

Subsecs. (a), (b). Pub. L. 109-221, § 401(b)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which authorized loan sale or assignment and set forth parameters for initial transfers.

Subsec. (c). Pub. L. 109-221, § 401(b)(2), (3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which set forth requirements for secondary transfers under this subchapter.

Subsec. (c)(2). Pub. L. 109-221, § 401(b)(4), added par. (2) and struck out former par (2) which provided for the incontestability of a guarantee or insurance of a loan under this subchapter with an exception for fraud or misrepresentation.

Subsec. (d). Pub. L. 109-221, § 401(b)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 109-221, § 401(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 109-221, § 401(b)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 109-221, § 401(b)(6), substituted "subsection (h)" for "subsection (i)" in introductory provisions and struck out ", and issuance of acknowledgments," after "agent functions" in par. (2)(B).

Pub. L. 109-221, § 401(b)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g) to (i). Pub. L. 109-221, § 401(b)(3), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g) redesignated (f).

2002—Pub. L. 107-331 designated existing provisions as subsec. (a), inserted heading and substituted "Any loan guaranteed or insured" for "Any loan guaranteed", and added subsecs. (b) to (i).

1988—Pub. L. 100-442 amended section generally. Prior to amendment, section read as follows: "Any loan guaranteed hereunder, including the security given therefor, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the United States or of any State or the District of Columbia."

#### Statutory Notes and Related Subsidiaries

##### FINDINGS AND PURPOSE

Pub. L. 107-331, title I, § 102, Dec. 13, 2002, 116 Stat. 2835, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide Native American borrowers with access to commercial sources of capital that otherwise would not be available through the guarantee or insurance of loans by the Secretary of the Interior;

"(2) although the Secretary of the Interior has made loan guarantees and insurance available, use of those guarantees and that insurance by lenders to benefit Native American business borrowers has been limited;

"(3) twenty-seven years after the date of enactment of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) [Pub. L. 93-262, which was approved Apr. 12, 1974], the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

"(4) use by commercial lenders of the available loan insurance and guarantees may be limited by liquidity and other capital market-driven concerns; and

"(5) it is in the best interest of the insured and guaranteed loan program of the Department of the Interior—

"(A) to encourage the orderly development and expansion of a secondary market for loans guaranteed or insured by the Secretary of the Interior; and

"(B) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

"(b) PURPOSE.—The purpose of this Act [see Short Title of 2002 Amendment note set out under section 1451

of this title] is to reform and clarify the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) in order to—

"(1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;

"(2) preserve the authority of the Secretary to administer the program and regulate lenders;

"(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;

"(4) provide for the appointment by the Secretary of a qualified fiscal transfer agent to establish and administer a system for the orderly transfer of those loans; and

"(5)(A) authorize the Secretary to promulgate regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary; and

"(B) allow the pooling of those loans as the secondary market develops."

#### § 1486. Loans ineligible for guaranty or insurance

Loans made by any agency or instrumentality of the Federal Government (not including an eligible Community Development Finance Institution), or by an organization of Indians from funds borrowed from the United States, and loans the interest on which is not included in gross income for the purposes of chapter 1 of title 26 shall not be eligible for guaranty or insurance hereunder.

(Pub. L. 93-262, title II, § 206, Apr. 12, 1974, 88 Stat. 80; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 109-221, title IV, § 401(c), May 12, 2006, 120 Stat. 342.)

#### Editorial Notes

##### AMENDMENTS

2006—Pub. L. 109-221 inserted "(not including an eligible Community Development Finance Institution)" after "Government".

1986—Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

#### § 1487. Loans eligible for insurance

Any loans insured hereunder shall be restricted to those made by a financial institution subject to examination and supervision by an agency of the United States, a State, or the District of Columbia, and to loans made by Indian organizations from their own funds to other tribes or organizations of Indians.

(Pub. L. 93-262, title II, § 207, Apr. 12, 1974, 88 Stat. 80.)

#### § 1488. Lenders authorized to make loans; decrease or increase of liability under the guaranty

Loans guaranteed hereunder may be made by any lender satisfactory to the Secretary, except as provided in section 1486 of this title. The liability under the guaranty shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation.

(Pub. L. 93-262, title II, § 208, Apr. 12, 1974, 88 Stat. 80.)

