

## SUBCHAPTER G—FINANCIAL ACTIVITIES

### PART 101—LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

- Sec.
- 101.1 Definitions.
  - 101.2 Kinds of loans.
  - 101.3 Eligible borrowers under United States direct loan program.
  - 101.4 Applications.
  - 101.5 Approval of loans.
  - 101.6 Modification of loans.
  - 101.7 Management and technical assistance.
  - 101.8 Environmental and Flood Disaster Acts.
  - 101.9 Preservation of historical and archeological data.
  - 101.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.
  - 101.11 Interest.
  - 101.12 Records and reports.
  - 101.13 Security.
  - 101.14 Maturity.
  - 101.15 Penalties on default.
  - 101.16 Default on loans made by relending organizations.
  - 101.17 Uncollectable loans made by the United States.
  - 101.18 Uncollectable loans made by relending organizations.
  - 101.19 Assignment of loans.
  - 101.20 Relending by borrower.
  - 101.21 Repayments on United States direct loans.
  - 101.22 Repayments on loans made by relending organizations.
  - 101.23 Approval of articles of association and bylaws.
  - 101.24 Loans for expert assistance for preparation and trial of Indian claims.
  - 101.25 Information collection.

AUTHORITY: 25 U.S.C. 1469.

SOURCE: 40 FR 3587, Jan. 23, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

#### § 101.1 Definitions.

As used in this part 101:

*Applicant* means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

*Commissioner* means the Commissioner of Indian Affairs or an authorized representative.

*Cooperative association* means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with

profits distributed or allocated to patrons who are members of the organization.

*Corporation* means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

*Default* means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

*Economic enterprise* means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

*Equity* means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

*Financing statement* means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

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

*Organization* means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

*Other organization* means any non-Indian individual, firm, corporation, partnership, or association.

*Partnership* means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

## Bureau of Indian Affairs, Interior

## § 101.2

*Reservation* means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

*Revolving loan fund* means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 14, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

*Secretary* means the Secretary of the Interior.

*Tribe* means any Indian tribe, bank, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[57 FR 46471, Oct. 8, 1992]

### § 101.2 Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon. Loans made by tribes or relending organizations may be for the following purposes:

(1) To individual Indians or Natives, cooperative associations, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians or Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grant or scholarship sources, or federal or state training programs.

Loans may also be made by the United States to tribes for loaning to or investing in other organizations subject to the provisions in paragraph (d) of this section.

(b) Direct loans may be made by the United States to eligible tribes, tribal organizations or corporations and tribal cooperative associations without fund restrictions. Direct loans to individual Indians, partnerships, and other non-tribal organizations shall not exceed \$350,000. Direct loans from the United States shall be made for the following purposes:

(1) To eligible tribes, individual Indians, Natives, or associations thereof, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or

### § 101.3

### 25 CFR Ch. I (4-1-01 Edition)

graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grants or scholarship sources or federal or state training programs.

(c) Before a United States direct loan is approved, the Commissioner may require the applicants to prepare a market and capacity report on existing or proposed economic enterprises for which financing is requested if the operation involves manufacturing, selling or providing services.

(d) Loans may be made to eligible tribes and Indian organizations for use in attracting industries and economic enterprises, the operation of which will contribute to the economy of a reservation. Tribes and Indian organizations may receive loans from the revolving loan fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation will be accompanied by:

(1) Audited balance sheets and operating statements of the other organization for the immediate three preceding years;

(2) Pro forma operating statement and balance sheets for the succeeding three years reflecting the results of operations after injection of the additional funds;

(3) Names of owners or if a corporation and stock has been issued, names of major stockholders and shares of stock owned by each;

(4) A copy of the articles of incorporation and bylaws, if incorporated, or other organization papers if not incorporated;

(5) Names of members of the board of directors and officers with a resume of education and experience, and the number of shares of stock owned by each in the corporation;

(6) Purposes for which loan or investment will be used; and

(7) If for manufacturing, selling or providing services, a market and capacity report will be prepared. If a proposed operation is to be established, the information in paragraphs (d)(2) through (7) of this section will be furnished. The Commissioner may require additional information on the other organization, if needed, to adequately evaluate the benefits which the Indian organization will receive and the economic benefits which will accrue to a reservation. If the loan is for relending to another organization, the application must show what security is being offered. If the loan is for investment in another organization, the equity to be obtained must be shown. Copies of all agreements, contracts or other documents to be executed by the Indian organization and the other organization in connection with a loan or investment shall be submitted with the application for a loan and will require Commissioner approval prior to disbursement of loan funds to the Indian organization.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989]

#### **§ 101.3 Eligible borrowers under United States direct loan program.**

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as tribal relending programs, banks, Farmers Home Administration, Small Business Administration, Production Credit Associations,

## Bureau of Indian Affairs, Interior

## § 101.4

or Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to title II of the Indian Financing Act of 1974 (88 Stat. 77). In addition, the applicant will be required to have equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise.

(b) The establishment of a United States direct revolving loan program on a reservation(s) for making direct loans will require the approval of the Commissioner. All requests for establishing a United States direct revolving loan program on a reservation will be accompanied by reasons for need, estimate of financing needs, and other sources of financing available to meet the needs. The Commissioner, in approving a United States direct loan program, may require the preparation and approval of a plan of operation for conducting the program.

(c) If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant may be able to obtain the loan from other sources, the Commissioner, before approving a United States direct loan, will require the applicant to furnish letters from two customary lenders in the area who are making loans for similar purposes, stating whether or not they are willing to make a loan to the applicant for the same purposes and amount. If a customary lender will make the loan on reasonable terms and conditions, the Commissioner will not approve a United States direct loan.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989; 57 FR 46471, Oct. 8, 1992]

### § 101.4 Applications.

An applicant for a United States direct loan or a loan from a relending organization conducting a relending program under this part will submit an application on a form approved by the Commissioner. Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan

requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. In addition, applications for loans to finance economic enterprises already in operation will be accompanied by:

(a) A copy of operating statements, balance sheets and budgets for the prior two operating years or applicable period thereof preceding submittal of the application;

(b) Current budget, balance sheet and operating statements; and

(c) Pro forma budgets operating statements and balance sheets showing the estimated results for operating the enterprise for two years after injection of the loan funds into the operation.

A resume of the applicant's management experience will be submitted with the application. Applications for loans and requests for advance of tribal trust funds for relending under the provisions of this part shall be accompanied by a declaration of policy and plan of operation or other acceptable plan for conducting the program. Applications for loans or modifications thereof, to establish, acquire, operate, or expand an economic enterprise shall be accompanied by a plan of operation. Declarations of policy or other plans for conducting a relending program and plans of operation for economic enterprises require the approval of the Commissioner before becoming effective. An application from a corporation, partnership or cooperative association, for a United States direct loan or a loan under a relending program for financing an economic enterprise must, in addition to financial statements and budgets, include a copy of documents establishing the entity, or the proposed

## § 101.5

## 25 CFR Ch. I (4–1–01 Edition)

documents to be used in establishing it.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46471, Oct. 8, 1992]

### § 101.5 Approval of loans.

(a) Loan agreements, including those used by relending organizations in operating a relending program, must be executed on a form approved by the Commissioner. On direct United States loans, the Commissioner will approve the loan by issuing a commitment order covering the terms and conditions for making the loan.

(b) Applications for loans from relending organizations must be approved, if a tribe, by the governing body or designated committee, or other approving committee or body authorized to act on credit matters for a relending organization, before the Commissioner takes action on the application. This designated governing body of the tribe or committee must be authorized to act on behalf of the relending organization as evidenced in the organization's declaration of policy and plan of operation.

(c) Corporations, partnerships and cooperative associations organized for the purpose of establishing, acquiring, expanding, and operating an economic enterprise shall be organized pursuant to federal, state or tribal law. The form of organization shall be acceptable to the Commissioner. Economic enterprises which are or will be operated on a reservation(s) must comply with the requirements of applicable rules, resolutions and ordinances enacted by the governing body of the tribe.

### § 101.6 Modification of loans.

(a) *United States direct loans.* Any modification of the terms and provisions of a United States direct loan agreement must be requested in writing by the borrower and approved by the Commissioner. The borrower will submit the request for modification and will indicate the section(s) of the loan agreement to be modified together with a justification for the modification. Requests for modifications of loan agreements will include an agreement to abide by the provisions of the regu-

lations in this part and future amendments and modifications thereof. In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

(b) *Relending program.* Any modification of the terms and provisions of a loan agreement of a borrower from an organization conducting a relending program must be in writing, agreed to by the borrower, and must be approved by the body authorized to act on loans and modifications thereof as provided in an approved declaration of policy and plan of operation or other plan. If a request for modification of a loan has been disapproved by the body authorized to act on the request, the rejected borrower may request the Commissioner to make a direct loan from the revolving loan fund if the Commissioner determines that the rejection is unwarranted.

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

### § 101.7 Management and technical assistance.

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. Assistance may be provided by available Bureau of Indian Affairs staff, the tribe or other sources which the Commissioner considers competent to provide needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter 153 (35 Stat. 71), as

## Bureau of Indian Affairs, Interior

## § 101.11

amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

### § 101.8 Environmental and Flood Disaster Acts.

Loans will not be approved until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), the National Environmental Policy Act of 1969 (Pub. L. 91-190), (42 U.S.C. 4321) and Executive Order 11514.

### § 101.9 Preservation of historical and archeological data.

(a) On United States direct loans from the revolving loan fund and modifications thereof to provide additional loan funds which will involve excavations, road or street construction, land development or disturbance of land on known or reported historical or archeological sites, the Commissioner will take or require appropriate action to assure compliance with the applicable provisions of the Act of June 27, 1960 (74 Stat. 220; (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174).

(b) On loans made by relending organizations conducting a relending program using revolving loan funds, the body authorized to act on loan applications and modifications thereof will, at the time of taking action on a loan or request for modification, inform the applicant of the applicability of this Act to the loan and advise the Commissioner of compliance or the need to obtain compliance.

### § 101.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.

(a) United States direct loans and loans made by a relending organization are subject to the provisions of Federal Reserve Regulation Z (Truth In Lending, 12 CFR part 226; Pub. L. 91-508, 84 Stat. 1127). Economic enterprises which extend credit and require payment of finance charges on unpaid balances will determine the applicability of Regulation Z and comply with the requirements thereof. The Commissioner will issue any necessary instructions to as-

sure compliance with Regulation Z on United States direct loans.

(b) Relending organizations, through their committee or other body authorized to act on loan matters on its behalf, will assure compliance with the applicable provisions of this Act.

(c) The Commissioner will require adherence to the provisions and requirements of title VI of the Fair Credit Reporting Act in making United States direct loans. Relending organizations, through the body authorized to act on credit matters, will require compliance with the requirements of the Fair Credit Reporting Act.

### § 101.11 Interest.

(a) The interest to be charged on loans by the United States shall be at a rate determined by the Secretary of the Treasury in accordance with section 104, title I, of the Indian Financing Act of 1974 (Pub. L. 93-262, 88 Stat. 77). The interest rate shall be determined monthly and shall be effective on advances made on loans during the current calendar month. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s).

(b) Additional charges to cover loan administration costs, including credit reports, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

(d) The interest rate on loans made by relending organizations which are conducting relending programs shall not be less than the rate the organization pays on its loan(s) from the United States. Relending organizations which adopt and follow the same procedure in calculating interest on educational loans as is followed on educational loans made by the United States, will not be charged interest on loans from the United States on the amount outstanding on educational loans during the period the organization is not charging its borrowers interest.

(e) Interest rates on loan advances made by the United States as shown on promissory notes dated before April 12, 1974, will remain in effect until the loan is paid in full, refinanced, or modified to extend the repayment

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.



## § 101.16

## 25 CFR Ch. I (4–1–01 Edition)

(d) Declare the entire amount advanced immediately due and payable.

(e) Prevent further disbursement of credit funds under the control of the borrower.

(f) Withdraw any unobligated funds from the borrower.

(g) Require relending organizations conducting a relending program to apply all collections on loans to liquidate the debt to the United States.

(h) Take possession of the assets of a relending organization conducting a relending program and exercise or arrange to exercise its powers until the Commissioner has received acceptable assurance of its repayment of the revolving loan and compliance with the provisions of the terms of the loan agreement.

(i) Liquidate, operate or arrange for the operation of economic enterprises financed with revolving loans made to individuals, tribes, corporations, partnerships and cooperative associations until the indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and compliance with the terms of the loan agreement.

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

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

### § 101.16 Default on loans made by relending organizations.

Relending organizations conducting relending programs using revolving loan funds will follow prudent lending practices in making and servicing loans and take appropriate actions to protect their interests in the security given to secure repayment of loans. Declarations of policy and plans of operation shall include procedures which will be followed in acting to correct a default, such as modification of loan agreement or foreclosure and liquidation of security. Relending organizations employing a general counsel will refer legal questions on foreclosure procedures and sale of security to their counsel.

### § 101.17 Uncollectable loans made by the United States.

If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken as security for loans. The cancellation of all or part of a loan shall become effective when signed by the Secretary.

[54 FR 34975, Aug. 23, 1989]

### § 101.18 Uncollectible loans made by relending organizations.

(a) Relending organizations conducting relending programs using revolving loan funds may, when approved by the Commissioner, chargeoff as uncollectible all or part of the balance

## Bureau of Indian Affairs, Interior

## § 101.21

of principal and interest owing on loans which are considered to be uncollectible. Usually a chargeoff includes both principal and interest and provides for cessation of interest accruals on the principal balance owing as of the date of the chargeoff.

(b) Action to chargeoff a loan will be in the form of a resolution enacted by the committee or body authorized and responsible for actions on loan matters for the relending organization. Before action is taken to chargeoff a loan as uncollectible, the lender will make an effort, to the extent feasible, to liquidate the security given for a loan and apply the net proceeds as a repayment on the balance of principal and interest owed. The chargeoff of a loan by a relending organization as uncollectible will not reduce the principal balance owed to the United States. A chargeoff will not release the borrower of the obligation or the responsibility to make payments when his or her financial situation will permit. Chargeoff action will not release the lender of responsibility to continue its efforts to collect the loan.

### § 101.19 Assignment of loans.

A borrower of a direct loan from the United States may not assign the loan agreement or any interest in it to a third party without the consent of the Commissioner. Relending organizations which are conducting relending programs may not assign the loan agreements of borrowers, or any interest therein, to third parties without the approval of the Commissioner and the borrower.

### § 101.20 Relending by borrower.

(a) A relending organization may reloan funds loaned to it by the United States with the approval of the Commissioner. The Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Loans shall be secured by such securities as the lender and the Commissioner may require. With the Commissioner's approval, mortgages of individually held trust or restricted land, leasehold interests, chattels, crops grown on trust or restricted land, and

assignments of trust income may all be taken as security for loans.

(c) Title to personal property purchased with loans received from relending organizations using revolving loan funds in its relending program shall be taken in the name of the borrower.

(d) The term of a loan made by a relending organization conducting a relending program shall not extend beyond the maturity date of its loan from the United States, unless an exception is approved by the Commissioner and the organization has funds available from which to make scheduled repayment on its loan from the United States. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose for which a loan is made and the indicated repayment capacity of the borrower.

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

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

### § 101.21 Repayments on United States direct loans.

Repayments on United States direct loans shall be made to the authorized collection officer of the Bureau of Indian Affairs who shall issue an official receipt for the repayment and deposit the collection into the revolving loan fund. Collections will first be applied to pay interest to date of payment and the balance applied on the principal installment due. Collections on loans made by relending organizations which have been declared in default in which the Commissioner has taken control of the assets of the program (including loans made with balances owing) will be made to an authorized collection officer of the Bureau of Indian Affairs who shall issue a receipt to the payor and deposit the collection in the United States revolving loan fund. The relending organization's loan from the United States will be credited with the

## § 101.22

amounts collected from its borrowers, with the collections applied first on interest accrued and the balance applied to the principal. Payments on United States direct loans may be made in advance of due dates without penalty.

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

### **§ 101.22 Repayments on loans made by relending organizations.**

Repayments on loans made by a relending organization conducting a relending program will be made to the officers of the lending organization or individuals designated and authorized in a declaration of policy and plan of operation. Collections on loans and other income to a relending program will be deposited in the lender's revolving loan account as designated in a declaration of policy and plan of operation. Collections on loans will be first applied to pay interest to date of payment with the balance applied to the principal.

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

### **§ 101.23 Approval of articles of association and bylaws.**

Articles of association and bylaws of relending organizations and cooperative associations require approval of the Commissioner if they make application for a revolving credit loan.

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

### **§ 101.24 Loans for expert assistance for preparation and trial of Indian claims.**

(a) Loans may be made to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of section 1 of the Act of November 4, 1963 (Pub. L. 88-168, 77 Stat. 301; 25 U.S.C. 70n-1), as amended by the Act of September 19, 1966 (Pub. L. 89-592, 80 Stat. 814) and section 2 of the Act of May 24, 1973 (Pub. L. 93-37, 87 Stat. 73). Loan proceeds may only be used for the employment of expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission.

## 25 CFR Ch. I (4-1-01 Edition)

Applications for loans will be submitted on forms approved by the Commissioner and shall include a justification of the need for a loan. The justification shall include a statement from the applicant's claims attorney regarding the need for a loan. The application will be accompanied by a statement signed by an authorized officer of the applicant certifying that the applicant does not have adequate funds available to obtain and pay for the expert assistance needed. The Superintendent and the Area Director will attest to the accuracy of the statement or point out any inaccuracies. Loans will be approved by issuance of a commitment order by the Commissioner.

(b) No loan shall be approved if the applicant has funds available on deposit in the United States Treasury or elsewhere in an amount adequate to obtain the expert assistance needed or if, in the opinion of the Commissioner, the fees to be paid the experts are unreasonable on the basis of the services to be performed by them.

(c) Contracts for the employment of experts are subject to the provisions of 25 U.S.C. 81 and require approval by the Commissioner.

(d) Vouchers or claims submitted by experts for payment for services rendered and reimbursement for expenses will be in accordance with the provisions of the expert assistance contract and shall be sufficiently detailed and itemized to permit an audit to determine that the amounts are in accordance with the contract. Vouchers or claims shall be reviewed by the borrower's claims attorney who will certify on the last page of the voucher or by attachment thereto, that the services have been rendered and payment is due the expert and that expenses and charges for work performed are in accordance with the provisions of the contract.

(e) Requests for advances under the loan agreement shall be accompanied by a certificate signed by an authorized officer of the borrower certifying that the borrower does not have adequate funds available from its own financial resources with which to pay the expert. The Superintendent and Area Director will attest to the accuracy of the statement or point out inaccuracies. A copy

of the voucher or claim from the expert will accompany the request for advance.

(f) Loan funds will be advanced only as needed to pay obligations incurred under approved contracts for expert assistance. The funds will be deposited in a separate account, shall not be commingled with other funds of the borrower, and shall not be disbursed for any other purpose.

(g) Loans shall bear interest at the rate of 5½ percent per annum from the date funds are advanced until the loan is repaid.

(h) The principal amount of the loan advanced plus interest shall be repayable from the proceeds of any judgment received by the borrower at the time funds from the award become available to make the payment.

(77 Stat. 301 (25 U.S.C. 70n-1 to 70n-7))

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

#### § 101.25 Information collection.

(a) The collections of information contained in §§101.3, 101.4, 101.12, and 101.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0020. The information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project

(1076-0020), Office of Management and Budget, Washington, DC 20503.

[54 FR 34975, Aug. 23, 1989. Redesignated at 57 FR 46472, Oct. 8, 1992]

## PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

### Subpart A—General Provisions

Sec.

- 103.1 What does this part do?
- 103.2 Who does the Program help?
- 103.3 Who administers the Program?
- 103.4 What kinds of loans will BIA guarantee or insure?
- 103.5 What size loan will BIA guarantee or insure?
- 103.6 To what extent will BIA guarantee or insure a loan?
- 103.7 Must the borrower have equity in the business being financed?
- 103.8 Is there any cost for a BIA guaranty or insurance coverage?

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

- 103.9 Who applies to BIA under the Program?
- 103.10 What lenders are eligible under the Program?
- 103.11 How does BIA approve lenders for the Program?
- 103.12 How does a lender apply for a loan guaranty?
- 103.13 How does a lender apply for loan insurance coverage?
- 103.14 Can BIA request additional information?
- 103.15 Are there any prohibited loan terms?
- 103.16 How does BIA approve or reject a loan guaranty or insurance application?
- 103.17 Must the lender follow any special procedures to close the loan?
- 103.18 How does BIA issue a loan guaranty or confirm loan insurance?
- 103.19 When must the lender pay BIA the loan guaranty or insurance premium?

### Subpart C—Interest Subsidy

- 103.20 What is interest subsidy?
- 103.21 Who applies for interest subsidy payments, and what is the application procedure?
- 103.22 How does BIA determine the amount of interest subsidy?
- 103.23 How does BIA make interest subsidy payments?
- 103.24 How long will BIA make interest subsidy payments?

**§ 103.1**

**Subpart D—Provisions Relating to Borrowers**

- 103.25 What kind of borrower is eligible under the Program?
- 103.26 What must the borrower supply the lender in its loan application?
- 103.27 Can the borrower get help preparing its loan application or putting its loan funds to use?

**Subpart E—Loan Transfers**

- 103.28 What if the lender transfers part of the loan to another person?
- 103.29 What if the lender transfers the entire loan?

**Subpart F—Loan Servicing Requirements**

- 103.30 What standard of care must a lender meet?
- 103.31 What loan servicing requirements apply to BIA?
- 103.32 What sort of loan documentation does BIA expect the lender to maintain?
- 103.33 Are there reporting requirements?
- 103.34 What if the lender and borrower decide to change the terms of the loan?

**Subpart G—Default and Payment by BIA**

- 103.35 What must the lender do if the borrower defaults on the loan?
- 103.36 What options and remedies does the lender have if the borrower defaults on the loan?
- 103.37 What must the lender do to collect payment under its loan guaranty certificate or loan insurance coverage?
- 103.38 Is there anything else for BIA or the lender to do after BIA makes payment?
- 103.39 When will BIA refuse to pay all or part of a lender's claim?
- 103.40 Will BIA make exceptions to its criteria for denying payment?
- 103.41 What happens if a lender violates provisions of this part?
- 103.42 How long must a lender comply with Program requirements?
- 103.43 What must the lender do after repayment in full?

**Subpart H—Definitions and Miscellaneous Provisions**

- 103.44 What certain terms mean in this part.
- 103.45 Information collection.

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

## Bureau of Indian Affairs, Interior

## § 103.10

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

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;

**§ 103.11**

**25 CFR Ch. I (4-1-01 Edition)**

(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

## Bureau of Indian Affairs, Interior

## § 103.15

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-

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



## § 103.16

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

## 25 CFR Ch. I (4–1–01 Edition)

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

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

## § 103.22

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 by the Secretary of the Treasury 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.

### § 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

## 25 CFR Ch. I (4-1-01 Edition)

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?

(b) 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.

EDITORIAL NOTE: At 66 FR 3871, Jan. 17, 2001, part 103 was revised. However, in §103.25 there are two paragraphs designated as paragraph (b) and no paragraph (a).

### § 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;

(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 permit-

ting 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

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;

(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

### § 103.33

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

### 25 CFR Ch. I (4-1-01 Edition)

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



**§ 103.36**

**25 CFR Ch. I (4-1-01 Edition)**

is likely to result in the borrower curing the default. However, BIA must approve in writing any forbearance or other agreement that:

(1) Permanently modifies the terms of the loan in any manner indicated by §103.34(a);

(2) Would allow the borrower's default to extend beyond the deadline established in §103.36(d) for the lender to elect a remedy; or

(3) Is not likely to result in the borrower curing the default.

(b) The lender may make precautionary advances on the borrower's behalf during the default, if doing so is reasonably necessary to ensure that loan recovery prospects do not significantly deteriorate. Items for which the lender may make precautionary advances include, for example:

(1) Hazard, liability, or key man life insurance premiums;

(2) Security measures to safeguard abandoned business assets;

(3) Real or personal property taxes;

(4) Corrective actions required by court or administrative orders; or

(5) Essential maintenance.

(c) BIA will guaranty or insure the amount of precautionary advances from the date of each advance to the same extent as other amounts due under the loan, if:

(1) The borrower has demonstrated its inability or unwillingness to make the payment or perform the duty that jeopardizes loan recovery, including by undue delay in making the payment or performing the duty;

(2) The total expense of all precautionary advances by the lender does not at the time of the advance exceed 10 percent of the outstanding principal balance of the loan;

(3) Where loan document provisions do not require the borrower to repay precautionary advances (however termed) when made by the lender, or where the total expense of all precautionary advances by the lender will exceed 10 percent of the outstanding principal balance of the loan when made, the lender secures BIA's prior written approval; and

(4) The lender properly claims and documents all precautionary advances, if and when it submits a claim for loss under §103.37.

(d) If the default remains uncured, the lender must send BIA a written notice by certified mail (return receipt requested), or by a nationally-recognized overnight delivery service (signature of recipient required) within 90 calendar days of the default to select one of the following remedies:

(1) In the case of a guaranteed loan, the lender may submit a claim to BIA for its loss;

(2) In the case of either a guaranteed or insured loan, the lender may liquidate all collateral securing the loan, and upon completion, if it has a residual loss on the loan, it may submit a claim to BIA for that loss; or

(3) The lender may negotiate a loan modification agreement with the borrower to permanently change the terms of the loan in a manner that will cure the default. If the lender chooses this remedy, it may take no longer than 45 calendar days from the date BIA receives the notice of remedy selection to finalize a loan modification agreement and secure BIA's written approval of it, unless BIA specifically extends this deadline in writing. However, the lender may at any time before the expiration of the 45-day period (or any extension thereof) change its choice of remedy by sending BIA a notice otherwise complying with §103.36(d)(1) or (2). If the lender fails to send BIA a notice changing its choice of remedy and does not finalize an approved loan modification agreement within the 45-day period (or any extension thereof), the lender's only permissible remedy under the Program will be to pursue the procedure specified in §103.36(d)(2).

(e) Failure by the lender to provide BIA with notice of the lender's election of remedy within 90 calendar days of the default, as indicated in §103.36(d), will invalidate BIA's loan guaranty certificate or insurance coverage for that particular loan, absent an express waiver of this provision by BIA. BIA may preserve the validity of a loan guaranty certificate or insurance coverage through waiver of this provision only when BIA determines, in its discretion, that:

(1) The lender consistently has acted in good faith, and

(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.

## § 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 (4-1-01 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.

§ 103.45

25 CFR Ch. I (4-1-01 Edition)

§ 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.

EFFECTIVE DATE NOTE: At 66 FR 3867, Jan. 17, 2001, part 103 was revised, effective Feb. 16, 2001. At 66 FR 8898, Feb. 5, 2001, the effective date was delayed to Apr. 17, 2001. For the convenience of the user, the superseded text is set forth as follows.

PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY (Eff. 04-17-01)

- Sec.
103.1 Definitions.
103.2 Purpose.
103.3 Kinds of loans.
103.4 Management and technical assistance.
103.5 Preservation of historical and archeological data.
103.6 Environmental and flood disaster protection.
103.7 Eligible organizations.
103.8 Eligible individuals.
103.9 Eligible lenders.
103.10 Ineligible loans.
103.11 Guaranteed loans.
103.12 Insured loans.
103.13 Amount of guaranty.
103.14 Amount of insurance.
103.15 Applications for loan guaranties or insurance.
103.16 Loan otherwise available.
103.17 Refinancing.
103.18 Furnishing additional information.
103.19 Approval of guaranteed loans.
103.20 Approval of insured loans.

- 103.21 Modification of loan agreements.
103.22 Protective advances.
103.23 Increase in principal of loans.
103.24 Maturity.
103.25 Amortization.
103.26 Prepayments.
103.27 Amount of security.
103.28 Filing and recording.
103.29 Property purchased with loan funds.
103.30 Land.
103.31 Chattels.
103.32 Crop mortgages.
103.33 Assignments of income.
103.34 Restrictions.
103.35 Release of security.
103.36 Default on guaranteed loans.
103.37 Default on insured loans.
103.38 Subrogated and assigned rights.
103.39 Cancellation.
103.40 Charges upon liquidation.
103.41 Interest.
103.42 Interest subsidy.
103.43 Premium charges.
103.44 Other charges.
103.45 Late charge.
103.46 Loan servicing.
103.47 Restrictions on lenders.
103.48 Title to property purchased with loans.
103.49 Fraud or misrepresentation.
103.50 Loan guaranty and insurance fund.
103.51 Sale or assignment of guaranteed loans.
103.52 Records.
103.53 Suspension of lenders.
103.54 Probate.
103.55 Information collection.

AUTHORITY: 25 U.S.C. 1498.

SOURCE: 40 FR 12492, Mar. 19, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 103.1 Definitions.

As used in this part:

Applicant means one who applies for a guaranteed or insured loan.

Borrower means the Indian organization or individual Indian receiving a guaranteed or insured loan.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due.

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

*Economic enterprise* means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

*Equity* means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

*Financing statement* means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

*Guaranty* means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this part.

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

*Insured loan* means a loan made pursuant to an agreement approved by the Commissioner with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of the loss on loans, pursuant to the regulations in this part.

*Interest subsidy* means payments which may be made by the United States to lenders making guaranteed or insured loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

*Mortgage* means a mortgage or deed of trust evidencing an encumbrance of land, a mortgage or security agreement executed as evidence of a lien against crops and chattels, and a mortgage or deed of trust evidencing a lien on leasehold interests.

*Organization* means the governing body of any Indian tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

*Partnership* means a form of business organization in which two or more persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain organized under tribal, state, or Federal law.

*Premium* means the charges paid by lenders for the guaranty or insurance of loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

*Reservation* means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

*Secretary* means the Secretary of the Interior.

*Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, or urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[57 FR 46472, Oct. 8, 1992]

#### § 103.2 Purpose.

(a) The purpose of this part 103 is to prescribe the terms, conditions and provisions under which loans made to eligible tribes, Indian organizations and individual Indians for financing economic enterprises which contribute beneficially to the economy of an Indian reservation or for housing on a reservation may be guaranteed or insured by the United States. Lenders are reimbursed for a percentage of a loss or losses incurred on loans made under the provisions of this part 103, as evidenced by an approved guaranty certificate or insurance agreement.

(b) It is also the purpose of this part 103 to prescribe procedures for payment of an interest subsidy to lenders making guaranteed or insured loans to reduce the interest to be paid by the borrowers, for establishing loan guaranty and insurance premiums to be charged, and for collection of the premium. This program will provide Indians with additional sources of financing needed to develop and manage their reservation resources to a higher degree.

#### § 103.3 Kinds of loans.

(a) Loans to tribes, eligible Indian organizations, and Indian individuals for financing economic enterprises which contribute to the economy of a reservation or its members or for housing on a reservation to be occupied by the borrower may be guaranteed or insured. Housing loans may be guaranteed or insured only after a determination has been made by the Commissioner that other sources of financing are not available to the applicant on reasonable terms and conditions.

(b) Loans to tribes and organizations for the purchase of land may be guaranteed or insured only for purchasing land within the exterior boundaries of a reservation or land outside the exterior boundaries of a reservation which will be used by the borrower and/or its members for an economic enterprise

which will contribute to the economy of a reservation. Loans to individuals may be guaranteed or insured for purchasing trust or restricted land in which the borrower owns an interest or land within the exterior or outside the exterior boundaries of a reservation. In all instances, the land must be used by the borrower in operating an economic enterprise which will contribute to the economy of a reservation. The Commissioner may require an applicant for a guaranteed or insured loan for the purchase of land to provide information showing that financing from other sources is not available on reasonable terms and conditions. Title to land purchased with a guaranteed or insured loan 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 a trust or restricted interest 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) Funds included in loans for the purchase of non-recoverable items, as well as furniture, passenger carrying automobiles, trucks or pickups, televisions, radios, and household appliances are not eligible for guaranty or insurance unless required in the direct operation of an economic enterprise. Funds included in loans for payment of personal bills or obligations are not eligible for guaranty or insurance. Funds included in loans for payment of unsecured debts may be guaranteed or insured only if justified, due to the applicant's financial position and clearly to the advantage of the applicant in the operation of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending program.

**§ 103.4 Management and technical assistance.**

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional

cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the specific areas of need, and whether it will provide such assistance.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

**§ 103.5 Preservation of historical and archeological data.**

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

**§ 103.6 Environmental and flood disaster protection.**

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

**§ 103.7 Eligible organizations.**

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy shall be discontinued. Cooperative associations, corporations and partnerships shall be organized pursuant to state, federal or tribal law. Cooperative associations, corporations, and partnerships applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions, or ordinances enacted by the governing body of the tribe, if applicable.

[40 FR 12492, Mar. 19, 1975; 40 FR 20952, May 15, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.8 Eligible individuals.**

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

[54 FR 34975, Aug. 23, 1989]

**§ 103.9 Eligible lenders.**

(a) Those financial institutions subject to examination and supervision by an agency of the United States, a state, or the District of Columbia, having the capacity to evaluate, process, disburse, and service loans, and Indian tribes making loans from their own funds to other tribes or organizations of Indians, are eligible to have loans insured under this part 103. Loans made by any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and which lender is satisfactory to the Commissioner, may be guaranteed. Any national bank or federal savings and loan association, or any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia may make any loan of which at least 20 percent is guaranteed under this part 103 without regard to the limitations and restrictions of any other federal statute with respect to:

(1) Ratio of amount of loan to the value of the property;

(2) Maturity of loans,

(3) Requirement of mortgage or other security,

(4) Priority of lien, or

(5) Percentage of assets which may be invested in real estate loans.

