

Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with APPH Ltd. Service Newsletter, Issue 2, Jetstream 31 Steering Jack Part Number 618200, as referenced in British Aerospace Mandatory Service Bulletin 32-JA 981043, dated March 5, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 5, 2001.

**Note 2:** The subject of this AD is addressed in British AD 012-03-99.

Issued in Kansas City, Missouri, on January 4, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-916 Filed 1-16-01; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-48-AD; Amendment 39-12052; AD 2000-26-03]

RIN 2120-AA64

#### **Airworthiness Directives; Airbus Model A310, and Model A300 B4-600, A300 B4-600R, and A300 F4-600R (A300-600) Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in airworthiness directive (AD) 2000-26-03, which was published in the **Federal Register** on December 28, 2000 (65 FR 82262). The typographical error resulted in the misidentification of affected airplanes. This AD is applicable to Airbus Model A310, and Model A300 B4-600, A300 B4-600R, and A300 F4-600R (A300-600) series airplanes. This AD requires new wiring modifications for the engine and the fire detection system of the auxiliary power unit.

**EFFECTIVE DATE:** Effective February 1, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

Airworthiness Directive (AD) 2000-26-03, amendment 39-12052, was published in the **Federal Register** on December 28, 2000 (65 FR 82262). The AD requires new wiring modifications for the engine and auxiliary power unit (APU) fire detection system.

As published, AD 2000-26-03 incorrectly substituted a nonaffected group of airplanes for an affected group. Specifically, the AD substituted Model A300 B2 and B4 series airplanes for Model A310 series airplanes. The NPRM for this AD correctly identified the affected airplanes.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains February 1, 2001.

In AD 2000-26-03, amendment 39-12052, make the following corrections:

1. On page 82262, in the first column, the subject heading should read

“Airworthiness Directives; Airbus Model A310 Series Airplanes, and Model A30A300 B4-600, A300 B4-600R, and A300 F4-600R (A300-600) Series Airplanes.”

2. On page 82262, in the first column, under the heading **Summary**, in the fourth line, “A300 B2 and B4” should read “A310.”

3. On page 82262, in the second column, under the heading **Cost Impact**, in the second line of the first paragraph, “A300 B2 and B4” should read “A310.”

#### **§ 39.13 [Corrected]**

4. On page 82262, in the third column, the applicability of AD 2000-26-03 is corrected to read as follows:

\* \* \* \* \*

*Applicability:* Model A310 series airplanes, and Model A300 B4-600, A300 B4-600R, and A300 F4-600R (A300-600) series airplanes; certificated in any category; except those on which Airbus Modifications 06267 and 07340 have been accomplished during production.

\* \* \* \* \*

Issued in Renton, Washington, on January 8, 2001.

**Donald L. Riggan,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-1231 Filed 1-16-01; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 103

RIN 1076-AD73

#### **Loan Guaranty, Insurance, and Interest Subsidy**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (DOI), Bureau of Indian Affairs (BIA) is revising the regulations that implement the Loan Guaranty, Insurance, and Interest Subsidy Program. This Program authorizes the Secretary of DOI to guaranty or insure loans made by private lenders to individual Indians and to organizations of Indians, and to assist qualified borrowers with a portion of their interest payments. The new regulations clarify prior regulatory language, in keeping with the “plain language” standard required by Executive Order 12866. They also reflect evolved BIA policies, and address several issues that prior regulations did not cover.

**EFFECTIVE DATE:** These regulations take effect on February 16, 2001. They do not govern pre-existing loan guarantees. However, a lender may elect to have its pre-existing loan guarantees governed by the new regulations after the effective date by entering into a new loan guaranty agreement with BIA.

**FOR FURTHER INFORMATION CONTACT:** David B. Johnson, Division of Indian Affairs, Office of the Solicitor, 202-208-3401.

**SUPPLEMENTARY INFORMATION:** The Loan Guaranty, Insurance, and Interest Subsidy Program (Program) was established in the Act of April 12, 1974, as amended, 88 Stat. 79, 25 U.S.C. 1481 *et seq.* and 25 U.S.C. 1511 *et seq.* The Program has existed since 1974, and the regulations implementing it have existed since 1975. Until now, there has never been any extensive or significant revision of these regulations. The new regulations clarify part 103, reflect evolved BIA policies, address issues that have emerged over the years, and enhance some features of the Program. For example, BIA has overhauled the loan insurance feature of the Program to encourage lenders to reconsider its many advantages.

BIA published a proposed rule in the **Federal Register** on September 6, 2000 (65 FR 53948). BIA considered all comments received during the comment period, September 6, 2000 through November 6, 2000, in drafting this final rule.

### Review of Public Comments

BIA received 133 comments during the comment period. Commenters generally liked the organization and approach of the proposed rule much better than the prior rule, and sought only to influence the effect or wording of particular sections. Nonetheless, while most comments were rather specific, some raised issues of greater impact than was apparently envisioned. Correspondingly, in some cases BIA had to rethink sections of the proposed rule other than the one cited by the commenter. Here is a detailed breakdown of the comments, and how they impacted the proposed rule:

#### Subpart A—General Provisions

**Section 103.1** *What does this part do?* There were no comments on this section.

**Section 103.2** *Who does the Program help?* One commenter felt that the second sentence of proposed Section 103.2 was superfluous. BIA agrees. The final rule omits the sentence.

**Section 103.3** *Who administers the Program?* Two commenters made three comments on this section, to the effect that BIA regional offices cannot and

should not be the first point of contact for all applicants. BIA agrees. The final rule now has applicants contact “the BIA office serving the borrower’s location.”

