

§ 103.29

25 CFR Ch. I (4-1-03 Edition)

(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