

Bureau of Indian Affairs, Interior

§ 103.4

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AUTHORITY: 25 U.S.C. 1498, 1511.

SOURCE: 66 FR 3867, Jan. 17, 2001, unless otherwise noted.

Subpart A—General Provisions

§ 103.1 What does this part do?

This part explains how to obtain and use a BIA loan guaranty or loan insurance agreement under the Program, and who may do so. It also describes how to obtain and use interest subsidy payments under the Program, and who may do so.

§ 103.2 Who does the Program help?

The purpose of the Program is to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The direct function of the Program is to help lenders reduce excessive risks on loans they make. That function in turn helps borrowers secure conventional financing that might otherwise be unavailable.

§ 103.3 Who administers the Program?

Authority for administering the Program ultimately rests with the Secretary, who may exercise that authority directly at any time. Absent a direct exercise of authority, however, the Secretary delegates Program authority to BIA officials through the U.S. Department of Interior Departmental Manual. A lender should submit all applications and correspondence to the BIA office serving the borrower's location.

§ 103.4 What kinds of loans will BIA guarantee or insure?

In general, BIA may guarantee or insure any loan made by an eligible lender to an eligible borrower to conduct a lawful business organized for profit. There are several important exceptions:

(a) The business must contribute to the economy of an Indian reservation or tribal service area recognized by BIA;

(b) The borrower may not use the loan for relending purposes;

(c) If any portion of the loan is used to refinance an existing loan, the borrower must be current on the existing loan; and

(d) BIA may not guarantee or insure a loan if it believes the lender would be

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willing to extend the requested financing without a BIA guaranty or insurance coverage.

§ 103.5 What size loan will BIA guarantee or insure?

BIA can guarantee or insure a loan or combination of loans of up to \$500,000 for an individual Indian, or more for an acceptable Indian business entity, Tribe, or tribal enterprise involving two or more persons. No individual Indian may have an outstanding principal balance of more than \$500,000 in guaranteed or insured loans at any time. BIA can limit the size of loans it will guarantee or insure, depending on the resources BIA has available.

§ 103.6 To what extent will BIA guarantee or insure a loan?

(a) BIA can guarantee up to 90 percent of the unpaid principal and accrued interest due on a loan.

(b) BIA can insure up to the lesser of:

(1) 90 percent of the unpaid principal and accrued interest due on a loan; or

(2) 15 percent of the aggregate outstanding principal amount of all loans the lender has insured under the Program as of the date the lender makes a claim under its insurance coverage.

(c) BIA's guaranty certificate or loan insurance agreement should reflect the lowest guaranty or insurance percentage rate that satisfies the lender's risk management requirements.

(d) Absent exceptional circumstances, BIA will allow no more than:

(1) Two simultaneous guarantees under the Program covering outstanding loans from the same lender to the same borrower; or

(2) One loan guaranty under the Program when the lender simultaneously has one or more outstanding loans insured under the Program to the same borrower.

§ 103.7 Must the borrower have equity in the business being financed?

The borrower must be projected to have at least 20 percent equity in the business being financed, immediately after the loan is funded. If a substantial portion of the loan is for construction or renovation, the borrower's equity may be calculated based upon the

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reasonable estimated value of the borrower's assets after completion of the construction or renovation.

§ 103.8 Is there any cost for a BIA guaranty or insurance coverage?

BIA charges the lender a premium for a guaranty or insurance coverage.

(a) The premium is:

(1) Two percent of the portion of the original loan principal amount that BIA guarantees; or

(2) One percent of the portion of the original loan principal amount that BIA insures, without considering the 15 percent aggregate outstanding principal limitation on the lender's insured loans.

(b) Lenders may pass the cost of the premium on to the borrower, either by charging a one-time fee or by adding the cost to the principal amount of the borrower's loan. Adding the premium to the principal amount of the loan will not make any further premium due. BIA will guarantee or insure the additional principal to the same extent as the original approved principal amount.

Subpart B—How a Lender Obtains a Loan Guaranty or Insurance Coverage

§ 103.9 Who applies to BIA under the Program?

The lender is responsible for determining whether it will require a BIA guaranty or insurance coverage, based upon the loan application it receives from an eligible borrower. If the lender requires a BIA guaranty or insurance coverage, the lender is responsible for completing and submitting a guaranty application or complying with a loan insurance agreement under the Program.

