

shall issue a certificate as evidence of the guaranty. Such certificate shall be issued only when, in the judgment of the Secretary, there is a reasonable prospect of repayment. No loan to an individual Indian may be guaranteed or insured which would cause the total unpaid principal indebtedness to exceed \$500,000. No loan to an economic enterprise (as defined in section 1452 of this title) in excess of \$250,000, or such lower amount as the Secretary may determine to be appropriate, shall be insured unless prior approval of the loan is obtained from the Secretary.

(Pub. L. 93-262, title II, §204, Apr. 12, 1974, 88 Stat. 79; Pub. L. 98-449, §5, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 100-442, §1, Sept. 22, 1988, 102 Stat. 1763; Pub. L. 101-644, title III, §303(b), Nov. 29, 1990, 104 Stat. 4668; Pub. L. 107-331, title I, §103(a), Dec. 13, 2002, 116 Stat. 2836.)

#### Editorial Notes

##### AMENDMENTS

2002—Pub. L. 107-331 substituted “\$250,000” for “\$100,000”.

1990—Pub. L. 101-644 struck out “prior” before “approval” in first sentence and substituted “may review” for “shall review” in second sentence.

1988—Pub. L. 100-442 substituted “\$500,000” for “\$350,000”.

1984—Pub. L. 98-449 substituted “\$350,000” for “\$100,000”, and inserted after first sentence “The Secretary shall review each loan application individually and independently from the lender.”

#### § 1485. Sale or assignment of loans and underlying security

##### (a) In general

All or any portion of a loan guaranteed or insured under this subchapter, including the security given for the loan—

- (1) may be transferred by the lender by sale or assignment to any person; and
- (2) may be retransferred by the transferee.

##### (b) Transfers of loans

With respect to a transfer described in subsection (a)—

- (1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and
- (2) the transferee shall give notice of the transfer to the Secretary.

##### (c) Full faith and credit

###### (1) In general

The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this subchapter after December 13, 2002.

###### (2) Validity

Except as provided in regulations in effect on the date on which a loan is made, the validity of a guarantee or insurance of a loan under this subchapter shall be incontestable.

##### (d) Damages

Notwithstanding section 3302 of title 31, the Secretary may recover from a lender of a loan under this subchapter any damages suffered by the Secretary as a result of a material breach of

the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

##### (e) Fees

###### (1) In general

The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

###### (2) Compensation of fiscal transfer agent

A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.

##### (f) Central registration of loans

On promulgation of final regulations under subsection (h), the Secretary shall—

(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

(2) enter into 1 or more contracts with a fiscal transfer agent—

(A) to act as the designee of the Secretary under this section; and

(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions under this section.

##### (g) Pooling of loans

###### (1) In general

Nothing in this subchapter prohibits the pooling of whole loans or interests in loans transferred under this section.

###### (2) Regulations

In promulgating regulations under subsection (i),<sup>1</sup> the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

##### (h) Regulations

Not later than 180 days after December 13, 2002, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.

(Pub. L. 93-262, title II, §205, Apr. 12, 1974, 88 Stat. 80; Pub. L. 100-442, §2, Sept. 22, 1988, 102 Stat. 1763; Pub. L. 107-331, title I, §103(b), Dec. 13, 2002, 116 Stat. 2836; Pub. L. 109-221, title IV, §401(b), May 12, 2006, 120 Stat. 342.)

#### Editorial Notes

##### REFERENCES IN TEXT

Subsection (i), referred to in subsec. (g)(2), was redesignated as subsection (h) of this section by Pub. L. 109-221, title IV, §401(b)(3), May 12, 2006, 120 Stat. 342.

##### AMENDMENTS

2006—Pub. L. 109-221, §401(b)(1), inserted section catchline.

<sup>1</sup> See References in Text note below.

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.)