(b) Any guaranty certificate issued pursuant to this part 103 or any loan insured pursuant to an agreement with a lender approved in accordance with this part 103 shall be conclusive evidence that the loan was eligible for guaranty or insurance.

**§ 103.10 Ineligible loans.**

The following loans are not eligible for guaranty or insurance under this part 103:

(a) Loans made by any agency or instrumentality of the federal government.

(b) Loans made by an organization of Indians making loans from funds borrowed from the United States.

(c) Loans where the interest income is not included as taxable income under chapter 1 of the Internal Revenue Code of 1954 as amended.

(d) Loans with repayment terms exceeding thirty years.

(e) Loans which are linked to Federally tax-exempt bond obligations.

(f) Loans to a borrower whose equity, as defined in §103.1, in the business being financed is less than 20 percent.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.11 Guaranteed loans.**

Loans, except those excluded in §103.10, made by any lender meeting the requirements of §103.9(a), which are satisfactory to the Commissioner may be guaranteed. Applications for guaranty will be considered on a loan by loan basis. No guaranty shall be effective until issuance of a guaranty certificate by the Commissioner and receipt of the guaranty premium from the lender. A guaranty certificate shall be issued only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment of the loan.

**§ 103.12 Insured loans.**

(a) Eligible lenders, as prescribed in §103.9, and tribes making loans from their own funds to other tribes or Indian organizations, may make insured loans, except those excluded in §103.10 pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans



which require the issuance of individual insurance agreements.

(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner.

**§ 103.13 Amount of guaranty.**

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of \$500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

(b) Applications of minors as determined by applicable state and federal law, may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing document(s). Not more than one guaranteed loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

**§ 103.14 Amount of insurance.**

(a) The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender. The insurance procedure will be used primarily for loans to finance small economic enterprises and secondarily for housing. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90 percent of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15 percent of the aggregate of insured loans made by it.

(b) Loans for any amount made by tribes from their own funds to other tribes or Indian organizations will not be insured without the prior approval of the Commissioner. No loan to finance an economic enterprise with a principal amount in excess of \$50,000 shall be insured without the prior approval of the Commissioner. No loan to an individual Indian may be insured which would cause the total unpaid principal amount to exceed \$100,000. Any loan to an individual Indian having a principal amount in excess of \$50,000 will require prior approval of the

Commissioner. No loan to an individual with a principal amount of less than \$2,500 or for a term of less than one year may be insured. No loan to a tribe or Indian organization for a principal amount of less than \$10,000 for a term of less than one year may be insured. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(c) Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

**§ 103.15 Applications for loan guaranties or insurance.**

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the lender. The application for a loan guaranty or insurance, or attachments thereto, must include or show the following:

- (1) The name and address of the borrower with the tax identification number if the borrower is a business entity or the social security number if an individual;
- (2) A statement signed by the borrower that the borrower is not delinquent with any Federal tax or other obligations;
- (3) The plan of operation for the economic enterprise including an identified target market for the goods or services being offered;
- (4) Purpose(s) and the amount of the loan;
- (5) Security to be given which shall be itemized with valuations of such collateral and the method used to value the collateral, the date of such valuation, who performed the valuation, and the creditor priority positions;
- (6) Hazard and liability insurance to be carried;
- (7) Interest rate;
- (8) Repayment schedule;
- (9) Repayment source(s);
- (10) How title to the property to be purchased with the loan will be taken;
- (11) Current financial statements of the loan applicant;
- (12) Description and dollar value of the equity or personal investment to be made by the applicant;
- (13) Charges pursuant to § 103.44;
- (14) Pro forma balance sheets, operating statements and cash flow statements for at least three years;
- (15) Balance sheets and operating statements for the two preceding years, or applicable period thereof if already in operation;
- (16) The lender's evaluation of the economic feasibility of the enterprise and internal credit memorandum; and

(17) A current credit bureau report on the borrower.

Applications will also show the percentage of guaranty requested.

(b) Reasonable assurance of repayment will be considered to exist:

(1) In the case of individuals, where past operations and future prospects of the applicant's operations demonstrate ability to repay the loan from production, earnings, or other assets. Full consideration will be given to the applicant's managerial ability and experience.

(2) In the case of tribes and Indian organizations, where past operations or future plans of operations indicate that the economic enterprise for which financing is requested is economically sound. Full consideration will be given to arrangements for efficient management of the economic enterprise for which financing is requested.

(c) The Commissioner may review applications for guaranteed loans individually and independently from the lending institution.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

#### **§ 103.16 Loan otherwise available.**

If the information in an application for a guaranteed or insured loan indicates that the applicant may obtain the loan without a guaranty or insurance, the Commissioner may deny the request for a guaranty or insurance.

[57 FR 46473, Oct. 8, 1992]

#### **§ 103.17 Refinancing.**

(a) Applications for loans to refinance indebtedness will be approved only if justified and required due to the applicant's financial position and if clearly to the advantage of the applicant. Applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 103.15(a) (1) through (17). A guaranty of a loan to refinance existing indebtedness will be considered only if the loan will result in a significantly lower lender's interest rate to the borrower, or provide a substantially longer term for repayment of the loan, or decrease the loan-to-asset value ratio of the business being financed.

(b) Applications for refinancing loans not guaranteed or insured under this part 103 will not be approved for guaranty or insurance if, in the opinion of the Commissioner, the submittal of the application is motivated primarily to obtain guaranty or insurance of a loan which otherwise would be made.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

#### **§ 103.18 Furnishing additional information.**

The Commissioner may require either the lender or the borrower, or both, to furnish additional information or justification for a loan prior to issuance of a guaranty certificate or insurance agreement where Commissioner approval of an individual insured loan is required.

#### **§ 103.19 Approval of guaranteed loans.**

(a) Upon a lender's approval of an application for a guaranteed loan, the lender will forward the application in duplicate to the Commissioner with a "Request for Guaranty". The Commissioner will approve the application by issuance of a "Guaranty Certificate" which will show the percentage amount of the loan guaranteed, the premium to be paid to the Commissioner and the interest subsidy to be paid on the loan by the United States.

(b) If the application is not approved, the original will be returned to the lender with an explanation, and a copy furnished the loan applicant.

#### **§ 103.20 Approval of insured loans.**

After a lender approves a loan eligible for insurance in accordance with an approved insurance agreement, the lender will proceed as authorized by the agreement. Applications for insured loans which require approval by the Commissioner as prescribed in § 103.14 will be forwarded in duplicate to the Commissioner with a "Request for Insurance" signed by the lender. The Commissioner will approve the application by issuance of an "Insurance Agreement". If the application is not approved, the original will be returned to the lender with an explanation.

#### **§ 103.21 Modification of loan agreements.**

(a) Guaranteed and insured loans may be modified with the approval of the parties to the original loan agreement. Modification of guaranteed loans and those insured loans which required Commissioner approval, requires the Commissioner's approval only if the modification involves:

- (1) Change of the repayment schedules,
- (2) Changes in the prime security,
- (3) Change of interest rate,
- (4) Change in the use of loan funds,
- (5) Increase in the principal amount of a loan, except as provided in § 103.22,
- (6) Change of the plan of operation,
- (7) Amendment or changes in the organization papers of the borrower,
- (8) Changes in partnership agreements, and
- (9) Change in the location of an enterprise.

(b) Lenders making insured loans which under the provisions of an approved insurance agreement do not require Commissioner approval shall use prudence in approving requests for modifications of loan agreements and follow the lender's customary procedures

and practices which are used in connection with noninsured loans made by it. Modifications are to be in compliance with the provisions of §§103.13, 103.14, and 103.24. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner upon modification.

**§ 103.22 Protective advances.**

When provided for in a loan agreement, and subject to the limitations on the amounts and terms of loans as provided in §§103.13, 103.14, and 103.24, lenders may advance, for certain purposes, up to 10 percent of the amount for which a guaranteed or insured loan originally was approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other purpose necessary for the protection of the interest of the lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically guaranteed or insured at the same percentage rate as applied to the original amount of the loan upon the Commissioner's receiving notice from the lender that an additional amount has been advanced with a statement as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the premium for the additional amount pursuant to §103.43(b). The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The interest rate charged on protective advances as provided for in this section will be determined in accordance with the provisions of §103.41.

**§ 103.23 Increase in principal of loans.**

(a) Borrowers requiring additional funds may apply for an increase in a guaranteed or insured loan with the same lender. Applications to increase the amount of guaranteed and insured loans which originally were approved by the Commissioner, require his approval upon increases in amounts. Lenders making insured loans which under the provisions of an approved insurance agreement which did not require Commissioner approval, may approve applications for an increase in the principal of such loans subject to compliance with the limitations con-

tained in §§103.14 and 103.24. Such insured lenders shall immediately notify the Commissioner upon approval of an increase in the principal of a loan and remit the premium on the increase pursuant to §103.43(b).

(b) The application for an increase in the amount of a loan must show the reasons why an increase is needed, the amount and purposes for which the funds will be used, and the repayment schedule. If the financing involves an economic enterprise, the application must be accompanied by the information required in §103.15(a)(1) through (17) of this part.

(c) The interest rate to be charged on principal increases will be determined in accordance with the provisions of §103.41.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.24 Maturity.**

The period of maturity of guaranteed and insured loans will be determined according to the circumstances, but may not extend beyond 30 years from the date of the first advance. All maturities will be consistent with sound business practices and customs of lenders in the area.

**§ 103.25 Amortization.**

All loans shall be scheduled for repayment at the earliest practicable date consistent with the purpose(s) of the loans and the repayment capacity of the borrowers. Lenders will require amortization in accordance with customary practices in the area for loans for the same purposes. Loan payments may be scheduled for repayment either monthly, quarterly, semi-annually or annually. Balloon installments shall be avoided.

**§ 103.26 Prepayments.**

Borrowers whose loans are guaranteed or insured under this part 103 shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in the loan agreement. Lenders and borrowers may agree that prepayments applied to the latest loan installments may be reapplied to current installment(s) to cure or prevent any subsequent default. The Commissioner shall be notified promptly by the lender when payments are made in advance of the due dates.

**§ 103.27 Amount of security.**

Lenders will require borrowers to give security, if available, up to an amount adequate to protect the loan, without consideration of the guaranty or insurance. The lender shall itemize and describe the collateral given as security as described in §§103.15(a)(5) and (10) of this part.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.28 Filing and recording.**

(a) All securing documents and financing statements, when applicable, except assignments of income from trust land and mortgages on documented vessels, shall be filed or recorded in the appropriate county or other public office in accordance with state law. 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. Security interests in personal property will be perfected in accordance with the provisions of Article 9 of the Uniform Commercial Code in states in which the code has been adopted.

(b) Lenders are responsible for filing a copy of assignments of income from trust land with the office of the Bureau of Indian Affairs having jurisdiction over the trust land involved and for filing or recording other securing instruments pursuant to the laws of the state in which the property is located or in the proper Customs House. Lenders must also see that:

(1) Effective liens are maintained at all times;

(2) Taxes on the property included in the securing instruments are paid promptly to prevent such taxes from becoming a lien taking priority over a mortgage; and

(3) Hazard and liability insurance is obtained and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected, to the extent customary in the locality.

Failure of a lender to discharge any of these responsibilities will diminish the amount of the guaranty or insurance to the extent of any loss caused by the lender's failure, unless there are extenuating circumstances which in the judgment of the Commissioner do not justify a reduction of the amount guaranteed or insured.

**§ 103.29 Property purchased with loan funds.**

(a) Lenders making guaranteed or insured loans which include funds to finance construction of buildings, or installation of water, sewage, electrical or gas lines shall assure that the site is appropriate and adequate; cost estimates are prepared and are in line with current costs; plans are prepared by qualified individuals or a firm; provisions are made to assure compliance with applicable building codes, zoning and labor laws; and inspections are made by qualified inspectors during construction and upon completion. Upon receiving applications involving funds to finance construction, lenders may request assistance and guidance from the Commissioner on such matters. The Commis-

sioner may arrange for an inspection of any property purchased with guaranteed or insured loans at any reasonable time. Property which may be inspected includes proposed building sites, during and on completion of construction of buildings; electrical, sewage, water or gas lines; and livestock and machinery purchased with loan funds.

(b) Lenders will require that any property purchased with a guaranteed or insured loan, except land purchased by a tribe, title to which is taken in trust or restricted status, be mortgaged to the lender as security for the loan, unless the loan is otherwise adequately secured.

**§ 103.30 Land.**

(a) Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any Federal official.

(b) Tribal land, title to which is held in a trust or restricted status, may not be mortgaged unless specifically authorized by Congress.

(c) Individually-owned land held in trust or restricted status 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 the acreage of the land owned by a borrower, which the Commissioner considers is adequate to protect the loan in case of default. Mortgages on individually held trust or restricted land shall be subject to foreclosure or sale pursuant to the terms of the mortgage. For the purposes of any foreclosure or sales proceedings, the owner shall be regarded as vested with an unrestricted fee simple title to the land. The United States shall not be a necessary party to the proceedings pursuant to the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Any conveyance of the land pursuant to such proceedings shall divest the United States of title to the land. Trust or restricted land given as security for a loan shall not be sold or title otherwise transferred without giving the Commissioner and the tribe of the reservation on which the land is located, or is adjacent to, written notice, at least 45 days in advance of the date of sale or proposed transfer of title.

(d) Tribes, corporations, cooperative associations, partnerships, and Indian individuals leasing trust or restricted land may, when provided in the lease and approved by the lessor and the Commissioner, mortgage their leasehold interest in the leased premises for the purpose of borrowing capital for the development and improvement of the leased premises.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.31 Chattels.**

Tribes, organizations and Indian individuals may execute mortgages on nontrust and unrestricted chattels as security without the approval of any federal official. If a lender requires, the Commissioner may approve mortgages of trust or restricted chattels given to secure guaranteed or insured loans. A tribe must adhere to the provisions of its constitution, bylaws, charter, or other organizational documents in mortgaging chattels. Mortgaged chattels shall be subject to foreclosure or sale pursuant to the terms of the mortgage or security agreement in accordance with applicable laws.

**§ 103.32 Crop mortgages.**

Crops grown on leased trust or restricted land may be mortgaged as security for a loan with the approval of the lessor and the Commissioner. Individuals owning trust or restricted land may mortgage crops grown on such land as security for a loan with approval of the Commissioner. Crops grown on trust or restricted land after severance from the land and crops grown on nontrust and unrestricted land may be mortgaged as security without the approval of any Federal official.

**§ 103.33 Assignments of income.**

(a) A tribe or organization may execute assignments of trust income from specific sources as security for loans, pursuant to authorization in its constitution, bylaws, charter, or other organization papers. Tribes may not execute general assignments of trust income as security for loans. Assignments of trust income require approval by the Commissioner before becoming effective.

(b) Assignments of income from the trust or restricted land of an Indian individual may be executed as security for loans with the approval of the Commissioner. However, restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma is subject to the jurisdiction of Oklahoma state courts under the Act of August 4, 1947 (61 Stat. 73).

**§ 103.34 Restrictions.**

Unless the security for a loan requires approval of a federal official, no restrictions shall be placed by any official upon the security that may be given for a loan. Lenders will document any and all prior security interests of record with respect to proposed collateral. Lenders will use caution in making certain that the security taken is unencumbered. Lenders will follow the same prudent procedures as if the borrower were a non-Indian or a non-Indian organization.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

**§ 103.35 Release of security.**

The prime security for a loan will not be released unless the property is sold and the net proceeds applied to the loan. When approved by the Commissioner, the prime security may be released when the property is sold and the proceeds are used to purchase property of similar nature and use and of at least equal value and lien priority as the property sold and when the lender, borrower and Commissioner agree that the sale and such use of the proceeds are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of a business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require the prior approval of the Commissioner.

**§ 103.36 Default on guaranteed loans.**

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be

paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States.

Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under the guaranty plus costs or expenses shall be paid to the lender up to the amount of the lender's losses. Any residue from collection shall go to the borrower.

[57 FR 46473, Oct. 8, 1992]

**§ 103.37 Default on insured loans.**

Within 45 calendar days after the occurrence of a default of a loan made under the provisions of an insurance agreement, the lender shall notify the Commissioner by certified or registered mail giving the name of the borrower, insurance agreement number, amount of unpaid principal, amount of delinquent principal, accrued interest unpaid to date of notice, amount of delinquent interest

and description of default. Within 60 calendar days after default on an insured loan, the lender shall proceed as prescribed in paragraph (a) or (b) of this section unless it has requested, and the Commissioner has approved, an extension of time. A request for an extension of time will explain the necessity for an extension and the estimated date on which action will be initiated. Failure of the lender to proceed within 60 calendar days or the extended time approved by the Commissioner, will be grounds for the Commissioner to terminate the loan insurance on the loan involved.

(a) The lender and borrower may agree upon an extension of the repayment terms of a loan or other forbearance for the benefit of the borrower. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Insured loans made under the provisions of a general insurance agreement authorizing a lender to make loans under the terms prescribed in the agreement will not require Commissioner approval of changes in agreements made by the lender and borrower. Provided, such changes are in compliance with the requirements of § 103.21 and the applicable sections referred to therein. The lender shall immediately notify the Commissioner within 21 calendar days of changes made in the agreement. Insured loans made which originally required the issuance of a separate insurance agreement by the Commissioner will require Commissioner approval of changes in the provisions of such loans.

(b) If an insured lender determines that proceeding under paragraph (a) of this section is contrary to its customary lending practices or is not in the interest of a borrower, it will be required to exhaust all reasonable efforts to collect the loan and to liquidate the security to the fullest extent feasible before submitting a claim for reimbursement of a loss.

(c) If a lender proceeds under the provisions of paragraph (b) of this section and suffers a loss, it may submit a claim for reimbursement for unpaid principal and interest on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. Claims will be submitted to the Commissioner within 45 calendar days after completion of the procedures prescribed in this section. All claims shall be accompanied by evidence showing that all reasonable efforts to collect the loan have been exhausted and that security given for the loan has been liquidated to the extent feasible. If the Commissioner agrees that a loss has occurred, he will reimburse the lender pursuant to the terms of the approved insurance agreement under which the loan was insured. Upon reimbursement by the Commissioner to the lender in whole or in part for the loss insured, the note and security for the loan or

judgment evidencing the debt shall be assigned to the United States. The lender shall have no further claim against the United States or the borrower. The Commissioner will then take such further collection action as may be warranted. The Commissioner may establish a date upon which accrual of interest or charges shall cease.

**§ 103.38 Subrogated and assigned rights.**

The Commissioner will take such action as he deemed appropriate to realize the maximum recovery upon the rights to which the United States is subrogated and the security assigned to the United States. Any amount collected will be deposited in the loan guaranty and insurance fund.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

**§ 103.39 Cancellation.**

The Secretary may cancel the uncollectable portion of any obligation assigned to the United States or rights to which the United States is subrogated and the security assigned to the United States.

[54 FR 34976, Aug. 23, 1989]

**§ 103.40 Charges upon liquidation.**

Lenders may charge the following against the gross amounts collected from the sale of security in determining the amounts to be claimed under a guaranty certificate or insurance agreement:

(a) Reasonable and necessary expenses for preservation of the security.

(b) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.

(c) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.

(d) Other expenses or fees approved in advance by the Commissioner.

(e) Accrued unpaid interest to the date of judgment and decree of foreclosure or sale, or the date established by the Commissioner that accrued interest shall cease pursuant to §§ 103.36 and 103.37.

**§ 103.41 Interest.**

Interest rates charged by lenders on guaranteed and insured loans, exclusive of loan service charges, if any, shall not exceed such percent per annum on the principal obligation outstanding as the Commissioner determines to be reasonable and legal at the time a loan is guaranteed or insured, taking into account the range of rates prevailing in the private market for similar loans and the risks assumed by the United States. Each loan shall show the rate of interest to be charged. Interest shall be payable at least annually. Once a loan is closed the interest rate may not be increased except when a

variable interest rate tied to a specified base rate agreed upon by the borrower and the lender has been approved by the Commissioner. Lenders may not charge interest on loan funds used for payment of loan service charges.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34976, Aug. 23, 1989]

**§ 103.42 Interest subsidy.**

(a) The Commissioner may pay an interest subsidy to lenders on loans which are guaranteed or insured under this part 103 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with title I, section 104, of the Indian Financing Act of 1974 (Pub. L. 93-262, 83 Stat. 77). The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. Interest subsidy payments by the United States shall be discontinued on such loans if the lender elects to discontinue the guaranty or insurance or causes the termination of the guaranty or insurance by failure to make premium payments as required by § 103.43, or when one of the following occurs:

(1) The loan is paid in full prior to the expiration of the original term.

(2) The loan is refinanced by a new loan.

(3) The repayment schedule on the principal balance owing is extended beyond the original term, unless an exception is approved by the Commissioner. The interest subsidy shall only be discontinued as to the balance which has been extended beyond the original term of the loan.

(4) The lender on a defaulted loan is reimbursed for a guaranteed or insured loss. The date of the check shall be the date of reimbursement.

(5) Cash flow from the business being financed appears sufficient to pay for full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

(b) The lender shall notify the Commissioner that he has made or modified an insured loan under the provisions of a general insurance agreement within 20 days of such action and provide the Commissioner with the following information:

(1) The name and address of the borrower.

(2) Tribal affiliation of the borrower.

(3) Amount of the loan and purpose(s).

(4) The repayment schedule.

(5) The interest rate charged the borrower.

(6) The date(s) funds were advanced.

(c) After receiving notice from the lender, the Commissioner will establish the interest

subsidy rate and notify the lender of the rate established. The Commissioner may establish procedures requiring lenders to provide reports which will expedite the prompt payment of interest subsidies. Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semi-annually, quarterly or monthly, depending on the time interest is scheduled to be paid and as near the due date as feasible, but not before. Lenders shall notify the Commissioner promptly when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement. The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

#### § 103.43 Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the premium within 90 days of the date of approval of the loan guaranty. Existing lenders may elect to modify their Loan Guaranty and Insurance Agreements with the Bureau of Indian Affairs so as to pay future premium payments in a lump sum. If the guaranty premium is not paid within 90 days of approval of the loan guaranty or modification of the agreement, the Commissioner will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

[57 FR 46474, Oct. 8, 1992]

#### § 103.44 Other charges.

Funds may be included in loans for payment of reasonable and customary costs for legal or architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recordation costs, hazard and liability insurance premiums, taxes and such other charges as the Commissioner may authorize at the time a loan is made. Loan service charges, if any, may be charged if authorized in the loan agreement. Funds included in a loan for payment of loan service charges may not bear interest pursuant to § 103.41. Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

#### § 103.45 Late charge.

Lenders may assess borrowers a late charge on any loan installment, principal only, received more than 30 days after its due date if the loan agreement at the time of approval contains an authorization to this effect. The rate shall be specified in the loan agreement. The amount of late charges assessed may not be guaranteed or insured. Interest may not be charged on late charges.

#### § 103.46 Loan servicing.

(a) The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 103.44. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in the computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices shall include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. There should be a record of the time and outcome of each contact with the borrower, including notification of delinquent status, requests for repayment, and intent to report the delinquent debt to credit bureaus or to refer debts to collection agencies.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

#### § 103.47 Restrictions on lenders.

Loan agreements shall not provide that the lender shall have the right to declare the indebtedness due, or to pursue one or more legal remedies, if the lender "shall feel insecure". This restriction shall not prevent a



lender from taking action against a borrower due to any act or omission on the part of the borrower which, by the terms of a note, mortgage, or other loan document, would allow the lender to declare a loan in default, nor to take action to minimize the loss on a loan.

**§ 103.48 Title to property purchased with loans.**

Title to personal property purchased with a guaranteed or insured loan shall be taken in the name of the borrower without a restriction against alienation. Title to land purchased with a guaranteed or insured loan may be taken pursuant to §103.3. Transactions involving taking title to land purchases in trust or restricted status require approval of the Commissioner.

**§ 103.49 Fraud or misrepresentation.**

(a) Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure their accuracy and the validity of signatures.

(b) There shall be no liability on the part of the United States to reimburse an insured lender for that portion of an insured loss on a loan caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;

(2) The lender's furnishing false information to induce the issuance of an insurance agreement by the Commissioner;

(3) The lender's furnishing false information in a loan docket on a loan made under the provisions of a general insurance agreement issued by the Commissioner; or

(4) The lender's willful or negligent action which resulted in a fraud, forgery or misrepresentation.

(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loss caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;

(2) The lender's furnishing false information to induce the issuance of a guaranty certificate by the Commissioner; or

(3) The lender's willful or negligent action which permitted a fraud, forgery or misrepresentation.

A reduction will not be made in the amount of reimbursement on a guaranteed loss to a purchaser, assignee, or transferee who acquired the loan before maturity for value and did not directly or by agent participate in or have prior knowledge of a fraud, forgery or misrepresentation.

**§ 103.50 Loan guaranty and insurance fund.**

(a) The loan guaranty and insurance fund shall be utilized for all loan guaranty and insurance operations pursuant to the regulations in this part 103. All receipts from operations including premium charges shall be deposited in this fund. All disbursements incident to administering guaranteed and insured loans shall be made from this fund. All cash, claims, notes, mortgages, contracts, and property acquired by the Secretary under this part 103 shall constitute assets of the fund. All liabilities and obligations of such assets shall be liabilities and obligations of the fund.

(b) The Commissioner will design an accounting system that will reflect at all times the financial condition of the fund and the results from its operation.

(c) Interest subsidies paid by the Commissioner pursuant to §103.42 shall be paid from the loan guaranty and insurance fund and charged against an "interest subsidy account" as an expense of the fund.

**§ 103.51 Sale or assignment of guaranteed loans.**

Any guaranteed loan, including the security and guaranty certificate, may be sold to any person. The person acquiring the loan shall notify the Commissioner in writing with 30 days after acquisition. The notice will give the name of the borrower, the certificate number, the amount of principal and interest unpaid on the loan, and the security acquired. Failure of the acquirer to notify the Commissioner within 30 days of acquisition will void the guaranty unless the Commissioner authorizes an exception because of extenuating circumstances.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46475, Oct. 8, 1992]

**§ 103.52 Records.**

Lenders will maintain adequate records on guaranteed and insured loans made and will submit reports to keep the Commissioner informed regarding guaranteed and insured loans made. The Commissioner may prescribe the number of reports to be submitted annually, the dates, and the forms to be used for reporting. The Commissioner may have the records of lenders inspected at any reasonable time during regular business days and hours.

**§ 103.53 Suspension of lenders.**

Whenever the Commissioner finds that any lender or holder of a guaranty certificate or insured loan fails to maintain adequate accounting records, to demonstrate proper ability to adequately service loans guaranteed or insured, or to exercise proper credit

## Bureau of Indian Affairs, Interior

## § 111.1

judgment, or has willfully or negligently engaged in practices detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any additional loans made by such lender or certificate holder. He may also bar such lender or certificate holder from acquiring additional loans guaranteed under this part 103. However, the Commissioner shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

### § 103.54 Probate.

(a) The estates of deceased borrowers who die possessed of trust property or funds and who gave as security for a guaranteed or insured loan an assignment of income from trust property, a mortgage or deed of trust on trust or restricted land, or a lien on trust chattels or crops growing on trust land will be probated in accordance with the applicable regulations in subpart D of 43 CFR part 4 and in parts 16 and 17 of 25 CFR. The Superintendent or other Bureau official having jurisdiction over the trust property and trust funds of a decedent shall promptly notify the lender on receipt of information confirming the demise of a borrower. The notice may be given by furnishing the lender with a copy of the Superintendent's report to the Administrative Law Judge or by separate letter.

(b) A lender receiving information from a Superintendent or otherwise learning of the demise of a borrower shall notify the Administrative Law Judge of the lender's claim against the decedent's trust estate. The lender's notice to the Administrative Law Judge shall include:

- (1) The name of the borrower.
- (2) The balance owing on the loan.
- (3) The trust property or income given as security for the loan.
- (4) A copy of securing documents.
- (5) A copy of the guaranty certificate or insurance agreement.

(c) Within 15 days after receiving information that a borrower has died, the lender shall notify the Commissioner of this fact by furnishing a copy of the information provided to the Administrative Law Judge or by separate letter furnishing:

- (1) The name of the borrower.
- (2) The guaranty certificate number or insurance agreement number.
- (3) The balance owing on loan.
- (4) Any anticipated action which will be taken to protect the interests of the lender and the United States.
- (d) The notice shall be sent by registered or certified mail.

### § 103.55 Information collection.

(a) The collection of information contained in § 103.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-

0020. The information will be used to rate applicant in accordance with the terms and conditions set forth in §§ 103.4, 103.9, 103.15, 103.36, 103.37, 103.42, 103.43, and 103.52 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337-SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076-0020), Office of Management and Budget, Washington, DC 20503.

[54 FR 34975, Aug. 23, 1989]

## 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,<sup>1</sup> 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;

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

## § 111.2

(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 a payment will not be recognized. Superintendents will note in the "Re-

## 25 CFR Ch. I (4-1-01 Edition)

marks" column on the roll the date of birth of each new enrollee and the date of death of deceased annuitants.

### § 111.4 Election of shareholders.

An Indian holding equal rights in two or more tribes can share in payments to only one of them and will be required to elect with which tribe he wishes to be enrolled and to relinquish in writing his claims to payments to the other. In the case of a minor the election will be made by the parent or guardian.

### § 111.5 Future payments.

Indians who have received or applied for their pro rata shares of an interest-bearing tribal fund under the act of March 2, 1907 (34 Stat. 1221; 25 U.S.C. 119, 121), as amended by the act of May 18, 1916 (39 Stat. 128), will not be permitted to participate in future payments made from the accumulated interest.

## PART 112—REGULATIONS FOR PRO RATA SHARES OF TRIBAL FUNDS

Sec.

112.1 Fee simple patentees.

112.2 Applicants who have received neither fee simple patents nor certificates of competency.

112.3 Applicants who are mentally or physically incapable of managing their affairs.

112.4 Interest in pro rata shares not vested rights unless application approved.

112.5 Basis of distribution; pro rata shares.

112.6 Disposition of pro rata share in event of applicant's death.

112.7 Pro rata shares of minors.

AUTHORITY: Sec. 2, 34 Stat. 1221, as amended; 25 U.S.C. 121.

CROSS REFERENCE: For regulations pertaining to the determination of heirs and approval of wills, see part 15 and subpart G of part 11 of this chapter.

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

### § 112.1 Fee simple patentees.

When the applicant has been granted a patent in fee or certificate of competency, that fact will be accepted as prima facie evidence of his competency, but in forwarding applications of this class the agent will give the

## Bureau of Indian Affairs, Interior

## § 112.4

date on which the patent was issued, report whether in his judgment the patentee has made proper use of his privileges and would make good use of his share of the tribal funds if paid to him, and make a specific recommendation for approval or disapproval of the application.

### § 112.2 Applicants who have received neither fee simple patents nor certificates of competency.

In the case of an applicant who has received neither a fee simple patent nor a certificate of competency, the application must be accompanied by evidence which will establish the fact that he is capable of managing his own affairs. In forwarding applications of this class the superintendent will report fully, as follows:

- (a) Is the applicant living on this allotment? If so, is he making reasonable efforts to cultivate his land and to support himself and family? If he is not living on his allotment, what is his occupation?
- (b) Is any part of his allotment leased? If so, to what extent does he depend upon the rent therefrom to support himself and family?
- (c) Has the applicant been given the privilege of leasing his own lands; and if so, with what result?
- (d) Has he an interest in any inherited land? If he has sold or leased any inherited land, how has he managed the proceeds?
- (e) Is the applicant of good moral character?
- (f) Is he addicted to the use of intoxicants? And if so, does this habit, in the judgment of the agent, unfit him to make proper use of his share of the tribal funds?
- (g) What is his physical condition?
- (h) Is the applicant in debt? If so, to what extent and for what purpose was the debt incurred?
- (i) Has the applicant the necessary business qualifications to enable him to manage his own affairs?
- (j) Give such other information concerning the applicant as will aid the office in determining whether or not to approve his application.
- (k) Make a specific recommendation for the approval or disapproval of the application.

### § 112.3 Applicants who are mentally or physically incapable of managing their affairs.

Applications of this class must be accompanied by evidence that will establish the advisability of withdrawing the share. If the application is approved, the funds will be deposited to the credit of the Indian and handled as individual Indian money.

In forwarding applications the agent will report fully as follows:

- (a) Sex and exact date of birth.
- (b) Identify the applicant by allotment and last annuity-roll numbers.
- (c) What is the actual physical condition of the applicant. If suffering from disease, submit certificate of physician if necessary to establish disability.
- (d) What is the actual mental condition of the applicant? Answer fully.
- (e) What are the material resources of the applicant?
- (f) What advantages will accrue to applicant by withdrawal of his or her share at this time?
- (g) Has it been explained to the applicant and does he understand that if the application is approved the funds will be deposited to his credit as individual Indian money to be expended under the supervision of the superintendent?
- (h) Make a specific recommendation for the approval or disapproval of the application.

CROSS REFERENCE: For individual Indian money regulations, see part 115 of this chapter.

[22 FR 10549, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 48 FR 13414, Mar. 31, 1983]

### § 112.4 Interest in pro rata shares not vested rights unless application approved.

On November 6, 1908, the Secretary of the Interior decided, in effect, that the interest of an Indian in a pro rata share of a tribal fund does not vest in the Indian an inheritable property until after his application has been approved by the Secretary and an order signed by him segregating it from the tribal fund. Applications for shares of funds under this act may be made at any time, but in view of the Secretary's decision such applications should be forwarded to the Bureau by

## § 112.5

the superintendent as soon as they are completed and filed with him. Applications from those who are blind, decrepit, etc., must be made special and forwarded to the Bureau of Indian Affairs, Washington, D.C., as soon as possible.