§ 103.10 What lenders are eligible under the Program?

(a) Except as specified in paragraph (b) of this section, a lender is eligible under the Program, and may be considered for BIA approval, if the lender is:

(1) Regularly engaged in the business of making loans;

(2) Capable of evaluating and servicing loans in accordance with reasonable and prudent industry standards; and

(3) Otherwise reasonably acceptable to BIA.

(b) The following lenders are not qualified to issue loans under the Program:

(1) An agency or instrumentality of the Federal Government;

(2) A lender that borrows money from any Federal Government source, other than the Federal Reserve Bank System, for purposes of relending;

(3) A lender that does not include the interest on loans it makes in gross income, for purposes of chapter 1, title 26 of the United States Code; and

(4) A lender that does not keep any ownership interest in loans it originates.

§ 103.11 How does BIA approve lenders for the Program?

(a) BIA approves each lender by entering into a loan guaranty agreement and/or a loan insurance agreement with it. BIA may provide up to three different levels of approval for a lender making guaranteed loans, depending on factors such as:

(1) The number of loans the lender makes under the Program;

(2) The total principal balance of the lender's Program loans;

(3) The number of years the lender has been involved with the Program;

(4) The relative benefits and opportunities the lender has given to Indian business efforts through the Program; and

(5) The lender's historical compliance with Program requirements.

(b) BIA will consider a lender's loan guaranty agreement and/or loan insurance agreement suspended as of:

(1) The effective date of a change in the lender's corporate structure;

(2) The effective date of a merger between the lender and any other entity, when the lender is not the surviving entity; or

(3) The start of any legal proceeding in which substantially all of the lender's assets may be subject to disposition through laws governing bankruptcy, insolvency, or receivership.

(c) A change in a lender's name, without any other change specified under paragraph (b) of this section, will not cause a suspension of the lender's loan guaranty agreement and/or loan insurance agreement. The lender should notify BIA of its name change as soon as possible.

(d) If a lender's loan guaranty agreement and/or loan insurance agreement is suspended under paragraph (b) of this section, the lender, or its successor in interest, must enter into a new loan guaranty agreement and/or loan insurance agreement with BIA in order to secure any new BIA loan guarantees or insurance coverage.

(e) The suspension of a loan guaranty agreement and/or loan insurance agreement does not affect the validity of any guaranty certificate or insurance coverage in effect before the date of the suspension. Any such certificate or insurance coverage will remain governed by applicable terms of the suspended loan guaranty agreement and/or loan insurance agreement.

§ 103.12 How does a lender apply for a loan guaranty?

To apply for a loan guaranty, a BIA-approved lender must submit to BIA a loan guaranty application request form, together with each of the following:

(a) A written explanation from the lender indicating why it needs a BIA guaranty for the loan, and the minimum loan guarantee percentage it will accept;

(b) A copy of the borrower's complete loan application;

(c) A description of the borrower's equity in the business being financed;

(d) A copy of the lender's independent credit analysis of the borrower's business, repayment ability, and loan collateral (including insurance);

(e) An original report from a nationally-recognized credit bureau, dated within 90 days of the date of the lender's loan guaranty application package, outlining the credit history of the borrower, and to the extent permitted by law, each co-maker or guarantor of the loan (if any);

(f) A copy of the lender's loan commitment letter to the borrower, showing at a minimum the proposed loan

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amount, purpose, interest rate, schedule of payments, and security (including insurance requirements), and the lender's terms and conditions for funding;

(g) The lender's good faith estimate of any loan-related fees and costs it will charge the borrower, as authorized under this part;

(h) If any significant portion of the loan will be used to finance construction, renovation, or demolition work, the lender's:

(1) Insurance and bonding requirements for the work;

(2) Proposed draw requirements; and

(3) Proposed work inspection procedures;

(i) If any significant portion of the loan will be used to refinance or otherwise retire existing indebtedness:

(1) A clear description of all loans being paid off, including the names of all makers, cosigners and guarantors, maturity dates, payment schedules, uncured delinquencies, collateral, and payoff amounts as of a specific date; and

(2) A comparison of the terms of the loan or loans being paid off and the terms of the new loan, identifying the advantages of the new loan over the loan being paid off.

§ 103.13 How does a lender apply for loan insurance coverage?

BIA-approved lenders can make loans insured under the Program in two ways, depending on the size of the loan:

(a) For loans in an original principal amount of up to \$100,000 per borrower, the lender can make each loan in accordance with the lender's loan insurance agreement, without specific prior approval from BIA.

