

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 1

General

Page 1

1.1 Purpose. This chapter provides general authorities and guidance on the administration of Indian Affairs loan programs to individual Indians, Tribes, and Indian-owned companies.

1.2 Objective. The objective of Indian Affairs loan programs is to improve economic and social conditions among Indian people by assisting Indian organizations and individual Indians to obtain financing for commercial, industrial, agricultural, and other developmental activities, including loans for educational purposes and housing.

1.3 Authority.

A. 25 U.S.C. § 1451, Indian Financing Act of 1974, Public Law 93-262 as amended by Public Law 98-449, 98 Stat. 1725;

B. 2 U.S.C. § 661, Omnibus Budget Reconciliation Act of 1990, Title V - The Federal Credit Reform Act of 1990, 104 Stat. 1388, Public Law 101-508; and

C. 31 U.S.C. § 3701, Debt Collection Improvement Act of 1996, 110 Stat 1321-1358, Public Law 104-134.

1.4 Guidance.

A. Treasury Financial Manual, Part 2, Chapter 4100, Credit and Debt Management Reporting;

B. Laws, Regulations, and Guidance Related to Debt Management Service Programs and Initiatives, Treasury Financial Management Service, is available on the Internet at: <http://www.fms.treas.gov/debt/dmpolicy.html>;

C. Credit Memorandum Handbook, for the financial, management, and market analysis of loans submitted for guarantees, is available from the Office of Economic Development, 1849 C St. NW, Mail Stop 4660-MIB, Washington, DC 20240; and

D. Policies for Federal Credit Programs and Non-tax Receivables, OMB Circular A-129.

1.5 Definitions.

A. Default. Failure of a borrower to:

- (1) Make scheduled payments on a loan when due;
- (2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan; or
- (3) Comply with the covenants, obligations, or other provisions of a loan agreement.

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 1

General

Page 2

B. Delinquency. Failure of a borrower to make scheduled payments on a loan when due.

C. Financing Statement. The document filed or recorded in county or state offices pursuant to the Uniform Commercial Code (UCC) notifying third parties that a lender has a lien on the chattels and/or crops of a borrower. The filing of a financing statement is also known as perfecting a lien.

D. Loan Servicing. The monitoring of a loan account and assuring its good standing by accounting for scheduled payments, reporting delinquencies, protecting against diversion of funds for unauthorized purposes, requiring that necessary taxes and insurance premiums be paid, and maintaining current financing statements.

E. Technical Default. A violation of a requirement in the loan agreement which can be cured to keep the loan agreement in force. A delinquency in payments may be considered a technical default if the borrower is able to resume payments.

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 2

Loan Guarantees and Interest Subsidies

Page 1

2.1 Purpose. This chapter describes the responsibilities and procedures for the loan guaranty and interest subsidy programs of Indian Affairs.

2.2 Authority. 25 CFR § 103, Loan Guaranty, Insurance, and Interest Subsidy.

2.3 Definitions.

A. Guaranty. The obligation assumed by the United States to repay a specific percentage of a loan if the borrower defaults.

B. Interest Subsidy. Payments which may be made by Indian Affairs to lenders making guaranteed loans to reduce the interest rate which borrowers pay the lenders to a pre-established rate. Only guaranteed loans can be subsidized.

C. Premium. The amount paid by a lender to keep a loan guaranty in effect.

2.4 Responsibilities.

A. Commissioner or Deputy Commissioner.

(1) Approves or denies guaranty applications, loan cancellations, and compromises;

(2) Delegates authority for Area Directors, the Office of Economic Development (OED) and others to perform duties listed in 2.4.A.(1);

(3) Reviews and sustains or reinstates loan guaranty applications which have been denied by Area Directors and appealed by applicants to the Bureau instead of the Interior Board of Indian Appeals (IBIA).

B. Director, Office of Economic Development (OED).

(1) Establishes policies, performance standards, and milestones for the operation of the guaranteed loan program;

(2) Allots loan guaranty ceilings to Area Directors and ensures that Areas do not approve more guarantees than their ceiling permits;

(3) Recommends guarantees to be approved by the Commissioner or Deputy Commissioner; and

(4) Provides technical assistance to and acts as a liaison between applicant and Bureau Credit Officers.

C. Area Directors/Agency Superintendents.

(1) Provide oversight and supervision of guaranty loan programs within the Area/Agency; and

(2) Recommend guarantees and forward them to OED for surnaming, or approve or deny loan guaranty applications if signature authority has been delegated and loan guaranty ceiling has not been met.

