

## § 101.12

## 25 CFR Ch. I (4-1-05 Edition)

terms. Unless otherwise specifically provided in a loan contract, the interest rate on advances made after April 12, 1974, will be at a rate determined pursuant to section 104 of title I of the Indian Financing Act of 1974. The interest rate on loans for expert assistance will be at a rate established in § 101.25 herein.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

### § 101.12 Records and reports.

Loan agreements between the United States and tribes, corporations, partnerships, cooperative associations and individual Indians for financing economic enterprises, and to relending organizations, will require that borrowers establish and maintain accounting and operating records that are satisfactory to the Commissioner and submit written reports as required by the Commissioner. The records, accounts, and loan files shall be available for examination and audit by the Commissioner at any reasonable time. Unless an exception is approved by the Commissioner, borrowers will be required to have an annual audit made of the records of relending programs and economic enterprises financed with revolving loan funds, by a certified public accountant or a firm of certified public accountants satisfactory to the Commissioner.

### § 101.13 Security.

(a) United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is

sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(b) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 152.34 and the Act of March 29, 1956 (70 Stat. 62; (25 U.S.C. 483a)). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the loan in case of default. On proposed foreclosures which involve the sale of individually held trust or restricted land given as security for a loan, the tribe of the reservation on which the land is located will be notified in writing at least thirty calendar days in advance of the anticipated date of sale. Land purchased by a tribe with the proceeds of a loan from the revolving loan fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe may not be mortgaged as security for a loan.

(1) Title to any land purchased by a tribe or by an individual Indian with revolving loan funds may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control, or use.

(c) Mortgages of leasehold interests in land held in trust or restricted status by an individual Indian, may be

## Bureau of Indian Affairs, Interior

## § 101.15

taken for the purpose of borrowing capital for the development and improvement of the leased premises when permitted in the lease or lease modification agreement. Such mortgages must be approved by the lessor and Commissioner. (70 Stat. 62, (25 U.S.C. 483a)).

(d) Individuals may give assignments of income from trust property as security for loans. Tribes may give assignments of trust income as security for loans provided that the assignment shall be specific as to the source(s) of income being assigned. All assignments of trust income require approval by the Commissioner before becoming effective.

(e) Chattels may be given as security for a loan. A mortgage on chattels, the title to which is known to be in trust, requires Commissioner approval. Non-trust chattels may be mortgaged without approval of any federal official.

(f) Crops grown on lands held in trust or restricted status for the benefit of an individual Indian may be given as security for a loan when approved by the Commissioner. Crops grown on leased, trust or restricted land may be given as security for a loan when permitted by the provisions of a lease or when the owner gives written consent. Approval of the lien document by the Commissioner is required. Crops grown on trust or restricted land held by a tribe which has been assigned to an individual for use may be given as security for a loan, provided the terms of the assignment permit the assignee to give the crops as security for a loan or the tribe's governing body specifically gives consent. The lien document requires Commissioner approval. Crops grown on non-trust or non-restricted land may be mortgaged without the approval of any federal official.

(g) Title to any personal property purchased with a loan shall be taken in the name of the purchaser and mortgaged to secure the loan unless the loan is otherwise adequately secured. Tribes must adhere to the provisions of their constitutions and bylaws, corporate charters, or other organizational documents when mortgaging tribal property and assigning trust income as security for loans.

(h) Relending organizations receiving a loan from the United States for re-

lending shall be required to assign to the United States as security for the loan all securities acquired in connection with loans made to its members, sub-organizations, or associations from such funds, unless the Commissioner determines that repayment of the loan to the United States is otherwise reasonably assured. Funds advanced to finance a tribal economic enterprise shall be secured by an assignment of net income and net assets of the economic enterprise, unless the Commissioner determines that it is not feasible to require an assignment or that repayment of the loan to the United States is otherwise reasonably assured.

(i) Securing documents or financing statements shall be filed or recorded in accordance with applicable state or federal laws except for those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the customs house designated as the home port of the vessel as shown on the marine document.

### § 101.14 Maturity.

The maturity of any United States direct loan shall not exceed thirty years. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose of the loan and the repayment capacity of the borrower.

### § 101.15 Penalties on default.

Unless otherwise provided in the loan agreement between the United States and a borrower, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for the taking of any one or all of the following steps by the Commissioner:

(a) Discontinue any further advance of funds contemplated by the loan agreement.

(b) Take possession of any or all collateral given as security and in the case of individuals, corporation, partnerships or cooperative associations, the property purchased with the borrowed funds.

(c) Prosecute legal action against the borrower or against officers of corporations, tribes, bands, credit associations, cooperative associations, and other organizations.