

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2017

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## AN ACT

To amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Financing  
5 Amendments Act of 2002”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the Indian Financing Act of 1974 (25  
4 U.S.C. 1451 et seq.) was intended to provide Native  
5 American borrowers with access to commercial  
6 sources of capital that otherwise would not be avail-  
7 able through the guarantee or insurance of loans by  
8 the Secretary of the Interior;

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

14 (3) 27 years after the date of enactment of the  
15 Indian Financing Act of 1974 (25 U.S.C. 1451 et  
16 seq.), the promotion and development of Native  
17 American-owned business remains an essential foun-  
18 dation for growth of economic and social stability of  
19 Native Americans;

20 (4) use by commercial lenders of the available  
21 loan insurance and guarantees may be limited by li-  
22 quidity and other capital market-driven concerns;  
23 and

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

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

5 (B) to expand the number of lenders origi-  
6 nating loans under the Indian Financing Act of  
7 1974 (25 U.S.C. 1451 et seq.).

8 (b) PURPOSE.—The purpose of this Act is to reform  
9 and clarify the Indian Financing Act of 1974 (25 U.S.C.  
10 1451 et seq.) in order to—

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

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

17 (3) clarify that a good faith investor in loans in-  
18 sured or guaranteed by the Secretary will receive ap-  
19 propriate payments;

20 (4) provide for the appointment by the Sec-  
21 retary of a qualified fiscal transfer agent to establish  
22 and administer a system for the orderly transfer of  
23 those loans; and

24 (5)(A) authorize the Secretary to promulgate  
25 regulations to encourage and expand a secondary

1 market program for loans guaranteed or insured by  
2 the Secretary; and

3 (B) allow the pooling of those loans as the sec-  
4 ondary market develops.

5 **SEC. 3. AMENDMENTS TO INDIAN FINANCING ACT.**

6 (a) **LIMITATION ON LOAN AMOUNTS WITHOUT**  
7 **PRIOR APPROVAL.**—Section 204 of the Indian Financing  
8 Act of 1974 (25 U.S.C. 1484) is amended in the last sen-  
9 tence by striking “\$100,000” and inserting “\$250,000”.

10 (b) **SALE OR ASSIGNMENT OF LOANS AND UNDER-**  
11 **LYING SECURITY.**—Section 205 of the Indian Financing  
12 Act of 1974 (25 U.S.C. 1485) is amended—

13 (1) by striking “Any loan guaranteed” and in-  
14 serting the following:

15 “(a) **IN GENERAL.**—Any loan guaranteed or in-  
16 sured”; and

17 (2) by adding at the end the following:

18 “(b) **INITIAL TRANSFERS.**—

19 “(1) **IN GENERAL.**—The lender of a loan guar-  
20 anteed or insured under this title may transfer to  
21 any individual or legal entity—

22 “(A) all rights and obligations of the lend-  
23 er in the loan or in the unguaranteed or unin-  
24 sured portion of the loan; and

25 “(B) any security given for the loan.

1           “(2) ADDITIONAL REQUIREMENTS.—With re-  
2           spect to a transfer described in paragraph (1)—

3                   “(A) the transfer shall be consistent with  
4                   such regulations as the Secretary shall promul-  
5                   gate under subsection (i); and

6                   “(B) the lender shall give notice of the  
7                   transfer to the Secretary.

8           “(3) RESPONSIBILITIES OF TRANSFEREE.—On  
9           any transfer under paragraph (1), the transferee  
10          shall—

11                   “(A) be deemed to be the lender for the  
12                   purpose of this title;

13                   “(B) become the secured party of record;  
14                   and

15                   “(C) be responsible for—

16                           “(i) performing the duties of the lend-  
17                           er; and

18                           “(ii) servicing the loan in accordance  
19                           with the terms of the guarantee by the  
20                           Secretary of the loan.

21          “(c) SECONDARY TRANSFERS.—

22                   “(1) IN GENERAL.—Any transferee under sub-  
23                   section (b) of a loan guaranteed or insured under  
24                   this title may transfer to any individual or legal  
25                   entity—

1           “(A) all rights and obligations of the  
2           transferee in the loan or in the unguaranteed or  
3           uninsured portion of the loan; and

4           “(B) any security given for the loan.