(b) For loans in an original principal amount of over \$100,000, the lender must seek BIA's specific prior approval in each case. The lender must submit a loan insurance coverage application request form, together with the same information required for a loan guaranty under § 103.12, except for the information required by § 103.12(a).

(c) The lender must submit a loan insurance application package even for a loan of less than \$100,000 if:

(1) The total outstanding balance of all insured loans the lender is extend-

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ing to the borrower under the Program exceeds \$100,000; or

(2) the lender makes a request for interest subsidy, pursuant to § 103.21.

§ 103.14 Can BIA request additional information?

BIA may require the lender to provide additional information, whenever BIA believes it needs the information to properly evaluate a new lender, guaranty application, or insurance application. After BIA issues a loan guaranty or insurance coverage, the lender must let BIA inspect the lender's records at any reasonable time for information concerning the Program.

§ 103.15 Are there any prohibited loan terms?

A loan agreement guaranteed or insured under the Program may not contain:

(a) Charges by the lender styled as "points," loan origination fees, or any similar fees (however named), except that if authorized in the loan agreement, the lender may charge the borrower a reasonable annual loan servicing fee that:

(1) Is not included as part of the loan principal; and

(2) Does not bear interest;

(b) Charges of any kind by the lender or by any third party except for the reasonable and customary cost of legal and architectural services, broker commissions, surveys, compliance inspections, title inspection and/or insurance, lien searches, appraisals, recording costs, premiums for required hazard, liability, key man life, and other kinds of insurance, and such other charges as BIA may approve in writing;

(c) A loan repayment term of over 30 years;

(d) Payments scheduled less frequently than annually;

(e) A prepayment penalty, unless the terms of the penalty are clearly specified in BIA's loan guaranty or loan insurance conditions;

(f) An interest rate greater than what BIA considers reasonable, taking into account the range of rates prevailing in the private market for similar loans;

(g) A variable interest rate, unless the rate is tied to a specific prime rate

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published from time to time by a nationally recognized financial institution or news source;

(h) An increased rate of interest based on default;

(i) A fee imposed for the late repayment of any installment due, except for a late fee that:

(1) Is imposed only after the borrower is at least 30 days late with payment;

(2) Does not bear interest; and

(3) Equals no more than 5 percent of the late installment;

(j) An “insecurity” clause, or any similar provision permitting the lender to declare a loan default solely on the basis of its subjective view of the borrower’s changed repayment prospects;

(k) A requirement that the borrower take title to any real or personal property purchased with loan proceeds by a title instrument containing restrictions on alienation, control or use of the property, unless otherwise required by applicable law; or

(l) A requirement that a borrower which is a tribe provide as security a general assignment of the tribe’s trust income. If otherwise lawful, a tribe may provide as loan security an assignment of trust income from a specific source.

§103.16 How does BIA approve or reject a loan guaranty or insurance application?

(a) BIA reviews each guaranty or insurance application, and may evaluate each loan application independently from the lender. BIA bases its loan guaranty or insurance decisions on many factors, including compliance with this part, and whether there is a reasonable prospect of loan repayment from business cash flow, or if necessary, from liquidating loan collateral. Lenders are expected to obtain a first lien security interest in enough collateral to reasonably secure repayment of each loan guaranteed or insured under the Program, to the extent that collateral is available.

(b) BIA approves applications by issuing an approval letter, followed by the procedures in §103.18. If the guaranty or insurance application is incomplete, BIA may return the application to the lender, or hold the application while the lender submits the missing

information. If BIA denies the application, it will provide the lender with a written explanation, with a copy to the borrower.

§103.17 Must the lender follow any special procedures to close the loan?

(a) BIA officials or their representatives may attend the closing of any loan or loan modification that BIA agrees to guarantee or insure. For guaranteed loans, and insured loans that BIA must individually review under this part, the lender must give BIA notice of the date of closing at least 5 business days before closing occurs.

(b) At or prior to closing, the lender must obtain appropriate, satisfactory title and/or lien searches for each asset to be used as loan collateral.

(c) At or prior to closing, the lender must obtain recent appraisals for all real property and improvements to be used as collateral for the loan, to the extent required by law.