### § 112.5 Basis of distribution; pro rata shares.

In estimating the pro rata share of an individual, the last annuity payroll prior to July 1, or January 1 of each year will be taken as a basis of distribution. Where no payment has been made within 1 year, the last census, if taken within the year, will be the basis. If no census has been taken or payment made within a year, the last available record—either census or annuity roll will be used.

### § 112.6 Disposition of pro rata share in event of applicant's death.

In the event of the death of an applicant prior to the approval of his application by the Secretary of the Interior, the share to which he would have been entitled, if living, will revert to the tribe. In case of the death of an applicant after approval of his application and the signing by the Secretary of the Interior of an order for the segregation of his share, but before payment is made, his share will descend to his legal heirs and should be deposited to the credit of the estate pending formal determination thereof.

CROSS REFERENCE: For regulations pertaining to the determinations of heirs and approval of wills, see part 15 and §§11.30 through 11.32C of this chapter.

### § 112.7 Pro rata shares of minors.

The shares of minors will not be withdrawn except when necessary for their own benefit. The application should be signed by the parent or guardian and transmitted to the Bureau by the superintendent with his recommendation as in other cases and a full explanation of the circumstances which justify the withdrawal. Such shares will be deposited to the credit of the minors subject to expenditure under the individual Indian money regulations. The term "minor," as used in this section, shall be interpreted in conformity with the State law.

## 25 CFR Ch. I (4-1-01 Edition)

CROSS REFERENCE: For individual Indian money regulations, see part 115 of this chapter.

### PART 114—SPECIAL DEPOSITS [RESERVED]

### PART 115—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

#### Subpart A—Purpose, Definitions, and Public Information

Sec.

- 115.001 What is the purpose of this part?
- 115.002 What definitions do I need to know?

#### Subpart B—IIM Accounts

- 115.100 Osage Agency.
- 115.101 Individual accounts.
- 115.102 Adults under legal disability.
- 115.103 Payments by other Federal agencies.
- 115.104 Restrictions.
- 115.105 Funds of deceased Indians of the Five Civilized Tribes.
- 115.106 Assets of members of the Agua Caliente Band of Mission Indians.
- 115.107 Appeals.

#### Subpart C—IIM Accounts: Minors

- 115.400 Will a minor's IIM account always be supervised?
- 115.401 What is a minor's supervised account?
- 115.402 Will a minor have access to information about his or her account?
- 115.403 Who will receive information regarding a minor's supervised account?
- 115.404 What information will be provided in a minor's statement of performance?
- 115.405 How frequently will a minor's statement of performance be mailed?
- 115.406 Who provides an address of record for a minor's supervised account?
- 115.407 How is an address of record for a minor's supervised account changed?
- 115.408 May a minor's supervised account have more than one address on file with the BIA?
- 115.409 How is an address for a minor's residence changed?
- 115.410 What types of identification will the BIA or OTFM accept as "verifiable photo identification"?
- 115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?
- 115.412 Will child support payments be accepted for deposit into a minor's supervised account?
- 115.413 Who may receive funds from a minor's supervised account?

- 115.414 What is an authorized disbursement request?
- 115.415 How will an authorized disbursement from a minor's supervised account be sent?
- 115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?
- 115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?
- 115.418 What types of trust funds may a minor have?
- 115.419 Who develops a minor's distribution plan?
- 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?
- 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?
- 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?
- 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?
- 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?
- 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?
- 115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?
- 115.427 What is the BIA's annual review process for a minor's supervised account?
- 115.428 Will you automatically receive all of your trust funds when you reach the age of 18?
- 115.429 What do you need to do when you reach 18 years of age to access your trust funds?
- 115.430 Will your account lose its supervised status when you reach the age of 18?
- 115.431 If you are an emancipated minor may you withdraw trust funds from your account?
- 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?
- 115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?

#### Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

- 115.600 If BIA decides to restrict your IIM account under §115.102 or §115.104, what procedures must the BIA follow?
- 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?
- 115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?
- 115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?
- 115.604 When will BIA authorize OTFM to place a restriction on your IIM account?
- 115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?
- 115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?
- 115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?
- 115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?
- 115.609 Will you be allowed to present testimony and/or evidence at the hearing?
- 115.610 Will you be allowed to present witnesses during a hearing?
- 115.611 Will you be allowed to question opposing witnesses during a hearing?
- 115.612 May you be represented by an attorney during your hearing?
- 115.613 Will the BIA record the hearing?
- 115.614 Why is the BIA hearing recorded?
- 115.615 How long after the hearing will BIA make its final decision?
- 115.616 What information will be included in BIA's final decision?
- 115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?
- 115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?

#### Subpart D—IIM Accounts: Estate Accounts

- 115.500 When is an estate account established?
- 115.501 How long will an estate account remain open?
- 115.502 Who inherits the money in an IIM account when an account holder dies?

- 115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?
- 115.620 If you decide to appeal the BIA's final decision pursuant to §115.107, will the BIA restrict your IIM account during the appeal?

#### Subpart F—Trust Fund Accounts: General Information

- 115.700 Why is money held in trust for tribes and individual Indians?
- 115.701 What types of accounts are maintained for Indian trust funds?
- 115.702 What specific sources of money will be accepted for deposit into a trust account?
- 115.703 May we accept for deposit into a trust account money not specified in §115.702?
- 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in §115.702?
- 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?
- 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?
- 115.707 Will the Secretary accept administrative fees for deposit into a trust account?
- 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?
- 115.709 Will an annual audit be conducted on trust funds?

#### INVESTMENTS AND INTERESTS

- 115.710 Does money in a trust account earn interest?
- 115.711 How is money in a trust account invested?
- 115.712 What is the interest rate earned on money in a trust account?
- 115.713 When does money in a trust account start earning interest?

#### Subpart G—Tribal Accounts

- 115.800 When does OTFM open a tribal account?
- 115.801 How often will a tribe receive information about its trust account(s)?
- 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?
- 115.803 What information will be provided in a statement of performance?

- 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?
- 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?
- 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

#### INVESTING AND MANAGING TRIBAL TRUST FUNDS

- 115.807 Will OTFM consult with tribes about investments of tribal trust funds?
- 115.808 Could trust fund investments made by OTFM lose money?
- 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?
- 115.810 May a tribe directly invest and manage its trust funds?
- 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?
- 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?
- 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?
- 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?

#### WITHDRAWING TRIBAL TRUST FUNDS

- 115.815 How does a tribe request trust funds from a tribal trust account?
- 115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?
- 115.817 How does OTFM disburse money to a tribe?

#### UNCLAIMED PER CAPITA FUNDS

- 115.818 What happens if an Indian adult does not cash his or her per capita check?
- 115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?
- 115.820 May OTFM transfer money in a returned per capita account to a tribal account?

#### Subpart H—Special Deposit Accounts

- 115.900 Who receives the interest earned on trust funds in a special deposit account?
- 115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?

## Bureau of Indian Affairs, Interior

## § 115.002

- 115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?
- 115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?
- 115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?

### Subpart I—Records

- 115.1000 Who owns the records associated with this part?
- 115.1001 How must records associated with this part be preserved?

AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87-283; Pub. L. 97-100; Pub. L. 97-257; Pub. L. 103-412; Pub. L. 97-458; 44 U.S.C. 3101 *et seq.*

SOURCE: 66 FR 7094, Jan. 22, 2001, unless otherwise noted.

### Subpart A—Purpose, Definitions, and Public Information

#### § 115.001 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior, including any tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. §450f) or a Self-Governance compact (pursuant to 25 U.S.C. §558cc), to carry out the trust duties owed to tribes and individual Indians to manage and administer trust assets for the exclusive benefit of tribal and individual Indian beneficiaries pursuant to federal law, including the American Indian Trust Fund Management Reform Act of 1994, Public Law 103-412, 108 Stat. 4239, 25 U.S.C. §4001 (Trust Reform Act).

#### § 115.002 What definitions do I need to know?

As used in this part:

*Account holder* means a tribe or a person who owns the funds in a tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

*Account* means a record of trust funds that is maintained by the Secretary for the benefit of a tribe or a person.

*Administratively restricted account* means an IIM account that is placed on temporary hold by OTFM where an account holder's current address of record is unknown or where more documentation is needed to make a distribution from an account.

*Adult* means an individual who has reached 18 years of age, except when the individual's tribe has determined the age for adulthood to be older than 18 for access to tribal trust fund per capita proceeds.

*Adult in need of assistance* means an individual who has been determined to be "incapable of managing or administering his or her property, including his or her financial affairs" either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction.

*BIA* means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

*Bond* means security for the performance of certain obligations or a guaranty of such performance as furnished by a third-party surety. As used in this part, bonds may include cash bonds, performance bonds, and surety bonds.

*Court of competent jurisdiction* means a federal or tribal court with jurisdiction; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction.

*Day* means a calendar day unless otherwise specified.

*Department* means the Department of the Interior or its authorized representative.

*Deposits* mean receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account.

*Emancipated minor* means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

*Encumber or encumbrance* means to attach trust assets held by the Secretary with a claim, lien, or charge



that has been approved by the Secretary.

*Encumbered account* means a trust fund account where some portion of the proceeds are obligated to another party.

*Estate account* means an account for a deceased IIM account holder.

*FOIA* means the Freedom of Information Act, 5 U.S.C. § 552.

*Guardian* means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property. However, this definition does not apply to property subject to § 115.106 of this part.

*Individual Indian Money (IIM) accounts* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are three types of IIM accounts: unrestricted, restricted, and estate accounts.

*Legal disability* means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her behalf.

*MSW* means a Master of Social Work degree from an accredited college or university.

*Minor* means an individual who is not an adult as defined in this part.

*Non-compos mentis* means a person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

*OST* means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*OTFM* means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*Privacy Act* means the Federal Privacy Act, 5 U.S.C. § 552a.

*Restricted fee land(s)* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

*Secretary* means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc).

*Special deposit account* means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holders.

*Supervised account* means a restricted IIM account, from which all disbursements must be approved by the BIA, that is maintained for minors, emancipated minors, adults who are in need of assistance, adults who under legal disability, or adults who are non-compos mentis.

*Tribal account or tribal trust account* generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary.

*Tribe* means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

*Trust account* means a tribal account, an IIM account, or a special deposit account for trust funds maintained by the Secretary.

*Trust assets* mean trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians.

*Trust funds* means money derived from the sale or use of trust lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into trust.

*Trust land(s)* means any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or an individual Indian.

*Trust Reform Act* means the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001.

*Trust resources* means any element or matter directly derived from Indian trust property.

*Unrestricted account* means an IIM account in which an Indian account holder may determine the timing and amount of disbursements from the account.

*Voluntary hold* means a request by an individual Indian with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the trust funds automatically disbursed.

*We* or *Us* or *Our* means the Secretary as defined in this part.

*You* or *Your* means an IIM account holder.

### Subpart B—IIM Accounts

#### § 115.100 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this subchapter.

#### § 115.101 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

#### § 115.102 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

#### § 115.103 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the Act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

#### § 115.104 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded

## § 115.105

and filed with the records of the account. For rules governing the payment of judgments from individual Indian money accounts, see § 11.208 of this chapter.

### § 115.105 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

### § 115.106 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90-597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, *supra*, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

## 25 CFR Ch. I (4-1-01 Edition)

### § 115.107 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of subpart E.

## Subpart C—IIM Accounts: Minors

### § 115.400 Will a minor's IIM account always be supervised?

Yes, all IIM accounts established by BIA for minors will be a supervised by the BIA.

### § 115.401 What is a minor's supervised account?

A minor's supervised account is a restricted IIM account from which all disbursements must be made pursuant to a distribution plan approved by the BIA that is established for:

- (a) A minor, or
- (b) An emancipated minor.

### § 115.402 Will a minor have access to information about his or her account?

A minor will not have access to information about his or her IIM account without approval of the custodial parent(s) or legal guardian. However, an emancipated minor will have access to information about his or her IIM account.

### § 115.403 Who will receive information regarding a minor's supervised account?

(a) The parent(s) with legal custody of the minor or the minor's legal guardian will receive a minor's statement of performance at the address of record for the minor's supervised account.

(b) An emancipated minor will receive his or her statement of performance at the address of record for the minor's supervised account.

### § 115.404 What information will be provided in a minor's statement of performance?

A minor's statement of performance will identify the source, type, and status of the funds deposited and held in the account; the beginning balance; the gains and losses; receipts and disbursements, if any; and the ending balance

**Bureau of Indian Affairs, Interior**

**§ 115.409**

of the quarterly statement period for the minor's supervised account.

**§ 115.405 How frequently will a minor's statement of performance be mailed?**

We will mail a minor's statement of performance to the address of record quarterly, within and no later than 20 business days after the close of the quarterly statement period.

**§ 115.406 Who provides an address of record for a minor's supervised account?**

(a) The custodial parent or the legal guardian must provide an address to the BIA and this address will be the address of record for the minor's supervised account. Where applicable, a parent or legal guardian must provide a copy of the custodial order or guardianship order from a court of competent jurisdiction when providing the address of record for the minor's supervised IIM account.

(b) The emancipated minor must provide his or her address of record to the BIA.

(c) Upon receipt of the change of address of record from the parent or legal guardian, the BIA must provide the change of the address of record to the OTFM.

**§ 115.407 How is an address of record for a minor's supervised account changed?**

(a) To change an address of record for a minor's supervised IIM account, a custodial parent(s), legal guardian, or emancipated minor must provide BIA with the following information:

- (1) The minor's or emancipated minor's name;
- (2) The name of the custodial parent(s) or legal guardian, if applicable;
- (3) A custody order from a court of competent jurisdiction or a copy of a guardianship, if applicable;
- (4) The new address of the custodial parent(s), legal guardian, or emancipated minor; and
- (5) The signature, mark or thumb print of a custodial parent, legal guardian, or emancipated minor that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address of record, the following information will further assist us to identify the minor's account:

- (1) The minor's or emancipated minor's IIM account number;
- (2) The minor's or emancipated minor's date of birth;
- (3) The minor's or emancipated minor's tribal enrollment number; and
- (4) The minor's or emancipated minor's social security number.

**§ 115.408 May a minor's supervised account have more than one address on file with the BIA?**

Yes, a minor's supervised account may have more than one address on file with the BIA. We request that the parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor, notify us of the following addresses for the minor:

- (a) The minor's residence;
- (b) The address of record where the statement of performance will be mailed;
- (c) The address where disbursement checks will be mailed or financial institution information for direct deposits of trust funds as authorized under an approved distribution plan.

**§ 115.409 How is an address for a minor's residence changed?**

(a) To change an address for a minor's residence, the custodial parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor must provide BIA with the following information:

- (1) The minor's name;
- (2) The name of the custodial parent(s) or legal guardian;
- (3) A copy of a custodial order from a court of competent jurisdiction or a guardianship order, where applicable;
- (4) The new address of the minor's residence; and
- (5) The signature, mark or thumb print of the individual who is providing the updated address for the minor's residence that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

## § 115.410

(b) When requesting a change of an address for a minor's residence, the following information will further assist us to identify the minor's account:

- (1) The minor's IIM account number;
- (2) The minor's date of birth;
- (3) The minor's tribal enrollment number (if known); and
- (4) The minor's social security number (where known).

### **§ 115.410 What types of identification will the BIA or OTFM accept as "verifiable photo identification"?**

BIA or OTFM will accept the following forms of identification as "verifiable photo identification":

- (a) A valid driver's license;
- (b) A government-issued photo identification card, such as a passport, security badge, etc.; or
- (c) A tribal photo identification card.

### **§ 115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?**

If the individual making a request regarding a minor's supervised account does not have any verifiable photo identification, the individual may make a request in person at the BIA and we will talk with the individual and review information in the minor's file to see if we can attest to the individual's identity. If we cannot establish the identity of the individual, we will not accept the request.

### **§ 115.412 Will child support payments be accepted for deposit into a minor's supervised account?**

The Secretary will not accept child support payments for deposit into a minor's supervised account.

### **§ 115.413 Who may receive funds from a minor's supervised account?**

A custodial parent, a legal guardian, a person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor may be eligible to withdraw funds from a minor's supervised account if there is an authorized disbursement request that is based upon the terms of a BIA-approved distribution plan.

## 25 CFR Ch. I (4-1-01 Edition)

### **§ 115.414 What is an authorized disbursement request?**

An authorized disbursement request is the form or letter that must be approved by the BIA that specifies the funds to be disbursed from an IIM account. The authorized disbursement request may not be issued to disburse funds from a minor's supervised account unless an approved distribution plan exists, the amount to be disbursed is in conformity with the distribution plan and the disbursement will be made to an individual or third party specified in the plan.

### **§ 115.415 How will an authorized disbursement from a minor's supervised account be sent?**

OTFM will make an authorized disbursement based on the approved distribution plan from a minor's supervised account by:

- (a) Making a direct deposit to a specified account at a financial institution (a direct deposit into the specified account will eliminate lost, stolen or damaged checks and will also eliminate delays associated with mailing the check);
- (b) Mailing a check to the address of record or to a specified disbursement address; or
- (c) Mailing a check to a specified third party's address.

### **§ 115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?**

(a) Federal law does not allow the United States post office to forward checks that are issued by the federal government. Therefore, a check from a minor's supervised account will not be forwarded to an address left with the United States post office. The new address of record must be provided directly to BIA.

(b) Where a forwarding address has been provided to the United States post office, the United States post office will forward a statement of performance and general correspondence regarding a minor's supervised account that is mailed to the minor's address of

record for a limited time period. However, it is the responsibility of a custodial parent, legal guardian, or emancipated minor to give BIA the new address of record for the minor's supervised account.

**§ 115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?**

Trust money in a minor's supervised account will not be distributed without a review of other resources that may be available to meet the needs of the minor. Any trust funds of a minor that are distributed must be used for the direct benefit of the minor and in accordance with any additional limitations (*e.g.*, statutory, court order, tribal resolution, etc.) placed on the use of specific trust funds. Allowable uses may include health, education, or welfare when based upon a justified unmet need. The BIA will require receipts for expenditures of funds disbursed from a minor's account to a custodial parent, legal guardian, person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor.

**§ 115.418 What types of trust funds may a minor have?**

A minor may have one or more of the following types of trust funds:

- (a) Judgment per capita funds: Withdrawals may only be made upon BIA approval of an application made under Public Law 97-458. See 25 CFR 1.2.
- (b) Tribal per capita funds: Withdrawals may only be made under a BIA approved distribution plan and in accordance with the terms of the tribe's per capita resolution/document.
- (c) Other trust funds: Withdrawals may only be made under a minor's BIA-approved distribution plan that is based on a justified unmet need for the minor's health, education, or welfare.
- (d) Funds from other federal agencies (*e.g.*, SSA, SSI, VA) received for the benefit of the minor: Withdrawals must be made only under a BIA-approved distribution plan that must be consistent with the disbursing agency's (*e.g.*, SSA, SSI, VA) allowable uses for the funds.

**§ 115.419 Who develops a minor's distribution plan?**

A social service provider will develop a minor's distribution plan for approval by the BIA after evaluating the needs of the minor in consultation with a custodial parent, a legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or emancipated minor. A minor's distribution plan may only provide for those expenditures outlined in part § 115.417.

**§ 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?**

When developing a minor's distribution plan, the following information must be considered and included in the evaluation:

- (a) Documentation which establishes who has physical custody of the minor (*e.g.*, home visits, school records, medical records, etc.);
- (b) A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;
- (c) The name(s) of the person and his or her relationship to the minor, if any, who make a request for a disbursement from the minor's account;
- (d) An evaluation of other resources, including parental income, that may be available to meet the unmet needs of the minor;
- (e) A list of the amounts, purposes, and dates for which disbursements will be made;
- (f) The name(s) of the person to whom disbursements may be made, including, as applicable:
  - (1) A custodial parent;
  - (2) A legal guardian;
  - (3) The person who has been recognized by the BIA as having control and custody of the minor;
  - (4) An emancipated minor; and/or
  - (5) Any third parties to whom the BIA will make direct payment for goods or services provided to the minor and supported by an invoice or bill of sale;
- (g) The date(s) (at least every six months) when the custodial parent, the legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or

**§ 115.421**

**25 CFR Ch. I (4-1-01 Edition)**

the emancipated minor must provide receipts to the BIA to show that expenditures were made in accordance with the approved distribution plan;

(h) Additional requirements and justification for those requirements, as necessary to ensure that any distribution(s) will benefit the minor;

(i) The dates the disbursement plan was developed, approved, and reviewed, and the date for the next scheduled review;

(j) The date(s) the distribution plan was amended and an explanation for any amendment(s) to the distribution plan, when an amendment is necessary;

(k) The signature of the BIA official approving the plan with the certification that the plan is in the best interest of the account holder; and

(l) The signature(s) of the custodial parent, legal guardian, with date(s) signed, certifying that he or she has been consulted and has agreed to the terms of the evaluation and the distribution plan.

**§ 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?**

A minor's distribution plan must contain the following:

(a) A copy of any custodial order or guardianship order from a court of competent jurisdiction;

(b) A list of the amounts, purposes, and dates for which disbursements will be made;

(c) The name(s) of the person(s) to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor and the address of that person;

(4) An emancipated minor; and/or

(5) Any third parties and the address(es) of the third parties to whom the direct payment will be made for goods or services provided to the minor and supported by an invoice or bill of sale, where applicable;

(d) The date that the disbursement plan was approved and the expiration date of the distribution plan; and

(e) The date and signature of the BIA official approving the plan with a cer-

tification that the plan is in the best interest of the account holder.

**§ 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?**

If you are a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor who receives funds from a minor's supervised account, you must:

(a) Consult with the social service provider on the development of an evaluation;

(b) Sign an acknowledgment that you have reviewed the evaluation;

(c) Follow the terms of a distribution plan approved by the BIA;

(d) Follow any applicable court order;

(e) Provide receipts to the social services provider in accordance with terms of the evaluation for all expenses paid out of the minor's IIM funds;

(f) Review the statements of performance for the supervised account for discrepancies, if applicable;

(g) File tax returns on behalf of the account holder, if applicable; and

(h) Notify the social service provider of any change in circumstances that impairs your performance of your obligations under this part or inform the social service provider of any information regarding misuse of a minor's trust funds.

**§ 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?**

At the Secretary's discretion, the BIA may authorize the disbursement of funds from a minor's supervised account for the benefit of the minor.

**§ 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?**

The BIA-approved distribution plan will be provided to:

(a) The custodial parent; or

(b) A legal guardian; or

## Bureau of Indian Affairs, Interior

## § 115.429

(c) At the Secretary's discretion, in unusual circumstances, to a family member who has been recognized as having control and custody of the minor; or

- (d) An emancipated minor; and
- (e) OTFM.

### **§ 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?**

If we find that a distribution plan has not been followed or that a custodial parent, a legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor has failed to satisfactorily account for expenses or has not used the minor's funds for the primary benefit of the minor, we will:

- (a) Notify the individual; and
- (b) Take action to protect the interests of the minor, which may include:
  - (1) Referring the matter for civil or criminal legal action;
  - (2) Demanding repayment from the individual who has improperly expended trust funds or failed to account for the use of trust funds;
  - (3) Liquidating a bond posted by the legal guardian, where applicable, to recover improperly expended trust funds up to the amount of the bond; or
  - (4) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of the individual to receive further disbursements.

### **§ 115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?**

The BIA's responsibility in regard to the management of a minor's supervised account is to:

- (a) Review and approve the evaluation and the distribution plan;
- (b) Authorize OTFM to disburse IIM funds in accordance with an approved distribution plan; and
- (c) Conduct annual reviews of case records for minors' supervised accounts to ensure that the social service providers have managed the accounts in

accordance with the approved evaluation and distribution plan.

### **§ 115.427 What is the BIA's annual review process for a minor's supervised account?**

A BIA social worker with an MSW will conduct an annual review of minors' supervised accounts by:

- (a) Verifying that all receipts for disbursements made under a distribution plan were collected in accordance with the terms specified in the evaluation;
- (b) Reviewing the receipts for disbursements made from a minor's supervised account to ensure that all expenditures were made in accordance with the distribution plan;
- (c) Reviewing all case worker reports and notes;
- (d) Reviewing account records to insure that withdrawals and payments were made in accordance with the distribution plan;
- (e) Verifying current addresses, including the address of record, the address of the minor's residence, and the disbursement address; and
- (f) Deciding whether the distribution plan needs to be modified.

### **§ 115.428 Will you automatically receive all of your trust funds when you reach the age of 18?**

No, we will not automatically send your trust funds to you when you reach the age of 18.

### **§ 115.429 What do you need to do when you reach 18 years of age to access your trust funds?**

You must contact OTFM to request withdrawal of any or all of your trust funds that may be available to you. OTFM may require certain information from you to verify your identity, etc. prior to the release of your trust funds. All signatures must be notarized by a notary public or witnessed by a DOI employee. In addition, if you choose to have a check mailed to you, you must provide us with your address of record. If you choose to have your trust funds electronically transferred to you, you must provide your financial institution account information to OTFM.



**§ 115.430**

**§ 115.430 Will your account lose its supervised status when you reach the age of 18?**

Your account will no longer be supervised when you reach the age of 18 unless statutory language or a tribal resolution specifies an age other than 18 years of age for access to specific trust funds. However, if a court of competent jurisdiction has found you to be non-compos mentis, under legal disability, or the BIA has determined you to be an adult in need of assistance, your account will remain supervised and you will be notified in accordance with subpart E.

**§ 115.431 If you are an emancipated minor may you withdraw trust funds from your account?**

If you are an emancipated minor, you may have access to some or all of your trust funds as follows:

(a) For judgment per capita funds: you may not make withdrawals from your account until you have reached the age specified in the judgment. Exceptions are only granted upon the approval of an application made under Public Law 97-458. See 25 CFR 1.2.

(b) Tribal per capita funds: access to these funds will be determined by tribal resolution.

(c) Other trust funds: You may be able to have supervised access to some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You must work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

(d) For funds from other federal agencies (*e.g.*, SSA, SSI, VA), you may be able to receive funds directly, but you must contact and make arrangements with the other federal agency. Direct receipt of funds from another federal agency will not change the supervised status of an emancipated minor's trust account.

**25 CFR Ch. I (4-1-01 Edition)**

**Subpart D—IIM Accounts: Estate Accounts**

**§ 115.500 When is an estate account established?**

An estate account is established when we receive notice of an account holder's death.

**§ 115.501 How long will an estate account remain open?**

An estate account will remain open until the funds have been distributed in accordance with the distribution and/or probate order.

**§ 115.502 Who inherits the money in an IIM account when an account holder dies?**

At the end of all probate procedures, funds remaining in a decedent's estate account will be distributed from the decedent's estate account and paid directly to or deposited into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds, where applicable. See 25 CFR part 15.

**§ 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?**

(a) If you are responsible for making the funeral arrangements of a decedent who had an IIM account and you have an immediate need for emergency assistance to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to \$1,000 from the decedent's IIM account if the decedent's IIM account has more than \$2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to \$1,000 that are necessary for the burial services.

(d) We will make payments directly to the providers of the service(s).

**§ 115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?**

If you have a life estate interest in income-producing trust assets, which is earning income, OTFM will open an IIM-life estate account for you and funds will be distributed after BIA has certified ownership of the trust funds.

**Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account**

**§ 115.600 If BIA decides to restrict your IIM account under § 115.102 or § 115.104, what procedures must the BIA follow?**

If under § 115.102 or § 115.104, the BIA has decided to limit your access to your IIM account (*i.e.*, decided to supervise the IIM account), or if the BIA has decided to pay creditors with funds from your IIM account, including creditors with judgments from Courts of Indian Offenses for which preliminary procedures are prescribed in 25 CFR 11.208, the BIA must notify you or your guardian, as applicable, to provide you or your guardian, as applicable, with an opportunity to challenge the BIA's decision to restrict your IIM account as specified in subpart E.

**§ 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?**

(a) The BIA may restrict your IIM account through supervision if the BIA:

(1) Receives an order from a court of competent jurisdiction that you are non-compos mentis; or

(2) Receives an order or judgment from a court of competent jurisdiction that you are an adult in need of assistance because you are "incapable of managing or administering property, including your financial affairs;" or

(3) Determines through an administrative process that you are an adult in need of assistance based on a finding by a licensed medical or mental health professional that you are "incapable of managing or administering property, including your financial affairs;" or

(4) Receives information from another federal agency that you are under a legal disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

**§ 115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?**

The BIA will notify you or your guardian, as applicable, of its decision to restrict your IIM account by:

(a) United States certified mail to your address of record;

(b) Personal delivery to you or your guardian, as applicable, or to your address of record;

(c) Publication for four consecutive weeks in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known address of record; or

**§ 115.603**

**25 CFR Ch. I (4-1-01 Edition)**

(d) United States certified mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney, if known.

**§ 115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?**

If BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason, the BIA will remove the restriction on your account, which was placed five days after the notice was mailed, and will publish a notice in accordance with § 115.602(c) and § 115.605(b).

**§ 115.604 When will BIA authorize OTFM to place a restriction on your IIM account?**

BIA will authorize OTFM to place a restriction on your IIM account after providing OTFM with supporting documentation (i.e., receipts, notice of publication, etc.) of the following:

- (a) Five (5) days after the date BIA mails you or your guardian, as applicable, notice of its decision to restrict your account by United States certified mail to your address of record;
- (b) One (1) day after BIA has made personal delivery to you or your guardian, as applicable, or to your address of record of its notice of the BIA's decision to restrict your account; or
- (c) Five (5) days after the fourth publication of the public notice of BIA's decision to restrict your account.

**§ 115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?**

- (a) When the BIA provides notice of its decision to restrict your IIM account by certified mail or personal delivery to you or your guardian, as applicable, the notice must contain:
  - (1) The name on the IIM account;
  - (2) The reason for the restriction;
  - (3) The amount to be encumbered, if applicable;
  - (4) A statement that your IIM account will be restricted 5 days after the date the notice was sent United States

certified mail to your address of record;

- (5) An explanation that you have 40 days from the date the notice was sent United States certified mail to request a hearing to challenge BIA's decision to restrict your IIM account;

- (6) An explanation of how to request a hearing;

- (7) A statement that the BIA will conduct the hearing and that you are assured a fair hearing;

- (8) A copy of the fair hearing guidelines;

- (9) A statement that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim, if applicable;

- (10) The address and phone number of the BIA office that made the decision to restrict your IIM account and provided the notice; and

- (11) Other information as may be determined appropriate by the BIA.

- (b) When the BIA provides public notice of its decision to restrict your account, the only information the public notice will include is:

- (1) The name on the account;
- (2) The date of first publication of the public notice;
- (3) A statement that the BIA has decided to place a restriction on your IIM account;

- (4) A statement that the public notice will be published once a week for four consecutive weeks;

- (5) A statement that the BIA will place a restriction on your account five (5) days after the date of the fourth publication of the public notice;

- (6) A statement that your opportunity to request a hearing to challenge BIA's decision to restrict your account will expire 30 days after the date of the fourth publication of the public notice; and

- (7) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing.

**§ 115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?**

If you or your guardian, as applicable, do not request a hearing to challenge BIA's decision to restrict your

## Bureau of Indian Affairs, Interior

## § 115.616

IIM account during the allotted time period, BIA's decision to restrict your IIM account will become final. BIA will follow the procedures outlined in § 115.616 through § 115.618, and § 115.620, as applicable.

### **§ 115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?**

You or your guardian, as applicable, must request a hearing to challenge the BIA's decision to restrict your IIM account from the BIA office that made the decision and notified you of the restriction. Your request must:

- (a) Be in writing;
- (b) Specifically request a hearing to challenge the restriction; and
- (c) Be hand delivered to the BIA office or postmarked within:
  - (i) 40 days of the date that BIA's notice was sent United States certified mail or personally delivered to the address of record, or
  - (ii) 30 days of the date of the final publication of the public notice.

### **§ 115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?**

BIA will conduct a hearing within ten (10) working days from its receipt of a written request from you or your guardian, as applicable, for a hearing to challenge the decision to restrict your IIM account.

### **§ 115.609 Will you be allowed to present testimony and/or evidence at the hearing?**

Yes, you or your guardian, as applicable, will be provided the opportunity to present testimony and/or evidence as to the reasons the BIA should not restrict your IIM account, including information showing how an encumbrance may create an undue financial hardship, if applicable. You may not challenge a court order or judgment in this proceeding. However, if you have appealed an order or judgment from a court of competent jurisdiction, you or your guardian, as applicable, may present evidence of your appeal and the BIA hearing will be postponed until there is a final order from the court. The restriction on your IIM account

will remain in place until after the hearing is concluded.

### **§ 115.610 Will you be allowed to present witnesses during a hearing?**

Yes, you or your guardian, as applicable, may present witnesses during a hearing. You are responsible for any and all expenses which may be associated with presenting witnesses.

### **§ 115.611 Will you be allowed to question opposing witnesses during a hearing?**

Yes, you or your guardian, as applicable, may question all opposing witnesses testifying during your hearing. You may also present witnesses to challenge opposing witness testimony.

### **§ 115.612 May you be represented by an attorney during your hearing?**

Yes, you may have an attorney or other person represent you during your hearing. However, you are responsible for any and all expenses associated with having an attorney or other person represent you.