5           “(2) ADDITIONAL REQUIREMENTS.—With re-  
6           spect to a transfer described in paragraph (1)—

7           “(A) the transfer shall be consistent with  
8           such regulations as the Secretary shall promul-  
9           gate under subsection (i); and

10          “(B) the transferor shall give notice of the  
11          transfer to the Secretary.

12          “(3) ACKNOWLEDGMENT BY SECRETARY.—On  
13          receipt of a notice of a transfer under paragraph  
14          (2)(B), the Secretary shall issue to the transferee an  
15          acknowledgement by the Secretary of—

16          “(A) the transfer; and

17          “(B) the interest of the transferee in the  
18          guaranteed or insured portion of the loan.

19          “(4) RESPONSIBILITIES OF LENDER.—Notwith-  
20          standing any transfer permitted by this subsection,  
21          the lender shall—

22          “(A) remain obligated on the guarantee  
23          agreement or insurance agreement between the  
24          lender and the Secretary;

1           “(B) continue to be responsible for serv-  
2           icing the loan in a manner consistent with that  
3           guarantee agreement or insurance agreement;  
4           and

5           “(C) remain the secured creditor of record.

6           “(d) FULL FAITH AND CREDIT.—

7           “(1) IN GENERAL.—The full faith and credit of  
8           the United States is pledged to the payment of all  
9           loan guarantees and loan insurance made under this  
10          title after the date of enactment of this subsection.

11          “(2) VALIDITY.—

12          “(A) IN GENERAL.—Except as provided in  
13          subparagraph (B), the validity of a guarantee  
14          or insurance of a loan under this title shall be  
15          incontestable if the obligations of the guarantee  
16          or insurance held by a transferee have been ac-  
17          knowledged under subsection (c)(3).

18          “(B) EXCEPTION FOR FRAUD OR MIS-  
19          REPRESENTATION.—Subparagraph (A) shall  
20          not apply in a case in which a transferee has  
21          actual knowledge of fraud or misrepresentation,  
22          or participates in or condones fraud or mis-  
23          representation, in connection with a loan.

24          “(e) DAMAGES.—Notwithstanding section 3302 of  
25          title 31, United States Code, the Secretary may recover

1 from a lender of a loan under this title any damages suf-  
 2 fered by the Secretary as a result of a material breach  
 3 of the obligations of the lender with respect to a guarantee  
 4 or insurance by the Secretary of the loan.

5 “(f) FEES.—The Secretary may collect a fee for any  
 6 loan or guaranteed or insured portion of a loan that is  
 7 transferred in accordance with this section.

8 “(g) CENTRAL REGISTRATION OF LOANS.—On pro-  
 9 mulgation of final regulations under subsection (i), the  
 10 Secretary shall—

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

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

16 “(A) to act as the designee of the Sec-  
 17 retary under this section; and

18 “(B) to carry out on behalf of the Sec-  
 19 retary the central registration and fiscal trans-  
 20 fer agent functions, and issuance of acknowl-  
 21 edgements, under this section.

22 “(h) POOLING OF LOANS.—

23 “(1) IN GENERAL.—Nothing in this title pro-  
 24 hibits the pooling of whole loans or interests in loans  
 25 transferred under this section.

1           “(2) REGULATIONS.—In promulgating regula-  
2           tions under subsection (i), the Secretary may include  
3           such regulations to effect orderly and efficient pool-  
4           ing procedures as the Secretary determines to be  
5           necessary.

6           “(i) REGULATIONS.—Not later than 180 days after  
7           the date of enactment of this subsection, the Secretary  
8           shall develop such procedures and promulgate such regula-  
9           tions as are necessary to facilitate, administer, and pro-  
10          mote transfers of loans and guaranteed and insured por-  
11          tions of loans under this section.”.

Passed the Senate September 17, 2002.

Attest:

*Secretary.*

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To amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.