

Bureau of Indian Affairs, Interior

§ 103.15

amount, purpose, interest rate, schedule of payments, and security (including insurance requirements), and the lender's terms and conditions for funding;

(g) The lender's good faith estimate of any loan-related fees and costs it will charge the borrower, as authorized under this part;

(h) If any significant portion of the loan will be used to finance construction, renovation, or demolition work, the lender's:

(1) Insurance and bonding requirements for the work;

(2) Proposed draw requirements; and

(3) Proposed work inspection procedures;

(i) If any significant portion of the loan will be used to refinance or otherwise retire existing indebtedness:

(1) A clear description of all loans being paid off, including the names of all makers, cosigners and guarantors, maturity dates, payment schedules, uncured delinquencies, collateral, and payoff amounts as of a specific date; and

(2) A comparison of the terms of the loan or loans being paid off and the terms of the new loan, identifying the advantages of the new loan over the loan being paid off.

§ 103.13 How does a lender apply for loan insurance coverage?

BIA-approved lenders can make loans insured under the Program in two ways, depending on the size of the loan:

(a) For loans in an original principal amount of up to \$100,000 per borrower, the lender can make each loan in accordance with the lender's loan insurance agreement, without specific prior approval from BIA.

(b) For loans in an original principal amount of over \$100,000, the lender must seek BIA's specific prior approval in each case. The lender must submit a loan insurance coverage application request form, together with the same information required for a loan guaranty under § 103.12, except for the information required by § 103.12(a).

(c) The lender must submit a loan insurance application package even for a loan of less than \$100,000 if:

(1) The total outstanding balance of all insured loans the lender is extend-

ing to the borrower under the Program exceeds \$100,000; or

(2) the lender makes a request for interest subsidy, pursuant to § 103.21.

§ 103.14 Can BIA request additional information?

BIA may require the lender to provide additional information, whenever BIA believes it needs the information to properly evaluate a new lender, guaranty application, or insurance application. After BIA issues a loan guaranty or insurance coverage, the lender must let BIA inspect the lender's records at any reasonable time for information concerning the Program.

§ 103.15 Are there any prohibited loan terms?

A loan agreement guaranteed or insured under the Program may not contain:

(a) Charges by the lender styled as "points," loan origination fees, or any similar fees (however named), except that if authorized in the loan agreement, the lender may charge the borrower a reasonable annual loan servicing fee that:

(1) Is not included as part of the loan principal; and

(2) Does not bear interest;

(b) Charges of any kind by the lender or by any third party except for the reasonable and customary cost of legal and architectural services, broker commissions, surveys, compliance inspections, title inspection and/or insurance, lien searches, appraisals, recording costs, premiums for required hazard, liability, key man life, and other kinds of insurance, and such other charges as BIA may approve in writing;

(c) A loan repayment term of over 30 years;

(d) Payments scheduled less frequently than annually;

(e) A prepayment penalty, unless the terms of the penalty are clearly specified in BIA's loan guaranty or loan insurance conditions;

(f) An interest rate greater than what BIA considers reasonable, taking into account the range of rates prevailing in the private market for similar loans;

(g) A variable interest rate, unless the rate is tied to a specific prime rate

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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

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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