### **§ 115.613 Will the BIA record the hearing?**

Yes, the BIA will record the hearing.

### **§ 115.614 Why is the BIA hearing recorded?**

The BIA hearing will be recorded so that it will be available for review if the hearing process is appealed under § 115.107. The BIA hearing record must be preserved as a trust record.

### **§ 115.615 How long after the hearing will BIA make its final decision?**

BIA will make its final decision within 10 business days of the end of the hearing.

### **§ 115.616 What information will be included in BIA's final decision?**

BIA's final written decision to the parties involved in the proceeding will include:

- (a) BIA's decision to remove or retain the restriction on the IIM account;
- (b) A detailed justification for the supervision or encumbrance of the IIM account, where applicable;
- (c) The amount(s) to be paid, the name and address of a third party to

## § 115.617

whom payment will be made, and the time period for repayment established under 617(a) of this part, where applicable;

(d) Any provision to allow for distributions to the account holder because of an undue financial hardship created by the encumbrance, if applicable; and

(e) Any other information the hearing officer deems necessary.

### **§ 115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?**

BIA will provide OTFM with a copy of the distribution plan, after the BIA decides to:

(a) Supervise your IIM account. BIA social services staff will consult with you and/or your guardian to develop a distribution plan. Upon BIA approval, the distribution plan will be valid for one year.

(b) Encumber your IIM account. BIA will review your account balance and your future IIM income to develop a distribution plan that establishes the amount(s) to be paid and the dates payment(s) will be made to the specified party. Payments may need to be made over the course of one or more years if the amount owed to the specified party is greater than your current IIM account balance.

### **§ 115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?**

If we decide at the conclusion of the notice and hearing process to encumber your account because of an administrative error which resulted in funds that you do not own being deposited into your IIM account or distributed to you or to a third party on your behalf, we will consult with you or your guardian,

## 25 CFR Ch. I (4–1–01 Edition)

as applicable, to determine how the funds will be re-paid.

### **§ 115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?**

Yes, if the BIA decides after your hearing to continue the restriction on your IIM account, you or your guardian, as applicable, have the right to appeal the decision under the procedures proscribed in § 115.107.

### **§ 115.620 If you decide to appeal the BIA's final decision pursuant to § 115.107, will the BIA restrict your IIM account during the appeal?**

Yes, if under § 115.107 you or your guardian, as applicable, decide to appeal the BIA's final decision to:

(a) Supervise your IIM account, your IIM account will remain restricted during the appeal period.

(b) Encumber your IIM account, your IIM account will remain restricted up to the amount at issue during the appeal period. If your account balance is greater than the amount encumbered, those funds will be available to you upon request to and by approval of the Secretary.

## **Subpart F—Trust Fund Accounts: General Information**

### **§ 115.700 Why is money held in trust for tribes and individual Indians?**

Congress has passed a number of laws that require the Secretary to establish and administer trust fund accounts for Indian tribes and certain individual Indians who have an interest(s) in trust lands, trust resources, or trust assets.

### **§ 115.701 What types of accounts are maintained for Indian trust funds?**

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The illustration below provides information on each of these trust accounts.

Types of Trust Fund Accounts		Descriptions	
<b>Individual Indian Money (IIM) Accounts</b>	Unrestricted IIM accounts	There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder.	
	Restricted IIM accounts:	Administratively Restricted	A temporary hold is placed on an account by OTFM where an address of record for an account holder is unknown or where more documentation is needed to make a distribution from an account.
		Supervised	A restriction is placed on the account by the BIA and funds from these accounts may only be withdrawn under a BIA approved distribution plan. The following account holders will have supervised accounts: <ul style="list-style-type: none"> <li>• minors,</li> <li>• emancipated minors,</li> <li>• adults who are non-compos mentis,</li> <li>• adults in need of assistance; and/or</li> <li>• adults under legal disability as defined in this part.</li> </ul>
		Encumbered	A restriction is placed on the account by the BIA until money owed from an the account is paid to a specified party. The account holder may withdraw any money available in the account that is above the amount owed to specified parties.
	IIM Estate accounts	An account for a deceased IIM account holder.	
<b>Tribal Accounts</b>		Generally, an account for a federally recognized tribe.	
<b>Special Deposit Accounts</b>		An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners.	

[66 FR 7094, Jan. 22, 2001, as amended at 66 FR 8768, Feb. 2, 2001]

**§ 115.702 What specific sources of money will be accepted for deposit into a trust account?**

We must accept proceed on behalf of tribes or individuals from the following sources:

SOURCES	TRUST ACCOUNTS				
	Tribal	Individual Indian Money (IIM)			
		Unrestricted IIM Accounts	Restricted IIM Accounts		
			Administratively restricted	Supervised	Encumbered
<b>Payments from the United States as a Result of —</b>					
Federal laws requiring funds to be deposited in trust accounts.	✓	✓	✓	✓	✓
Settlement of a claim related to trust assets that requires the funds to be deposited in trust accounts	✓	✓	✓	✓	✓
A final order from a United States court for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Unobligated or unspent forestry funds specifically appropriated for the benefit of such Indian tribe	✓				
Designation of the BIA as the representative payee (by another federal agency) to receive certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, on behalf of an individual Indian because there is no legal guardian for that individual			✓	✓	
<b>Payments resulting from —</b>					
Money directly derived from the title conveyance (e.g. sale, probate, condemnation) or use of trust lands or restricted fee lands or trust resources, including any late payment penalties, when paid directly to the Secretary on behalf of the account holder	✓	✓	✓	✓	✓
Penalties for trespass on trust lands or restricted fee lands	✓	✓	✓	✓	✓

Bureau of Indian Affairs, Interior

§ 115.702

Default or breach of the terms of a contract for the sale or use of trust lands, restricted fee lands, or trust resources arising from cash performance or surety bonds, or other source(s)	✓	✓	✓	✓	✓
A final order from a court of competent jurisdiction for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
<b>Deposits from an Indian Tribe --</b>					
Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act)	✓				
Where a tribe under 25 U.S.C. 450f et seq. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual	✓	✓	✓	✓	✓
Legislative settlement funds or judgment funds withdrawn, but not spent, for a specific project. Documentation showing source of funds is required.	✓				
<b>Deposits from other sources --</b>					
Interest earned on trust fund deposits	✓	✓	✓	✓	✓
Disbursements of tribal trust funds held by OTFM to tribal members as per capita payments	✓			✓	
As permitted by law (25 U.S.C. § 3109) to be deposited into an Indian forest land assistance account	✓				



Funds derived directly from trust lands, restricted fee lands, or trust resources that are presented to the Secretary, on behalf of the tribe or individual Indian owner(s) of the trust asset, by the payor after being mailed to the owner(s) as required by contract (i.e., direct pay) and returned by mail to the payor as undeliverable	✓	✓	✓		✓
---	---	---	---	--	---

[66 FR 7094, Jan. 22, 2001. Redesignated at 66 FR 8768, Feb. 2, 2001.]

**§ 115.703 May we accept for deposit into a trust account money not specified in § 115.702?**

No, we will not accept funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

**§ 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?**

No, we will not accept retirement checks/payments or pension fund checks/payments or any funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

**§ 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?**

We will accept money awarded or assessed by a court of competent jurisdiction for a cause of action directly related to trust assets to be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

**§ 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?**

When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust as-

sets, we must receive the funds awarded as stipulated in the court order and a copy of the court's order.

**§ 115.707 Will the Secretary accept administrative fees for deposit into a trust account?**

No. The Secretary will not accept administrative fees for deposit into a trust account because administrative fees are not trust funds. However, administrative fees may be deposited into a non-interest bearing, non-trust account with the BIA.

**§ 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?**

Trust funds received by the Secretary on behalf of a tribe or individual Indians will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository.

**§ 115.709 Will an annual audit be conducted on trust funds?**

Yes, in accordance with the Trust Reform Act an annual audit will be conducted on trust funds. Each tribe and IIM account holder will be notified when the Secretary has conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes and individual Indians. This notice will be provided in the first quarterly statement of performance following the publication of the audit.

## Bureau of Indian Affairs, Interior

## § 115.806

### INVESTMENTS AND INTERESTS

#### § 115.710 Does money in a trust account earn interest?

Yes, all money deposited in a trust account is invested and earns interest or yield returns, or both.

#### § 115.711 How is money in a trust account invested?

OTFM manages trust fund investments and its investment decisions are governed by federal statute. See 25 U.S.C. §§ 161(a) and 162a.

#### § 115.712 What is the interest rate earned on money in a trust account?

The rate of interest on a trust account changes based on how the money is invested and how those investments perform.

#### § 115.713 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned. Interest earnings of less than one cent are not credited to any account.

### Subpart G—Tribal Accounts

#### § 115.800 When does OTFM open a tribal account?

A tribal account is opened when OTFM receives income from the sources described in § 115.702.

#### § 115.801 How often will a tribe receive information about its trust account(s)?

The OTFM is required to provide each tribe with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period.

#### § 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?

Yes, a tribe may contact OTFM at any time to:

- (a) Request information about account transactions and balances;
- (b) Make arrangements to access account information electronically; or
- (c) Receive a monthly statement.

#### § 115.803 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds deposited and held in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance of the quarterly statement period.

#### § 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?

No, under the Trust Reform Act we are only responsible for accounting for those trust funds received into, and maintained by, the Department's trust funds management system.

#### § 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?

If a contract for the sale or use of trust assets specifies that payments are to be made directly to a tribe, we will not accept these trust funds into a tribal trust account. Where a tribe under 25 U.S.C. 450f *et seq.* has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual [the owner of the trust assets], the tribe must follow § 115.708 for the deposit of the trust funds into the trust account.

#### § 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) If the tribe requests assistance or if Congress directs the Secretary to provide assistance, BIA will provide technical assistance on developing a judgment use and distribution plan to a tribe.

(b) BIA will review all tribal requests for distribution of tribal judgment funds to ensure that each request complies with any requirements associated with the use of that money found in

**§ 115.807**

statutory language, congressional directives, court orders, court-approved settlements, settlement agreements, use and distribution plans, or bond or loan payments.

INVESTING AND MANAGING TRIBAL  
TRUST FUNDS

**§ 115.807 Will OTFM consult with tribes about investments of tribal trust funds?**

Upon the request of a tribe, OTFM will consult with the tribe annually to develop investment strategies to accommodate the cash flow needs of the tribe.

**§ 115.808 Could trust fund investments made by OTFM lose money?**

The value of trust fund investments made by OTFM will vary depending on the type of investment and, including but not limited to, the following:

- (a) Current interest rates;
- (b) Whether the security/investment is held to its maturity; and
- (c) Original purchase price.

However, as long as the purchase price of the security/investment is made at or below face value and the security/investment is held until maturity or payoff, the security/investment will not lose principal invested funds.

**§ 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?**

Tribes may recommend certain investments to OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. §§161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

**§ 115.810 May a tribe directly invest and manage its trust funds?**

A tribe may apply to withdraw its trust funds from OTFM for investment and management by the tribe. The tribe's request to withdraw funds must be in accordance with the requirements of the Trust Reform Act and 25 CFR part 1200, subpart B, unless otherwise specified by statutory language or the controlling document which governs the use of the trust funds.

**25 CFR Ch. I (4-1-01 Edition)**

**§ 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?**

Tribal trust funds withdrawn under the Trust Reform Act may be returned to OTFM under the following conditions:

(a) A tribe must make a written request to OTFM to redeposit all or part of the withdrawn trust funds;

(b) No tribal trust funds may be redeposited to a tribal trust account during the first six months after being withdrawn, except with the approval of the Secretary;

(c) Tribal trust funds may only be returned to OTFM a maximum of twice a year, except with the approval of the Secretary; and

(d) A tribe must return withdrawn trust funds in accordance with the requirements of the Trust Reform Act in 25 CFR, part 1200, subpart C.

**§ 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?**

If a tribe's use of trust funds is limited by statutory language or other federal law(s) and a tribe uses those trust funds in direct violation of those laws, absent an approved modification which allows for the expenditures, we will require the tribe to reimburse its trust fund account.

**§ 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?**

OTFM will only disburse the available balance of the trust funds in a tribal trust account in accordance with a use and distribution plan, if applicable, and will not overdraw a tribal trust account. If a tribe's trust funds are invested in securities that have not matured, OTFM will only sell the asset to make cash available to the tribe if:

(a) There are no restrictions against the sale, and

(b) A tribe provides OTFM with a tribal resolution stating that:

(1) The security must be sold;

(2) The tribe acknowledges that they may incur a penalty when the security is sold; and

## Bureau of Indian Affairs, Interior

## § 115.818

(3) The tribe acknowledges that the security may lose value if it is sold prior to maturity.

### **§ 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?**

A tribe may redeposit funds not used for a particular purpose or project if:

(a) The funds were withdrawn in accordance with:

- (1) The terms of Trust Reform Act;
- (2) The terms of the legislative settlement; or
- (3) The terms of a judgment use and distribution plan; and

(b) The tribe can provide documentation showing the source of the funds to be redeposited.

#### WITHDRAWING TRIBAL TRUST FUNDS

### **§ 115.815 How does a tribe request trust funds from a tribal trust account?**

To request trust funds from a tribal trust account, a tribe may:

(a) Make a written request to the BIA or the OTFM that is signed by the proper authorizing official(s), list the amount of trust funds to be withdrawn, provide any additional documentation or information required by law to withdraw certain trust funds, and must include a tribal resolution approving the withdrawal of the specified amount of trust funds; or

(b) Contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

### **§ 115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?**

(a) Action on a tribe's request for a withdrawal of trust funds may be delayed or denied if:

- (1) The tribe did not submit all the necessary documentation;
- (2) The tribe's request is not signed by the proper authorizing official(s);
- (3) OTFM does not have documentation from the tribe certifying its recognized, authorizing officials;
- (4) The tribe's request is in conflict with statutory language or the control-

ling document governing the use of the trust funds; or

(5) The BIA or OTFM requires clarification regarding the tribe's request.

(b) If action on a tribe's request to withdraw trust funds will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within ten (10) working days of the date of a request made under § 115.815(a);

(2) Notify the tribe under the time frames established in 25 CFR part 1200 for requests made under the Trust Reform Act; and

(3) Provide technical assistance to the tribe to address any problems.

### **§ 115.817 How does OTFM disburse money to a tribe?**

Upon receipt of all necessary documentation, OTFM will process the request for disbursement and send the tribe the requested amount of trust funds within one business day. Whenever possible, trust funds will be disbursed electronically to an account in a financial institution designated by the tribe. If there are circumstances that preclude electronic payments, OTFM will mail a check.

#### UNCLAIMED PER CAPITA FUNDS

### **§ 115.818 What happens if an Indian adult does not cash his or her per capita check?**

(a) If an Indian adult does not cash his or her per capita check within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the Indian adult or for disposition by a tribe pursuant to § 115.820.

(b) If an Indian adult's per capita check is returned to us as undeliverable, the trust funds will be immediately deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the individual or for disposition by a tribe pursuant to § 115.820.

**§ 115.819**

**§ 115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?**

The OTFM will notify a tribe of the names of the individuals whose per capita checks were returned as undeliverable or not cashed within twelve (12) months of issuance and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the per capita funds.

**§ 115.820 May OTFM transfer money in a returned per capita account to a tribal account?**

Funds in a returned per capita account will not automatically be returned to a tribe. However, a tribe may apply under 25 U.S.C. 164 and Public Law 87-283, 75 Stat. 584 (1961), to have the unclaimed per capita funds transferred to its account for the tribe's use after six years have passed from the date of distribution.

**Subpart H—Special Deposit Accounts**

**§ 115.900 Who receives the interest earned on trust funds in a special deposit account?**

Generally, any interest earned on trust funds in a special deposit account will follow the principal (i.e., the tribe or individual who owns the trust funds in the special deposit account will receive the interest earned).

**§ 115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?**

OTFM will disburse the trust funds from a special deposit account and deposit the trust funds in the owner's trust account following the BIA certification of the ownership of the funds and OTFM's receipt of such certification.

**§ 115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?**

No, administrative or land conveyance fees paid as federal reimbursements may not be deposited with

**25 CFR Ch. I (4-1-01 Edition)**

OTFM, which includes special deposit accounts. These fees must be deposited in the Federal Financial System.

**§ 115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?**

No, cash bonds may not be deposited with OTFM, which includes the special deposit accounts at OTFM. Cash bonds held by the Secretary are to be deposited in non-interest bearing accounts until the term of the bonds expire.

**§ 115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?**

No, any money received prior to Secretarial approval of conveyance or contract instrument involving trust assets must be deposited into a non-interest bearing, non-trust account. After the Secretary approves the conveyance or contract instrument involving trust assets, the money designated by the conveyance or contract instrument will be deposited into a trust fund account.

**Subpart I—Records**

**§ 115.1000 Who owns the records associated with this part?**

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to 25 U.S.C. 450f *et seq.*; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

**§ 115.1001 How must records associated with this part be preserved?**

(a) Any organization, including tribes and tribal organizations, that have

## Bureau of Indian Affairs, Interior

## § 116.2

records identified in §115.1000(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in §115.1000(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

### **PART 116—CREATION OF TRUSTS FOR RESTRICTED PROPERTY OF INDIANS, FIVE CIVILIZED TRIBES, OKLAHOMA**

#### Sec.

- 116.1 Application for trust.
- 116.2 Obligations of trust company.
- 116.3 Secretarial approval discretionary.
- 116.4 Contents trust agreement.
- 116.5 Eligibility of appraisers.
- 116.6 Aiding Indians in formulating trust agreements.
- 116.7 Trust duration.
- 116.8 Trustee's security.
- 116.9 Trustee's compensation.
- 116.10 Necessary forms.
- 116.11 Limit restricted property in trust.
- 116.12 Amendments.

AUTHORITY: Sec. 7, 47 Stat. 778.

SOURCE: 22 FR 10552, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

#### **§ 116.1 Application for trust.**

Indians desiring to establish trust estates under the provisions of the said act must make written application therefor to the Secretary of the Interior through the superintendent or other official in charge of the Five Civilized Tribes Agency, Muskogee, Oklahoma.

The application shall designate the trustee, the beneficiary or beneficiaries and the manner in which it is desired the corpus of the estate shall be distributed upon the termination of the trust. A form of application will, upon request, be furnished by the said superintendent and should be filled out and executed in the presence of the field clerk or, in the office of the superintendent and duly attested by the field clerk or some other Government employee. The information required by the form of application and such other information as may be requested concerning the Indian and his affairs shall be carefully considered by the superintendent who will affix his recommendation to the application and forward it to the Secretary of the Interior with his report, which report shall contain full advice with respect to the education and business qualifications of the applicant, his ability to read, write and understand the English language, his reputation for industry and thrift and what experience, if any, he has had in a business way.

#### **§ 116.2 Obligations of trust company.**

The form of proposed trust agreement shall be executed by the trust company or banking institution selected as trustee, and shall be signed by and submitted with the application of the Indian, together with a statement in writing by said trust company or banking institution similar in form to that prescribed by the Comptroller of the Currency (or by the State banking department), showing fully the conditions of said trust company or banking institutions on a day not more than 1 month prior to the date of the application for the creation of the trust. The agreement must also be accompanied by a written certificate duly executed by the trustee to the effect that it has not paid or promised to pay any person other than an officer or employee on its regular payroll any fee, charge, commission or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in that or in other trusts to which the regulations in this part apply.

**§ 116.3 Secretarial approval discretionary.**

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior the trustee therein named is deemed by him to be on a sound financial basis and otherwise sufficiently qualified to justify approval of such trust.

**§ 116.4 Contents trust agreement.**

In addition to the subject matter of the trust, its object and beneficiaries, duties of trustee, etc., the form of trust agreement shall contain provisions to the following general effect:

(a) That such of the current income from the corpus of the estate as may be payable to the Indians of the Five Civilized Tribes of one-half or more Indian blood shall be remitted by the trustee to the Secretary of the Interior or such other official as he may designate for appropriate disposition.

(b) That the trusts declared and each of them shall be irrevocable except with the approval of the Secretary of the Interior, but, subject to his approval, the beneficiaries named in any approved trust may be redesignated by the maker without in any manner otherwise impairing or altering any of the provisions thereof, particularly the duration of the trust or the compensation to be paid to the trustee.

(c) That neither the corpus of the trust estate nor the income derived therefrom is, during the restriction period provided by law, subject to alienation or incumbrance, or to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restricted period.

(d) That if the trust be annulled, canceled or set aside by order of any court or otherwise, the principal of the trust with all accrued and unpaid interest shall be returned to the Secretary of the Interior as restricted individual property.

(e) That the trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income from any such trust for the preceding year or any part thereof was due and payable, such annual accounting to be submitted within 30 days following the ending of each annual period of the

trust, and the trustee shall render accounting to the Secretary of the Interior at any other time on written request by the Secretary of the Interior, within 30 days from such request.

(f) That except as to U.S. Government bonds and other securities fully guaranteed by the Federal Government in which such funds in the hands of the trustee may be invested without limitations, the following limitations are prescribed on the right of the trustee to invest or reinvest any part of the corpus or income from the trust:

(1) Not more than 30 percent of the estate may be invested in securities exclusive of all other limitations contained in this part, which appear on the current list of legal investments for savings banks prepared by the superintendent of banks of the State of New York, except that this authorization shall not include the purchase of public utility securities or railroad securities which do not represent obligations of operating companies, or the purchase of stocks: *Provided, however,* That in the purchase of such securities not more than 20 percent may be invested in general obligations issued by States or by any political subdivisions thereof, and not more than 10 percent may be invested in public utilities and in railroad securities, or in either of them;

(2) Not more than 15 percent of the trust estate may be invested in Federal land bank bonds issued under the provisions of the act of July 17, 1916 (39 Stat. 360) as amended;

(3) Not more than 40 percent of the trust estate may be invested in total loans secured on first deeds of trust or first mortgages on improved city or farm real estate situated in the States designated in the trust agreements, but no such loans shall exceed 50 percent of the value of the real estate and improvements appraised not more than 30 days prior to such investments by one or more appraisers selected with the approval of the Secretary of the Interior;

(4) No part of the trust fund shall be invested in the purchase of real estate or stocks for the trust except to protect the trust estate in foreclosure or other proceedings;

## Bureau of Indian Affairs, Interior

## § 116.9

(5) No part of the trust estate shall be invested in any kind of foreign securities, loans, or other properties, private or public.

### § 116.5 Eligibility of appraisers.

Hereafter no person who is interested directly or indirectly, whether through intimate personal, financial or business connections, in any trust company or banking institution designated as trustee under an approved trust agreement involving restricted Indian property, or who is an officer, director, or employee of such trust company or banking institution, shall act as an appraiser of real estate in connection with the making of loans from the trust estate to be secured by first deeds of trust or first mortgages. Nor shall any person having an interest in obtaining such a loan, either personally or as an officer, director or employee of any company, association or partnership seeking such a loan, act as an appraiser. An investigation into the qualifications of all persons selected as appraisers will be made for the purpose of determining that the persons selected are both competent and disinterested.

### § 116.6 Aiding Indians in formulating trust agreements.

In the formulation of the trust agreement and the provisions thereof the superintendent for the Five Civilized Tribes Agency and the other employees under his supervision will upon request assist the Indian to the fullest possible extent to the end that he may understand fully the meaning and the intent of the agreement and make the most satisfactory provision for the formation and consummation of the trust agreement.

### § 116.7 Trust duration.

Under the terms of the statute no trust shall be established to continue for a period of more than 21 years after the death of the last surviving beneficiary named in the trust agreement.

### § 116.8 Trustee's security.

To secure the faithful performance of the duties imposed by the trust agreement the trustee shall, as required by section 7 of the act (47 Stat. 778), de-

posit securities of the United States or furnish an acceptable corporate surety bond in an amount equal to the value of the trust as fixed and determined by the Secretary of the Interior. Appraisers will be appointed by the Secretary for the purpose of fixing the value of the trust and of revising such value from time to time as the judgment of the Secretary may dictate. Additional or substitute security may be required at any time when deemed necessary for the protection of the trust estate and the interest of the Indians. Trustees pledging United States bonds or notes as security shall execute on forms<sup>1</sup> prescribed by the Secretary an appropriate resolution and power of attorney authorizing the sale, assignment or transfer of the collateral. Only those corporate sureties who hold certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties. The cost to the trustee, if any, of furnishing the required bond, will be regarded as a necessary part of the cost of administering the trust and as such deductible from the gross income accruing therefrom.

### § 116.9 Trustee's compensation.

As compensation for administering the trust the trustee will be permitted to receive annually not to exceed 5 percent of the gross annual income from such trust estate, and as further compensation will also be permitted to receive not to exceed an amount equal to 1 percent of the corpus of the trust estate, to be paid out of the income first accruing therefrom, and not to exceed an amount equal to 2 percent of the corpus of the estate at the time of final distribution based upon the last valuation made by the Secretary of the Interior prior to such distribution. By final distribution is meant any distribution to a beneficiary of any part of the corpus of the trust estate at any time under the terms of the trust. All fees are to be based on the size of the trust and the nature of the duties to be performed thereunder. The foregoing percentage of fees are maximum and

<sup>1</sup>Forms may be obtained from the superintendent of the Five Civilized Tribes Agency, Muskogee, Oklahoma.



## § 116.10

alternative, that is, within such maximum limitations any one or more of said fees may or may not be allowed within the discretion of the Secretary of the Interior.

### § 116.10 Necessary forms.

In addition to the form of application by the Indians under the act of January 27, 1933 (47 Stat. 777), there are skeleton forms of trust agreement and bond which forms are subject to such changes as may be necessary to meet the requirements of each particular case.

### § 116.11 Limit restricted property in trust.

Not more than three million dollars aggregate value of restricted Indian property shall be placed in trust pursuant to the regulations in this part with any one trustee, trust company or other banking institution authorized by law to act as a fiduciary.

### § 116.12 Amendments.

The regulations in this part may be changed, amended, added to, and any part thereof eliminated at any time by the Secretary of the Interior.

## PART 117—DEPOSIT AND EXPENDITURE OF INDIVIDUAL FUNDS OF MEMBERS OF THE OSAGE TRIBE OF INDIANS WHO DO NOT HAVE CERTIFICATES OF COMPETENCY

Sec.

- 117.1 Definitions.
- 117.2 Payment of taxes of adult Indians.
- 117.3 Payment of taxes of Indians under 21 years of age.
- 117.4 Disbursement of allowance funds.
- 117.5 Procedure for hearings to assume supervision of expenditure of allowance funds.
- 117.6 Allowance for minors.
- 117.7 Disbursement or expenditure of surplus funds.
- 117.8 Purchase of land.
- 117.9 Construction and repairs.
- 117.10 Purchase of automotive equipment.
- 117.11 Insurance.
- 117.12 Costs of recording and conveyancing.
- 117.13 Telephone and telegraph messages.
- 117.14 Miscellaneous expenditure of surplus funds.
- 117.15 Collections from insurance companies.
- 117.16 Reimbursement to surplus funds.

## 25 CFR Ch. I (4–1–01 Edition)

- 117.17 Inactive surplus funds accounts.
- 117.18 Withdrawal and payment of segregated trust funds.
- 117.19 Debts of Indians.
- 117.20 Purchase orders.
- 117.21 Fees and expenses of attorneys.
- 117.22 Disbursements to legal guardians.
- 117.23 Transactions between guardian and ward.
- 117.24 Compensation for guardians and their attorneys.
- 117.25 Charges for services to Indians.
- 117.26 Expenses incurred pending qualification of an executor or administrator.
- 117.27 Custody of funds pending administration of estates.
- 117.28 Payment of claims against estates.
- 117.29 Sale of improvements.
- 117.30 Sale of personal property.
- 117.31 Removal of restrictions from personal property.
- 117.32 Funds of Indians of other tribes.
- 117.33 Signature of illiterates.
- 117.34 Financial status of Indians confidential.
- 117.35 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10554, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 117.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) *Secretary* means the Secretary of the Interior or his authorized representative.

(b) *Commissioner* means the Commissioner of Indian Affairs or his authorized representative.

(c) *Superintendent* means the superintendent of the Osage Agency.

(d) *Quarterly payment* means the payment of not to exceed \$1,000 which is made each fiscal quarter to or on behalf of an adult Indian, from the following sources:

(1) The pro rata distribution of tribal mineral income and other tribal revenues.

(2) The interest on segregated trust funds.

(3) Surplus funds in addition to the income from the foregoing sources in the amount necessary to aggregate \$1,000 when the income from those sources is less than \$1,000 and the Indian has a balance of accumulated surplus funds in excess of \$10,000.

(e) *Surplus funds* means all those moneys and securities readily convertible into cash, except allowance funds and segregated trust funds, which are held to the credit of an Indian at the Osage Agency and which may be disbursed, expended or invested only upon authorization by the Secretary. The term includes:

(1) That portion of the quarterly distribution of tribal income and interest on segregated trust funds, in excess of \$1,000, belonging to an adult Indian.

(2) The proceeds, including appreciation, of the sale or conversion of restricted real or personal property (other than partition sales).

(3) Payments made by insurance companies or others for loss or damage to restricted real or personal property.

(4) All moneys and securities, other than segregated trust funds, to the credit of an Indian who is less than 21 years of age (except the income from restricted lands payable as provided by § 117.3).

(5) Funds and securities placed to the credit of an Indian upon the distribution of an Osage estate.

(f) *Allowance funds* means that income payable to or on behalf of a living adult Indian, the expenditure and disbursement of which is not subject to supervision unless authorized pursuant to the procedure contained in § 117.5. The term includes:

(1) The quarterly payment in an amount not to exceed \$1,000.

(2) The rentals and income from restricted lands owned by the Indian.

(3) The rentals and income from restricted lands owned by the minor children of the Indian, as provided in § 117.3.

(4) Income from investments.

(5) Interest on deposits to the credit of the Indian.

(g) *Segregated trust funds* means those moneys held in the United States Treasury at interest to the credit of an Indian which represent pro rata shares of the segregation of tribal trust funds and the proceeds of the partition of restricted lands.

#### § 117.2 Payment of taxes of adult Indians.

The superintendent may cause to be paid out of any money heretofore ac-

rued or hereafter accruing to the credit of any adult Indian all taxes of every kind and character for which such Indian is or may be liable before paying to or for such person any funds as required by law. All checks in payment of taxes shall be made payable to the proper collector. For the purpose of establishing a fund with which to meet the payment of such taxes when due, the Superintendent may cause the funds of an adult Indian to be hypothecated in the following manner:

(a) For the payment of ad valorem taxes, one-fourth of the estimated amount ad valorem taxes from each quarterly payment unless this procedure would cause the obligation of more than 25 percent of such quarterly payments, in which event the necessary additional funds shall be retained from other allowance funds payable to such person under the law. If there be no other allowance funds available, or if the funds from these sources are insufficient, one-fourth of the estimated amount of such ad valorem taxes may be obligated from each quarterly payment. If an Indian who is liable for ad valorem taxes has no allowance funds, or such funds are insufficient for the payment thereof, surplus funds may be used for such payment.

(b)(1) For the payment of income taxes, one-half of the estimated amount of income taxes from each semi-annual payment of interest on deposits, but if such interest payments are insufficient to meet this obligation, additional funds shall be retained from interest on investments, rentals, or other allowance funds.

(2) Whenever funds are withheld for the purpose of establishing a fund to meet the payment of taxes, the Indian shall be notified of the action taken.

#### § 117.3 Payment of taxes of Indians under 21 years of age.

All taxes assessed against the restricted lands of Indians less than 21 years of age shall be paid by the superintendent direct to the collector from the rents and income derived from such lands, and the balance, if any, of such rents and income shall be paid to the living parents or parent. If the parents are separated, the balance shall be paid

## § 117.4

to the parent having custody of the Indian under 21 years of age. All other taxes for which an Indian under 21 years of age may be liable shall be paid from his surplus funds.

### **§ 117.4 Disbursement of allowance funds.**

Except as provided in § 117.5, all allowance funds shall be disbursed to the Indian owner unless the Indian owner directs otherwise in writing. At the request of the Indian owner, such funds may be retained by the superintendent as voluntary deposits subject to withdrawal or other disposition upon demand or direction of the Indian owner. The superintendent may recognize a power of attorney executed by the Indian and may disburse the allowance funds of the Indian in conformity therewith so long as the power of attorney remains in force and effect.

### **§ 117.5 Procedure for hearings to assume supervision of expenditure of allowance funds.**

(a) Whenever the superintendent has reason to believe that an adult Indian is wasting or squandering his allowance funds the superintendent may cause an investigation and written report of the facts to be made. If the report indicates that the Indian is wasting or squandering his allowance funds the following notice shall be served upon the Indian, in person or by registered mail, and a copy thereof shall likewise be served upon his guardian if the Indian is under guardianship:

Section 1 of the act of February 27, 1925 (43 Stat. 1008) provides in part as follows:

"All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the Superintendent of the Osage Agency: . . ."

Enclosed is a copy of a report which has been made to me concerning your handling and management of the income paid to you through the Osage Agency. This report indicates that you have been wasting and squandering your payments.

You are hereby notified that a hearing will be held in the Osage Indian Agency, Pawhuska, Oklahoma, at --- m., on the ---- day of -----, 19--, before the Superintendent, for the purpose of taking testimony and evidence to be submitted to the

## 25 CFR Ch. I (4-1-01 Edition)

Commissioner of Indian Affairs for his consideration in determining whether your payments shall be subject to the supervision of the Superintendent.