**Section 103.4** *What kinds of loans will BIA guarantee or insure?* Three commenters made five comments on this section, two of which were subsequently withdrawn. One comment stated that paragraph (a) should require a business to contribute to the economy of an Indian reservation, instead of to “an Indian tribe or its members.” BIA agrees in part, and has changed the phrase in the final rule to “an Indian reservation or tribal service area recognized by BIA.”

Another commenter stated that qualified loans should include individual housing loans, but should not include loans for refinancing. BIA disagrees with both of these comments. Individual housing loans are outside the apparent scope of statutory authority for the Program, whereas loans for refinancing Indian businesses are not. In BIA’s experience, refinancing loans is occasionally required to meet Program objectives.

**Section 103.5** *What size loan will BIA guarantee or insure?* Four commenters made five comments on this section. They generally questioned the concept of an “acceptable Indian business entity,” and warned of the potential abuse of small partnerships seeking big loans. BIA disagrees with these comments. It is BIA’s duty to determine when there is a reasonable prospect of loan repayment. No regulatory ceiling on the amount an Indian business entity can borrow, especially one dependent on the organizational structure of the borrower, is an acceptable substitute for BIA’s exercise of its reasonable discretion on a case-by-case basis.

A comment on Section 103.6, however, resulted in a change to Section 103.5. The commenter pointed out that the proposed rule appeared to allow an individual Indian to apply for more than one loan in a manner that would enable the borrower to exceed the statutory limitation of \$500,000 for an individual Indian. BIA agrees, and has added language to Section 103.5 to resolve this potential concern.

**Section 103.6** *To what extent will BIA guarantee or insure a loan?* Two commenters made three comments on this section, one of which was subsequently withdrawn and one of which was actually addressed in Section 103.5. The remaining comment was to the effect that BIA should allow only one guaranteed loan at a time between a particular borrower and lender. BIA disagrees, and believes that

the proposed rule offers a more workable balance between reasonable limits and flexibility.

**Section 103.7** *Must the borrower have equity in the business being financed?* Two commenters made comments on this section. One comment was subsequently withdrawn, and the other merely expressed confusion over the proposed language. Upon review, BIA does not find any need to change this section.

**Section 103.8** *Is there any cost for a BIA guaranty or insurance coverage?* There were no comments on this section.

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

**Section 103.9** *Who applies to BIA under the Program?* Three commenters made four comments on this section, one of which was subsequently withdrawn. The remaining comments were to the effect that the last sentence of the proposed section was partly redundant, and partly unnecessary. BIA agrees, and has deleted it in the final rule.

**Section 103.10** *What lenders are eligible under the Program?* Three commenters made five comments on this section. Two commenters felt that tribes should not qualify as lenders. BIA disagrees with this comment, but notes that paragraph (b) of the proposed rule is superfluous, and eliminating it would satisfy these commenters, at least in part. BIA has removed the former paragraph (b) in the final rule, and re-lettered the remaining provisions accordingly.

Another commenter suggested that BIA establish minimum ownership interests for those lenders who sell off portions of their guaranteed loans; the commenter suggested 25 percent. BIA agrees in part, and has established a minimum ownership interest of 10 percent. The final rule reflects this change in Section 103.28(a), not Section 103.10.

A commenter suggested that BIA insert a new section, between proposed §§ 103.10 and 103.11, to explain how a lender applies to BIA to become an approved lender under the Program. BIA disagrees. Historically, lenders interested in the Program have expressed no trouble getting channeled to BIA Regional Credit Officers, who in turn make the application process simple and expeditious in the vast majority of cases. BIA also has new, OMB-approved Loan Guaranty Agreement and Loan Insurance Agreement forms (BIA forms 5-4753

and 5-4754) that are designed to answer a number of questions and circumstances that prior forms bearing those numbers did not. In summary, the process is simple and is adequately explained in standard forms. There is no need to put the procedure in the rule itself.

A final comment was unclear to BIA, and did not result in any change in the final rule.

*Section 103.11 How does BIA approve lenders for the Program?* Six commenters made fifteen comments on this section. Five comments were directed at the need for three different levels of guaranteed lender approval, and how those levels are defined. BIA did not change the final rule as a result of these comments. The three levels of guaranteed lender approval are fully explained in BIA's new form 5-4753, Loan Guaranty Agreement.

Four comments noted a typographical error repeated in paragraphs (b) and (c), which previously used the phrase "loan agreement." BIA has corrected the phrase, which is now "loan guaranty agreement."

Four comments addressed the concern that a lender might think the suspension of its loan guaranty agreement and/or loan insurance agreement had an adverse impact on loan guarantees or insurance coverage already in effect. BIA has added a new paragraph (e) to clarify its intent.

One comment requested a grace period prior to the suspension of a lender's loan guaranty agreement and/or loan insurance agreement following a change in corporate structure or merger. BIA disagrees with this request. Suspension affects only the lender's ability to issue new guaranteed or insured loans, and can be quickly remedied when and if the lender has a new qualified loan to present.

One comment focused on the precise nature of the corporate changes that would trigger a suspension under this section. BIA agrees with the general comment, and has made changes in the final rule to clarify its intent. The changes appear in § 103.11(b)(2), and in the new paragraph (c). Correspondingly, BIA has renumbered the former paragraph (c) as paragraph (d). BIA also has added a new paragraph (g) in § 103.33, to conform with these changes.

