

## § 103.38

(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.

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

### **§ 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.

(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.