You are requested to be present at the hearing at the time and place designated above. You may introduce at the hearing such testimony and evidence as you deem appropriate to show that you are not wasting or squandering your payments and that your payments should continue to be made to you without supervision for your unrestricted use.

You are entitled to employ an attorney to assist you in this matter. Upon your request the employees of the Osage Agency will furnish you with any information you desire concerning your accounts at the Osage Agency or any of your transactions handled through the Osage Agency.

Date.

Superintendent.

(b) A hearing shall be held pursuant to the notice, the date of which shall be not less than 30 days after the date of the notice. For good cause shown to exist the superintendent may continue the hearing to a later date.

(c) A record of the proceedings, consisting of the superintendent's preliminary report, the notice and proof of service, all testimony and evidence introduced at the hearing, and all briefs and letters filed by the Indian or his attorney shall be submitted to the Commissioner, together with a recommendation from the superintendent.

(d) Upon a finding by the Commissioner that the Indian is wasting or squandering his income, his allowance funds shall thereafter be subject to the supervision of the superintendent. Notice of the decision of the Commissioner shall be furnished all interested parties.

### **§ 117.6 Allowance for minors.**

The superintendent may disburse from the surplus funds of an Indian under 21 years of age not to exceed \$300 quarterly for the support and maintenance of the minor. Disbursement may be made to the parent, guardian, or other person, school or institution having actual custody of the minor, or, when the minor is 18 years of age or over, disbursement may be made direct to the minor.

## Bureau of Indian Affairs, Interior

## § 117.12

### § 117.7 Disbursement or expenditure of surplus funds.

Except as provided in the regulations in this part, no disbursement or expenditure of surplus funds of Indians shall be made without the consent of the Indian owner and until authorization has been obtained from the Commissioner. Application by an Indian or his legal guardian, or if he is a minor, by his parent or legal guardian, for the expenditure of surplus funds shall be presented to the Commissioner, fully justified with the appropriate attachments such as court orders, decrees or other papers. Such application shall contain full information regarding the individual including his cash balance, the sum invested, the number of shares in the Osage mineral estate, total income from all sources including that paid on behalf of minors, the family status and the occupation or industry of the applicant. When request is made for payment to the individual without supervision, the record of said individual and his ability to handle such funds shall be shown.

### § 117.8 Purchase of land.

Upon written application of an adult Indian, the superintendent may disburse not to exceed \$10,000 from the surplus funds of such Indian for the purchase of land, the title to which has been examined and accepted by the special attorney for the Osage Indians or other legal officer designated by the Commissioner. In all cases title must be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary of the Interior or his authorized representative.

### § 117.9 Construction and repairs.

Upon written application by an adult Indian, the superintendent may disburse not to exceed \$1,000 during any one fiscal year from the surplus funds of such Indian to make repairs and improvements to restricted real property and in addition not to exceed \$300 for new construction. When such expenditures are being made on property producing an income, reimbursement shall be required from such income unless otherwise directed by the Commis-

sioner. When an Indian refuses to make application for funds to defray the cost of repairs necessary to preserve restricted property, the superintendent may, when authorized by the Commissioner, expend the surplus funds of the Indian for such repairs.

### § 117.10 Purchase of automotive equipment.

The superintendent may disburse from the surplus funds of an adult Indian not to exceed \$2,000 for the purchase of automotive equipment when the Indian agrees in writing to carry property and liability insurance on the automotive equipment and to reimburse his surplus funds account from allowance funds within 24 months. No disbursement of surplus funds for the purchase of automotive equipment shall be made if the fulfillment of the reimbursable agreement will endanger the payment of taxes, insurance or other obligations, or result in the inability of the Indian to meet his current living expenses from allowance funds.

### § 117.11 Insurance.

The superintendent may obtain policies of insurance covering the restricted property, real or personal, of minor Indians and pay the premiums thereon from the funds of the minors. Upon application by an adult Indian the superintendent may procure insurance on any restricted property, real or personal, owned by the applicant and pay the necessary premiums from his surplus or allowance funds. When authorized by the Commissioner, the superintendent may also procure insurance on restricted property, real or personal, of any adult Indian who neglects or refuses to take out such insurance.

### § 117.12 Costs of recording and conveyancing.

The superintendent may expend the surplus funds of an Indian to make direct payment of recording fees and costs, of conveyancing, including abstracting costs, which are properly payable by the Indian.

## § 117.13

### § 117.13 Telephone and telegraph messages.

The superintendent may expend the surplus funds of an Indian to make direct payment for telephone and telegraph messages sent by the agency or received at the agency at the instance of the Indian or his guardian or attorney.

### § 117.14 Miscellaneous expenditure of surplus funds.

Upon application by an adult Indian the superintendent may disburse the surplus funds of such Indian for the following purposes:

(a) Medical, dental, and hospital expenses for the applicant or a member of his family, not to exceed one thousand dollars (\$1,000) during any one fiscal year.

(b) Funeral expenses, including the funeral feast, of a deceased member of his family, in an amount not to exceed one thousand dollars (\$1,000).

(c) A tombstone or monument to mark the grave of a deceased member of his family in amount not to exceed five hundred dollars (\$500).

(d) Court costs in any judicial proceeding to which the applicant is a party.

(e) Bond premiums, except bail and supersedeas bonds.

(f) For miscellaneous purposes, not to exceed five hundred dollars (\$500) during any one fiscal year.

### § 117.15 Collections from insurance companies.

Moneys collected from insurance companies for loss or damage to restricted real or personal property shall be deposited to the credit of the Indian owner as surplus funds. Moneys so deposited to the credit of an adult Indian may, upon the written application of the Indian, be disbursed by the superintendent for the purpose of repairing or replacing the property. Moneys collected from insurance companies for loss or damage to unrestricted real or personal property shall be paid to the Indian for his unrestricted use.

### § 117.16 Reimbursement to surplus funds.

When expenditures have been made from surplus funds upon the condition,

## 25 CFR Ch. I (4-1-01 Edition)

and with the written agreement of the Indian, that reimbursement or repayment shall be made from future allowance funds, the superintendent is authorized to withhold from succeeding quarterly payments or other allowance funds such amounts as may be necessary to effect reimbursement within a period not exceeding 24 months from date of the first expenditure under the given authority.

### § 117.17 Inactive surplus funds accounts.

When the balance of surplus funds to the credit of an adult Indian is less than \$300 and when there is no likelihood of its increase within 90 days, the superintendent may disburse the entire balance to the Indian owner for his unrestricted use.

### § 117.18 Withdrawal and payment of segregated trust funds.

The withdrawal and payment of segregated trust funds will be made only upon application and satisfactory evidence that the withdrawal and payment of such funds would be to the best interest of the Indian in view of all the circumstances shown to exist. The segregated trust funds of an Indian under guardianship or an Indian under 21 years of age shall not be released and paid except to a guardian appointed by a proper court and after the filing of a bond approved by the court conditioned upon the faithful handling of the funds. Applications for the withdrawal and payment of segregated trust funds must be made upon the forms prescribed by the Secretary for that purpose.

### § 117.19 Debts of Indians.

No indebtedness of Indians will be paid from their funds under the control or supervision of the Secretary unless authorized in writing and obligated against their accounts by the superintendent or some other designated employee except in cases of emergency involving the protection or preservation of life or property, which emergency must be clearly shown. With this exception, no authorization or obligation against the account of any Indian for indebtedness incurred by him shall be made by the superintendent unless

**Bureau of Indian Affairs, Interior**

**§ 117.24**

specifically authorized by the regulations in this part.

**§ 117.20 Purchase orders.**

Purchase orders may be issued by the superintendent for expenditures authorized by the regulations in this part or for expenditures specifically authorized by the Commissioner. When necessary to prevent hardship or suffering, purchase orders may be issued by the superintendent against the future income of an Indian in an amount not to exceed 80 percent of the anticipated quarterly payment. The payment of purchase orders issued against future income shall be contingent upon the availability of funds.

**§ 117.21 Fees and expenses of attorneys.**

When payment of an attorney fee for services to an Indian is to be made from his surplus funds, the employment of the attorney by the Indian must be approved in advance. All fees will be determined on a quantum merit basis and paid upon completion of the services. The superintendent may approve the employment of an attorney, determine the fee, and disburse the surplus funds of the Indian in payment thereof when the fee does not exceed \$500. Upon application by the Indian and upon the presentation of properly authenticated vouchers, the superintendent may disburse the surplus funds of the Indian in an amount not to exceed \$200 in payment of necessary expenses incurred by the attorney.

**§ 117.22 Disbursements to legal guardians.**

Any disbursement authorized to be made to an Indian by the regulations of this part may, when the Indian is under guardianship, be made by the superintendent to the guardian. All expenditures by a guardian of the funds of his ward must be approved in writing by the court and the superintendent.

**§ 117.23 Transactions between guardian and ward.**

Business dealings between the guardian and his ward involving the sale or purchase of any property, real or personal, by the guardian to or from the ward, or to or from any store, company

or organization in which the guardian has a direct interest or concern or contrary to the policy of the Department and shall not be approved by the superintendent without specific authority from the Commissioner.

**§ 117.24 Compensation for guardians and their attorneys.**

(a) The superintendent may approve compensation for services rendered by the guardian of an Indian on an annual basis, the amount of the compensation to be determined by application of the following schedule to the moneys collected by the guardian:

First \$1,000 or portion thereof, not to exceed 10 percent.

Second \$1,000 or portion thereof, not to exceed 9 percent.

Third \$1,000 or portion thereof, not to exceed 8 percent.

Fourth \$1,000 or portion thereof, not to exceed 7 percent.

Fifth \$1,000 or portion thereof, not to exceed 6 percent.

Sixth \$1,000 or portion thereof, not to exceed 5 percent.

Seventh \$1,000 or portion thereof, not to exceed 4 percent.

Eighth \$1,000 or portion thereof, not to exceed 3 percent.

Ninth \$1,000 or portion thereof, not to exceed 2 percent.

All above \$9,000 not to exceed 1 percent.

(b) Balance carried forward from previous reports and moneys received by a guardian or his attorney as compensation shall be excluded in determining the compensation of the guardian or his attorney.

(c) The attorney for a guardian shall be allowed compensation in an amount equal to one-half of the amount allowed the guardian under the foregoing schedule except when such attorney is himself the guardian and acting as his own attorney, in which event he shall be allowed a fee of not to exceed one-fourth of the amount allowed the guardian under the foregoing schedule in addition to the fee as guardian.

(d) The superintendent may in his discretion permit the guardian to collect rentals from restricted city or town properties belonging to his ward.

**§ 117.25**

**§ 117.25 Charges for services to Indians.**

The superintendent shall make the following charges for services to Indians: Five per cent of all interest and non-liquidating dividends received from all types of securities, including stocks, bonds, and mortgages held in trust for individual Indians and interest on group investments. Such fees shall be deposited in the Treasury of the United States to the credit of the fund "Proceeds of Oil and Gas Leases, Royalties, etc., Osage Reservation, Oklahoma".

**§ 117.26 Expenses incurred pending qualification of an executor or administrator.**

Pending the qualification of the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death, the superintendent may authorize the extension of credit for the following purposes, subject to allowance of claims by the executor or administrator and approval thereof by the court:

- (a) Funeral expenses, including the cost of a funeral feast, in an amount not to exceed \$1,000.
- (b) Necessary expenses in hearings before the Osage Agency involving the approval or disapproval of last wills and testaments.
- (c) Expenses necessary to preserve restricted property.

**§ 117.27 Custody of funds pending administration of estates.**

(a) *Estates of Indians of less than one-half Indian blood and estates of Indians who had certificates of competency.* Upon the death of an Indian of less than one-half Indian blood or an Indian who had a certificate of competency, the superintendent shall pay to the executor or administrator of the estate all moneys and securities, other than segregated trust funds to the credit of the Indian and all funds which accrue pending administration of the estate.

(b) *Estates of Indians of one-half or more Indian blood who did not have certificates of competency.* Upon the death of an Indian of one-half or more Indian blood who did not have a certificate of

competency at the time of his death, the following classes of funds, less any amount hypothecated for the payment of taxes as provided in §117.2 shall be paid by the superintendent to the executor or administrator of the estate:

- (1) Allowance funds to the credit of the Indian.
- (2) Any quarterly payment authorized prior to the death of the Indian.
- (3) Interest on segregated trust funds and deposits computed to the date of death.
- (4) Rentals and income from restricted lands collected after the death of the Indian which were due and payable to the Indian prior to his death.

Except as provided in §117.28, the superintendent shall not pay to the executor or administrator any surplus funds to the credit of the Indian or any funds, other than those listed in paragraphs (b) (1), (2), (3) and (4) of this section which accrue pending administration of the estate.

**§ 117.28 Payment of claims against estates.**

The superintendent may disburse to the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death sufficient funds out of the estate to pay the following classes of claims approved by the court:

- (a) Debts authorized by the superintendent during the lifetime of the Indian.
- (b) Expenses incurred pending the qualifications of an executor or administrator under authority contained in §117.26.
- (c) Expenses of administration, including court costs, premium on bond of executor or administrator, transcript fees and appraiser fees.
- (d) Living expenses incurred within 90 days immediately preceding the date of death of the Indian.
- (e) Allowance for reasonable living expenses each month for 12 months to a surviving spouse who is entitled to participate in the distribution of the estate and who is in need of such support.
- (f) Allowance for reasonable living expenses each month for 12 months for each child of the decedent under 21

## Bureau of Indian Affairs, Interior

## § 117.33

years of age who is entitled to participate in the distribution of the estate and who is in need of such support.

(g) Insurance premiums and license fees on restricted property.

(h) Not to exceed \$1,000 for the preservation and upkeep of restricted property including the services of a caretaker when necessary.

(i) Debts incurred during the lifetime of the Indian but not authorized by the superintendent, if found by the Commissioner to be just and payable. The superintendent shall disburse no funds to an executor or administrator for the payment of the foregoing classes of claims unless the executor or administrator has no other funds in his hands available for the payment of such claims.

[22 FR 10554, Dec. 24, 1957, as amended at 35 FR 10005, June 18, 1970. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 117.29 Sale of improvements.

The superintendent may approve the sale of improvements on restricted Indian lands when such improvements are appraised at not more than \$500 and when the owner has submitted a written request that the sale be made and a statement that the improvements can no longer be used by him. The proceeds of all such sales shall be deposited to the credit of the Indian as surplus funds. Improvements consisting of buildings, etc., located on property within the Osage villages of Pawhuska, Hominy, and Grayhorse may, upon approval of the superintendent, be disposed of to other Osage Indians. The superintendent may disburse the surplus funds of the purchaser to consummate the transaction. Sale of such improvements to non-Indian or non-Osage Indians must be approved by the Commissioner.

### § 117.30 Sale of personal property.

The superintendent may approve the sale of restricted personal property other than livestock. The superintendent may also approve the sale of livestock when authorized so to do by special or general instructions from the Commissioner. The proceeds from the sale of personal property other than livestock shall be deposited to the credit of the Indian as surplus funds

unless the surplus funds from which said property was purchased have been reimbursed from allowance funds, in which case the proceeds from such sale shall be disbursed as allowance funds. If partial reimbursement only has been made, such portion of the proceeds of sale as may be necessary to complete the reimbursable agreement shall be deposited to the credit of the Indian as surplus funds and the balance, if any, shall be disbursed as allowance funds. The proceeds from the sale of livestock shall be deposited in conformity with general or specific instructions from the Commissioner.

### § 117.31 Removal of restrictions from personal property.

The superintendent may relinquish title to personal property (other than livestock) held by the United States in trust for the Indian when to do so will enable the Indian to use the property as part payment in the purchase of other personal property and when the remainder of the purchase price is to be made from other than surplus funds of the Indian.

### § 117.32 Funds of Indians of other tribes.

The funds of restricted non-Osage Indians, both adults and minors, residing within the jurisdiction of the Osage Agency, derived from sources within the Osage Nation and collected through the Osage Agency, may be disbursed by the superintendent, subject to the condition that all payments to third persons, including taxes and insurance premiums, shall be made upon the written authorization of the individual whose funds are involved, if an adult, and upon the written authorization of the parent or guardian, if a minor. The funds of restricted non-Osage Indians who do not reside within the jurisdiction of the Osage Agency shall be transferred to the superintendent of the jurisdiction within which the Indian resides, to be disbursed under regulations of the receiving agency.

### § 117.33 Signature of illiterates.

An Indian who cannot write shall be required to endorse checks payable to his order and sign receipts or other documents by making an imprint of



**§ 117.34**

**25 CFR Ch. I (4-1-01 Edition)**

the ball of the right thumb (or the left, if he has lost his right) after his name. This imprint shall be clear and distinct, showing the central whorl and striations and witnessed by two reputable persons whose addresses shall be given opposite or following their names. An Indian may sign by marking "X" before two witnesses where he is unable to attach his thumb mark for physical reasons.

**§ 117.34 Financial status of Indians confidential.**

The financial status of Indians shall be regarded as confidential and shall not be disclosed except to the owner of the account or his authorized agent, unless authorized in advance by the Commissioner.

**§ 117.35 Appeals.**

Any decision by the superintendent may be appealed to the area director, any decision by the area director may be appealed to the Commissioner, and any decision by the Commissioner may be appealed to the Secretary.

**PART 121—DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE OSAGE TRIBE OF INDIANS IN OKLAHOMA**

Sec.

- 121.1 Definitions.
- 121.2 Purpose.
- 121.3 Notice of time limit and place for filing claims.
- 121.4 Issuance of Orders of Distribution.
- 121.5 Segregation of per capita shares.
- 121.6 Distribution of share of deceased allottee.
- 121.7 Notice of orders to claimants and distributees.
- 121.8 Appeal from an Order of Distribution.
- 121.9 Disbursement of distributed shares.
- 121.10 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 301; 86 Stat. 1295.

SOURCE: 38 FR 9163, Apr. 11, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 121.1 Definitions.**

- (a) *Act* means the act of October 27, 1972 (86 Stat. 1295).
- (b) *Allottee* means a person whose name appears on the roll of the Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908,

pursuant to the act of June 28, 1906 (34 Stat. 539).

(c) *Regional Solicitor, Tulsa* means the Regional Solicitor for the Tulsa Region of the Office of the Solicitor, U.S. Department of the Interior, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) *Distributee* means one to whom a distribution is ordered pursuant to the regulations in this part.

(e) *Secretary* means the Secretary of the Interior or his authorized representative.

(f) *Superintendent* means the Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Oklahoma 74056.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 121.2 Purpose.**

The regulations in this part govern the distribution, pursuant to the act, of judgment funds awarded to the Osage Tribe of Indians of Oklahoma. All funds appropriated by the act of January 8, 1971 (84 Stat. 1981), in satisfaction of a judgment in the Indian Claims Commission against the United States in dockets numbered 105, 106, 107, and 108, together with interest thereon, are to be distributed, except the sum of \$1 million and any funds that revert to the Osage Tribe and except the amount allowed for attorney fees and expenses and the cost of distribution.

**§ 121.3 Notice of time limit and place for filing claims.**

The act provides for distribution of funds to allottees and heirs of Osage Indian blood of deceased allottees.

- (a) All claims for per capita shares by heirs of Osage Indian blood shall be filed with the Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, not later than April 27, 1974. An individual who claims as an heir of Osage Indian blood should make a timely filing of a claim which identifies, by name and allotment number, each allottee in whose share the individual claims an interest, in order that the Superintendent may notify the individual when the order of distribution for each such allottee is made. Failure to file a claim in this

manner may prevent an individual from receiving notice of distribution in an instance in which he is an interested party. Failure of an heir of Osage Indian blood to file a claim will not necessarily prevent the distribution to such heir of the portion of the allottee's share due that heir if sufficient evidence to support such distribution is available to the Superintendent. However, no heir who fails to file a claim within the prescribed period (on or before April 27, 1974) shall after that period have any right to any distribution other than that ordered by the Superintendent based on evidence available to the Superintendent during that period. Unclaimed shares of distributees are required by statute to revert to the Osage Tribe 6 months after determination of their right to share.

(b) Distribution of a living allottee's own share will be made without the filing of a claim.

**§ 121.4 Issuance of Orders of Distribution.**

The Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, is authorized to issue the Orders of Distribution in accordance with the act and the regulations in this part. The Superintendent's decisions thereon shall be final unless a timely appeal therefrom is filed in accordance with § 121.8.

**§ 121.5 Segregation of per capita shares.**

The Superintendent shall segregate one per capita share for each allottee for distribution as follows:

(a) One share for distribution to each such allottee who is living on the date the Order for Distribution for that share is issued; and

(b) One share for distribution to the heir or heirs of Osage Indian blood of each allottee who is deceased on the date the Order of Distribution for that share is issued, to be divided among such heirs in such proportions as shall be computed in accordance with § 121.6.

**§ 121.6 Distribution of share of deceased allottee.**

The Superintendent shall issue an Order of Distribution which, except as

otherwise provided in this § 121.6, divides the share of a deceased allottee leaving heirs of Osage Indian blood in such proportions as the allottee's heirs of Osage Indian blood would have shared in the estate of the allottee if the allottee had died intestate leaving one or more individuals of Osage Indian blood as the allottee's only heirs at law under the Oklahoma law of intestate succession. In preparing such an order, the Superintendent shall accept as accurate any unambiguous determination of heirship, of an allottee or of the heir of an allottee, either made by the Secretary prior to April 18, 1912, or contained in a final order of an Oklahoma court after that date. When no such unambiguous determination is available, such order shall be based upon all other pertinent heirship evidence available to the Superintendent. When one or more of the immediate heirs of Osage Indian blood of an allottee is deceased, the heirs of Osage Indian blood of such deceased heirs shall be ascertained, successively among all remote heirs of Osage Indian blood of the allottee, in the sequence in which the deaths of the heirs occurred until the identities of all living remote heirs of Osage Indian blood, and the respective proportions of the share to which they are entitled, have been ascertained. To qualify for distribution as an heir, it must be established that the distributee and each heir of the allottee through whom the claim is traced had Osage Indian blood acquired either from an allottee or from a common ancestor of an allottee and the distributee.

**§ 121.7 Notice of orders to claimants and distributees.**

Notice of an Order of Distribution shall be mailed, on the date of issuance of such order, to the allottee whose share is being distributed if living, but if not living, to (a) each distributee named therein, (b) each claimant whose claim asserts entitlement to a portion of the allottee's share, and (c) each person who had not filed a claim on the date of issuance of such order but is in that order determined by the Superintendent to be ineligible to receive a portion of the allottee's share. Such notice shall be accompanied by a copy of the Order of Distribution and

## § 121.8

## 25 CFR Ch. I (4-1-01 Edition)

shall contain instructions for filing an appeal in accordance with paragraphs (a) or (b) and (c) of § 121.8.

### **§ 121.8 Appeal from an Order of Distribution.**

(a) An Order of Distribution of the share of an allottee living on the date the order is issued shall become final 3 days from the date thereof unless an appeal is filed by an interested party with the Superintendent before the expiration of those 3 days.

(b) An Order of Distribution of the share of an allottee who is deceased on the date the order is issued shall become final 30 days from the date thereof unless an appeal is filed by an interested party with the Superintendent before the expiration of those 30 days.

(c) Each appeal must contain a statement of the reasons that the appellant considers the Order of Distribution to be subject to error, and each appellant must, at the time of filing his appeal, mail a copy thereof to each person named as a distributee in the Order of Distribution. The Superintendent shall furnish a copy of the appeal to each other interested party to whom a copy of the Order of Distribution was mailed.

(d) The Regional Solicitor, Tulsa, is authorized to determine appeals from Orders of Distribution in accordance with the act and the regulations in this part. The Regional Solicitor's decision thereon shall be final on the date of the issuance of his decision and shall constitute the final action of the Department of the Interior in connection with such appeal.

(e) The Superintendent may, in his discretion for good cause shown, order partial distribution of any undisputed segment of any share for which an appeal is pending when such distribution will not be affected by the appeal decision on the disputed portion of the share.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

### **§ 121.9 Disbursement of distributed shares.**

When an Order of Distribution, either as issued or as amended by decision on appeal, has become final, the Super-

intendent shall either disburse to distributees the amounts distributed to them or deposit such amounts to appropriate accounts, in accordance with the following guidelines:

(a) When the amount distributed to any heir is less than \$20, the amount shall be segregated in a special account for that heir until all Orders of Distribution have become final, at which time the sum of all amounts thus segregated to such account shall be disbursed or redeposited as provided in paragraphs (b), (c), (d) and (e) of this section, if such sum equals or exceeds \$20. When such sum is less than \$20, such sum in each of such accounts, and all unclaimed shares, and all amounts awarded to distributees which remain unclaimed for 6 months after the Order of Distribution has become final, shall, subsequent to April 27, 1974, be deposited to the account of the Osage Tribe as sums which have reverted to it.

(b) Living allottees having certificates of competency shall have their distributions disbursed directly to them.

(c) Living allottees not having certificates of competency shall have their distributions deposited to their accounts, subject to withdrawal by them at their request.

(d) Heirs of Osage Indian blood who are at least 18 years of age and are not under guardianship shall have their distributions disbursed directly to them.

(e) Heirs of Osage Indian blood who are under guardianship shall have their distributions deposited to their accounts, subject to disbursement to the distributees or their guardians or other persons on their behalf on such terms and conditions as the Superintendent shall consider to be in their best interests during their legal disability, after which the remaining portion shall be disbursed to such distributees.

(f) Heirs of Osage Indian blood who are under 18 years of age shall have their distributions deposited to their accounts, with the funds represented by such deposits invested at favorable rates of return for prudent investments, to be disbursed with earnings thereon only when the respective distributees for whom they are held shall attain the age of 18 years.

**§ 121.10 Miscellaneous provisions.**

(a) Powers of attorney, assignments, and orders given to another person by anyone entitled to share in the payment will not be recognized.

(b) None of the funds distributed are subject to Federal or State income taxes.

(c) Claimants are hereby notified that criminal penalties are provided by statute (18 U.S.C. 1001) for knowingly filing fraudulent information.

## PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.

- 122.1 Purpose and scope.
- 122.2 Definitions.
- 122.3 Information collection.
- 122.4 Establishment of the Osage Tribal Education Committee.
- 122.5 Selection/nomination process for committee members.
- 122.6 Duties of the Osage Tribal Education Committee.
- 122.7 Budget.
- 122.8 Administrative costs for management of the fund.
- 122.9 Annual report.
- 122.10 Appeal.
- 122.11 Applicability.

AUTHORITY: 86 Stat. 1295, 98 Stat. 3103 (25 U.S.C. 331 note).

SOURCE: 54 FR 34155, Aug. 18, 1989, unless otherwise noted.

**§ 122.1 Purpose and scope.**

(a) The purpose of this part is to set forth procedures and guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members, along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98-605 on October 30, 1984, provides that \$1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or re-invested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

**§ 122.2 Definitions.**

*Act* means Osage Tribe by Act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98-605.

*Allottee* means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

*Assistant Secretary* means the Assistant Secretary—Indian Affairs.

*Osage Tribal Education Committee* means the committee selected to administer the provisions of this part as specified by § 122.6.

*Reverted funds* means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than \$20 due an individual from one or more shares of one or more Osage allottees.

*Secretary* means the Secretary of the Department of the Interior or his/her authorized representative.

**§ 122.3 Information collection.**

(a) The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076-0098 and 1076-0106, respectively. The information collected in § 122.6 is used to determine the eligibility of Osage Indian student applicants for educational assistance grants. The information collected in § 122.9 provides summary review for program evaluation and program planning. Response to the information collections is required to obtain a benefit in accordance with 25 U.S.C. 883.

(b) Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the

## § 122.4

## 25 CFR Ch. I (4–1–01 Edition)

Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337 SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington DC 20503.

### § 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe, to maintain its right of Tribal autonomy, shall, at the direction of the Bureau of Indian Affairs, establish the Osage Tribal Education Committee (OTEC) to fulfill the responsibilities and provisions of this part as set out in § 122.6.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendants of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

### § 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to serve on the Osage Tribal Education Committee.

(2) Nominees for committee membership shall include a brief statement of interest and qualifications for serving on the committee.

(b) Nominations may be made by any Osage organization, including the Osage village communities of Greyhorse, Hominy and Pawhuska, by requesting its candidates to follow pro-

cedures outlined in paragraph (a)(2) of this section.

(c) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office—Room 152, 5th & W, Okmulgee, Muskogee, Oklahoma 74401.

(d) A Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process, the Nominee Selection Committee will forward its recommendations for final consideration to the Assistant Secretary.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

(f) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve for a temporary period not to exceed 120 days.

### § 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational assistance, the Osage Tribal Education Committee shall maintain an office and retain all official records at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination which incorporates a systematic sequential process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system appropriate to applications for education assistance. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request, and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student, with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

#### § 122.7 Budget.

(a) By August 1 of each year, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restrictions by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars appropriated by the Act and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the Federal Government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or savings institution or invested in the same obligations of the United States

Government for the same period of time.

#### § 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Record-keeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

#### § 122.9 Annual report.

The Osage Tribal Education Committee shall submit an annual report on OMB approved Form 1076-0106, Higher Education Annual Report, to the Assistant Secretary or his/her designated representative on or before November 1, for the preceding 12 month period.

#### § 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR part 2, Appeals from Administrative Action.

#### § 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

### PART 123—ALASKA NATIVE FUND

#### Sec.

- 123.1 Scope and purpose.
- 123.2 Definitions.
- 123.3 Payment of shares of the Fund in the absence of recognition of an assignment.
- 123.4 Recognition of assignments.
- 123.5 Register of recognized assignments.
- 123.6 Sub-assignment.
- 123.7 Multiple assignments.
- 123.8 Disclaimer.
- 123.9 Cancellation of assignments.
- 123.10 Decision; finality.

AUTHORITY: Secs. 25 and 31, Pub. L. 92-203, 85 Stat. 715, as amended by Pub. L. 95-178, 91 Stat. 1370 (43 U.S.C. 1624, 1628).

SOURCE: 43 FR 20003, May 10, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

## § 123.1

## 25 CFR Ch. I (4–1–01 Edition)

### § 123.1 Scope and purpose.

(a) The regulations in this part shall apply to all future distributions of the Alaska Native Fund pursuant to section 6 of the Alaska Native Claims Settlement Act (43 U.S.C. 1605), except money reserved for the payment of attorney and other fees as provided in section 20 of the Act (43 U.S.C. 1619).

(b) These regulations are not intended (1) to alter the distribution formula of section 6 of the Act (43 U.S.C. 1605), or the redistribution formulas of section 7(j) or 7(m) of the Act (43 U.S.C. 1606(j), (m)); or (2) to require the distribution of money in the Fund when not authorized by the Act, or when the money has been set aside in an escrow or reserved account pursuant to an order of a court of competent jurisdiction.

(c) The regulations in this part are intended to implement section 31 of the Act (43 U.S.C. 1628) which authorizes the Secretary to recognize validly executed assignments of a Regional Corporation's rights to receive payments from the Fund.

### § 123.2 Definitions.

As used in the regulations in this part:

*Act* means the Alaska Native claims Settlement Act, as amended (Pub. L. 92–203, 85 Stat. 715, 43 U.S.C. 1601 et seq.; Pub. L. 95–178, 91 Stat. 1370).

*Assignee* means the person or entity receiving from a Regional Corporation an assignment of certain of the corporation's future interests in the Fund.

*Assignor* means a Regional Corporation which has assigned to another certain of its future interests in the Fund.

*Assistant Secretary* means the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, or his authorized representative.

*Fund* means the Alaska Native Fund created by section 6 of the Act (43 U.S.C. 1605).

*Payee* means the recipient of a distribution from the Fund. The payee must be a financial corporation such as a bank, credit union, or savings and loan association which is insured under the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Federal Savings and Loan Insurance Corporation, respec-

tively. The payee must be capable of receiving payment through the U.S. Treasury's Financial Communication System.

*Regional Corporation* means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Act.

*Secretary* means the Secretary of the Interior.

### § 123.3 Payment of shares of the Fund in the absence of recognition of an assignment.

(a) All money in the Fund shall be distributed by the Assistant Secretary at the end of each three months of the fiscal year among the Regional Corporations on the basis of the relative numbers of Natives enrolled in each region.

(b) Except as otherwise authorized in the regulations in this part, a Regional Corporation's quarterly share of the Fund shall be made payable to the Regional Corporation through a payee designated by the Regional Corporation.

(c) A Regional Corporation may designate a payee of its quarterly share at any time, and may change that designation at any time, *Provided*, That the Assistant Secretary receive written notification of any such designation or change in designation at least ten (10) days before the quarterly distribution date. Any such designation must include the name and address of the payee and the identifying American Banking Association number.

### § 123.4 Recognition of assignments.

(a) Upon application of a Regional Corporation, as provided in paragraph (c) of this section, the Assistant Secretary shall recognize a validly executed assignment of that portion of a future interest in the Fund not subject to the redistribution provisions of sections 7(j) and 7(m) of the Act. A future interest which is not subject to those redistribution provisions shall be referred to in this section as an "assignable future interest" or the "assignable portion of a quarterly distribution."

**Bureau of Indian Affairs, Interior**

**§ 123.6**

(b) Such assignments shall only be recognized to the extent that the Regional Corporation involved is not required to distribute funds pursuant to subsection (j) or (m) of section 7 of the Act.

(c) Upon recognition of such an assignment, the Assistant Secretary shall distribute the amount assigned to the payee designated by the parties to the assignment, and shall continue to pay the amount assigned to that payee, except as provided by §§123.6(b) and 123.9.