*Section 103.12 How does a lender apply for a loan guaranty?* Four commenters made thirteen comments on this section, two of which were subsequently withdrawn. One comment suggested specifying that a lender should submit its application to the BIA Superintendent where the business is located. BIA's response to this comment

already is incorporated in the changes made to Section 103.3.

One comment raised a question about the lender's role in providing a borrower with technical assistance, or even in evaluating the borrower's need for technical assistance. BIA agrees with this concern. BIA has reworded proposed paragraph (c) of this section—paragraph (d) in the final rule—to relieve the lender of these duties. BIA will bear primary responsibility for questions of technical assistance, to the extent it is able.

One comment suggested that in some cases obtaining a credit report on a natural person other than the borrower might violate the Fair Credit Reporting Act. BIA agrees that the law is not entirely clear. Accordingly, it has reworded proposed paragraph (d) of this section—paragraph (e) in the final rule.

One comment suggested that credit reports be more current than 90 days at the time of the application. BIA disagrees. The loan process can be lengthy, and BIA does not want to cause a borrower any unnecessary expense or a high number of credit report "inquiries," when the reason for a stale credit report may not even be the borrower's fault. Lenders still may require a more recent credit report if that is their ordinary procedure.

One comment said that lenders should not have to issue a commitment letter to a borrower until after BIA has approved the loan under the Program. BIA disagrees. A lender can avoid potential exposure by issuing its commitment letter subject to BIA approval under the Program. BIA, on the other hand, has no substitute for having before it the lender's blueprint for how it thinks a given loan will work.

One comment requested a stylistic change in proposed paragraph (f) of this section. Upon reflection, BIA slightly reworded paragraph (f), but in a manner different from the suggested wording. The meaning remains the same.

One comment recommended establishing a standard for the maximum interest rate BIA would find acceptable. BIA disagrees, noting the historic volatility of interest rates.

Two comments noted that proposed paragraphs (e) and (h) of this section would require a borrower to make a substantial investment of time and money, very early in the overall application process. This investment may prove unwarranted, since some projects do not get even tentative approval before denial. BIA agrees. BIA has removed the requirements described in these proposed paragraphs, and made them conditions of closing in § 103.17 instead.

One comment displayed confusion over whether the proposed paragraph (h)—now, paragraph (d) in § 103.17—required each of the items in subparagraphs 1 through 4, or merely listed the items for convenience, should they apply in a given transaction. BIA has reworded the final rule to reduce the likelihood of confusion, and also to clarify the process for establishing that a proposed business will not be located in a special flood hazard area.

One comment stated that proposed §§ 103.12 and 103.26 are redundant. BIA agrees in part. BIA has eliminated the redundant features of these sections and placed their common components in § 103.17.

*Section 103.13 How does a lender apply for loan insurance coverage?* One commenter felt that lenders should always have to ask for BIA's approval, even to obtain loan insurance for a loan of under \$100,000. BIA disagrees, noting the apparent intent of Congress in 25 U.S.C. 1484.

*Section 103.14 Can BIA request additional information?* There were no comments on this section.

*Section 103.15 Are there any prohibited loan terms?* Five commenters made seven comments on this section, one of which was subsequently withdrawn. One commenter felt that BIA should be flexible concerning balloon payments, with the understanding that BIA would normally avoid them in determining whether there was a reasonable prospect of loan repayment. BIA agrees, and has deleted proposed paragraph (e).

Two commenters recommended establishing a standard for the maximum interest rate BIA would find acceptable. BIA disagrees, noting the historic volatility of interest rates.

One commenter suggested that BIA limit interest rate adjustments to quarterly. BIA disagrees. BIA has no compelling reason to force lenders to use special interest rate change dates, which could be viewed by lenders as a disincentive to use the Program.

Two commenters questioned the late fee limitations in proposed paragraph (j)(3), now paragraph (i)(3). BIA agrees in part. It has removed the \$100 cap on late fees.

*Section 103.16 How does BIA approve or reject a loan guaranty or insurance application?* One commenter made a comment on this section, then withdrew it.

*Section 103.17 Must the lender follow any special procedures to close the loan?* Three commenters made seven comments on this section, four of which were withdrawn. One commenter suggested that BIA require lenders to

submit three copies of all loan closing documents. BIA disagrees. It has no compelling reason to force lenders to undertake large amounts of photocopying for BIA's convenience.

One commenter questioned whether BIA really needs copies of construction contracts and plans and specifications. BIA disagrees. BIA has experience with loans in which the absence of such documents has been disruptive.

One commenter felt that a lender should be given 90 days, not 60, within which to close a loan that BIA has approved under the Program. BIA agrees and correspondingly has changed proposed paragraph (c) of this section, which is paragraph (f) of this section in the final rule.

In addition, due to comments received with respect to proposed §§ 103.12 and 103.26, in the final rule BIA has taken requirements from those locations and placed them in § 103.17, specifically at paragraphs (c) and (d).

*Section 103.18 How does BIA issue a loan guaranty certificate or confirm loan insurance?* There were no comments on this section.

*Section 103.19 When must the lender pay BIA the loan guaranty or insurance premium?* One commenter made a comment on this section, then withdrew it.

#### Subpart C—Interest Subsidy

*Section 103.20 What is interest subsidy?* BIA received two comments on this section. One commenter asked BIA to adopt Robert Morris Associates as its standard for establishing industry norms for earnings. BIA disagrees. No single private source for such figures covers every circumstance that BIA encounters, and BIA typically avoids tying regulatory requirements to standards that are in the hands of a single private source.