**§ 1489. Loans made by certain financial institutions without regard to limitations and restrictions of other Federal statutes with respect to certain particulars**

Any loan made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia, at least 20 per centum of which is guaranteed hereunder, may be made without regard to the limitations and restrictions of any other Federal statute with respect to (a) ratio of amount of loan to the value of the property; (b) maturity of loans; (c) requirement of mortgage or other security; (d) priority of lien; or (e) percentage of assets which may be invested in real estate loans.

(Pub. L. 93-262, title II, §209, Apr. 12, 1974, 88 Stat. 80.)

**§ 1490. Maturity of loans**

The maturity of any loan guaranteed or insured hereunder shall not exceed thirty years.

(Pub. L. 93-262, title II, §210, Apr. 12, 1974, 88 Stat. 80.)

**§ 1491. Defaults; written notification; pro rata payments; subrogation and assignment rights of Secretary; cancellation of uncollectable portion of obligations; forbearance for benefit of borrower; interest or charges cessation date**

In the event of a default of a loan guaranteed hereunder, the holder of the guaranty certificate may immediately notify the Secretary in writing of such default and the Secretary shall thereupon pay to such holder the pro rata portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guaranty and receive an assignment of the obligation and security. The Secretary may cancel the uncollectable portion of any obligation, to which he has an assignment or a subrogated right under this section. Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower as may be agreed upon by the parties to the loan and approved by the Secretary. The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

(Pub. L. 93-262, title II, §211, Apr. 12, 1974, 88 Stat. 80; Pub. L. 98-449, §6, Oct. 4, 1984, 98 Stat. 1725.)

**Editorial Notes**

**AMENDMENTS**

1984—Pub. L. 98-449 struck out proviso at end of second sentence which provided that proceedings pursuant to this section shall be effective only after following the procedure set out in section 386a of this title.

**§ 1492. Claims for losses; submission to Secretary; reimbursement; single and aggregate loss limitations, conditions; assignment of note or judgment; collection or cancellation by Secretary; interest or charges cessation date**

When a lender suffers a loss on a loan insured hereunder, including accrued interest, a claim

therefor shall be submitted to the Secretary. If the Secretary finds that the loss has been suffered, he shall reimburse the lender therefor: *Provided*, That the amount payable to the lender for a loss on any one loan shall not exceed 90 per centum of such loss: *Provided further*, That no reimbursement may be made for losses in excess of 15 per centum of the aggregate of insured loans made by the lender: *Provided further*, That before any reimbursement is made, all reasonable collection efforts shall have been exhausted by the lender, and the security for the loan shall have been liquidated to the extent feasible, and the proceeds applied on the debt. Upon reimbursement, in whole or in part, to the lender, the note or judgment evidencing the debt shall be assigned to the United States, and the lender shall have no further claim against the borrower or the United States. The Secretary shall then take such further collection action as may be warranted, or may cancel the uncollectable portion of any debt assigned pursuant hereto. The Secretary may establish a date upon which accrual of interest or charges shall cease.

(Pub. L. 93-262, title II, §212, Apr. 12, 1974, 88 Stat. 80.)

**§ 1493. Loan refusal; conditions; prohibition against acquisition of additional loans; payment of claims on loans made in good faith**

Whenever the Secretary finds that any lender or holder of a guaranty certificate fails to maintain adequate accounting records, or to demonstrate proper ability to service adequately loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any further loans made by such lender or holder, and may bar such lender or holder from acquiring additional loans guaranteed or insured hereunder: *Provided*, That the Secretary shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

(Pub. L. 93-262, title II, §213, Apr. 12, 1974, 88 Stat. 81.)

**§ 1494. Evidence of eligibility of loan for and amount of guaranty or insurance; defenses and partial defenses against original lender**

Any evidence of guaranty or insurance issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guaranty or insurance under the provisions of this chapter and the amount of such guaranty or insurance: *Provided*, That nothing in this section shall preclude the Secretary from establishing, as against the original lender, defenses based on fraud or material misrepresentation or bar him from establishing, by regulations in force at the date of such issuance or disbursement, whichever is the earlier, partial defenses to the amount payable on the guaranty or insurance.

(Pub. L. 93-262, title II, §214, Apr. 12, 1974, 88 Stat. 81.)