D. Credit Officers.

(1) Provide technical assistance to lenders (referred to as applicants in applicable regulations) and borrowers;

(2) Provide borrower and/or lender the opportunity to correct deficiencies found in a loan guaranty/interest subsidy application;

(3) Recommend loans for guaranty and interest subsidy;

(4) Ensure lender is properly servicing loans;

(5) Service loans after lender has notified Indian Affairs of default and Indian Affairs has paid guaranty;

(6) Actively pursue collection of secured assets upon default by borrower and payment of guaranty by Indian Affairs;

(7) Prepare recommendations for cancellation or compromise of debt, when justified; and

(8) Refer uncollectible debt to the Department of Treasury or other collection agencies, as appropriate.

2.5 Guaranty/Interest Subsidy Application Procedures.

A. Loans may be guaranteed and subsidized if:

(1) The applicant and the borrower are eligible to participate in the program in accordance with regulations;

(2) The borrower can not obtain financing for the project by other means and the prospect of repayment is reasonable;

(3) A complete application package has been submitted as explained on the "Request for Loan Guaranty and Approval" (Illustration 1) and approved by the appropriate approving official; and

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 2

Loan Guarantees and Interest Subsidies

Page 3

(4) The lender makes timely premium payments.

B. The Credit Officer will submit a complete application package and application analysis as prescribed in the "Credit Memorandum Handbook" to the Area Director/Agency Superintendent for concurrence, approval, or denial and notify the lender once the application has been approved or denied.

C. When a guaranty is denied, Indian Affairs must:

(1) Provide the borrower and the lender with a written explanation why the guaranty was denied; and

(2) Provide lender and borrower with information on appeal rights.

2.6 Periodic Review of Loans. Although it is the responsibility of the lender to service the loan, Indian Affairs must ensure that:

A. Lenders submit "Lender's Report of Premiums and Interest Subsidies Due on Guaranteed Loans," semi-annually (Illustration 2), or more frequently if required by the guaranty agreement;

B. Lump-sum or semi-annual premiums are received from lenders; and

C. Lenders and borrowers are notified when guaranty and/or subsidy is no longer in effect due to non-payment of premium or for other reasons.

2.7 Loan Default Procedures. Indian Affairs is only responsible for paying loan guarantees if the lender notifies Indian Affairs of the default within timeframes specified in the regulations. In the event of a technical default, the lender may choose to begin foreclosure proceedings or give the borrower time to cure the default. The Bureau must concur if the lender intends to give the borrower additional time to cure the default.

A. Regarding the lender, Indian Affairs will:

(1) Ensure that the lender has taken adequate measures to protect or foreclose upon pledged assets; and

(2) Pay the lender the guaranteed amount within 60 days after request for payment. Regulations will determine the amount of the payment, which is based on a percentage of the outstanding loan amount.

B. Regarding the borrower, Indian Affairs will:

(1) Notify the borrower that Indian Affairs will assume the servicing of the loan;

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 2

Loan Guarantees and Interest Subsidies

Page 4

(2) Determine whether the loan will be foreclosed, restructured or otherwise modified based upon negotiations with the borrower;

(3) Service the loan and maintain a file on the loan if the borrower continues to make payments on the loan; and

(4) Make necessary referrals to the Department of Treasury or other collection agency, as appropriate, and notify borrower of the referral.

Name of Borrower _____

The request for BIA to Guarantee a loan in the amount of \$ _____ with annual interest rate of _____ to be made by and between _____ (Lender) and _____ (Borrower) is hereby approved pursuant to the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) The maturity date of this loan is _____. This authorization is subject to:

- (a) Provisions of the Guaranty Agreement between Lender and BIA dated _____.
- (b) First disbursement of the loan being made not later than ____ months, and no disbursement being made later than ____ Months from the date of this Authorization unless such time is extended pursuant to prior written consent by BIA.
- (c) Prior to each disbursement on account of the loan, Lender shall be in receipt of evidence satisfactory to it, in its sole discretion, that there has been no unremedied adverse change since the date of the application, or since any of the preceding disbursements, in the financial or any other condition of the Borrower which would warrant withholding or not making any such disbursement or any further disbursement.
- (d) A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The guaranty of a loan will not be effective until the Commissioner receives the premium payment.
- (e) The Commissioner may pay the lender an interest subsidy on loans which are guaranteed. The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate. The interest subsidy rate established will be in effect for three years and extended on an annual basis for an additional two years, if justified.
- (f) Other conditions: Refer to Attachment Request for Loan Guaranty and Approval, dated _____.