(d) At or prior to closing, the lender must document that the lender and borrower have complied with all applicable Federal, State, local, and tribal laws implicated by financing the borrower’s business, for example by securing:

(1) Copies of all permits and licenses required to operate the borrower’s business;

(2) Environmental studies required for construction and/or business operations under NEPA and other environmental laws;

(3) Archeological or historical studies required by law; and

(4) Certification by a registered surveyor or appropriate BIA official indicating that the proposed business will not be located in a special flood hazard area, as defined by applicable law.

(e) The lender must supply BIA with copies of all final, signed loan closing documents within 30 days following closing. To the extent applicable, loan closing documents must include the following:

(1) Promissory notes;

(2) Security agreements, including pledge and similar agreements, and related financing statements (together

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with BIA's written approval of any assignment of specific tribal trust assets under §103.15(1), or of any security interest in an individual Indian money account);

(3) Mortgage instruments or deeds of trust (together with BIA's written approval, if required by 25 U.S.C. 483a, or if the mortgage is of a leasehold interest in tribal trust property);

(4) Guarantees (other than from BIA);

(5) Construction contracts, and plans and specifications;

(6) Leases related to the business (together with BIA's written approval, if required under 25 CFR part 162);

(7) Attorney opinion letters;

(8) Resolutions made by a Tribe or business entity;

(9) Waivers or partial waivers of sovereign immunity; and

(10) Similar instruments designed to document the loan, establish the basis for a security interest in loan collateral, and comply with applicable law.

(f) Unless BIA indicates otherwise in writing, the lender must close a guaranteed or insured loan within 90 days of any approval provided under §103.16.

§ 103.18 How does BIA issue a loan guaranty or confirm loan insurance?

(a) A loan is guaranteed under the Program when all of the following occur:

(1) BIA issues a signed loan guaranty certificate bearing a series number, an authorized signature, a guaranty percentage rate, the lender's name, the borrower's name, the original principal amount of the loan, and such other terms and conditions as BIA may require;

(2) The loan closes and funds;

(3) The lender pays BIA the applicable loan guaranty premium; and

(4) The lender meets all of the conditions listed in the loan guaranty certificate.

(b) A loan is insured under the Program when all of the following occur:

(1) The loan's purpose and terms meet the requirements of the Program and the lender's loan insurance agreement with BIA;

(2) The loan closes and funds;

(3) The lender notifies BIA of the borrower's identity and organizational

structure, the amount of the loan, the interest rate, the payment schedule, and the date on which the loan closing and funding occurred;

(4) The lender pays BIA the applicable loan insurance premium;

(5) If over \$100,000 or if the loan requires interest subsidy, BIA approves the loan in writing; and

(6) If over \$100,000 or if the loan requires interest subsidy, the lender meets all of the conditions listed in BIA's written loan approval.

§ 103.19 When must the lender pay BIA the loan guaranty or insurance premium?

The premium is due within 30 calendar days of the loan closing. If not paid on time, BIA will send the lender written notice by certified mail (return receipt requested), or by a nationally-recognized overnight delivery service (signature of recipient required), stating that the premium is due immediately. If the lender fails to make the premium payment within 30 calendar days of the date of BIA's notice, BIA's guaranty certificate or insurance coverage with respect to that particular loan is void, without further action.

Subpart C—Interest Subsidy

§ 103.20 What is interest subsidy?

Interest subsidy is a payment BIA makes for the benefit of the borrower, to reimburse part of the interest payments the borrower has made on a loan guaranteed or insured under the Program. It is available to borrowers whose projected or historical earnings before interest and taxes, after adjustment for extraordinary items, is less than the industry norm.

§ 103.21 Who applies for interest subsidy payments, and what is the application procedure?

(a) An eligible lender must request interest subsidy payments on behalf of an eligible borrower, after determining that the borrower qualifies. Typically, the lender should include a request for interest subsidy at the time it applies for a guaranty or insurance coverage under the Program. A request for interest subsidy must be supported by the information required in §§103.12 and

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103.13 (relating to loan guaranty and insurance coverage applications). BIA approves, returns, or rejects interest subsidy requests in the same manner indicated in §103.16, based on the factors in §103.20 and BIA's available resources.

(b) BIA's approval of interest subsidy for an insured loan may provide for specific limitations on the manner in which the lender and borrower can modify the loan.

§ 103.22 How does BIA determine the amount of interest subsidy?