(d) A Regional Corporation's application for recognition of an assignment of a future interest in the Fund:

(1) Shall be addressed to the Assistant Secretary for Indian Affairs, Attn.: Assistant Director, Financial Management, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20240;

(2) Shall specifically request that the Assistant Secretary recognize an assignment of a fixed sum to which the Regional Corporation may be entitled from the Fund;

(3) Shall designate a payee of the amount assigned;

(4) Shall be accompanied by a duly-adopted resolution of the Board of Directors of the Regional Corporation, which resolution authorizes the making of the assignment and the application for recognition of that assignment by the Secretary of the Interior, or evidence of stockholder approval when required by Alaska state law; and

(5) Shall be accompanied by one executed copy and three facsimile copies of a validly executed assignment of all or a portion of the Regional Corporation's assignable future interest in the Fund, which assignment shall contain the following language:

(i) The parties to this assignment agree to seek recognition of this assignment by the Secretary of the Interior, as authorized by section 4 of the Act of November 15, 1977, Pub. L. 95-178 (91 Stat. 1369, 1370).

(ii) It is understood by the parties to this assignment that in the event the Secretary of the Interior recognizes this assignment, the United States reserves the right to assert against the assignee and successors of the assignee, any setoff or counterclaim which the United States has, or may have, against the Assignor Corporation.

(e)(1) An assignment may provide that:

(i) All of the assignable portion of each quarterly distribution be paid to the payee designated in the application for recognition of assignment;

(ii) A fraction of the assignable portion of each quarterly distribution be paid to the designated payee; or that

(iii) The assignable portion of each quarterly distribution, up to a stated maximum amount, be paid to the designated payee.

(2) Other formulas for assignment of assignable future interests may be recognized if:

(i) Such a formula clearly identifies what portion of each affected quarterly distribution is to be paid to the designated payee, and

(ii) The formula will permit the Assistant Secretary to set priorities in accordance with §123.7 when subsequent application is made for recognition of additional assignments.

**§ 123.5 Register of recognized assignments.**

The Assistant Secretary shall maintain and make available for inspection by the public a register of requests for recognition of assignments and assignments recognized by him pursuant to the regulations in this part. Such register shall list the name of the Regional Corporation; the name and address of the assignee; the name, address, American Banking Association number, and account number for deposit of the payee of the amount assigned; the amount assigned; the amount paid at each quarterly distribution under the terms of the assignment; and the date of the Assistant Secretary's recognition.

**§ 123.6 Sub-assignment.**

(a) Nothing in the regulations in this part shall prohibit an assignee from making a valid sub-assignment of a Regional Corporation's rights to receive payments from the Fund. However, the Assistant Secretary has no authority and shall not recognize any sub-assignment by the assignee of any future interest of a Regional Corporation in the Fund.

(b) The Assistant Secretary may accept a re-designation of a new payee of



## § 123.7

an assignment recognized by the Assistant Secretary, upon application of an authorized official of the assignee in accordance with § 123.3(c).

### § 123.7 Multiple assignments.

(a) The Assistant Secretary may recognize more than one assignment of a Regional Corporation's future interests in the Fund. A second or later assignment of a Regional Corporation's future interest in the Fund, when recognized in accordance with § 123.4, shall be recognized subject to assignments already recognized.

(b) The Assistant Secretary shall not recognize an assignment of a Regional Corporation's future interest in the Fund if he has more than one outstanding application from that Corporation seeking recognition of such future interests. If more than one application from a Regional Corporation is pending before the Assistant Secretary, he shall notify both the Regional Corporation and the assignees of the assignments sought to be recognized, and seek a written consensus on the priorities to be established. In the absence of such a consensus, the Assistant Secretary shall not recognize any such assignment.

### § 123.8 Disclaimer.

The Assistant Secretary does not guarantee by any action taken pursuant to the regulations in this part that the entitlement of a Regional Corporation to any quarterly distribution of the Fund shall be of any given amount, or that the cumulative entitlement of that Corporation will reach any given sum.

### § 123.9 Cancellation of assignments.

(a) The Assistant Secretary shall cancel his recognition of an assignment upon joint application of the assignee and Regional Corporation involved. Such application must include a resolution of the Board of Directors of the Regional Corporation, and a validly executed agreement between the Regional Corporation and assignee cancelling the assignment and authorizing the Secretary of the Interior to cancel his recognition of the assignment.

(b) Such cancellation of recognition of an assignment shall be reflected in

## 25 CFR Ch. I (4-1-01 Edition)

the register compiled by the Assistant Secretary as provided in § 123.5.

### § 123.10 Decision; finality.

(a) A decision of the Assistant Secretary not to recognize an assignment of a future interest in the Fund shall inform the Regional Corporation what defects, if any, remain in its application for recognition, and shall provide the corporation with an opportunity to cure those defects.

(b) A decision of the Assistant Secretary to recognize an assignment of a Regional Corporation's future interest in the Fund shall not be subject to reconsideration or administrative appeal, and shall therefore be final for the Department.

## PART 124—PROCEDURES FOR DEPOSITING FUNDS TO THE CREDIT OF 14X6140-DEPOSITS OF PROCEEDS OF LANDS WITHDRAWN FOR NATIVE SELECTION, BIA

Sec.

124.1 Purpose.

124.2 Proceeds received by Federal agencies.

124.3 Proceeds received by the State of Alaska.

AUTHORITY: 89 Stat. 1145.

SOURCE: 42 FR 32229, June 24, 1977, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 124.1 Purpose.

The purpose of the regulations in this part is to describe the procedures to be used by all Departments and Agencies of the Federal Government and the State of Alaska for the deposit of proceeds derived from contracts, leases, permits, and rights-of-way or easements pertaining to affected lands or resources in affected lands withdrawn for Native selection pursuant to the Alaska Native Claims Settlement Act.

### § 124.2 Proceeds received by Federal agencies.

(a) *Direct deposits.* (1) Agency will prepare Deposit Ticket (SF 215), using Agency Accounting Station Code 14-20-0650.

(2) In Block (6) Fund Symbol 14X6140 will be inserted as well as the following:

## Bureau of Indian Affairs, Interior

## § 125.2

Credit to Bureau of Indian Affairs, Branch of Finance and Accounting, P.O. Box 127, Albuquerque, New Mexico 87103.

(3) Memorandum copy and confirmed copy of Deposit Ticket will be mailed to above address, immediately upon completion and confirmation.

(4) Agency will provide information (lease, contract or other identification) which will permit depositing agency to identify deposit with particular plot of land at time distribution of the funds is to be made. This information can be shown in Block (6) if space permits, or on an attached listing.

(b) *Periodic deposits.* (1) In some circumstances, collection from Withdrawn Lands will be in such small amounts and such frequency as to be administratively burdensome to make individual deposits to the fund, or collections may be mixed with collections to be credited to other funds. In such instances depositing agencies may initially deposit the collections to their own suspense accounts. Such deposits will then be transferred to Fund 14X6140 no less frequently than monthly. The "Pay to" side of the SF 1081 will be completed as follows:

Department, Interior.  
Bureau, Indian Affairs.  
Agency Station Symbol, 14-20-0650.  
Address, Albuquerque, NM 87103.  
Appropriation or Fund Symbol, 14X6140.

and will be supported by sufficient detail to permit future identification by depositing agency. An advance copy of the SF 1081, with supporting documentation will be forwarded to the BIA at Albuquerque immediately.

(2) Agencies not using the SF 1081 procedures will issue a check made payable to the Treasurer of the United States, and forward it to:

Juneau Area Office, Bureau of Indian Affairs,  
P.O. Box 8000—B, Juneau, Alaska 99802.

accompanied by a listing in sufficient detail to permit the collecting agency to identify the collections with each parcel of land at the time distribution of the funds is to be made.

### § 124.3 Proceeds received by the State of Alaska.

The State agency responsible for making collections will deposit the proceeds to the credit of the State of

Alaska. A check will then be issued, payable to the Treasurer of the United States, and will be forwarded to the Juneau Area Office, Bureau of Indian Affairs, accompanied by a detailed listing providing information which will permit identification of the funds with each particular parcel of land at the time distribution of the funds is to be made. The Juneau Area Office will deposit all such receipts to the credit of Fund Symbol 14X6140, forwarding the memorandum copy to the Branch of Finance and Accounting immediately, together with a copy of the detail provided by the State of Alaska.

## PART 125—PAYMENT OF SIOUX BENEFITS

- Sec.
- 125.1 Scope.
- 125.2 Purpose.
- 125.3 Definitions.
- 125.4 Eligibility.
- 125.5 Application procedure.
- 125.6 Administration.
- 125.7 Information collection.

AUTHORITY: Act of March 2, 1889, c. 405, sec. 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 662, 45 Stat. 984; Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

SOURCE: 46 FR 36136, July 14, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 125.1 Scope.

The regulations in this part govern the payment of "Sioux benefits" to allotted Sioux Indians under the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984; and to unallotted Sioux Indians on the Cheyenne River Indian Reservation under the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

### § 125.2 Purpose.

The purpose of these regulations is to implement the provisions of federal statutes which provide for the payment of "Sioux benefits" to Sioux Indians by setting forth the criteria governing eligibility for and entitlement to "Sioux benefits" and by establishing procedures governing application for and payment of "Sioux benefits."

## § 125.3

## 25 CFR Ch. I (4–1–01 Edition)

### § 125.3 Definitions.

As used in this part, the term—

(a) *Area Director* means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

(b) *Bureau* or *BIA* means the Bureau of Indian Affairs, Department of the Interior.

(c) *Commissioner* means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) *Sioux benefits* means the allotment of stock and farming equipment plus \$50.00 cash as provided for by the Act of March 2, 1889, c. 405, §17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) *Sioux Indian* means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) *Single person* includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) *Head of a family* means only:

(1) A married person who meets the requirements of §125.4(c)(1) or (2) (if living with his/her spouse) or §125.4(c)(3) (if not living with his/her spouse), and

(2) An unmarried person under the age of eighteen years who meets the requirements of §125.4(c)(3).

(h) For the purpose of determining family support under §§125.4(c)(2) and 125.4(c)(3), *family* means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

### § 125.4 Eligibility.

(a) *Allotted Sioux Indians*. The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, §17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576 §14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of

the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years or a head of a family (as provided in §125.4(c));

(3) He/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in §125.5); and

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in §125.4(d)).

(b) *Unallotted Sioux Indians*. The Act of June 18, 1934, c. 576, §14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute, and have not, in fact, been allotted lands under the provisions of such Federal statutes. That Act has current application only to unallotted members of the Cheyenne River Sioux Tribe because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute a member of the Cheyenne River Sioux Tribe is eligible for Sioux benefits if—

(1) He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, §1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, §19, 35 Stat. 444, 451, or any prior Federal statute, and has not been allotted lands under the provisions of such Federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years or a

## Bureau of Indian Affairs, Interior

## § 125.5

head of a family (as provided in §125.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in §125.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in §125.4(d)); *and*

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) *Head of a family.* The following criteria apply in determining head of family status under both §§125.4(a) and 125.4(b).

(1) Except as provided in §125.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not concur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payment made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this part solely because of his status as a husband. The Bureau

shall not presume that a wife is not a head of a family for purposes of this part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this part solely because of such status. The Bureau shall not presume that a Sioux woman married to a Sioux man is not a head of a family for purposes of this part solely because of such status.

(d) *Double benefits.* The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any Federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that:

(1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian who, under prior law, was held to have a vested right to receive such benefits as of the date of death, or

(2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

### § 125.5 Application procedure.

(a) *Agency Superintendent.* Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.

## § 125.6

(b) *Area Director.* Within fourteen (14) days of receipt of an application from the Agency Superintendent, the Area Director shall approve or disapprove the application and notify, in writing, the applicant and the Agency Superintendent of such decision and, if denied, the reasons therefor. Failure of the Area Director to act within the specified time shall have the effect of approval of the application.

(c) *Appeal.* Approval of an application by the Area Director shall be final and conclusive. Disapproval of an application may be appealed to the Commissioner pursuant to the administrative review procedures of 25 CFR part 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 CFR part 4, subpart D. Approval of an application on administrative appeal or pursuant to judicial review shall relate back to the date of the Area Director's decision.

(d) *Prior applications.* (1) Eligibility for Sioux Benefits will be determined by an applicant's status as of the date of application, except that where an applicant's application was disapproved prior to the promulgation of these regulations under the provisions of previous Bureau regulations or policies, the applicant may reapply and, if he/she so requests, have his/her eligibility determined based upon his/her status as of the date of such prior application, which shall be deemed to be the date of the application, but nothing in this subsection shall be construed to allow any application to be made on behalf of a deceased Sioux Indian whose prior application was disapproved.

(2) Unallotted Sioux Indians of the Pine Ridge and Rosebud Reservations whose applications were submitted and disapproved prior to the termination of payment of Sioux benefits on each respective reservation may reapply for benefits under this subsection within one year of the effective date of this part and receive payment if their eligibility under §125.4(b) is established as of the date of such initial application.

(e) *Information collection.* The information collection requirements con-

## 25 CFR Ch. I (4-1-01 Edition)

tained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076-0004. The information is being collected to provide information necessary for the Bureau to determine eligibility for Sioux benefits. This information will be used to grant statutory benefits. The obligation to respond is required to obtain a benefit.

[46 FR 36136, July 14, 1981; 46 FR 38074, July 24, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 125.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved during the lifetime of the applicant as provided by Federal law.

(b) Payment of Sioux benefits shall be made in accordance with a budget or plan for expenditure submitted by the applicant and approved by the Agency Superintendent.

(c) The Commissioner shall annually compute the commuted monetary value of Sioux benefits to be effective on October 1 of that year and notify the affected tribes and Bureau agencies of such determination.

(d) The Area Director shall annually notify both the Cheyenne River Sioux Tribe and the Commissioner of the number of Sioux benefits remaining available to be paid under the provisions of the Act of June 18, 1934, c. 576, §14, 48 Stat. 987, 25 U.S.C. 474.

### § 125.7 Information collection.

The information collection requirements contained in §§125.4 and 125.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0004. The information is being collected to solicit information necessary to make a determination of eligibility for Sioux benefits. The information will be used to determine eligibility for payment. Response is required to obtain a benefit.

[53 FR 21995, June 13, 1988]

**PART 134—PARTIAL PAYMENT  
CONSTRUCTION CHARGES ON  
INDIAN IRRIGATION PROJECTS**

Sec.

- 134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.  
134.2 Landowners financially unable to pay.  
134.3 Period for payments extended.  
134.4 Annual payment reduced.  
134.4a Assessment and collection of additional construction costs.  
134.5 Payments to disbursing officer.  
134.6 "Owner" defined.  
134.7 Modifications.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interpret or apply sec. 1, 41 Stat. 409; 25 U.S.C. 386.

SOURCE: 22 FR 10643, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.**

In pursuance of the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), regulations governing partial payment of construction charges on Indian irrigation projects, with the exception of certain ones mentioned therein, where approved by the Department June 21, 1920, and require that each owner of irrigable land under any irrigation system constructed for the benefit of Indians under provisions of law requiring reimbursement of the cost of such system and to which land, water for irrigation purposes can be delivered from such system, shall pay, on or before November 15, 1920, a sum equal to 5 percent of the per acre cost, as of June 30, 1920, of the construction of the system under which such land is situated. The per acre cost of a given system as of June 30, 1920, shall be determined by dividing the total amount expended for construction purposes on such system up to that day by the total area of land to which water for irrigation purposes can be delivered on that date; and on November 15 of each year following the year 1920, until further notice, the land owners, as therein prescribed, shall pay 5 percent of the per acre construction cost as of June 30, of the current year, such per acre cost to be determined by dividing the cost of the system to June

30 of that year by the total area of land to which water for irrigation purposes can be delivered from the system on that date. Provision is contained that no payments shall be required under the regulations in behalf of lands still in process of allotment or prior to the issuance of the first or trust patent therefor, nor for lands reserved for school, agency, or other administrative purposes where the legal title still remains in the United States.

**§ 134.2 Landowners financially unable to pay.**

Considerable difficulty has been encountered in collecting charges under the regulations in this part owing to the fact that Indians have been financially unable to pay the charges, the result being that the construction charges have accrued against the lands and in cases where the land is sold for the benefit of the allottee or his heirs under the regulations, the purchaser is to pay the accrued and future irrigation charges which make it difficult in some instances, to sell the land at as favorable terms as might otherwise be secured.

**§ 134.3 Period for payments extended.**

Furthermore, in recent legislation dealing with specific projects in the Bureau and also all reclamation projects the policy has been to extend the payment of such charges over a longer period of years.

**§ 134.4 Annual payment reduced.**

In view of these conditions the regulations governing this matter are hereby modified so as to distribute the unaccrued installments over a period of time so that 2½ percent of the total amount yet due shall be due and payable on November 15 of each year until further notice. You shall accordingly ascertain the per acre cost after deducting the amount of the accrued charges and take 2½ percent of that amount and a like sum each year so that the amount of the annual installments will be the same each year. Superintendents are obligated to submit all proposed lists of sales involving allotments containing irrigable allotments to the project or supervising engineer for checking, as to the irrigable

## § 134.4a

## 25 CFR Ch. I (4-1-01 Edition)

acreage and amounts of unpaid construction, operation, and maintenance charges against such allotments. Each sale forwarded to the Bureau for action shall be accompanied by contract executed on Form 5-462b where irrigable acreage is involved and after approval thereof a copy of contract on said form shall be sent to the project engineer for his records and the charges paid by the purchaser shall be turned over to the disbursing agent for credit and deposit as instructed in the next paragraph. The regulations in this part shall not apply to lands in the Wapato project, on the Yakima Indian Reservation, nor to the irrigation projects on the Blackfeet, Fort Peck, Flathead, and Crow Reservations, Montana, for which special regulations have been issued nor to the Fort Hall Reservation, Idaho, or the San Carlos project, Arizona.<sup>1</sup>

CROSS REFERENCES: For special regulations applying to San Carlos project, see part 137 of this chapter. For further information concerning Form 5-462b, see part 159 of this chapter.

### § 134.4a Assessment and collection of additional construction costs.

(a) Upon the completion of the construction of an Indian irrigation project, or unit thereof, subsequent to the determination of the partial per acre construction assessment rate which was fixed prior to July 1, 1957, pursuant to § 134.4 the Secretary of the Interior or his authorized representative shall determine such additional construction cost and distribute that cost on a per acre basis against all of the irrigable lands of the project, or unit thereof, and  $\frac{1}{40}$ th of such per acre additional construction cost thus determined shall be assessed and collected annually from the non-Indian landowner of the project, or unit, thereof. The first installment shall be due and payable on November 15 of the year following the completion of such additional construction work or, if such additional construction work on the project, or unit thereof, has been completed prior to July 1, 1957, and the per acre annual

rate determined, the first installment of the additional construction cost to be repaid by such non-Indian landowners shall be due and payable on November 15, 1958. This annual per acre rate shall be in addition to, and run concurrently with, the per acre construction rate assessed annually under § 134.4.

(b) Project lands in Indian ownership are not subject to assessment for their proportionate share of the per acre construction cost of the project, or unit thereof, until after the Indian title to the land has been extinguished. At that time the total annual per acre assessment rate against non-Indian lands of the project, or unit thereof, shall be assessed against the former Indian lands for each and every acre of irrigable land to which water can be delivered through the project works, beginning on November 15 of the year following the extinguishment of the Indian title to the land and on November 15 of each year thereafter over a forty year period. In cases where the Indian title to project land was extinguished prior to July 1, 1957, the assessment rate shall be due and payable on November 15, 1958.

### § 134.5 Payments to disbursing officer.

Payments under this part shall be made to the disbursing officer for the supervising engineer of the Indian Irrigation Service having jurisdiction over the irrigation system under which the land for which payment is made may lie. The sum so collected will then, after proper credit has been made to the land for which collected, be deposited in the Treasury of the United States to the credit of the respective funds used in constructing irrigation systems toward which reimbursement shall have been made.

### § 134.6 "Owner" defined.

The word "owner" as used in this part shall be construed to include any person, Indian or white, or any firm, partnership, corporation, association, or other organization to whom title to the land capable of irrigation, as provided in the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), has passed, either by fee or trust patent, or otherwise.

<sup>1</sup>The special regulations for Wapato, Fort Peck, and Flathead, were not codified. Operations of the Blackfeet project were discontinued by the Bureau, July 20, 1938, effective September 30, 1933.

**§ 134.7 Modifications.**

The act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), cancelled all irrigation assessments for construction costs against lands in Indian ownership which were unpaid at that date and deferred all future assessments for construction costs until the Indian title to the land shall have been extinguished.

**PART 135—CONSTRUCTION ASSESSMENTS, CROW INDIAN IRRIGATION PROJECT**

**Subpart A—Charges Assessed Against Irrigation District Lands**

## Sec.

- 135.1 Contracts.
- 135.2 Annual rate of assessments.
- 135.3 Annual assessments.
- 135.4 Time of payment.
- 135.5 Penalty.
- 135.6 Refusal of water delivery.

**Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District**

- 135.20 Private contract lands; assessments.
- 135.21 Time of payment.
- 135.22 Penalty.
- 135.23 Refusal of water delivery.

AUTHORITY: Sec. 15, 60 Stat. 338.

SOURCE: 22 FR 10644, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**Subpart A—Charges Assessed Against Irrigation District Lands**

**§ 135.1 Contracts.**

Under provisions of the act of Congress approved June 28, 1946 (60 Stat. 333-338), contracts were executed June 28, 1951, by the United States with the Lower Little Horn and Lodge Grass Irrigation District and the Upper Little Horn Irrigation District providing for the payment, over a period of 40 years, by each of the Districts of its respective share of the sum of \$210,726 expended for the construction of the Willow Creek storage works on account of non-Indian lands within the Districts entitled to share in the storage water, directly or by substitution.

**§ 135.2 Annual rate of assessments.**

Within the Lower Little Horn and Lodge Grass Irrigation District there are 3,196.8 acres for which the District is obligated by contract to pay its proper share of the total construction costs. Within the Upper Little Horn Irrigation District there are 1,554.7 acres for which the District is obligated by contract to pay its proper share of the total construction costs. There are 3,237.6 acres, more or less, covered by contracts with private landowners, obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is \$26.38. This amounts to an annual per acre rate of \$0.6595. For the purpose of this notice the annual per acre rate is hereby fixed at \$0.66. This annual per acre rate of assessment will continue for a 40-year period within which the total amount of construction costs of \$210,726 is to be repaid without interest. The amount of each annual installment chargeable against each of the Districts for the acreage covered by their respective contracts shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by substitution, by the per acre annual rate.

**§ 135.3 Annual assessments.**

Notice is hereby given of an annual assessment of \$2,108.05 to be repaid by the Lower Little Horn and Lodge Grass Irrigation District for the 3,196.8 acres of irrigable land of the District, and an annual assessment of \$1,025.06 to be repaid by the Upper Little Horn Irrigation District for the 1,554.7 acres of irrigable land of the District. Against the amounts due annually by the Districts under this notice, there shall be allowed any credits due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected by the respective Districts when placing against such land the annual assessment on the tax rolls.

**§ 135.4 Time of payment.**

Annual assessments shall be paid by the Districts to the United States, one-half thereof on or before February 1 and one-half thereof on or before July



**§ 135.5**

1 following, of each year commencing with the calendar year 1952.

**§ 135.5 Penalty.**

To all assessments not paid on the due date, there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

**§ 135.6 Refusal of water delivery.**

The right is reserved to the United States to refuse the delivery of water to each of the said Irrigation Districts in the event of default in the payment of assessments, including penalties on account of delinquencies.

**Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District**

**§ 135.20 Private contract lands; assessments.**

In addition to 4,751.5 acres of non-Indian land included within the two irrigation Districts dealt with in subpart A, there are 3,237.6 acres of land, more or less, in non-Indian ownership under private ditches, covered by repayment contracts executed pursuant to the act of June 28, 1946 (60 Stat. 333-338), obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is \$26.38. This amounts to an annual per acre rate of \$0.6595. For the purposes of this notice the annual per acre rate is hereby fixed at \$0.66. This annual rate of assessment will continue for a 40-year period within which the total amount of construction cost of \$210,726 is to be repaid without interest. The amount of each annual installment chargeable against the lands covered by each of the several contracts with individual landowners whose lands are served under private ditches, shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by substitution, by the per acre annual rate. Against the amounts due annually by the individual landowners whose lands are served by private ditches, under this notice there shall be allowed any cred-

**25 CFR Ch. I (4-1-01 Edition)**

its due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected in any statement submitted to the landowners.

**§ 135.21 Time of payment.**

The amount of each annual installment, payable under the private landowner contracts, determined as provided in this part shall be paid by the landowners to the United States, on or before November 15 of each year commencing with the calendar year 1951.

**§ 135.22 Penalty.**

To all assessments not paid on the due date there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

**§ 135.23 Refusal of water delivery.**

The right is reserved to refuse the delivery of water to any landowner in the event of default in the payment of assessments, including penalties on account of delinquencies.

**PART 136—FORT HALL INDIAN IRRIGATION PROJECT, IDAHO**

- Sec.
- 136.1 Repayment contracts.
- 136.2 Construction costs.
- 136.3 Repayment of construction costs.

AUTHORITY: Sec. 9, 46 Stat. 1063.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 136.1 Repayment contracts.**

A rehabilitation program was established on the Fort Hall Unit of the Fort Hall Project in 1936. Based upon the estimated construction costs, contracts were signed by all non-Indian landowners within the project, including such landowners within the Little Indian Unit, now a part of the Fort Hall Unit. Under the terms of their contracts, the landowners agreed to repay to the Government their pro rata share, on an acreage basis, of all expenditures for construction and other necessary improvements for carrying out the approved program, payments not to exceed \$7.50 per acre, based upon

## Bureau of Indian Affairs, Interior

## § 137.3

an estimated expenditure of \$450,000.00 for a project then considered as covering approximately 60,000 acres.

### § 136.2 Construction costs.

The program of rehabilitation has now been completed at a cost of \$419,186.52. This amount, chargeable on an equal per acre basis against 60,000 acres, amounts to a rate of \$6.986 per acre, which rate is hereby determined to be the per acre cost to be repaid to the United States under the 1936 contracts.

### § 136.3 Repayment of construction costs.

Under the terms of the contracts, the landowners agreed to repay the construction cost in forty (40) equal annual installments. Therefore, the annual per acre installment is hereby fixed at seventeen and one-half cents (17½ cents) per acre, due and payable on December 1st of each year, the first payment being due on December 1, 1955. Under section 4 of the repayment contracts of the landowners and the act of March 10, 1928 (45 Stat. 210), the charges remain a lien against the lands until paid.

## PART 137—REIMBURSEMENT OF CONSTRUCTION COSTS, SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Sec.

- 137.1 Water supply.
- 137.2 Availability of water.
- 137.3 Construction charges.
- 137.4 Future charges.
- 137.5 Construction costs limited.
- 137.6 Power development.
- 137.7 Private ownership defined.
- 137.8 Indian lands excluded.

AUTHORITY: Sec. 5, 43 Stat. 476.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 137.1 Water supply.

The engineering report dealt with in section 1 of the act of June 7, 1924 (43 Stat. 475) and other available records show that the storage capacity of the San Carlos reservoir created by the Coolidge Dam and the water supply therefor over a period of years will pro-

vide for the irrigation of only 80,000 acres of lands in Indian and public or private ownership within the San Carlos irrigation project, the balance of the water supply needed for the additional 20,000 acres of the project to be provided for by recaptured and return flow water and by means of pumping the underground supply. The cost of providing the proposed supply and of operating the works for this latter acreage to be equally distributed over the entire 100,000 acres of the project regardless of where the works are placed and operated.

### § 137.2 Availability of water.

Pursuant to section 3 of the act of June 7, 1924 (43 Stat. 475), requiring the Secretary of the Interior by public notice to announce when water is actually available for lands in private ownership under the project and the amount of the construction charges per irrigable acre against the same which charges shall be payable in annual installments as provided for therein, this public notice, of which § 137.1 is made a part hereof, is hereby given:

The date when a reasonable water supply is actually available for lands in private ownership under the San Carlos irrigation project is hereby declared to be the 1st day of December 1932.

### § 137.3 Construction charges.

Each acre of land in private ownership of said project is hereby charged with \$95.25 of construction cost assessable thereto at the date hereof (Dec. 1, 1932), which sum is based upon 50,000 acres of such privately owned lands, making a total charge or assessment due from the owners thereof of \$4,762,250 on this date (Dec. 1, 1932), excluding the cost of operation and maintenance for the calendar year of 1933 which may be carried into construction cost as provided for by section 3 of the act of June 7, 1924 (43 Stat. 476), and also excluding interest at the rate of 4 percent which is charged against such lands by said act. Of the 50,000 acres constituting the lands in private ownership within the said project only 46,107.49 acres have at this date (Dec. 1, 1932) actually been designated as coming within the project. Should this

#### § 137.4

present designated area be not increased within a reasonable time herefrom and prior to the due date of the first installment of the charge fixed in this section, namely, on December 1, 1935, so as to bring the total designated area up to the 50,000 acres, the per acre charge fixed in this section shall be proportionately increased against the then designated area so as to assure reimbursement of the total indebtedness due the Government by the owners of the lands in private ownership from the lesser designated acreage.

#### § 137.4 Future charges.

The payment of said construction cost and costs of future operation and maintenance of said project as provided for in said section 3 of the act of June 7, 1924 (43 Stat. 476), as supplemented or amended and such contingent project liabilities which may be incurred in accordance with the provisions of said repayment contract shall be made in accordance with the provisions of said act of June 7, 1924, as supplemented or amended and the repayment contract by and between the San Carlos irrigation and drainage district and the Secretary of the Interior bearing date of June 8, 1931; the said construction cost incurred subsequent to this public notice assessable against the lands in private ownership and costs of operation and maintenance assessed against such privately owned lands within the project for the first year after this public notice to be included in the construction cost and such contingent project liabilities which may be incurred in accordance with provisions of the repayment contract shall also be repaid to the Government pursuant to the terms of said act of June 7, 1924, as supplemented or amended, and the repayment contract and this public notice.

#### § 137.5 Construction costs limited.

The repayment contract<sup>1</sup> with the San Carlos irrigation and drainage district, page 13 thereof, contains the following:

<sup>1</sup>Contract available at the Bureau of Indian Affairs, Washington, D.C.

#### 25 CFR Ch. I (4-1-01 Edition)

In accordance with the foregoing the costs of the San Carlos project as fixed by the public notice to be issued as aforesaid, unless further sums shall be agreed to by the Secretary of the Interior and the district after the execution of this instrument, may amount to but shall not exceed the sum of \$9,556,313.77, except that said total may be exceeded by the inclusion of any sums expended to safeguard the project as hereinabove provided for, and any sums expended on account of contingent liabilities as in the next paragraph hereof provided.

The foregoing and subsequent statements of project costs, the district's shares of which are to be repaid hereunder, unless otherwise provided by Congress more favorably to the lands of the project, may be increased by the addition of sums not now fixed as project charges but which possibly constitute contingent project liabilities incurred after the date of the San Carlos Act of June 7, 1924 (43 Stat. 476), or incurred on account of the Florence-casa Grande project, and so may become project charges by the judgment of courts of competent jurisdiction or of other proper authority.

The limitations therein fixed has approximately been reached, there remaining but \$32,815.02 yet to be expended on project works before reaching that limitation. Upon the expenditure of this additional sum there shall be no further expenditures of funds for construction, operation and maintenance of the San Carlos project so far as the private lands are concerned until the San Carlos irrigation and drainage district shall, through appropriate action, authorize pursuant to the terms of the said repayment contract such additional expenditures. This limitation does not apply to project expenditures for the extension of the distributing and pumping system regardless of where they may arise. This class of expenditures being excepted from the limitation on expenditures contained in the said repayment contract by section 14, page 10, thereof, which section is known as the "Equalization of Expenditures."

#### § 137.6 Power development.

The cost of the power development at the Coolidge Dam is hereby fixed at \$735,000. The net revenues derived from the operation of this power development shall be disposed of as required by the terms and conditions of the act of March 7, 1928 (45 Stat. 210) as supplemented or amended.

#### § 137.7 Private ownership defined.

The term "private ownership" used in this public notice includes all lands of the San Carlos irrigation project

that have or may be designated by the Secretary of the Interior that are situated outside of the boundaries of the Gila River Indian Reservation.

**§ 137.8 Indian lands excluded.**

This public notice, with the exception of that part dealing with payment in advance each year of operation and maintenance charges against lands in Indian ownership operated under lease, does not apply in so far as payments are concerned to Indian lands within the project. The act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a) defers the collection of construction costs from Indian owned lands so long as the title to such lands remains in the Indian ownership.

**PART 138—REIMBURSEMENT OF CONSTRUCTION COSTS, AHTANUM UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON**

Sec.

138.1 Construction costs and assessable acreage.

138.2 Repayment of construction costs.

138.3 Payments.

138.4 Deferment of assessments on lands remaining in Indian ownership.

138.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10646, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 138.1 Construction costs and assessable acreage.**

The construction program has been completed on the Ahtanum Unit of the Wapato Indian Irrigation Project and the construction costs have been established as \$79,833.64. The area benefited by this development has been established at 4,765.2 acres. Under the requirements of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the United States Treasury by the owners of the lands benefited.

**§ 138.2 Repayment of construction costs.**

The cost per acre under § 138.1 is, therefore, established at \$16.7535. Under the provisions of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210) is based on forty equal annual payments, the annual per acre assessment is hereby fixed at \$0.42 per acre for the year 1957 and each succeeding year until the entire cost for each tract shall have been repaid to the United States Treasury. On those tracts where payments have been made pursuant to part 134 of this chapter, annual assessments beginning with the year 1957 at the rate of \$0.42 per acre will be made until the entire cost of \$16.7535 per acre shall have been repaid to the United States Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210) the unpaid charges stand as a lien against the lands until paid.