A second commenter wanted BIA to delete the second sentence, effectively throwing interest subsidy open to every eligible borrower, regardless of their projected or historical earnings. BIA disagrees. The purpose and role of interest subsidy has evolved somewhat over the years, but at present policy considerations suggest that it should be available only in the limited circumstances BIA has proposed.

*Section 103.21 Who applies for interest subsidy payments, and what is the application procedure?* BIA received two comments on this section, one of which was subsequently withdrawn. One comment said that lenders should be required to submit interest subsidy applications at the same time they submit loan guaranty or loan insurance coverage applications. BIA disagrees.

Prior regulations contained this requirement, and BIA found it too inflexible to adequately address the legitimate needs of borrowers.

*Section 103.22 How does BIA determine the amount of interest subsidy?* BIA received two comments on this section. One commenter requested that this section identify a more specific source of the "rate determined by the Secretary of the Treasury in accordance with 25 U.S.C. 1464." BIA disagrees. Periodically issued source documents have been known to change, whereas the underlying statute can be expected to remain more stable. Lenders are of course free at any time to consult BIA on the current source document in use.

Another comment suggested that BIA fix the interest subsidy amount as of the date of BIA approval. BIA agrees, and has modified the section accordingly.

*Section 103.23 How does BIA make interest subsidy payments?* There were no comments on this section.

*Section 103.24 How long will BIA make interest subsidy payments?* One commenter suggested that BIA offer interest subsidy payments for three years only, with no extensions. BIA disagrees. Experience shows that in many cases the fourth and fifth years of a loan are the critical years in which a borrower first becomes profitable. Absent interest subsidy payments, some borrowers would not survive to see that happen.

#### Subpart D—Provisions Relating to Borrowers

*Section 103.25 What kind of borrower is eligible under the Program?* Three commenters made six comments, two of which were withdrawn. One comment asked BIA to specify that its guaranty would automatically be revoked in the event a borrower's business entity became less than 51 percent Indian-owned. BIA disagrees. While that interpretation may arguably apply to prior regulatory language, BIA specifically intends that the final rule preserve for a lender the option of either pursuing default remedies under the Program, or else ignoring the default (thereby allowing BIA's loan guaranty or insurance to become void) and simply carrying the loan on the lender's books without the benefit of Program coverage. In other words, prior regulatory language suggests that a reduction in the borrower's ownership to less than 51 percent Indian would automatically void BIA's guaranty or insurance of the lender's loan—through no fault of the lender, and without giving the lender any time to react. The new rule at least gives the lender the option of pursuing a claim under its loan guaranty or

insurance coverage, should such an event occur.

One comment requested that a lender have at least 45 days within which to exercise its remedies, should there be a default under the 51 percent Indian ownership requirement. BIA disagrees. A default under the 51 percent Indian ownership requirement triggers the same procedures, and the same deadlines, that apply for any other kind of default. See §§ 103.35 and 103.36. Those deadlines already provide 60 days for the lender to notify BIA of the default, and 90 days from the date of the default for the lender to elect a Program remedy.

One comment suggested that BIA define any ineligible businesses there may be, such as business activities involving gaming, currently made ineligible due to BIA policy. BIA disagrees. Policy considerations can change more rapidly than BIA can revise its regulations, and at present there is no other sort of business activity specifically prohibited under the Program.

One comment suggested that, in the event a borrower's business becomes less than 51 percent Indian owned, and the lender decides not to pursue a claim against BIA under the Program, the lender should be required at least to notify BIA of the default under the 51 percent Indian ownership requirement. This notification would permit BIA to remove the loan from its active recordkeeping system. BIA agrees. BIA has not modified this section to reflect the comment, however; it has instead made an addition to § 103.33.

*Section 103.26 What must the borrower supply the lender in its loan application?* Four commenters made thirteen comments on this section, one of which was subsequently withdrawn. Three comments suggested that a borrower should provide balance sheets and operating statements for the preceding three years, instead of two. BIA agrees, and has made the change in the final rule.

Two comments suggested that a borrower should provide three or more years of financial projections. BIA agrees, and the final rule reflects a requirement of three years.

Four comments pointed out that the borrower was being required to provide appraisals and proof of compliance with applicable law too early in the lending process, and that a borrower could unnecessarily suffer wasted time and expense pursuing these requirements for a loan without even tentative approval from a lender or BIA. BIA agrees. It has changed these requirements into conditions for closing, at § 103.17.

One comment displayed confusion over whether or not the borrower was required to supply the kinds of evidence outlined in proposed § 103.26(l), or whether the items listed at § 103.26(l)(1)–(4) were simply examples, to be used when applicable. BIA has slightly re-worded the language (now moved to § 103.17(d)) to reduce the likelihood of confusion.

One comment suggested that BIA establish standards for appraisals. BIA disagrees. In most cases, existing law or lender policy already establishes adequate appraisal standards, and BIA has no compelling need to add another system of requirements to what already is in place. Any BIA appraisal standards should in any event be designed for applicability far beyond the boundaries of the Program; it would be inappropriate to establish them for use solely within the Program.

One comment suggested that parts of § 103.12 and 103.26 are redundant. BIA agrees, and has removed the principal redundancies. The affected provisions have been combined and added to § 103.17.

*Section 103.27 Can the borrower get help preparing its loan application or putting its loan funds to use?* There were two comments on this section, both of which suggested revising the procedures for referring borrowers in need of technical assistance. One comment suggested that BIA refer borrowers to tribal business information centers. BIA disagrees. While tribal business information centers may be one potential source of help, they are not uniformly available and may not in some cases be the best available resource.