Interest subsidy payments should equal the difference between the lender's rate of interest and the rate determined in accordance with 25 U.S.C. 1464. BIA will fix the amount of interest subsidy as of the date it approves the interest subsidy request.

[66 FR 3867, Jan. 17, 2001, as amended at 67 FR 63543, Oct. 15, 2002]

§ 103.23 How does BIA make interest subsidy payments?

The lender must send BIA reports at least quarterly on the borrower's loan payment history, together with a calculation of the interest subsidy then due. The lender's reports and calculation do not have to be in any specific format, but in addition to the calculation the reports must contain at least the information required by §103.33(a). Based on the lender's reports and calculation, BIA will send interest subsidy payments to the borrower in care of the lender. The payments belong to the borrower, but the borrower and lender may agree in advance on how the borrower will use interest subsidy payments. BIA may verify and correct interest subsidy calculations and payments at any time.

§ 103.24 How long will BIA make interest subsidy payments?

(a) BIA will issue interest subsidy payments for the term of the loan, up to 3 years. If interest subsidy payments still are justified, the lender may apply for up to two 1-year extensions of this initial term. BIA will make interest subsidy payments on a single loan for no more than 5 years.

(b) BIA will choose the date from which it calculates interest subsidy

years, usually the date the lender first extends the loan funds. Interest subsidy payments will apply to all loan payments made in the calendar years following that date.

(c) Interest subsidy payments will not be due for any loan payment made after the corresponding loan guaranty or insurance coverage stops under the Program, regardless of the circumstances.

Subpart D—Provisions Relating to Borrowers

§ 103.25 What kind of borrower is eligible under the Program?

(a) A borrower is eligible for a BIA-guaranteed or insured loan if the borrower is:

- (1) An Indian individual;
- (2) An Indian-owned business entity organized under Federal, State, or tribal law, with an organizational structure reasonably acceptable to BIA;
- (3) A tribe; or
- (4) A business enterprise established and recognized by a tribe.

(b) To be eligible for a BIA-guaranteed or insured loan, a business entity or tribal enterprise must be at least 51 percent owned by Indians. If at any time a business entity or tribal enterprise becomes less than 51 percent Indian owned, the lender either may declare a default as of the date the borrower stopped being at least 51 percent Indian owned and exercise its remedies under this part, or else continue to extend the loan to the borrower and allow BIA's guaranty or insurance coverage to become invalid.

[66 FR 3867, Jan. 17, 2001; 66 FR 46307, Sept. 4, 2001]

§ 103.26 What must the borrower supply the lender in its loan application?

The lender may use any form of loan application it chooses. However, the borrower must supply the lender the information listed in this section in order for BIA to process a guaranty or insurance coverage application:

- (a) The borrower's precise legal name, address, and tax identification number or social security number;
- (b) Proof of the borrower's eligibility under the Program;

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(c) A statement signed by the borrower, indicating that it is not delinquent on any Federal tax or other debt obligation;

(d) The borrower's business plan, including resumes of all principals and a detailed discussion of the product or service to be offered, market factors, the borrower's marketing strategy, and any technical assistance the borrower may require;

(e) A detailed description of the borrower's equity in the business being financed, including the method(s) of valuation;

(f) The borrower's balance sheets and operating statements for the preceding 3 years, or so much of that period that the borrower has been in business;

(g) The borrower's current financial statement, and the financial statements of all co-makers and guarantors of the loan (other than BIA);

(h) At least 3 years of financial projections for the borrower's business, consisting of pro-forma balance sheets, operating statements, and cash flow statements;

(i) A detailed list of all proposed collateral for the loan, including asset values and the method(s) of valuation;

(j) A detailed list of all proposed hazard, liability, key man life, and other kinds of insurance the borrower will maintain on its business assets and operations;

(k) If any significant portion of the loan will be used to finance construction, renovation, or demolition work:

(1) Written quotes for the work from established and reputable contractors; and

(2) To the extent available, copies of all construction and architectural contracts for the work, plans and specifications, and applicable building permits;

(l) If the borrower is a tribe or a tribal enterprise, resolutions by the tribe and proof of authority under tribal law permitting the borrower to borrow the loan amount and offer the proposed loan collateral; and

(m) If the borrower is a business entity, resolutions by the appropriate governing officials and proof of authority under its organizing documents permitting the borrower to borrow the loan

amount and offer the proposed loan collateral.

§ 103.27 Can the borrower get help preparing its loan application or putting its loan funds to use?