[22 FR 10646, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

**§ 138.3 Payments.**

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

**§ 138.4 Deferment of assessments on lands remaining in Indian ownership.**

In conformity with the act of July 1, 1932 (47 Stat. 564); 25 U.S.C. 386(a) no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

**§ 138.5 Assessments after the Indian title has been extinguished.**

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that Indian title is extinguished. Assessments against this land will be at the annual rate of \$0.42 per acre and shall be due as provided in § 138.3, and payable promptly thereafter until the total construction cost of

\$16.7535 per acre chargeable against the land has been paid in full.

**PART 139—REIMBURSEMENT OF CONSTRUCTION COSTS, WAPATO-SATUS UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON**

Sec.

- 139.1 Construction costs and assessable acreage.
- 139.2 Repayment of construction costs.
- 139.3 Payments.
- 139.4 Deferment of assessments on lands remaining in Indian ownership.
- 139.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Sec. 1, 41 Stat. 409, 45 Stat. 210; 25 U.S.C. 386, 387.

SOURCE: 28 FR 6536, June 26, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§ 139.1 Construction costs and assessable acreage.**

The construction program has been completed on the Wapato-Satus Unit of the Wapato Indian Irrigation Project, and the construction costs have been established by Designation Report dated August 1962 as \$7,903,823.12 for the project and \$1,499,073.62 for the "B" lands share of the construction costs in the Bureau of Reclamation reservoirs on the Yakima River. The area benefited by this development has been established at 136,559.59 acres divided into 79,025.68 acres of "A" land and 57,533.91 acres of "B" land. Under the requirements of the acts of February 14, 1920 (41 Stat. 409), and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the U.S. Treasury by the owners of the lands benefited.

**§ 139.2 Repayment of construction costs.**

The cost per acre of the construction under § 139.1 is, therefore, calculated at \$57.8782 for "A" lands and \$83.9337 for "B" lands in non-Indian ownership as established by Designation Report dated August 1962. Under the provisions of the acts cited in § 139.1 the annual per acre assessment for forty equal annual payments, is hereby fixed at \$1.45 per acre for "A" lands and \$2.10 per acre for "B" lands for the year 1962 and

each succeeding year, until the entire cost for each tract shall have been repaid to the U.S. Treasury. On those tracts where payments have been made pursuant to uncodified special regulations, annual assessments beginning with the year 1962 at the rate of \$1.45 per acre for "A" lands and \$2.10 per acre for "B" lands will be made until the entire cost of \$57.8782 per acre for "A" lands and \$83.9337 per acre for "B" lands shall have been repaid to the U.S. Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

**§ 139.3 Payments.**

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

**§ 139.4 Deferment of assessments on lands remaining in Indian ownership.**

In conformity with the act of July 1, 1932 (47 Stat. 564; U.S.C. 386(a)), no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

**§ 139.5 Assessments after the Indian title has been extinguished.**

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that the Indian title is extinguished. The construction costs against this land will be established as provided by section 5 of the act of September 26, 1961 (75 Stat. 680). The annual per acre assessment rate will be determined by dividing the established construction cost per acre into forty equal payments. "B" lands will also be assessed for reservoir construction costs in the annual per-acre rate as established in the Designation Report dated August 1962. Assessments against this land will continue until the entire established construction costs shall have been repaid to the U.S. Treasury. Landowners may pay at any time the

total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

### PART 140—LICENSED INDIAN TRADERS

- Sec.  
 140.1 Sole power to appoint.  
 140.2 Presidential prohibition.  
 140.3 Forfeiture of goods.  
 140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.  
 140.9 Application for license.  
 140.11 License period.  
 140.12 License renewal.  
 140.13 Power to close unlicensed stores.  
 140.14 Trade limited to specified premises.  
 140.15 License applicable for trading only by original licensee.  
 140.16 Trade in annuities or gratuities prohibited.  
 140.17 Tobacco sales to minors.  
 140.18 Intoxicating liquors.  
 140.19 Drugs.  
 140.21 Gambling.  
 140.22 Inspection of traders' prices.  
 140.23 Credit at trader's risk.  
 140.24 Cash payments only to Indians.  
 140.25 Trade in antiquities prohibited.  
 140.26 Infectious plants.

AUTHORITY: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9, and 5 U.S.C. 301, unless otherwise noted.

CROSS REFERENCES: For law and order regulations on Indian Reservations, see part 11 of this chapter. For regulations pertaining to business practices on Navajo, Hopi and Zuni reservations, see part 141 of this chapter. For additional regulation of certain employees trading with Indians, see 43 CFR part 20.735-28 and 29.

SOURCE: 22 FR 10670, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

#### § 140.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

#### § 140.2 Presidential prohibition.

The President is authorized, whenever in his opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to any Indian tribe, and to direct that all licenses to trade with such tribe be revoked, and all applications therefor rejected. No trader shall, so long as such prohibition exists, trade with any Indians of or for said tribe.

(R.S. 2132; 25 U.S.C. 263)

#### § 140.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of \$500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs.

(R.S. 2133, as amended; 25 U.S.C. 264)

#### § 140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.

(a) Definitions of terms as used in this part:

(1) *Indian* means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(2) *Bureau* or the "Bureau of Indian Affairs" means the Bureau of Indian Affairs and the Office of the Assistant

Secretary for Indian Affairs, both in the Department of the Interior.

(3) *Employee* means an officer, employee, or agent of the Bureau of Indian Affairs.

(4) *Secretary* means the Secretary of the Interior.

(5) *Contract* means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies.

(6) *Trading* means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(7) *Commercial trading* means any trading transaction where an employee engages in the business of buying or selling services or items which he/she is trading.

(b) With the exceptions provided in subsection (b) of section 437 of title 18 U.S. Code, section 437 provides that whoever, being an officer, employee, or agent of the Bureau of Indian Affairs, has (other than as a lawful representative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interest:

(1) In any contract made or under negotiation with any Indian, for the purchase, transportation or delivery of goods or supplies for any Indian, or

(2) In any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale, shall be fined not more than \$5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any other provision of law concerning termination from Federal employment.

(c) The further subsections of this section authorize certain employees contracting and trading with Indians as authorized by the exceptions in section 437 of title 18 U.S. Code. All such contracting and trading is subject to the express provision of section 437 that none of the sales or purchases so authorized may be made if the purpose of any such sale, trade, or purchase is

that of commercially selling, reselling, trading, or bartering such property.

(d)(1) Under authority granted by section 437(b)(1) of title 18 U.S. Code, employees of the Bureau of Indian Affairs may with the approval of an authorized officer of the Bureau, as designated in paragraph (d)(2) of this section, purchase from or sell to an Indian any service or any real or personal property, not held in trust by the United States or subject to a restriction against alienation imposed by the United States, or any interest in such property. In addition, employees may purchase from Indians without approval from an authorized officer of the Bureau any non-trust or unrestricted personal property for home use or consumption the value of which property does not exceed \$1000. Where the purchase or sale price is less than \$1,000, employees may also purchase motor vehicles for their personal use from Indians or sell their personal motor vehicles to Indians without obtaining approval of such purchases or sales from an authorized officer of the Bureau. Approval must be obtained if the purchase or sale price is \$1,000 or more.

(2) As used in paragraph (d)(1) of this section an authorized officer of the Bureau of Indian Affairs for employees on reservations and in agencies or in field service units shall be the superintendent or other officer in charge of the unit in which the employee is employed. The authorized officer for the superintendent or officer in charge is his or her immediate supervisor. The authorized officer for employees in area offices is the Area Director, and the authorized officer for an Area Director is his or her immediate supervisor. The authorized officer for employees in the Central Office is the Deputy Assistant Secretary—Indian Affairs (Operations).

(e) No employee of the Bureau of Indian Affairs may have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau if such employee is employed in the office or installation of the Bureau which recommends, approves, executes,

## Bureau of Indian Affairs, Interior

## § 140.9

or administers such transaction, grant, or contract on behalf of the United States, except that, as authorized by section 437(b)(1) of title 18 U.S. Code an employee of the Bureau may have such an interest if such purchase or sale is approved by an authorized officer of the Bureau, as designated in paragraphs (e) (3) to (5) of this section, and the conditions in (e) (1) and (2) of this section are satisfied to the extent to which they are applicable to the transaction concerned:

(1) The conveyance or granting of any interest in property held in trust or subject to restriction against alienation imposed by the United States is otherwise authorized by law.

(2) Trading by employees with Indians which involves property or funds which are either held in trust by the United States or are subject to restrictions against alienation imposed by the United States must be conducted on the basis of sealed bid or public auction. If the trading involves leases or sales of trust or restricted Indian land it must be conducted on the basis of sealed bids. Such requirements for sealed bid or public auction may only be waived by the Assistant Secretary for Indian Affairs on the basis of a full report showing:

(i) The need for the transaction,

(ii) The benefits accruing to both parties,

(iii) That the consideration for the proposed transaction shall be not less than the fair market value of the trust or restricted property or interest therein, unless the employee is involved in a transaction in accordance with § 152.25(c) or (d) or § 162.5(b)(1), (2), or (3) of this title or the employee is the recipient of a benefit for tribal members for which a uniform charge to all members is made, and

(iv) An affidavit as follows shall accompany each proposed transaction: "I (name) (title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my employment in the Bureau in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction."

(3) The authorized officer of the Bureau for employees employed on reservations, in agencies or service units

is one who is not a relative by blood or marriage of the employee, and is not employed at the employee's reservation, agency or service unit. That officer must also be employed at not less than one grade level higher than such employee at the Washington, District of Columbia, Central Office or at an Area Office other than that with authority over the employee's reservation, agency, or service unit.

(4) The authorized officer of the Bureau for employees employed in Area offices is one who is not a relative by blood or marriage of the employee, is not employed at the employee's area office, and must be employed at not less than one grade level higher than the employee at the Washington, District of Columbia, Central Office.

(5) The authorized officer of the Bureau for employees employed at the Washington, District of Columbia, Central Office is the Secretary.

(f) Except as provided in subsection (b)(2) of section 437 of title 18 U.S. Code as implemented by this section, nothing in the cited law shall be construed as preventing any employee of the Bureau who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his/her designee has prescribed or shall prescribe.

[49 FR 25434, June 21, 1984]

### § 140.9 Application for license.

(a) Application for license must be made in writing on Form 5-052, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof; the place where it is proposed to carry on the trade; the capital to be invested; the names of the clerks to be employed; and the business experience of the applicant. The application must be forwarded through the Superintendent to the Commissioner of Indian Affairs,



## § 140.11

accompanied by two satisfactory testimonials on Form 2-077 as to the character of the applicant and his employees and their fitness to be in the Indian country, and by an affidavit of the Superintendent on Form 5-053 that neither he nor any person for him has any interest, direct or indirect, present or prospective, in the proposed business or the profits arising therefrom, and that no arrangement for any benefit to himself or to any other person on his behalf is contemplated in case the license is granted. Licensed traders will be held responsible for the conduct of their employees.

(b) Itinerant peddlers or purveyors of foodstuffs and other merchandise shall be considered as traders and shall obtain a license or permit from the Superintendent setting forth the class of trade or peddling to be carried on, furnishing such character or credit references, or both, as may be required by the Superintendent. The period of the license for such itinerant peddlers shall be determined by the Superintendent.

(c) When a license or permit to trade is issued under the regulations in this part 140, a fee of \$5, payable when the license is issued, shall be levied against the licensee.

[30 FR 8267, June 29, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 140.11 License period.

Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land, except that where the proposed licensee is the owner or beneficial owner or holds a use right to the land on which the business is to be conducted, the license period shall be fixed by the Commissioner of Indian Affairs or his authorized representative, but in no case shall the license period exceed 25 years.

[30 FR 8268, June 29, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 140.12 License renewal.

Application for renewal of license must be made to the Commissioner of Indian Affairs on Form 5-054, through

## 25 CFR Ch. I (4-1-01 Edition)

the superintendent, at least 30 days prior to the expiration of the existing license, and the superintendent must report as to the record the applicant has made as a trader and his fitness to continue as such under a new license.

### § 140.13 Power to close unlicensed stores.

If persons carry on trade within a reservation with the Indians without a license, or continue to trade after expiration of the license without applying for renewal, the superintendent will immediately report the facts in the case to the Commissioner of Indian Affairs, who may, if necessary, direct the superintendent to close the stores of such traders.

### § 140.14 Trade limited to specified premises.

No trade with Indians is permitted at any other place than that specified in the license. Licenses do not cover branch stores. A separate license and bond must be furnished for each such store. The business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

### § 140.15 License applicable for trading only by original licensee.

No trader will be allowed to lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Commissioner of Indian Affairs. A license to trade with Indians does not confer upon the trader any right or privileges in respect to the herding or raising of livestock upon the reservation. The use of reservation lands, whether tribal or allotted, for such purposes can be obtained by a trader only upon the terms and under the restrictions which apply to other persons. His license gives him no advantage over others in this respect.

### § 140.16 Trade in annuities or gratuities prohibited.

Traders are forbidden to buy, trade for, or have in their possession any annuity or other goods of any description which have been purchased or furnished by the Government for the use

## Bureau of Indian Affairs, Interior

## § 140.26

or welfare of the Indians. Livestock or their increase purchased by the Government and in possession or control of the Indians may not be purchased by any trader, not a member of the tribe to which the owners or possessors of the cattle belong, except with the written consent of the agent of said tribe.

### § 140.17 Tobacco sales to minors.

No trader shall sell tobacco, cigars, or cigarettes to any Indian under 18 years of age.

### § 140.18 Intoxicating liquors.

No trader shall use or permit to be used his premises for any unlawful conduct or purpose whatsoever. No trader shall use of permit to be used any part of his premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto. Violation of this section will subject the trader to criminal prosecution, revocation of license and such other action as may be necessary.

### § 140.19 Drugs.

Traders shall not keep for sale, or sell, give away, or use any opium, chloral, cocaine, peyote or mescal bean, hashish or Indian hemp or marihuana, or any compound containing either ingredient, and for violation hereof the trader's license shall be revoked.

### § 140.21 Gambling.

Gambling, by dice, cards, or in any way whatever, is strictly prohibited in any licensed trader's store or on the premises.

### § 140.22 Inspection of traders' prices.

It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on

reservation, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable.

### § 140.23 Credit at trader's risk.

Credit given Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges of personal property by Indians to obtain credit or loans.

### § 140.24 Cash payments only to Indians.

Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Payment must be made in money, or in credit if the Indian is indebted to the trader.

### § 140.25 Trade in antiquities prohibited.

Traders shall not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States.

CROSS REFERENCE: For regulations pertaining to archaeological resources, see part 262 of this chapter. For regulations of the Bureau of Land Management regarding antiquities, see 43 CFR part 3.

### § 140.26 Infectious plants.

Traders shall not introduce into, sell, or spread within Indian reservations any plant, plant product, seed, or any type of vegetation, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the laws and regulations of the State for plant quarantine and pest control. For the purpose of enforcement of this provision State officers may enter Indian reservations, with the consent of the superintendent, to inspect the premises of such traders and otherwise to execute such State laws and regulations.

**PART 141—BUSINESS PRACTICES  
ON THE NAVAJO, HOPI AND  
ZUNI RESERVATIONS**

**Subpart A—Interpretation and Construction  
Guides**

Sec.

- 141.1 Purpose.
- 141.2 Scope.
- 141.3 Definitions.
- 141.4 Interpretation and construction.

**Subpart B—Licensing Requirements and  
Procedures**

- 141.5 Reservation business license required.
- 141.6 Approval or denial of license application.
- 141.7 Bond requirement for a reservation business.
- 141.8 License period for reservation businesses.
- 141.9 Application for license renewal.
- 141.10 License fees for reservation businesses.
- 141.11 Tribal fees, taxes, and enforcement.
- 141.12 Peddler's permits.
- 141.13 Amusement company licenses.
- 141.14 Trade in livestock restricted.
- 141.15 Consent to jurisdiction of Hopi and Zuni tribal courts.

**Subpart C—General Business Practices**

- 141.16 Price marking.
- 141.17 Health and sanitation requirements.
- 141.18 Availability of employee authorized to transact business.
- 141.19 Check cashing.
- 141.20 Payment for purchase of Indian goods or services.
- 141.21 Trade confined to premises.
- 141.22 Subleasing prohibited.
- 141.23 Posted statement of ownership.
- 141.24 Attendance at semi-annual meetings.
- 141.25 Withholding of mail prohibited.
- 141.26 Trade in antiquities prohibited.
- 141.27 Trade in imitation Indian crafts prohibited.
- 141.28 Gambling prohibited.
- 141.29 Political contributions restricted.
- 141.30 Retaliation prohibited.
- 141.31 Trade by Indian Affairs employees restricted.

**Subpart D—Pawnbroker Practices**

- 141.32 Reservation pawnbroker license required.
- 141.33 Fees for pawnbroker license.
- 141.34 Pawnbroker records.
- 141.35 Pawnbroker disclosure requirements.
- 141.36 Maximum finance charges on pawn transactions.
- 141.37 Prepayment.

- 141.38 Pawn loans, period, notice and sale.
- 141.39 Sale and redemption of pawn.
- 141.40 Proceeds of sale.
- 141.41 Refinancing transaction.
- 141.42 Lost pawn receipts or tickets.
- 141.43 Outstanding obligations owed to pledgee.
- 141.44 Insurance on pawn.

**Subpart E—Consumer Credit Transactions  
Other Than Pawn**

- 141.45 Consumer credit applications.
- 141.46 Credit disclosure statements.
- 141.47 Monthly billing statement.
- 141.48 Translation of disclosure statements.
- 141.49 Usury prohibited.

**Subpart F—Enforcement Powers,  
Procedures and Remedies**

- 141.50 Penalty and forfeiture of merchandise.
- 141.51 Authority to close unlicensed reservation businesses.
- 141.52 Revocation of license and lease and recovery on bond.
- 141.53 Cease and desist orders.
- 141.54 Periodic review of performance.
- 141.55 Price monitoring and control.
- 141.56 Show cause procedures.
- 141.57 Procedures to cancel liability on bond.
- 141.58 Records, reports, and obligations of reservation business owners.
- 141.59 Customer complaint procedures.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9.

SOURCE: 40 FR 39835, Aug. 29, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**Subpart A—Interpretation and  
Construction Guides**

**§ 141.1 Purpose.**

The purpose of the regulations of this part is to prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni Reservations as required by 25 U.S.C. 261, 262, 263, and 264.

**§ 141.2 Scope.**

The regulations of this part apply to all non-members of the Navajo, Hopi and Zuni Tribes, who engage in retail businesses on the above respective reservations. These regulations do not apply to businesses that are wholly

## Bureau of Indian Affairs, Interior

## § 141.3

owned and operated by either the Navajo, Hopi or Zuni Tribes, or by individual tribal members within their respective reservations.

[45 FR 64906, Oct. 1, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 141.3 Definitions.

For the purposes of this part—

(a) *Annual percentage rate* means the annual percentage rate of finance charge determined in accordance with 12 CFR 226.5, which defines annual percentage rates.

(b) *Consumer credit transaction* means a grant of credit or a loan that is made by a person regularly engaged in the business of making loans or granting credit primarily for a personal, family, household, or agricultural purpose.

(c) *Draft* means a writing that is a direction to pay that:

(1) Identifies the person to pay with reasonable certainty;

(2) Is signed by the drawer;

(3) Contains an unconditional order to pay a sum certain in money and no other promise, order, obligation or power given by the drawer;

(4) Is payable on demand or at a definite time; and

(5) Is payable to order.

(d) *Finance charge* means the cost of credit determined in accordance with 12 CFR 226.4, which defines “finance charge”.

(e) *Firm* means a corporation or a partnership.

(f) *Gross receipts* include the following:

(1) All cash received from the conduct and operation of the licensee’s business at the premises described in the application for license.

(2) Receipts from both wholesale and retail transactions.

(3) Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee’s business on the reservation.

(4) The market value of all property taken in trade on the date when received and either held by the licensee for purposes other than resale or credited on any account in payment for merchandise.

(5) Proceeds from the sale of any goods bought from Indians regardless of where the sale takes place.

(6) Finance charge received on loans, but not the return of principal.

(g) *Open end credit* means consumer credit transactions made on an account by a plan under which:

(1) The creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide;

(2) The customer has the privilege of paying the balance in full or in installments; and

(3) A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(h) *Pawnbroker* means a person whose business includes lending money secured by personal property deposited with the lender.

(i) *Peddler* means a person who offers goods for sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations, but does not do business from a fixed location or site on any of those reservations.

(j) *Person* includes a natural person, a corporation, trust, estate, partnership, cooperative or association.

(k) *Replacement value* means the present cost to the owner of replacing an item with one having the same quality and usefulness.

(1) *Reservation business* means a person that engages at a fixed location or site within the exterior boundaries of the Navajo, Hopi or Zuni Reservations in the sale or purchase of goods or services or in consumer credit transactions with Indians and is not a bank, saving bank, trust company, savings or building and loan association or credit union operating under the laws of the United States or the laws of New Mexico, Arizona or Utah, a business on the Hopi Reservation that is wholly owned and operated by members of the Hopi Tribe, or a business on the Zuni Reservation that is wholly owned and operated by members of the Zuni Tribe.

## § 141.4

## 25 CFR Ch. I (4-1-01 Edition)

### § 141.4 Interpretation and construction.

(a) *Area Director* refers to the Area Director of the Bureau of Indian Affairs or the Administrator of the Joint Use Area of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(b) *Commissioner* refers to the Commissioner of Indian Affairs or a person to whom the Commissioner of Indian Affairs has delegated authority under this part or under 25 U.S.C. 261, 262, 263, or 264.

(c) *Superintendent* refers to the Superintendent of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(d) *Tribe* refers to the tribe that has jurisdiction over the land on which a person does business or intends to do business with Indians.

### Subpart B—Licensing Requirements and Procedures

#### § 141.5 Reservation business license required.

(a) No person may own or lease a reservation business without a license issued under the provisions of this subpart.

(b) The applicant shall apply in writing on a form provided by the Commissioner setting forth the following:

(1) The full name and residence of the applicant.

(2) Three (3) responsible references.

(3) The firm name and the name of each member of the board of directors if the applicant is a firm.

(4) Satisfactory evidence as to the character, experience and business ability of the applicant and the employees of the applicant.

(5) Satisfactory evidence of the general fitness of the applicant and employees of the applicant to reside on the Indian reservation.

(c) Upon the request of the Commissioner, the applicant shall furnish the following:

(1) The capital invested or to be invested and, of this, the amount of capital owned and the amount borrowed or to be borrowed.

(2) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorsers and security.

(3) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby financing fees are to be paid.

(d) Information that if released might adversely affect the competitive position of the applicant shall remain confidential.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

#### § 141.6 Approval or denial of license application.

(a) The Commissioner shall approve or deny each license application and notify the applicant no later than thirty (30) days after receipt of a completed application.

(b) No application is complete until any clearance or tribal council approval required by tribal or Federal regulations has been obtained.

(c) The Commissioner may not deny a license to an applicant for the purpose of limiting competition.

(d) If the application is approved the license shall be issued on a form provided by the Commissioner.

(e) If the Commissioner denies the license application the applicant may appeal under the provisions of part 2 of this title no later than thirty (30) days after the date on which notice of denial of the application was sent.

#### § 141.7 Bond requirement for a reservation business.

(a) An applicant for a license or renewal of a license to operate a reservation business shall at the time the application is submitted furnish a bond on a form provided by the Commissioner in the name of the applicant in the amount of ten thousand dollars (\$10,000) or such larger sum as the Commissioner may designate, with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13). The bond shall be for the same period covered by the license. No licensee may

## Bureau of Indian Affairs, Interior

## § 141.10

trade without a bond. Except as provided in paragraph (d) of this section, no surety may be released from liability until the license expires.

(b) The bond shall be in favor of the United States and the benefit of the United States and any customer of the licensee who recovers a judgment for damages resulting from violation of any law or regulation affecting or relating to reservation businesses. Any customer who recovers such a judgment may bring suit on the bond in his or her own name. The bond shall be conditioned on payment by the licensee of all judgments for damages resulting from violations of the regulations of this part.

(c) Any surety for a reservation business on the Hopi or Zuni Reservation shall agree in writing to submit itself voluntarily to the jurisdiction of the tribal court for the purpose of adjudicating any claim arising under the bond.

(d) Any surety on the bond of a licensed reservation business may be relieved from liabilities by complying with the provisions of §141.57 of this title.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 141.8 License period for reservation businesses.

A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. The license period shall correspond to the period of the lease held by the licensee. The license period in no event may exceed twenty-five (25) years.

### § 141.9 Application for license renewal.

(a) An applicant for renewal of the license to trade shall file an application on a form provided by the Commissioner with the Area Director not less than three (3) months prior to the expiration of the existing license. The Area Director shall report in writing to the Commissioner on the record the applicant has made as a reservation business owner and the applicant's present fitness to reside on the Indian reservation.

(b) The Commissioner may issue a temporary permit for three (3) months pending consideration of application for license renewal.

(c) Prior to expiration of the existing license or, if issued, the temporary permit, the Commissioner shall approve or deny the application for license renewal and notify the applicant.

(d) No license may be renewed until any clearance or tribal council approval required by tribal or other federal regulations has been obtained.

(e) If the Commissioner denies the application for renewal, the applicant may appeal under the provisions of part 2 of this title.

### § 141.10 License fees for reservation businesses.

(a) Prior to the issuance of an initial license, each licensee who is not a member of the Navajo tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay fifty dollars (\$50).

(2) If the license is issued on or after July 1, the licensee shall pay twenty-five dollars (\$25).

(b) Each licensed business owner who is not a member of the Navajo tribe shall pay on or before January 10 of each year an annual license fee determined as follows based on the licensee's most recent annual report:

(1) If the licensee's gross receipts are less than one hundred thousand dollars (\$100,000) for the year or the licensee has not yet been required to file its first annual report, the license fee is fifty dollars (\$50).

(2) If the licensee's gross receipts for the year are at least one hundred thousand dollars (\$100,000) but not more than four hundred and ninety-nine thousand nine hundred and ninety-nine dollars (\$499,999) the fee is one hundred dollars (\$100).

(3) If the licensee's gross receipts for the year are at least five hundred thousand dollars (\$500,000) but not more than seven hundred and forty-nine thousand nine hundred and ninety-nine dollars (\$749,999), the fee is two hundred dollars (\$200).

## § 141.11

(4) If the licensee's gross receipts for the year are seven hundred fifty thousand dollars (\$750,000) or more, the fee is three hundred dollars (\$300).

(c) The Navajo Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for an enrolled member of the Navajo Tribe may not be less than twenty percent (20%) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not a tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account "Special Deposits."

[40 FR 39835, Aug. 29, 1975, as amended at 59 FR 54502, Oct. 31, 1994]

### § 141.11 Tribal fees, taxes, and enforcement.

(a) The regulations in this part do not preclude the Hopi, Navajo, or Zuni tribal councils from assessing and collecting such fees or taxes as they may deem appropriate from reservation businesses.

(b) Nothing in the regulations of this part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 141.12 Peddler's permits.

(a) Except as provided in paragraph (b) of this section, no peddler may offer goods for sale within the exterior boundaries of the Hopi, Navajo, or Zuni reservations without a peddler's permit. The permit shall state on its face the class of goods that may be offered for sale. No peddler may offer for sale any class of goods other than those listed on the face of the permit.

(b) No peddler who is an enrolled member of a federally recognized Indian tribe is required to obtain a peddler's permit for offering to sell the following items:

- (1) Coal and wood for non-commercial use,
- (2) Homegrown fresh products,
- (3) Meat products raised locally by the peddler, or

## 25 CFR Ch. I (4-1-01 Edition)

(4) Arts and crafts made by the peddler or the peddler's family.

(c) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(d) Peddlers shall pay such fee and post such surety bond on a form provided by the Commissioner as the Commissioner requires. The surety bond required may not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000).

(e) Any surety on the bond of a peddler may be relieved of liability by complying with the provisions of § 141.57.

(25 U.S.C. 261 et seq.)

[43 FR 27826, June 27, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 141.13 Amusement company licenses.

(a) No person may operate a portable dance pavilion, mechanical amusement device such as a ferris wheel or carousel, or commercial games of skill within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations without a license from the Commissioner.

(b) The licensee shall pay such fee as the Commissioner requires. The fee shall be not less than five dollars (\$5) nor more than twenty-five dollars (\$25) per unit.

(c) The licensee shall post a surety bond on a form provided by the Commissioner in an amount not exceeding ten thousand dollars (\$10,000) and a personal injury and property damage liability bond of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000) as may be required by the Commissioner.

(d) The provisions of this section do not apply to amusement companies where the contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage by bond in the amounts specified in paragraph (c) of this section.

(e) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

**Bureau of Indian Affairs, Interior**

**§ 141.17**

**§ 141.14 Trade in livestock restricted.**

(a) No person other than an enrolled member of the tribe or any association, partnership, corporation or business entity wholly owned by enrolled members of the tribe may purchase livestock from tribal members without a special permit issued by the Commissioner.

(b) The Commissioner shall issue a permit to each applicant who establishes to the Commissioner's satisfaction that the applicant is a fit person to engage in the purchase of livestock and who posts a bond on a form provided by the Commissioner in the amount of ten thousand dollars (\$10,000). This paragraph does not require a person who has posted a bond of ten thousand dollars (\$10,000) or more under other provisions of this part to post an additional bond to obtain a permit under this section.

(c) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

(d) The provisions of this section do not apply to purchases of livestock made at an organized public auction.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 141.15 Consent to jurisdiction of Hopi and Zuni tribal courts.**

As a condition to doing business on the Hopi or the Zuni Reservation each applicant for license under this part shall, in accordance with the constitutions of those tribes, voluntarily submit the applicant and the applicant's employees or agents to the jurisdiction of the tribal court for the purpose of the adjudication of any dispute, claim or obligation arising under tribal ordinance relating to commerce carried out by the licensee.

**Subpart C—General Business Practices**

**§ 141.16 Price marking.**

The price of each article offered for sale shall be marked on the article, its containers or in any other manner that is plain and visible to the customer and that affords the customer a reasonable

opportunity to learn the price of the article prior to purchase.

**§ 141.17 Health and sanitation requirements.**

(a) Each licensee shall keep both the premises and the place of business in a clean and sanitary condition at all times and shall avoid exposure of foodstuffs to contamination. No licensee may offer for sale any goods that are banned for health or sanitation reasons from retail sale by any Federal agency or by the tribe or, where not in conflict with the tribal regulations, by the State or by any State agency. No licensee may knowingly offer for sale any food that is contaminated.

(b) All weights and measure shall conform to standards set by the National Bureau of Standards and to standards, if any, set by the tribe and, if not in conflict with tribal regulations, to the standards set by the State.

(c) If training in foodhandling is available from the Indian Health Service, each person working in a reservation business shall complete the foodhandler training offered by the Indian Health Service before handling any food sold by a reservation business.

(d) Any person whom the Service Unit Director of the Indian Health Service determines is infected with or is a carrier of any communicable disease in a stage likely to be communicable to persons exposed as a result of the infected employee's normal duties as a foodhandler may not be employed by a reservation business.

(e) Each business shall comply with all Federal health regulations and with all tribal health regulations that are consistent with Federal regulations. Each business shall comply with State health regulations that are consistent with tribal and Federal health regulations.

(f) Except as otherwise provided herein, nothing in this section may be construed as a grant of enforcement powers to any agency of a State or its subdivisions.

(g) It is the duty of the health officers of the Indian Health Service to make periodic inspections, recommend improvements, and report thereon to the Commissioner.



**§ 141.18**

**25 CFR Ch. I (4-1-01 Edition)**

**§ 141.18 Availability of employee authorized to transact business.**

Each licensee shall provide during normal business hours an employee authorized in writing to engage in all business transactions that the licensee normally offers to customers.

**§ 141.19 Check cashing.**

(a) A reservation business may give a fully negotiable check in addition to U.S. currency when cashing a draft, check or money order. A reservation business may not give scrip, credit or other substitute for U.S. currency when cashing a draft, check or money order.

(b) A reservation business owner or employee may advise a customer cashing checks, money orders or drafts of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the check, money order or draft from the customer on the basis of existing credit obligations.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 141.20 Payment for purchase of Indian goods or services.**

(a) A reservation business shall pay for the purchase of Indian goods or services with cash or a fully negotiable check. A reservation business may not pay for Indian goods or services with trade slips or future credit. In any transaction involving the purchase of Indian goods on the Navajo Reservation, the reservation business shall furnish a bill of sale indicating the name of the seller, a description of the goods, the amount paid for the goods, the date of sale, and the signature of both parties and shall retain a copy of the bill of sales in its business records.

(b) A reservation business owner or employee may advise a customer selling Indian goods or services of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the sale from the customer on the basis of existing credit obligations.

**§ 141.21 Trade confined to premises.**

The licensee shall confine all trade on the reservation to the premises specified in the license, except, where permitted under § 141.14, the buying and selling of livestock and livestock products.

**§ 141.22 Subleasing prohibited.**

No licensee may lease, sublet, rent, or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

**§ 141.23 Posted statement of ownership.**

The licensee of a reservation business shall display in a prominent place a notice that is legible to customers stating the form of the business entity, the names and addresses of all other reservation businesses owned in whole or in part by the business entity, and if the licensee is not a corporation, the names and addresses of the owner or owners of the business. If the licensee is a corporation the notice shall list the names and addresses of the members of the Board of Directors.