One comment noted that BIA does not always have technical assistance funding. It suggested revising the proposed regulation to eliminate the inference that BIA is obliged to provide free technical assistance to a borrower, when BIA has no funds for that purpose. BIA agrees, and has removed the last sentence of the proposed section in the final rule.

Changes to proposed §§ 103.17 and 103.26 also necessitated a conforming change in this section.

#### *Subpart E—Loan Transfers*

*Section 103.28 What if the lender transfers part of the loan to another person?* There were three comments on this section. One comment wanted BIA to permit the transfer of insured loans, in addition to guaranteed loans. BIA disagrees, due to the statutory prohibition implied by 25 U.S.C. 1485.

Two comments expressed confusion over transfers brought about through

merger, and on the distinction between a lender's right to make new guaranteed loans or insured loans under a loan guaranty agreement or loan insurance agreement, and a lender's right to guarantee or insurance coverage on the asset transferred. BIA has clarified this section and Section 103.29 in response to these comments.

In addition, a comment on § 103.10 caused BIA to insert in this section a requirement that lenders maintain at least a 10 percent ownership interest in loans they maintain under the Program.

*Section 103.29 What if the lender transfers the entire loan?* BIA received four comments on this section. One comment suggested that BIA restrict transfers to eligible BIA lenders. BIA disagrees. Congress specifically expanded the universe of potential transferees when it enacted the current 25 U.S.C. 1485.

One comment wanted BIA to permit the transfer of insured loans, in addition to guaranteed loans. BIA disagrees, due to the statutory prohibition implied by 25 U.S.C. 1485.

Two comments expressed confusion over transfers brought about through merger, and on the distinction between a lender's right to make new guaranteed loans or insured loans under a loan guaranty agreement or loan insurance agreement, and a lender's right to guarantee or insurance coverage on the asset transferred. BIA has clarified this section and Section 103.28 in response to these comments.

#### *Subpart F—Loan Servicing Requirements*

*Section 103.30 What standard of care must a lender meet?* BIA received two comments on this section. One comment requested deleting the requirement of automatic bank account debiting. BIA disagrees. The requirement is a reasonable and prudent use of modern technology, and in any event is required only when feasible.

One comment suggested an additional place within BIA for recording lien instruments. BIA disagrees. The proposed wording covers all necessary contingencies, and does not require lenders to file any instrument with BIA more than once.

*Section 103.31 What loan servicing requirements apply to BIA?* BIA received one comment on this section. The commenter suggested deleting proposed paragraph (b), as unnecessary. BIA agrees. It has deleted the paragraph, and correspondingly re-designated the paragraphs of this section in the final rule.

*Section 103.32 What sort of loan documentation does BIA expect the*

*lender to maintain?* There were no comments on this section.

*Section 103.33 Are there reporting requirements?* BIA received two comments on this section, one of which was subsequently withdrawn. The other commenter asked to reduce the number of lender's reports to once per annum. BIA disagrees. It needs quarterly updates to prepare accurate reports for the Department of the Treasury.

Also, due to comments received on §§ 103.11 and 103.25, BIA expanded this section to reflect two additional notices that a lender may be obliged to send BIA.

*Section 103.34 What if the lender and the borrower decide to change the terms of the loan?* There were no comments to this section. However, BIA made a minor change in paragraph (a)(7), to conform with a change in § 103.4.

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

*Section 103.35 What must the lender do if the borrower defaults on the loan?* Three commenters made four comments on this section, one of which was subsequently withdrawn. One comment suggested a stylistic change in the standard for when a lender is required to send a borrower notice of its default. BIA disagrees, finding its proposed language more appropriate.

One comment wanted BIA to keep its former requirement of having lenders notify BIA of a borrower's default within 45 days. BIA disagrees. BIA has determined that giving lenders an additional 15 days, as in the final rule, can be of significant benefit to lenders without exposing BIA to any significant risk of an overall increase of Program losses.

One comment suggested that BIA accept service by overnight delivery service. BIA agrees, and has changed the final rule accordingly.

*Section 103.36 What options and remedies does the lender have if the borrower defaults on the loan?* Four commenters made five comments on this section, one of which was subsequently withdrawn. Two comments sought additional time for a lender that elects to negotiate a loan modification agreement with a borrower. BIA agrees in part. Rather than give an automatic 60 days, as one commenter suggested, BIA has added language enabling it to extend the 45 day period specified in the proposed rule.

One comment suggested that BIA accept service by overnight delivery

service. BIA agrees, and has changed the final rule accordingly.

One comment suggested requiring lenders to liquidate collateral before submitting a claim for loss on a loan guaranty. BIA disagrees. Congress apparently wants lenders to have the option of making an immediate claim for loss without any prior efforts to enforce its other default remedies. See 25 U.S.C. 1491 and 1492.

*Section 103.37 What must the lender do to collect payment under its loan guaranty certificate or loan insurance coverage?* One commenter made three comments on this section. One comment suggested requiring lenders to submit claims for loss within 45 days of the borrower's default. BIA disagrees. Prior regulations gave the lender 60 days, and several lenders have had trouble complying with Program requirements within even that time period. BIA has determined that extending the required submission date for a claim for loss to 90 days will afford lenders the additional time they sometimes need, without unduly increasing BIA's potential exposure for overall Program losses.

One comment suggested requiring lenders to liquidate collateral before submitting a claim for loss on a loan guaranty. BIA disagrees. Congress apparently wants lenders to have the option of making an immediate claim for loss without any prior efforts to enforce its other default remedies. See 25 U.S.C. 1491 and 1492.