A borrower may seek BIA's assistance when preparing a loan application or when planning business operations, including assistance identifying and complying with applicable laws as indicated by § 103.17(d). The borrower should contact the BIA field or agency office serving the area in which the borrower's business is to be located, or if there is no separate field or agency office serving the area, then the borrower should contact the BIA regional office serving the area.

Subpart E—Loan Transfers

§ 103.28 What if the lender transfers part of the loan to another person?

(a) A lender may transfer one or more interests in a guaranteed loan to another person or persons, as long as the parties have in place an agreement that designates one person to perform all of the duties required of the lender under the Program and the loan guaranty certificate. Starting on the date of the transfer, only the person designated to perform the duties of the lender will be entitled to exercise the rights conferred by BIA's loan guaranty certificate, and will from that point forward be considered the lender for purposes of the Program. A lender under the Program must both service the guaranteed loan and own at least a 10 percent interest in the guaranteed loan. BIA will not consider more than one person at any given time to be the lender with respect to any loan guaranty certificate. If the person designated to perform the duties of the lender in an agreement among loan participants is not the original lender, then the provisions of § 103.29(a) will apply (relating to sale or assignment of guaranteed loans), and the person designated to perform the duties of the lender must give BIA notice of its interest in the loan. Failure to provide notice in accordance with § 103.29(a) will void BIA's loan guaranty certificate, without further action.

(b) Transferring any interest in an insured loan to another person will void the insurance coverage for that loan, except where the transfer is effected by a merger.

§ 103.29 What if the lender transfers the entire loan?

(a) A lender may transfer all of its rights in a guaranteed loan to any other person. The acquiring person must send BIA written notice of the transfer, describing the borrower, the loan, BIA's loan guaranty certificate number, and the acquiring person's name and address. Starting on the date of the transfer, only the acquiring person will be entitled to exercise the rights conferred by BIA's loan guaranty certificate, and will from that point forward be considered the lender for purposes of the Program. The acquiring person must service the guaranteed loan and otherwise perform all of the duties required of the lender under the Program and the loan guaranty certificate. Except when a transfer is effected by a merger, any failure by the acquiring person to send BIA proper notice of the transfer within 30 calendar days of the transfer date will void BIA's loan guaranty certificate, without further action.

(b) Transferring an insured loan to another person will void the insurance coverage for that loan, except where the transfer is effected by a merger.

(c) If a lender is not the surviving entity after a merger, the lender's successor must notify BIA in writing of the change within 30 calendar days of the merger. The lender also must re-apply to become an approved lender under the Program, as indicated in § 103.11.

Subpart F—Loan Servicing Requirements

§ 103.30 What standard of care must a lender meet?

Lenders must service all loans guaranteed or insured under the Program in a commercially reasonable manner, in accordance with standards and procedures adopted by prudent lenders in the BIA region in which the borrower's business is located, and in accordance with this part. If the lender fails to fol-

low any of these standards, BIA may reduce or eliminate entirely the amount payable under its guaranty or insurance coverage to the extent BIA can reasonably attribute the loss to the lender's failure. BIA also may deny payment completely if the lender gets a loan guaranty or insurance coverage through fraud, or negligently allows a borrower's fraudulent loan application or use of loan funds to go undetected. In particular, and without limitation, lenders must:

(a) Check and verify information contained in the borrower's loan application, such as the borrower's eligibility, the authority of persons acting on behalf of the borrower, and the title status of any proposed collateral;

(b) Take reasonable precautions to assure that loan proceeds are used as specified in BIA's guaranty certificate or written insurance approval, or if not so specified, then in descending order of importance:

(1) BIA's written loan guaranty approval;

(2) The loan documents;

(3) The terms of the lender's final loan commitment to the borrower; or

(4) The borrower's loan application;

(c) When feasible, require the borrower to use automatic bank account debiting to make loan payments;

(d) Require the borrower to take title to real and personal property purchased with loan proceeds in the borrower's own name, except for real property to be held in trust by the United States for the benefit of a borrower that is a tribe;

(e) Promptly record all security interests and subsequently keep them in effect. Lenders must record all mortgages and other security interests in accordance with State and local law, including the laws of any tribe that may have jurisdiction. Lenders also must record any leasehold mortgages or assignments of income involving individual Indian or tribal trust land with the BIA office having responsibility for maintaining records on that trust land;

(f) Assure, to the extent reasonably practicable, that the borrower and any guarantor of the loan (other than BIA) keep current on all taxes levied on real

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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;

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(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

in the ordinary course of business and promptly replaced by similar items of collateral, such as inventory.