**§ 141.24 Attendance at semi-annual meetings.**

Upon the request of a tribal official designated by the governing body, each licensee shall attend a semi-annual public meeting of a tribal governing body to respond to customer inquiries.

**§ 141.25 Withholding of mail prohibited.**

No owner or employee of a reservation business may open, withhold, or otherwise delay the delivery of mail.

**§ 141.26 Trade in antiquities prohibited.**

No licensee may knowingly buy, sell, rent or lease any artifact created before 1930 that was removed from an historic ruin or monument.

**§ 141.27 Trade in imitation Indian crafts prohibited.**

No person may introduce or possess for disposition or sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations any object that is represented to be an Indian handicraft

## Bureau of Indian Affairs, Interior

## § 141.32

unless the object was produced by an Indian or Indians with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual's product.

### § 141.28 Gambling prohibited.

No licensee may permit any person to gamble by dice, cards, or in any way whatever, including the use of any mechanical device, on the premises of any licensed business.

### § 141.29 Political contributions restricted.

No reservation business owner who is ineligible to vote in a Navajo tribal election may grant or donate any money or goods to any candidate for election to Navajo tribal office.

### § 141.30 Retaliation prohibited.

No licensee may refuse service to any customer for the purpose of retaliating against that customer for enforcing or attempting to enforce the regulations of this part.

### § 141.31 Trade by Indian Affairs employees restricted.

(a) Except as authorized in this section, no person employed by the U.S. Government in Indian Affairs may have any interest in any trade with an Indian or an Indian organization. Employees of the U.S. Government may trade with an Indian or Indian organization for any purpose other than to engage in a profit-making activity under the following conditions:

(1) Where the amount involved is \$500 or less a U.S. Government employee may purchase goods or services from an Indian or Indian organization.

(2) Where the amount involved is greater than \$500 a U.S. Government employee may, with the approval of the Secretary of the Interior, purchase goods or services from any Indian or Indian organization.

(b) Lease or sale of home sites or allotments on trust or restricted Indian land to or from Indian employees of the U.S. Government shall be made on sealed bids, unless the Commissioner waives this requirement on the basis of a report showing:

(1) The need for the transaction,

(2) The benefits accruing to both parties, and

(3) That the consideration for the proposed transaction is not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with §152.5 (b) and (c) of this chapter or §162.5(b)(1), (2) and (3) of this chapter.

An affidavit, as follows, shall accompany each proposed land transaction:

I, \_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)

swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(c) This section does not prohibit any reservation business from contracting with the Federal Government to provide postal services to Indian communities in which Government postal service is unavailable.

(d) Nothing in this section prohibits an Indian employee from receiving benefits by reason of membership in a tribe or corporation or cooperative association organized by and operated for Indians.

(e) U.S. Government employees who violate this section are liable to a penalty of five thousand dollars (\$5,000) and shall be removed from office, see 25 U.S.C. 68.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

EDITORIAL NOTE: For further information concerning Federal employees contracting or trading with Indians, see Executive Order 12328 of Oct. 8, 1981, at 46 FR 50357, Oct. 13, 1981.

## Subpart D—Pawnbroker Practices

### § 141.32 Reservation pawnbroker license required.

(a) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian within the exterior boundaries of the Navajo, Hopi or Zuni Reservations unless such person is an agent of a bank, saving bank, trust company, savings or building and loan association, or credit union operating under

**§ 141.33**

**25 CFR Ch. I (4-1-01 Edition)**

the laws of the United States or the laws of New Mexico, Arizona, or Utah or unless such person—

(1) Holds a valid license to operate a reservation business,

(2) Holds a valid reservation pawnbroker license, and

(3) Posts a bond on a form provided by the commissioner in the name of the licensee in the amount of twenty-five thousand dollars (\$25,000) or such larger sum as may be designated by the Commissioner with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13).

(b) An applicant for a reservation pawnbroker license shall apply in writing on a form provided by the Commissioner.

(c) The bond required by paragraph (a) of this section shall be in favor of the United States for the benefits of the customers of the licensee and shall specifically indemnify all customers who have recovered judgment against the licensee for destroyed, lost, misplaced or misappropriated pawn or other property. Any customer recovering such a judgment may bring suit on the bond in his or her own name. The bond shall be for the same period as the license.

(d) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

(e) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian after the effective date of a tribal ordinance banning the acceptance of pawn on the reservation.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 141.33 Fees for pawnbroker license.**

(a) Prior to the issuance of an initial pawnbroker license, each licensee who is not a member of the Navajo Tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay two hundred dollars (\$200).

(2) If the license is issued on or after July 1, the licensee shall pay one hundred dollars (\$100).

(b) Each licensed pawnbroker who is not a member of the Navajo Tribe shall pay on or before January 10 of each year an annual license fee of two hundred dollars (\$200).

(c) The Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for a member of the Navajo Tribe may not be less than twenty percent (20 percent) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account "Special Deposits."

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982; 59 FR 54502, Oct. 31, 1994]

**§ 141.34 Pawnbroker records.**

Each pawnbroker shall keep a written record of the following information:

- (a) Transaction number.
- (b) Name of pledgor.
- (c) Address of pledgor.
- (d) Census number or social security number of pledgor.
- (e) Date of transaction.
- (f) Replacement value of pawn.
- (g) Description of pawned item.
- (h) Amount loaned in cash.
- (i) Amount loaned as credit.
- (j) Finance charge.
- (k) Amount financed.
- (l) Date and amount of payments made by pledgor.
- (m) Date notice of default sent to pledgor.
- (n) Date pawned item sold.
- (o) Name and address of purchaser.
- (p) Amount received upon sale.
- (q) Amount of any surplus returned to the pledgor.
- (r) Such other information as the Commissioner may require.

**Bureau of Indian Affairs, Interior**

**§ 141.39**

**§ 141.35 Pawnbroker disclosure requirements.**

In all transactions in which pawn is taken the lender shall give the borrower a written ticket or receipt disclosing the following information to the extent applicable:

- (a) Clear identification of the property pledged.
- (b) The date of the transaction.
- (c) Amount of the loan.
- (d) Name and social security or census number of the pledgor.
- (e) Replacement value of the pawn as agreed upon by the pledgor and pledgee.
- (f) Date on which loan is due.
- (g) The amount, expressed as a dollar amount, of any finance charges.
- (h) The finance charges expressed as an annual percentage rate and computed in accordance with the provisions of 12 CFR 226.5(b).
- (i) The amount, or method of computing the amount, of any charges to be assessed after the date the loan is due.
- (j) A statement of the conditions of default and the pledgor's rights upon default, as defined by this part.
- (k) Identification of the method of computing any unearned portion of the finance charges in the event of prepayment of the obligation.

**§ 141.36 Maximum finance charges on pawn transactions.**

No pawnbroker may impose an annual finance charge greater than twenty-four percent (24 percent) of the unpaid balance for the period of the loan nor assess late charges or delinquency charges on any loan.

**§ 141.37 Prepayment.**

(a) Subject to the provisions of paragraph (b) of this section, the pledgor may prepay in full or in any part the unpaid balance of a loan at any time without penalty.

(b) When a loan is prepaid the lender may collect the earned portion of the finance charge or may charge an administrative fee not to exceed ten percent (10 percent) of the unearned finance charge or two dollars (\$2) whichever is greater.

**§ 141.38 Pawn loans, period, notice and sale.**

(a) The proceeds of all loans secured by pawn and for which a finance charge is imposed shall be paid only in cash or with a fully negotiable check.

(b) The period of all such loans shall be no less than twelve (12) months, subject to the provisions of paragraph (c).

(c) Thirty (30) days prior to the end of the loan period the pledgee may make a declaration of intention to proceed with sale of the pawned item by sending notice of intent to the pledgor.

(d) The notice required in paragraph (c) of this section shall be sent to the pledgor and proof of delivery obtained and shall contain a description of the item pawned, a statement of the principal and finance charge owed, a statement of the intention to sell, the date of the sale, and the procedure for redemption.

(e) Nothing in this section requires the business owner to proceed with notice and sale if the business owner desires to hold the pawn for a period longer than the loan period stated in the original agreement.

(f) Unless notice is given under paragraph (c) of this section, or the loan is refinanced under the provisions of §141.41, no finance charge may be imposed for the time the loan remains unpaid after the end of the loan period stated on the pawn ticket.

**§ 141.39 Sale and redemption of pawn.**

(a) If the retention period has expired and notice as required under §141.38 of this part has been sent and received, the pledgee may proceed with the sale of the pawn.

(b) The pawn shall be sold no sooner than thirty (30) days but no later than twelve (12) months after notice of intent to sell has been given. The sale shall be a public sale, with notice of the time, place, and manner to be given in a tribal newspaper of general circulation not less than fourteen (14) days prior to the sale, or in the absence of such a newspaper, in a commercially reasonable manner. The sale itself shall also be conducted in a commercially reasonable manner.

(c) A pledgor may redeem pawn which has been put up for sale at any time before the day it is to be sold by

**§ 141.40**

**25 CFR Ch. I (4-1-01 Edition)**

tendering to the pledgee the face amount of the loan, plus the finance charge assessed on the original loan. The pledgee may also collect an additional charge covering the period between the date due and the date of redemption, provided that the rate of charge does not exceed the finance charge on the original loan.

(d) The pledgee may buy at the pledgor's own sale if the collateral is of a type customarily sold in a recognized market or which is the subject of widely distributed standard price quotations.

(e) Pawn held for more than twelve (12) months after notice of intent to sell has been given may not be sold, but the pledgor may redeem the pawn at any time by tendering to the pledgee the face amount of the loan, plus the finance charge that accrued before the end of the sale period provided in paragraph (b) of this section.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 141.40 Proceeds of sale.**

(a) The following items shall be deducted from the proceeds of the sale of pawned items in the following order of priority:

(1) The expense of advertising and conducting the sale, not to exceed ten percent (10%) of the amount loaned.

(2) The principal amount of the loan, plus any accrued finance charges.

(3) The finance charge calculated at the annual percentage rate of the original loan on the unpaid balance of the loan for the period from the date of default to the date of sale.

(b) Within ten (10) days after the sale of the pledge under this section, the pledgee shall send a notice to the pledgor informing the pledgor of the date of the sale, the proceeds of the sale, the allowable costs of the sale, any additional finance charges, and the amount of any surplus realized. The pledgee shall obtain proof that the notice was delivered.

(c) Any proceeds of the sale remaining after the deductions authorized in paragraph (a) of this section are deemed to be "surplus" and shall be paid over to the pledgor or the pledgor's estate in U.S. currency.

(d) The sale of pledged goods and the application of the proceeds in accordance with this section extinguishes all rights of action of the pledgee for any unpaid principal or finance charge on the original loan.

**§ 141.41 Refinancing transaction.**

(a) Any pawn agreement may be refinanced, either with or without an increase in the principal amount of the loan, prior to or following the date of expiration of the original period of the loan upon agreement between the parties.

(b) Such refinancing constitutes a new transaction for purposes of all disclosure and record keeping requirements of this part and requires the issuance of a new ticket or receipt.

(c) The rate of the additional finance charge imposed as part of the refinancing agreement may not exceed the maximum rate imposed by § 141.36.

(d) The total finance charges in a refinancing agreement may not exceed the sum of the following amounts:

(1) The finance charge that the pledgor would have been required to pay upon prepayment on the date of refinancing under § 141.37 of this part, except that, for the purpose of computing this amount, no minimum finance charge or administrative fee may be included, and

(2) Such additional finance charge as is permissible on the balance of the loan over the remaining period of the loan as extended.

(e) The default and sale procedures of this part apply to a refinanced pawn transaction in the same manner as they apply to an original pawn transaction.

**§ 141.42 Lost pawn receipts or tickets.**

(a) Redemption may not be denied on the sole ground that the pledgor is unable to produce a receipt or pawn ticket, provided the pledgor gives a reasonable description of the pawned item or makes an actual identification of the item. The pledgee may require the pledgor to sign a receipt for the redeemed pawn. No person other than the pledgor may redeem pawn without a ticket.

**Bureau of Indian Affairs, Interior**

**§ 141.48**

(b) No additional charges may be imposed for the loss of a pawn receipt or ticket.

**§ 141.43 Outstanding obligations owed to pledgee.**

If the pledgor tenders payment to be applied toward redemption of a pawned item, it shall be so applied by the pledgee, irrespective of other outstanding obligations owed by the pledgor to the pledgee. The pledgee may not deny the pledgor the right to redeem the pawn.

**§ 141.44 Insurance on pawn.**

(a) Any licensee under this part who lends money or extends credit with personal property as security and holds such property as a pledge shall maintain invault all risk insurance coverage running in favor of the pledgor for such property in amounts based upon a report issued monthly to the insurer. Such monthly report shall be an amount not less than the total agreed replacement value of all pawned items then held by the licensee.

(b) A copy of the insurance policy shall be available for inspection at the licensee's place of business and a copy shall be filed with the Commissioner.

**Subpart E—Consumer Credit Transactions Other Than Pawn**

**§ 141.45 Consumer credit applications.**

Any reservation business offering credit which is not secured by pawn shall provide an application for credit to any customer requesting credit. Within thirty (30) days of the date of application, the lender shall act upon the application and notify the customer in writing of the decision with the reason therefor. A business owner who reduces the amount of credit available to a customer or terminates a credit account shall provide written notice to the customer stating the reason for the reduction or termination of such credit.

**§ 141.46 Credit disclosure statements.**

Upon approval of a credit application the lender shall give the applicant the following information where applicable in a written disclosure statement:

(a) The maximum credit limit of the account.

(b) The conditions under which a finance charge may be imposed.

(c) The period in which payment may be made without incurring a finance charge.

(d) The method used in determining the balance on which the finance charge is calculated.

(e) The method used to calculate the finance charge.

(f) The periodic rates used and the range of balances to which each rate applies.

(g) The conditions under which additional charges may be made and the method for calculating those charges.

(h) A description of any lien that may be acquired on a customer's property.

(i) The minimum payment that must be made on each billing.

**§ 141.47 Monthly billing statement.**

On all credit accounts on which a finance charge may be imposed and for all other credit accounts when requested by the customer, a licensee shall issue a monthly billing statement to the customer stating the following information where applicable:

(a) The unpaid balance at the start of the billing period.

(b) The amount and date of each extension of credit and identification of each item costing more than ten dollars (\$10).

(c) Payments made by a customer and other credits, including returns, rebates, and adjustments.

(d) The finance charge shown in dollars and cents.

(e) The rates used in calculating the finance charge plus the range of balances to which the finance charge was calculated.

(f) The closing date of the billing cycle.

(g) The unpaid balance at that time.

**§ 141.48 Translation of disclosure statements.**

Disclosure required by §§141.46 and 141.47 shall be made in writing regardless of the customer's ability to speak, read, or write the English language. Disclosure to non-English speaking

## § 141.49

persons shall be translated orally into the appropriate language.

### § 141.49 Usury prohibited.

No reservation business may take or receive money, goods, or other things of value for a loan or forbearance on a debt that exceeds in value the principal plus twenty-four percent (24 percent) per annum finance charge. Any reservation business contracting for, reserving, or receiving directly or indirectly, any greater amount shall forfeit the finance charge.

## Subpart F—Enforcement Powers, Procedures and Remedies

### § 141.50 Penalty and forfeiture of merchandise.

Any person other than an enrolled member of the tribe who either resides as a reservation business owner within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations or introduces or attempts to introduce goods or to trade therein without a license shall forfeit all merchandise offered for sale to the Indians or found in the person's possession and is liable to a penalty of five hundred dollars (\$500). This section may be enforced by commencing an action in the appropriate United States District Court under the provisions of 28 U.S.C. 1345.

### § 141.51 Authority to close unlicensed reservation businesses.

The Commissioner shall close any reservation business subject to the provisions of this part that does not hold a valid license or temporary permit.

### § 141.52 Revocation of license and lease and recovery on bond.

The reservation business owner is subject to revocation of license and lease and recovery on the bond in whole or in part in the event of any violation of the regulations of this part after a show cause proceeding according to the provisions of § 141.56.

[41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

### § 141.53 Cease and desist orders.

(a) If the Commissioner believes that violation of the regulations in this part

## 25 CFR Ch. I (4–1–01 Edition)

is occurring, the Commissioner may order the person believed to be in violation to show cause according to the provisions of § 141.56 why a cease and desist order should not be issued.

(b) If the person accused of the violations fails to show cause at the hearing why such an order should not issue, the Commissioner shall issue the order.

(c) A person subject to a cease and desist order issued under this section who violates the order is liable to revocation of license after a show cause proceeding according to the provisions of § 141.56 of this part.

### § 141.54 Periodic review of performance.

(a) The Commissioner shall review licenses at ten (10) year intervals to determine whether or not the business is operating in accordance with these regulations and all other applicable laws and regulations and whether the business is adequately serving the economic needs of the community.

(b) If, as a result of the review provided in paragraph (a) of this section, the Commissioner finds that the licensee has repeatedly violated these regulations, the Commissioner may order the licensee to show cause according to the provisions of § 141.56 why the licensee's license should not be revoked.

(c) If the licensee fails to show cause why the license should not be revoked, the Commissioner shall revoke the license.

### § 141.55 Price monitoring and control.

(a) A reservation business may not charge its customers unfair or unreasonable prices. To insure compliance with this section, the Commissioner shall perform audits as provided in § 141.58. In performing those audits the Commissioner may inspect all original books, records, and other evidences of the cost of doing business. In addition, at least once a year the Commissioner shall cause to be made a survey of the prices of flour, sugar, fresh eggs, lard, coffee, ground beef, bread, cheese, fresh milk, canned fruit, and such other goods as the Commissioner deems appropriate in all stores licensed under these regulations and in a representative number of similar stores located in

communities immediately adjoining the reservations. The results of the survey shall be posted publicly, sent to each licensed business, and made available to the appropriate agency of the tribal government. Copies of the survey shall be available at the office of the Area Director.

(b) If the Commissioner finds that a reservation business is charging higher prices, especially for basic consumer commodities, than those charged on the average based on the studies conducted under the provisions of paragraph (a) of this section, the Commissioner may order the business owner to show cause under the provisions of § 141.56 why an order should not be issued to reduce prices. If the Commissioner determines that the prices charged by the business are not economically justified, based on all of the information, then the Commissioner may order the business to reduce its price on all items determined to be priced too high to a reasonable price as determined by the Commissioner, but in no event to a lower price than the cost of the item increased by a reasonable mark-up.

**§ 141.56 Show cause procedures.**

(a) When the Commissioner believes there has been a violation of this part the Commissioner shall serve the licensee with written notice setting forth in detail the nature of the alleged violation and stating what remedial action the Commissioner proposes to take.

(b) The licensee shall have ten (10) days from the date of receipt of notice in which to show cause why the contemplated remedial action should not be ordered.

(c) If within the ten (10) day period the Commissioner determines that the violation may be corrected and the licensee agrees to take the necessary corrective measure, the licensee shall be given the opportunity to take the necessary corrective measures.

(d) If the licensee fails within a reasonable time to correct the violation or to show cause why the contemplated remedial action should not be ordered, the Commissioner shall order the appropriate remedial action.

(e) If the Commissioner orders remedial action the licensee may appeal under the provisions of part 2 of this title not later than thirty (30) days after the date on which the remedial action is ordered.

**§ 141.57 Procedures to cancel liability on bond.**

(a) Any surety who wishes to be relieved from liability arising on a bond issued under this part shall file with the Commissioner a statement in writing setting forth the desire of the surety to be relieved of liability and the reasons therefor.

(b) The surety shall mail a copy of the statement by certified mail, return receipt requested, to the last known address of the licensee named in the bond.

(c) Twenty (20) days after the statement required in paragraph (b) of this section is mailed to the licensee and the statement required in paragraph (a) of this section is filed with the Commissioner, the surety from all liability thereafter arising on the bond.

(d) If the licensee does not have other bond sufficient to meet the requirements of this part or has not executed and filed a new or substitute bond within twenty (20) days after the service of the statement, the Commissioner shall declare the license and lease void.

(e) No surety is released from liability under the bond for claims which arose prior to the issuance of the Commissioner's order releasing the surety.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 141.58 Records, reports, and obligations of reservation business owners.**

(a) The Commissioner may, in consultation with interested persons and agencies, promulgate a model book-keeping system for use in reservation businesses. Until such model book-keeping system is promulgated, each business owner shall keep records in accordance with generally accepted accounting principles.

(b) Each reservation business owner shall file with the Area Director an annual report on or before April 15 in a



§ 141.59

25 CFR Ch. I (4-1-01 Edition)

form approved by the Commissioner. Reports shall be subject to a yearly audit. The reports shall contain the names and respective interests of all persons participating in the business.

(c) The business owner or an employee shall record all sales and purchases whether for cash or credit. If the business is on the Navajo Reservation the owner or an employee shall supply the customer with a copy of the sale transaction containing a description of the article purchased or sold, the date of the transaction, and the price. A cash register receipt complies with this paragraph for grocery or dry goods purchases for cash.

(d) The licensee shall keep a duplicate copy of any writing required by paragraph (c) of this section for a period of not less than three (3) years and shall provide the customer or the customer's representative one copy of those writings upon request.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 13937, Apr. 1, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.59 Customer complaint procedures.

(a) Any customer of a licensee may file a complaint with the Commissioner alleging that the licensee has committed a violation of this part.

(b) Upon receipt of a customer complaint the Commissioner shall initiate show cause proceedings under the provisions of § 141.56 of this part.

(c) If the Commissioner fails to order remedial action within forty (40) days from the date the complaint is filed, the complainant may appeal under the provisions of part 2 of this title not later than seventy (70) days after the date the complaint is filed.

(d) If the Commissioner orders remedial action, the complainant may appeal under the provisions of part 2 of this title not later than thirty (30) days after the date on which the remedial action is ordered.

PART 142—ALASKA RESUPPLY OPERATION

Sec. 142.1 Definitions.

- 142.2 What is the purpose of the Alaska Resupply Operation?
142.3 Who is responsible for the Alaska Resupply Operation?
142.4 For whom is the Alaska Resupply Operation operated?
142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?
142.6 How are the rates and conditions for the Alaska Resupply Operation established?
142.7 How are transportation and scheduling determined?
142.8 Is economy of operation a requirement for the Alaska Resupply Operation?
142.9 How are orders accepted?
142.10 How is freight to be prepared?
142.11 How is payment made?
142.12 What is the liability of the United States for loss or damage?
142.13 Information collection.

AUTHORITY: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586.

SOURCE: 62 FR 18516, Apr. 16, 1997, unless otherwise noted.

§ 142.1 Definitions.

Area Director means the Area Director, Juneau Area Office, Bureau of Indian Affairs.

Bureau means Bureau of Indian Affairs.

Department means Department of the Interior.

Manager means Manager of the Seattle Support Center.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Indian means any individual who is a member of an Indian tribe.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791.

Alaska Native means a member of an Alaska Native village or a Native shareholder in a corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

§ 142.2 What is the purpose of the Alaska Resupply Operation?

The Alaska Resupply Operation provides consolidated purchasing, freight

## Bureau of Indian Affairs, Interior

## § 142.6

handling and distribution, and necessary transportation services from Seattle, Washington to and from other points in Alaska or en route in support of the Bureau's mission and responsibilities.

### § 142.3 Who is responsible for the Alaska Resupply Operation?

The Seattle Support Center, under the direction of the Juneau Area Office, is responsible for the operation of the Alaska Resupply Operation, including the management of all facilities and equipment, personnel, and procurement of goods and services.

(a) The Seattle Support Center is responsible for publishing the rates and conditions that must be published in a tariff.

(b) All accounts receivable and accounts payable are handled by the Seattle Support Center.

(c) The Manager must make itineraries for each voyage in conjunction with contracted carriers. Preference is to be given to the work of the Bureau.

(d) The Area Director is authorized to direct the Seattle Support Center to perform special services that may arise and to act in any emergency.

### § 142.4 For whom is the Alaska Resupply Operation operated?

The Manager is authorized to purchase and resell food, fuel, clothing, supplies and materials, and to order, receive, stage, package, store and transport these goods and materials for:

(a) Alaska Native Tribes, Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization.

(b) Other Federal agencies and the State of Alaska and its subsidiaries, as long as the ultimate beneficiaries are the Alaska Natives or their communities.

(c) Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians.

(d) The Manager must make reasonable efforts to restrict competition with private enterprise.

### § 142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?

The general authority of the Assistant Secretary—Indian Affairs to establish rates and conditions for users of the Alaska Resupply Operation is delegated to the Area Director.

(a) The Manager must develop a tariff that establishes rates and conditions for charging users.

(1) The tariff must be approved by the Area Director.

(2) The tariff must be published on or before March 1 of each year.

(3) The tariff must not be altered, amended, or published more frequently than once each year, except in an extreme emergency.

(4) The tariff must be published, circulated and posted throughout Alaska, particularly in the communities commonly and historically served by the resupply operation.

(b) The tariff must include standard freight categories and rate structures that are recognized within the industry, as well as any appropriate specialized warehouse, handling and storage charges.

(c) The tariff must specify rates for return cargo and cargo hauled between ports.

(1) The rates and conditions for the Bureau, other Federal agencies, the State of Alaska and its subsidiaries must be the same as that for Native entities.

(2) Different rates and conditions may be established for non-Indian and non-Native commercial establishments, if those establishments do not meet the standard in §142.4(c) and no other service is available to that location.

### § 142.6 How are the rates and conditions for the Alaska Resupply Operation established?

The Manager must develop tariff rates using the best modeling techniques available to ensure the most economical service to the Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives

## § 142.7

or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, without enhancing the Federal treasury.

(a) The Area Director's approval of the tariff constitutes a final action for the Department for the purpose of establishing billing rates.

(b) The Bureau must issue a supplemental bill to cover excess cost in the event that the actual cost of a specific freight substantially exceeds the tariff price.

(c) If the income from the tariff substantially exceeds actual costs, a prorated payment will be issued to the shipper.

### **§ 142.7 How are transportation and scheduling determined?**

(a) The Manager must arrange the most economical and efficient transportation available, taking into consideration lifestyle, timing and other needs of the user. Where practical, shipping must be by consolidated shipment that takes advantage of economies of scale and consider geographic disparity and distribution of sites.

(b) Itineraries and scheduling for all deliveries must be in keeping with the needs of the users to the maximum extent possible. Planned itineraries with dates set as to the earliest and latest anticipated delivery dates must be provided to users prior to final commitment by them to utilize the transportation services. Each shipping season the final departure and arrival schedules must be distributed prior to the commencement of deliveries.

### **§ 142.8 Is economy of operation a requirement for the Alaska Resupply Operation?**

Yes. The Manager must ensure that purchasing, warehousing and transportation services utilize the most economical delivery. This may be accomplished by memoranda of agreement, formal contracts, or cooperative arrangements. Whenever possible joint arrangements for economy will be entered into with other Federal agencies, the State of Alaska, Alaska Native cooperatives or other entities providing services to rural Alaska communities.

## 25 CFR Ch. I (4-1-01 Edition)

### **§ 142.9 How are orders accepted?**

(a) The Manager must make a formal determination to accept an order, for goods or services, and document the approval by issuing a permit or similar instrument.

(b) The Seattle Support Center must prepare proper manifests of the freight accepted at the facility or other designated location. The manifest must follow industry standards to ensure a proper legal contract of carriage is executed, upon which payment can be exacted upon the successful delivery of the goods and services.

### **§ 142.10 How is freight to be prepared?**

All freight must be prepared in accordance with industry standards, unless otherwise specified, for overseas shipment, including any pickup, delivery, staging, sorting, consolidating, packaging, crating, boxing, containerizing, and marking that may be deemed necessary by the Manager.

### **§ 142.11 How is payment made?**

(a) Unless otherwise provided in this part, all regulations implementing the Financial Integrity Act, Anti-Deficiency Act, Prompt Payments Act, Debt Collection Act of 1982, 4 CFR Ch. II—Federal Claims Collection Standards, and other like acts apply to the Alaska Resupply Operation.

(b) Payment for all goods purchased and freight or other services rendered by the Seattle Support Center are due and payable upon final receipt of the goods or services. If payment is not received within the time specified on the billing document, interest and penalty fees at the current treasury rate will be charged, and handling and administrative fees may be applied.

(c) Where fuel and other goods are purchased on behalf of commercial enterprises, payment for those goods must be made within 30 days of delivery to the Seattle Support Center Warehouse. Payment for freight must be made within 30 days from receipt of the goods by the shipper.

### **§ 142.12 What is the liability of the United States for loss or damage?**

(a) The liability of the United States for any loss or damage to, or non-delivery of freight is limited by 46 U.S.C. 746

## Bureau of Indian Affairs, Interior

## § 143.3

and the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*). The terms of such limitation of liability must be contained in any document of title relating to the carriage of goods by sea. This liability may be further restricted in specialized instances as specified in the tariff.

(b) In addition to the standards of conduct and ethics applicable to all government employees, the employees of the Seattle Support Center shall not conduct any business with, engage in trade with, or accept any gifts or items of value from any shipper or permittee.

(c) The Seattle Support Center will continue to function only as long as the need for assistance to Native village economies exists. To that end, a review of the need for the serve must be conducted every five years.

### § 142.13 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information collections contained in this regulation is not required.

## PART 143—CHARGES FOR GOODS AND SERVICES PROVIDED TO NON-FEDERAL USERS

Sec.

143.1 Definitions.

143.2 Purpose.

143.3 Procedures.

143.4 Charges.

143.5 Payment.

AUTHORITY: 31 U.S.C. 9701; 25 U.S.C. 2, 13, 413.

SOURCE: 55 FR 19621, May 10, 1990, unless otherwise noted.

### § 143.1 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior, or other employee to whom authority has been delegated.

(b) *Reservation* means any bounded geographical area established or created by treaty, statute, executive order, or interpreted by court decision and over which a federally recognized Indian Tribal entity may exercise certain jurisdiction.

(c) *Flat fee* is the amount prorated to each user based on the total costs incurred by the Government for the goods/services being provided.

(d) *Non-Federal users* are persons not employed by the Federal Government who receive goods/services provided by the BIA.

(e) *Goods/Services* for the purpose of these regulations are those provided or performed at the request of an identifiable recipient and are above and beyond those which accrue to the public at large.

### § 143.2 Purpose.

(a) The purpose of the regulations in this part is to establish procedures for the assessment, billing, and collection of charges for goods/services provided to non-Federal users.

(b) The Assistant Secretary may sell or contract to sell to non-Federal users within, or in the immediate vicinity of an Indian Reservation (or former Reservation), any of the following goods/services if it is determined that the goods/services are not available from another local source or providing that goods/services is in the best interest of the Indian tribes or individual Indians. The goods/services include, but are not limited to:

- (1) Electric power;
- (2) Water;
- (3) Sewage operations;
- (4) Landfill operations;
- (5) Steam;
- (6) Compressed air;
- (7) Telecommunications;
- (8) Natural, manufactured, or mixed gas;
- (9) Fuel oil;
- (10) Landscaping; and
- (11) Garbage collections.

### § 143.3 Procedures.

(a) All non-Federal users who receive the above listed goods/services must sign a standard agreement adopted by the Assistant Secretary for the goods/services. This agreement shall contain the following statement:

“Application for \_\_\_\_\_ (specify good(s)/service(s)) is hereby requested at the noted address. In exchange for receiving the requested good(s)/service(s), the applicant agrees to accept and abide by all applicable

#### § 143.4

rules, regulations, and rate schedules, including any future amendments, additions, or changes thereto. If the applicant should fail to comply with any of the rules, regulations, or rate schedules, the cost incurred by the United States Government for enforcement of same shall be charged to the applicant.”

(b) Lack of a signed agreement does not invalidate payment requirements. Any user will be responsible for payment of actual goods/services received or delivered.

#### § 143.4 Charges.

(a) Charges shall be established by the Assistant Secretary and shall be based upon the total costs (including both direct and indirect) of goods/services to the Government at that locale. A schedule of charges will be made available to the public upon request.

(b) All documentation used in establishing charges must be maintained at the appropriate Bureau of Indian Affairs agency or Area Office and shall be made available for review by the public upon request.

(c) Established charges may be reviewed, amended, and adjusted monthly, but not less than annually.

(d) A flat fee may be charged where it is impractical to measure actual usage by recipients.

(e) Security deposits are authorized under this regulation at the discretion of the Assistant Secretary. The deposit may not exceed the amount of one billing cycle. All deposits will be applied to the final bill.

#### 25 CFR Ch. I (4–1–01 Edition)

#### § 143.5 Payment.

(a) The Assistant Secretary—Indian Affairs will establish a billing cycle that is appropriate to the goods/services being provided.

(b) Payment is due within 30 days after the billing date.

(c) Upon non-payment by the non-Federal user, the Assistant Secretary may discontinue service. Service may be discontinued after proper notification by letter. Proper notification shall include:

(1) Written notice to user that payment is due. Such notice shall afford the user the opportunity to challenge payment or excuse non-payment within 14 days of the date on the notification letter.

(2) Following the expiration of the 14 day deadline for response, and after consideration of any such response, the Assistant Secretary—Indian Affairs may notify the user by letter that if payment is not received within 10 days of the date on the letter, the service will be discontinued.

(d) The Assistant Secretary has the discretion to continue services for health and safety reasons. However, the non-Federal user is still responsible for payment for goods/services provided.

(e) Once service has been discontinued based on delinquency of payment, the discontinuance may be appealed under part 2 of this title.