One comment observed an apparent inconsistency between allowing a lender up to 180 days following default to accrue interest while pursuing foreclosure remedies, and laws that require BIA to transfer a debt to the Department of the Treasury once it has been delinquent for 180 days. BIA disagrees. BIA is not obliged to send a debt to the Department of the Treasury until BIA has held the debt for at least 180 days, and in any event it need not forward any debt to Treasury that is in the process of foreclosure.

BIA made a change to paragraph (e) of this section, however, on the basis of a comment to Section 103.38. BIA has introduced a 90 day deadline for rendering a decision on a claim for loss.

*Section 103.38 Is there anything else for BIA or the lender to do after BIA makes payment?* BIA received two comments on this section, one of which was subsequently withdrawn. One comment asked BIA to adopt a 60 day deadline for making payment on a claim for loss. BIA agrees in part. It has added a 90 day deadline for rendering decision on a claim for loss. The change has been made in § 103.37(e).

*Section 103.39 When will BIA refuse to pay all or part of a lender's claim?* BIA did not receive any comments on this section.

*Section 103.40 Will BIA make exceptions to its criteria for denying payment?* BIA did not receive any comments on this section.

*Section 103.41 What happens if a lender violates provisions of this part?* BIA did not receive any comments on this section.

*Section 103.42 How long must a lender comply with Program requirements?* One commenter made two comments on this section. One comment suggested that BIA require either a shorter retention period, or else permit electronic data storage. BIA agrees. It has added appropriate language to the final rule.

One comment observed an apparent inconsistency between BIA's reservation of rights and applicable statutes of limitations. BIA disagrees. The final rule does not and cannot supercede Federal statutes of limitations.

*Section 103.43 What must the lender do after repayment in full?* BIA did not receive any comments on this section.

#### *Subpart H—Definitions and Miscellaneous Provisions*

*Section 103.44 What certain terms mean in this part.* Two commenters made four comments on this section, one of which was subsequently withdrawn. One comment suggested eliminating the phrase "when used as a noun," in the definition of "mortgage." BIA agrees. The change is in the final rule.

One comment suggested further restricting the definition of the word "Tribe" to those tribes recognized by the Federal government as eligible for services from BIA. BIA agrees. The change is in the final rule.

One comment suggested putting the definitions section at the beginning of the rule, rather than at the end. BIA disagrees. Current regulatory drafting theories suggest placing substantive provisions prominently at the beginning of a rule, and leaving reference materials towards the end.

*Section 103.45 Information collection.* BIA did not receive any comments on this section.

*Other changes.* In addition to the above comments, the final rule reflects a limited number of non-substantive, stylistic changes from the proposed rule. BIA added these for enhanced clarity, and in the case of a deletion in proposed § 103.30(e), to allow for conformity with another anticipated rulemaking. BIA also made a small number of conforming changes in definitions and

paragraph designations, required due to the change, addition, or deletion of rule provisions based on public comments.

#### **Regulatory Planning and Review**

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

This rule will not have an effect of \$100 million or more on the economy. Current and foreseeable funding levels for the Program will permit at most \$82 million in new loans per annum. The rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Program is designed to enhance, not hinder, productivity, competition, jobs, and the overall economy, and there is nothing inherent about the Program or the rule that will lead to adverse effects on the environment, public health or safety, or State, local, or tribal governments or communities.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. There is nothing in the rule to limit other efforts to encourage Indian economic development.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The Program does not create or limit any entitlement, has nothing to do with other grant or loan programs, and establishes no user fees.

This rule does not raise novel legal or policy issues. Part 103 has caused minimal legal review since 1975, and the new rule is in substance very similar to the existing rule.

#### **Regulatory Flexibility Act**

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The number of lenders who might be impacted by the changes in this document is limited by the relatively modest number of individual Indians and organizations of Indians whose loans can be guaranteed or insured under the Program.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. Current and foreseeable funding levels

for the Program will permit at most \$82 million in new loans per annum.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule is designed to clarify the roles and duties of the persons it may impact, and should in fact result in administrative savings. Any additional requirements imposed by the rule are either very limited in scope, or else in the nature of assembling information that lenders typically gather anyway.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule implements the Program in order to encourage investment in new Indian businesses, and thereby increase U.S.-based competition, employment, productivity, and innovation.

#### Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. It does not impose any mandates at all. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Only a small segment of the private sector—the lending community—is directly affected by the rule, and the rule (1) is functionally very similar to existing law, and (2) relates to a Program that will permit at most \$82 million in new loans per annum, based on current and foreseeable funding levels. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

#### Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The Program enhances the security available to lenders, and does not inherently involve any action that could deprive anyone of property without just compensation. A takings implication assessment is not required.

#### Federalism

In accordance with Executive Order 13132, this rule does not have federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The rule is directed at the relationship between lenders and the Federal Government, and does not impact States at all. This rule does not

impose costs on States or localities, for the same reason.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### Paperwork Reduction Act

The Office of Management and Budget has reviewed and approved the information collections contained in this rule and assigned them number 1076-0020. The proposed rule was published on September 6, 2000 (65 FR 53948) and solicited comments on the information collection. OMB expressed no concerns with the information collection, and no comments were received from the public.

The information collection is required to obtain or retain a benefit. Information covered by the Privacy Act will be kept confidential as required by law. Please note that a Federal agency may not collect or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

#### List of Subjects in 25 CFR Part 103

Indians—Insurance, Interest subsidy, and Loan guaranty.

For the reasons given in the preamble, BIA is revising part 103 in chapter I of title 25 of the Code of Federal Regulations as set forth below.