Date

Commissioner of Indian Affairs
or Area Director

Paperwork Reduction Act Notice (5 CFR Part 1320): This form is used to guarantee a loan. No person is required to respond to a collection of information unless it displays a current valid OMB control number.

Burden Estimate: The public reporting burden is estimated to average 1 hour per respondent. Direct comment regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Officer, Bureau of Indian Affairs, 1849 C Street, NW, Mailstop 4150-MIB, Washington, D.C. 20240; and to the Office of Management and Budget, Paperwork Reduction Project, 1024-1076-0020.

Privacy Act Statement: (5 U.S.C. 552(a)): The authorization to collect this information is 25 U.S.C. 1498. The information will be used to rate loans and assure compliance with 25 U.S.C. 1463 which requires a reasonable prospect of repayment before a loan can be guaranteed. Disclosures may be made to consumer reporting agencies, Federal, State, or local government, law enforcement responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule regulation order or license; U.S. Department of Justice, or in proceedings before a court or adjudicative body; Members of Congress; Department of the Treasury to effect payment; Federal Agency for collecting debts, and other Federal agencies to detect and eliminate fraud.

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF INDIAN AFFAIRS

LENDER'S REPORT OF PREMIUMS AND INTEREST SUBSIDIES DUE ON GUARANTEED LOANS

Borrower's Name _____ Loan Guaranty Certificate No. _____ EFA Index Rate _____
 Lender _____ Lender's ID No. _____
 _____ Guaranteed Agreement No. _____ Prime Rate @ Closing _____
 (Address) _____ Date _____
 _____ Telephone No. _____
 (City, State, Zip Code)

INTEREST SUBSIDY COMPUTATION

| Date | | | Principal | | | Interest | | | | |
|-----------------------------|--------------------------------|--------------------|------------------------------------|-------------------------|-----------------------|----------------------------|-----------------------------|-------------------------|--------------------------------------|----------------------------------|
| (1) Date Last Payment | (2) Date This Payment | (3) No. Days | (4) Previous Loan Balance | (5) Change + or - | (6) New Balance | (7) Paid by Borrower | (8) BIA Fixed Rate | (9) Lender's Rate | (10) Subsidy Factor (9-8/9) | (11) Subsidy Due (10X7) |
| | | | | | | | | | | |

Premium Payment (check one box) Semiannual Payment or One-time Payment

| Semiannual Payment | | | Single Payment | | | |
|---|-------------------------------|--------------------|----------------|---------------------|------------------------|--------------------|
| Principal balance as of June 30 ____ Dec. 31 ____ | Date to be Paid Through | Amount Due U.S. | Date | Principal Amount | Guaranty Percentage | Amount Due U.S. |
| | | | | | | |

Paperwork Reduction Act Notice (5 CFR Part 1320): This form is used to report premiums and loan subsidies due. No person is required to respond to a collection of information unless it displays a current valid OMB control number.

Burden Estimate: The public reporting burden is estimated to average 1 hour per respondent. Direct comment regarding the burden estimate or any other aspect of this form should be directed to the Information Collection Officer, Bureau of Indian Affairs, 1849 C Street NW, Mailstop 4140-MIB, Washington, D.C. 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1024-1076-0020.

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GENERAL INSTRUCTIONS FOR COMPLETING FORM 5-4749

Computation of the Interest Subsidy Due To compute the interest subsidy Due to Lender, three factors will be used; the bank's rate, the Bureau's index rate, and the interest subsidy percentage. The bank's rate will be adjusted not more than quarterly. The Bureau's index rate will be fixed for the term of the subsidy and is determined at loan closing. The interest subsidy is the difference between the bank's and the Bureau's rate.

Illustration: (where prime rate = P)
 80 percent loan guaranty at P+2.75%. (If loan is 90% guaranteed, max. interest rate is P+1.5%)

| | <u>Closing</u> | <u>P+I%</u> | <u>P-1 %</u> |
|-------------------|----------------|-------------|--------------|
| Bank's Rate: | 10.5% | 11.5% | 9.5% |
| Bureau's Rate: | <6.5%> | <6.5%> | <6.5%> |
| Interest Subsidy: | 4.0% | 5.0% | 3.0% |

Instructions to Complete the Interest Subsidies Due - Lender or bank official that completes the form will list name and telephone number.