(7) Allow the borrower to move any significant portion of its business operations to a location that is not on or near an Indian reservation or tribal service area recognized by BIA.

(8) Be likely to materially increase the risk of a claim on BIA's guaranty or insurance coverage, or materially reduce the aggregate value of the collateral securing the loan.

(9) Cure a default for which BIA is to receive notice under § 103.35(b).

(b) In the case of an insured loan, the amount of which will not exceed \$100,000 when combined with all other insured loans from the lender to the borrower, the lender need not obtain BIA's prior approval to make any of the loan modifications indicated in § 103.34(a), except as provided in § 103.21(b). However, all loan modifications must remain consistent with the lender's loan insurance agreement with BIA, and in the event of an increase in the borrower's outstanding principal amount (if a term loan), or maximum available credit (if a revolving loan), the lender must send BIA an additional premium payment in accordance with §§ 103.8, 103.19 and this section. 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). To the extent a loan modification changes any of the information supplied to BIA under § 103.18(b)(3), the lender also must promptly notify BIA of the new information.

(c) Subject to any applicable BIA loan guaranty or insurance coverage conditions, a lender may extend additional loans to a borrower without BIA approval, if the additional loans are not to be guaranteed or insured under the Program.

Subpart G—Default and Payment by BIA

§ 103.35 What must the lender do if the borrower defaults on the loan?

(a) The lender must send written notice of the default to the borrower, and

otherwise meet the standard of care established for the lender in this part. The lender's notice to the borrower should be sent as soon as possible after the default, but in any event before the lender's notice to BIA under paragraph (b) of this section. For purposes of the Program, "default" will mean a default as defined in this part.

(b) The lender also must send written notice of the default to BIA by certified mail (return receipt requested), or by a nationally-recognized overnight delivery service (signature of recipient required) within 60 calendar days of the default, unless the default is fully cured before that deadline. This notice is required even if the lender grants the borrower a forbearance under § 103.36(a). One purpose of the notice is to give BIA the opportunity to intervene and seek assistance for the borrower, even though BIA has no duty, either to the lender or the borrower, to do so. Another purpose of the notice is to permit BIA to plan for a possible loss claim from the lender, under § 103.36(d). The lender's notice must clearly indicate:

- (1) The identity of the borrower;
- (2) The applicable Program guaranty certificate or insurance agreement number;
- (3) The date and nature of all bases for default;
- (4) If a monetary default, the amount of past due principal and interest, the date through which interest has been calculated, and the amount of any late fees, precautionary advances, or other amounts the lender claims;
- (5) The nature and outcome of any correspondence or other contacts with the borrower concerning the default; and
- (6) The precise nature of any action the borrower could take to cure the default.

§ 103.36 What options and remedies does the lender have if the borrower defaults on the loan?

(a) The lender may grant the borrower a temporary forbearance, even beyond any default cure periods specified in the loan documents, if doing so

(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.

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(c) At any time 2 years or more following one of the events specified in paragraphs (b)(1) or (2) of this section, a lender may convert its records for corresponding loans to any electronic format that is readily retrievable and that provides an accurate, detailed image of the original records. Upon converting its records in this manner, the lender may dispose of its original loan records.

(d) This section does not restrict any claims BIA may have against the lender or any other party arising from the lender's participation in the Program.

§ 103.43 What must the lender do after repayment in full?

The lender must completely and promptly release of record all remaining collateral for a guaranteed or insured loan after the loan has been paid in full. The release must be at the lender's sole cost. In addition, if the loan is prepaid the lender must notify BIA in accordance with § 103.33(f).

Subpart H—Definitions and Miscellaneous Provisions

§ 103.44 What certain terms mean in this part.

BIA means the Bureau of Indian Affairs within the United States Department of the Interior.

Default means:

- (1) The borrower's failure to make a scheduled loan payment when it is due;
- (2) The borrower's failure to meet a material condition of the loan agreement;
- (3) The borrower's failure to comply with any other condition, covenant or obligation under the terms of the loan agreement within applicable grace or cure periods;
- (4) The borrower's failure to remain at least 51 percent Indian owned, as provided in § 103.25(b);
- (5) The filing of a voluntary or involuntary petition in bankruptcy listing the borrower as debtor;
- (6) The imposition of a Federal, State, local, or tribal government lien on any assets of the borrower or assets otherwise used as collateral for the loan, except real property tax liens imposed by law to secure payments that are not yet due;

(7) Any default defined in the loan agreement, to the extent the definition is not inconsistent with this part.