### 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?

#### 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.

#### 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 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;
- (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 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 extending 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

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

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

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

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

(2) Does not bear interest; and

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

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

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

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

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

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

(b) BIA approves applications by issuing an approval letter, followed by the procedures in § 103.18. If the guaranty or insurance application is incomplete, BIA may return the application to the lender, or hold the application while the lender submits the missing information. If BIA denies the application, it will provide the lender with a written explanation, with a copy to the borrower.

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

(a) BIA officials or their representatives may attend the closing of any loan or loan modification that BIA agrees to guarantee or insure. For

guaranteed loans, and insured loans that BIA must individually review under this part, the lender must give BIA notice of the date of closing at least 5 business days before closing occurs.

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

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

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

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

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

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

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

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

(1) Promissory notes;

(2) Security agreements, including pledge and similar agreements, and related financing statements (together with BIA's written approval of any assignment of specific tribal trust assets under § 103.15(l), 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 103.13 (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 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.

**§ 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 permitting the borrower to borrow the loan amount and offer the proposed loan collateral.

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

A borrower may seek BIA's assistance when preparing a loan application or

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

### Subpart E—Loan Transfers

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

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

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

#### § 103.29 What if the lender transfers the entire loan?

(a) A lender may transfer all of its rights in a guaranteed loan to any other person. The acquiring person must send BIA written notice of the transfer, describing the borrower, the loan, BIA's loan guaranty certificate number, and the acquiring person's name and address. Starting on the date of the transfer, only the acquiring person will be entitled to exercise the rights conferred by BIA's loan guaranty

certificate, and will from that point forward be considered the lender for purposes of the Program. The acquiring person must service the guaranteed loan and otherwise perform all of the duties required of the lender under the Program and the loan guaranty certificate. Except when a transfer is effected by a merger, any failure by the acquiring person to send BIA proper notice of the transfer within 30 calendar days of the transfer date will void BIA's loan guaranty certificate, without further action.

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

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

### Subpart F—Loan Servicing Requirements

#### § 103.30 What standard of care must a lender meet?

Lenders must service all loans guaranteed or insured under the Program in a commercially reasonable manner, in accordance with standards and procedures adopted by prudent lenders in the BIA region in which the borrower's business is located, and in accordance with this part. If the lender fails to follow 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 other documentation of efforts to liquidate loan collateral; and

(i) Originals or copies, as appropriate, of all notices, pleadings, motions, orders, and other documents associated with any legal proceeding involving the lender and the borrower or its assets, including without limitation judicial or non-judicial foreclosure proceedings, suits to collect payment, bankruptcy proceedings, probate proceedings, and any settlement associated with threatened or actual litigation.

**§ 103.33 Are there reporting requirements?**

(a) The lender must periodically report the borrower's loan payment history so that BIA can recalculate the government's contingent liability. Loan payment history reports must be quarterly unless BIA provides otherwise for a particular loan. These reports can be in any format the lender desires, as long as they contain:

(1) The lender's name;

(2) The borrower's name;

(3) A reference to BIA's Loan Guaranty Certificate or Loan Insurance Agreement number;

(4) The lender's internal loan number; and

(5) The date and amount of all loan balance activity for the reporting period.

(b) If applicable, the lender must supply a calculation of any interest subsidy payments that are due, as indicated in § 103.23.

(c) If there is a transfer of any or all of the lender's ownership interest in the loan, the party receiving the ownership interest may be required to notify BIA, as indicated in §§ 103.28 and 103.29.

(d) If there is a default on the loan, the lender must notify BIA, as indicated in §§ 103.35 and 103.36.

(e) If the borrower ceases to qualify for a BIA-guaranteed or insured loan under § 103.25(b), the lender must promptly notify BIA even if the lender does not pursue default remedies under §§ 103.35 and 103.36. This notice allows BIA to eliminate the guaranty or insurance coverage from its active recordkeeping system.

(f) If the loan is prepaid in full, the lender must promptly notify BIA in writing so that BIA can eliminate the guaranty or insurance coverage from its active recordkeeping system.

(g) If a lender changes its name, it should notify BIA in accordance with § 103.11(c).

**§ 103.34 What if the lender and borrower decide to change the terms of the loan?**

(a) The lender must obtain written BIA approval before modifying a loan guaranteed or insured under the Program, if the change will:

(1) Increase the borrower's outstanding principal amount (if a term loan), or maximum available credit (if a revolving loan).

(i) BIA will approve or disapprove a loan increase based upon the lender's explanation of the borrower's need for additional funding, and updated information of the sort required under §§ 103.12, 103.13, and 103.26, as applicable.

(ii) Upon approval by BIA and payment of an additional guaranty or insurance premium in accordance with §§ 103.8 and 103.19 and this section, the entire outstanding loan amount, as modified, will be guaranteed or insured (as the case may be) to the extent BIA specifies. The lender must pay the additional premium only on the increase in the outstanding principal amount of the loan (if a term loan) or the increase in the credit limit available to the borrower (if a revolving loan).

(iii) Lenders may not increase the outstanding principal amount of a loan guaranteed or insured under the Program if a significant purpose of doing so would be to allow the borrower to pay accrued loan interest it otherwise would have difficulty paying.

(2) Permanently adjust the loan repayment schedule.

(3) Increase a fixed interest rate, convert a fixed interest rate to an adjustable interest rate, or convert an adjustable interest rate to a fixed interest rate.

(4) Allow any changes in the identity or organizational structure of the borrower.

(5) Allow any material change in the use of loan proceeds or the nature of the borrower's business.

(6) Release any collateral taken as security for the loan, except items sold in the ordinary course of business and promptly replaced by similar items of collateral, such as inventory.