Date - Enter the date the premium is paid, funds are advanced and payments are received.

- (1) - Enter the date of the last payment.
- (2) - Enter the date of this payment.
- (3) - Enter the total number of days between Dates (1) and (2)

Principal

- (4) - Enter the outstanding balance before payment.
- (5) - Enter the amount of principal payment being made.
- (6) - Subtract (5) from (4) and enter new outstanding balance.

Interest

- (7) - Enter amount of interest paid by the borrower.
- (8) - Enter the Bureau's fixed index rate.
- (9) - Enter the bank's interest rate.
- (10) - To obtain the interest subsidy factor, subtract (8) from (9) and divide total by (9).
- (11) - To compute the interest subsidy due lender, multiply (7) by (I 0).

Premium. A premium of two percent (2%) of the guaranteed portion of a loan will be charged to Lenders. The loan guaranty is not in effect until the Bureau of Indian Affairs receives the premium payment. All new loan guaranties will require a two percent premium payment. Existing loans may have 1/2 of I percent premium payments due semiannually.

Semiannual payments are computed by multiplying the existing outstanding balance by 1/2 of I percent (0.005). Single payments are computed by multiplying the guaranteed portion of the loan by two percent. (2%).

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 3

Direct Loans

Page 1

3.1 Purpose. This chapter describes responsibilities and procedures for monitoring and servicing direct loans to individuals and Indian-owned organizations, corporations, and partnerships.

3.2 Direct Loan Programs. There are no new appropriations for these programs.

A. Tribal Relending Program. Indian Affairs provided funds to Tribes from the Revolving Loan Fund so that Tribes could make loans to their members. The funds provided to the Tribe must be repaid to the government, but payments are structured so that income from Tribal loans is sufficient to pay the debt to Indian Affairs and also make additional new loans to other Tribal members.

B. Direct Loans to Individuals. There are existing loans which were made directly by Indian Affairs from the Revolving Loan Fund and still require loan servicing.

3.3 Responsibilities.

A. Director, Office of Economic Development.

- (1) Establish policies for the operation of the direct loan program; and
- (2) Provide technical assistance and act as a liaison between lenders, tribes and Bureau Credit Officers.

B. Area Directors.

- (1) Provide oversight and supervision of direct loan programs within Area; and
- (2) Advise Director, Office of Economic Development, of any substantial defaults.

C. Credit Officers.

- (1) Monitor repayments to the Revolving Loan Fund and begin delinquent debt proceedings as needed;
- (2) Prepare statistical reports, as required;
- (3) Provide technical assistance to tribes and individuals;
- (4) Perform periodic reviews to ensure that Tribal credit programs:
 - (a) Service loans properly, including requiring sufficient collateralization from borrowers and perfecting liens on collateral;
 - (b) Notify applicants whose loans were denied of the reason(s) for the declination and provide applicants with appeal rights and procedures; and

INDIAN AFFAIRS MANUAL

Part: 46

Loan Programs

Chapter: 3

Direct Loans

Page 2

- (c) Foreclose on loans where warranted; and
- (5) If the Bureau Credit Officer services loans on behalf of the Tribe:
 - (a) Process loan applications received from individuals and submit recommendations for approval or denial to the tribal loan committee;
 - (b) Provide applicants whose loans have been denied with the reason(s) for the declination and their appeal rights;
 - (c) Service current loans; and
 - (d) Recommend foreclosure on delinquent loans.

3.4 Credit Officers may recommend loans for approval under a relending program in accordance with 3.3(5) of this Chapter if:

- A.** The applicant is eligible to participate in the program in accordance with regulations and the Credit Program's Plan of Operations;
- B.** A complete application package has been submitted and the prospect of repayment is reasonable based on an analysis of the loan application; and
- C.** The applicant has offered collateral of sufficient value or importance to the applicant.

3.5 A restructuring of the loan made to the Tribe for the relending program may be approved by the Deputy Commissioner if:

- A.** The Tribe demonstrates that the relending program would likely be unable to continue if restructuring does not occur;
- B.** The restructured loan would have a reasonable prospect of repayment;
- C.** The Tribe is unable to make its payments in accordance with the current payment agreement; and
- D.** Repayment does not extend beyond 30 years from the date of the original loan.