Equity means the value, after deducting all debt, of the borrower's tangible assets in the business being financed, on which a lender can perfect a first lien security interest. It can include cash, securities, or other cash equivalent instruments, but cannot include the value of contractual options, the right to pay below market rental rates, or similar rights if those rights:

- (1) Are unassignable; or
- (2) Can expire before maturity of the loan.

Indian means a person who is a member of a tribe as defined in this part.

Loan agreement means the collective terms and conditions under which the lender extends a loan to a borrower, as reflected by the documents that evidence the loan.

Mortgage means a consensual lien on real or personal property in favor of the lender, given by the borrower or a co-maker or guarantor of the loan (other than BIA), to secure loan repayment. The term "mortgage" includes "deed of trust."

NEPA means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Person means any individual or distinct legal entity.

Program means the BIA's Loan Guaranty, Insurance, and Interest Subsidy Program, established under 25 U.S.C. 1481 *et seq.*, 25 U.S.C. 1511 *et seq.*, and this part 103.

Reservation means any land that is an Indian reservation, California rancheria, public domain Indian allotment, pueblo, Indian colony, former Indian reservation in Oklahoma, or land held by an Alaska Native corporation under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the United States Department of the Interior, or his authorized representative.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, rancheria, village, community or corporation that the Secretary acknowledges to exist as an Indian tribe, and that is eligible for services from BIA.

§ 103.45 Information collection.

(a) The information collection requirements of §§ 103.11, 103.12, 103.13, 103.14, 103.17, 103.21, 103.23, 103.26, 103.32, 103.33, 103.34, 103.35, 103.36, 103.37, and 103.38 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076-0020. The information will be used to approve and make payments on Federal loan guarantees, insurance agreements, and interest subsidy awards. Response is required to obtain a benefit.

(b) The burden on the public to report this information is estimated to average from 15 minutes to 2 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Information Collection Control Officer, Bureau of Indian Affairs, MS 4613, 1849 C Street, NW., Washington, DC 20240.

PART 111—ANNUITY AND OTHER PER CAPITA PAYMENTS

Sec.

- 111.1 Persons to share payments.
- 111.2 Enrolling non-full-blood children.
- 111.3 Payments by check.
- 111.4 Election of shareholders.
- 111.5 Future payments.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10549, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 111.1 Persons to share payments.

In making all annuity and other per capita payments, the funds shall be equally divided among the Indians entitled thereto share and share alike. The roll for such payments should be prepared on Form 5-322,¹ in strict alphabetical order by families of husband, wife, and unmarried dependent minor children. Unless otherwise instructed,

(a) Indians of both sexes may be considered adults at the age of 18 years;

¹Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

(b) Deceased enrollees may be carried on the rolls for one payment after death;

(c) Where final rolls have been prepared constituting the legal membership of the tribe, only Indians whose names appear thereon are entitled to share in future payments, after-born children being excluded and the shares of deceased enrollees paid to the heirs if determined or if not determined credited to the estate pending determination; and

(d) The shares of competent Indians will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations.

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see part 15 and subpart G of part 11 of this chapter. For individual Indian money regulations, see part 115 of this chapter.

§ 111.2 Enrolling non-full-blood children.

Where an Indian woman was married to a white man prior to June 7, 1897, and was at the time of her marriage a recognized member of the tribe even though she left it after marriage and lived away from the reservation, the children of such a marriage should be enrolled—and, also in the case of an Indian woman married to a white man subsequent to the above date but who still maintains her affiliation with the tribe and she and her children are recognized members thereof; however, where an Indian woman by marriage with a white man after June 7, 1897, has, in effect, withdrawn from the tribe and is no longer identified with it, her children should not be enrolled. In case of doubt all the facts should be submitted to the Bureau of Indian Affairs, Washington, D.C., for a decision.

§ 111.3 Payments by check.

All payments should be made by check. In making payments to competent Indians, each check should be drawn to the order of the enrollee and given or sent directly to him. Powers of attorney and orders given by an Indian to another person for his share in