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

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

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

(b) In the case of an insured loan, the amount of which will not exceed

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

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

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

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

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

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

§ 103.36(d). The lender's notice must clearly indicate:

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

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

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

- (1) The date it submits the claim;
- (2) The date the lender gets a judgment of foreclosure or sale (or the non-judicial equivalent) on the principal collateral securing the loan; or
- (3) One hundred eighty calendar days after the date of the default.

(c) Whenever the lender liquidates loan collateral under § 103.36(d)(2), it must vigorously pursue all reasonable methods of collection concerning the loan collateral before submitting a claim for its residual loss (if any) to BIA. Without limiting the generality of the preceding sentence, the lender must:

- (1) Foreclose, either judicially or non-judicially, all rights of redemption the borrower or any co-maker or guarantor of the loan (other than BIA) may have in collateral under any mortgage securing the loan;
- (2) Gather and dispose of all personal property pledged as collateral under the loan, in accordance with applicable law;
- (3) Exercise all set-off rights the lender may have under contract or applicable law;
- (4) Make demand for payment on the borrower, all co-makers, and all guarantors of the loan (other than BIA); and

(5) Participate fully in all bankruptcy proceedings that may arise involving the borrower and any co-maker or guarantor of the loan. Full participation might include, for example, filing a proof of claim in the case, attending creditors' meetings, and seeking a court order releasing the automatic stay of collection efforts so that the lender can liquidate affected loan collateral.

(d) BIA may require further information, including without limitation copies of any documents the lender is to maintain under § 103.32 and all documentation of liquidation efforts, to help BIA evaluate the lender's claim for loss.

(e) BIA will pay the lender the guaranteed or insured portion of the lender's claim for loss, to the extent the claim is based upon reasonably sufficient evidence of the loss and compliance with the requirements of this part. BIA will render a decision on a claim for loss within 90 days of receiving all information it requires to properly evaluate the loss.

**§ 103.38 Is there anything else for BIA or the lender to do after BIA makes payment?**

When BIA pays the lender on its claim for loss, the lender must sign and deliver to BIA an assignment of rights to its loan agreement with the borrower, in

a document acceptable to BIA. Immediately upon payment, BIA is subrogated to all rights of the lender under the loan agreement with the borrower, and must pursue collection efforts against the borrower and any co-maker and guarantor, as required by law.

**§ 103.39 When will BIA refuse to pay all or part of a lender's claim?**

BIA may deny all or part of a lender's claim for loss when:

- (a) The loan is not guaranteed or insured as indicated in § 103.18;
- (b) The guaranty or insurance coverage has become invalid under §§ 103.28, 103.29, or 103.36(e);
- (c) The lender has not met the standard of care indicated in § 103.30;
- (d) The lender presents a claim for a residual loss after attempting to liquidate loan collateral, and:
  - (1) The lender has not made a reasonable effort to liquidate all security for the loan;
  - (2) The lender has taken an unreasonable amount of time to complete its liquidation efforts, the probable consequence of which has been to reduce overall prospects of loss recovery; or
  - (3) The lender's loss claim is inflated by unreasonable liquidation expenses or unjustifiable deductions from collateral liquidation proceeds applied to the loan balance; or
- (e) The lender has otherwise failed in any material respect to follow the requirements of this part, and BIA can reasonably attribute some or all of the lender's loss to that failure.

**§ 103.40 Will BIA make exceptions to its criteria for denying payment?**

(a) BIA will not reduce or deny payment solely on the basis of §§ 103.39(c) or (e) when the lender making the claim for loss:

(1) Is a person to whom a previous lender transferred the loan under §§ 103.28 or 103.29 before maturity for value;

(2) Notified BIA of its acquisition of the loan interest as required by §§ 103.28 or 103.29;

(3) Had no involvement in or knowledge of the actions or circumstances that would have allowed BIA to reduce or deny payment to a previous lender; and

(4) Has not itself violated the standards set forth in §§ 103.39(c) or (e).

(b) If BIA makes payment to a lender under this section, it may seek reimbursement from the previous lender or lenders who contributed to the loss by violating §§ 103.39(c) or (e).

**§ 103.41 What happens if a lender violates provisions of this part?**

In addition to reducing or eliminating payment on a specific claim for loss, BIA may either temporarily suspend, or permanently bar, a lender from making or acquiring loans under the Program if the lender repeatedly fails to abide by the requirements of this part, or if the lender significantly violates the requirements of this part on any single occasion.

**§ 103.42 How long must a lender comply with Program requirements?**

(a) A lender must comply in general with Program requirements during:

(1) The effective period of its loan guaranty agreement or loan insurance agreement; and

(2) Whatever additional period is necessary to resolve any outstanding loan guaranty or insurance claims or coverage the lender may have.

(b) Except as otherwise required by law, a lender must maintain records with respect to a particular loan for 6 years after either:

(1) The loan is repaid in full; or

(2) The lender accepts payment from BIA for a loss on the loan, pursuant to a guaranty certificate or an insurance agreement.

(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 rancharia, 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, rancharia, village, community or corporation that the Secretary acknowledges to exist as an Indian tribe, and that is eligible for services from BIA.

**§ 103.45 Information collection.**

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

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

Dated: December 28, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 01-1249 Filed 1-16-01; 8:45 am]

**BILLING CODE 4310-02-P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 155**

[USCG-1998-3417]

RIN 2115-AF60

**Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; partial suspension of regulation.

**SUMMARY:** Current vessel response plan regulations require the owners or operators of vessels carrying Groups I