - (2) The lender has taken an unreasonable amount of time to complete its liquidation efforts, the probable consequence of which has been to reduce overall prospects of loss recovery; or
 - (3) The lender's loss claim is inflated by unreasonable liquidation expenses or unjustifiable deductions from collateral liquidation proceeds applied to the loan balance; or
 - (e) The lender has otherwise failed in any material respect to follow the requirements of this part, and BIA can reasonably attribute some or all of the lender's loss to that failure.

§ 103.40 Will BIA make exceptions to its criteria for denying payment?

(a) BIA will not reduce or deny payment solely on the basis of §§ 103.39(c) or (e) when the lender making the claim for loss:

- (1) Is a person to whom a previous lender transferred the loan under §§ 103.28 or 103.29 before maturity for value;
 - (2) Notified BIA of its acquisition of the loan interest as required by §§ 103.28 or 103.29;
 - (3) Had no involvement in or knowledge of the actions or circumstances that would have allowed BIA to reduce or deny payment to a previous lender; and
 - (4) Has not itself violated the standards set forth in §§ 103.39(c) or (e).
- (b) If BIA makes payment to a lender under this section, it may seek reimbursement from the previous lender or lenders who contributed to the loss by violating §§ 103.39(c) or (e).

§ 103.41 What happens if a lender violates provisions of this part?

In addition to reducing or eliminating payment on a specific claim for loss, BIA may either temporarily suspend, or permanently bar, a lender from making or acquiring loans under the Program if the lender repeatedly fails to abide by the requirements of this part, or if the lender significantly violates the requirements of this part on any single occasion.

§ 103.42 How long must a lender comply with Program requirements?

- (a) A lender must comply in general with Program requirements during:
 - (1) The effective period of its loan guaranty agreement or loan insurance agreement; and
 - (2) Whatever additional period is necessary to resolve any outstanding loan guaranty or insurance claims or coverage the lender may have.
- (b) Except as otherwise required by law, a lender must maintain records with respect to a particular loan for 6 years after either:
 - (1) The loan is repaid in full; or
 - (2) The lender accepts payment from BIA for a loss on the loan, pursuant to a guaranty certificate or an insurance agreement.