

TITLE 25. INDIANS
CHAPTER 17. FINANCING ECONOMIC DEVELOPMENT OF INDIANS AND INDIAN ORGANIZATIONS
GENERAL PROVISIONS

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25 USCS § 1451

§ 1451. Congressional declaration of policy

It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.

§ 1452. Definitions

For the purpose of this Act [25 USCS §§ 1451 et seq.], the term--

- (a) "Secretary" means the Secretary of the Interior.
- (b) "Indian" means any person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) [43 USCS §§ 1601 et seq.].
- (c) "Tribe" means any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act [43 USCS §§ 1601 et seq.], which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.
- (d) "Reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 USCS §§ 1601 et seq.].
- (e) "Economic enterprise" means any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: *Provided*, That such Indian ownership shall constitute not less than 51 per centum of the enterprise.
- (f) "Organization", unless otherwise specified, shall be the governing body of any Indian tribe, as defined in subsection (c) hereof, or entity established or recognized by such governing body for the purpose of this Act [25 USCS §§ 1451 et seq.].
- (g) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.
- (h) "Surety" has the same meaning as in section 410 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, 694a).
- (i) "Surety Bond" means a bid bond, payment bond, or performance bond as those terms are defined in section 410 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, 694a).

§ 1453. Assistance or activities of other Federal agencies unaffected

No provision of this or any other Act shall be construed to terminate or otherwise curtail the assistance or activities of the Small Business Administration or any other Federal agency with respect to any Indian tribe, organization, or individual because of their eligibility for assistance under this Act [25 USCS §§ 1451 et seq.].

§ 1461. Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses

In order to provide credit that is not available from private money markets, or to supplement funds from private lenders, including loans guaranteed by the Secretary pursuant to section 201 of this Act [25 USCS § 1481], all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986) the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 19, 1950 (64 Stat. 44) as amended and supplemented, including sums received in settlement of debts of livestock pursuant to the Act of May 24, 1950 (64 Stat. 190) [25 USCS §§ 442, 443], and sums collected in repayment of loans heretofore or hereafter made, and as interest or other charges on loans, shall hereafter be administered as a single Indian Revolving Loan Fund. The fund shall be available for loans to Indians having a form of organization that is satisfactory to the Secretary and for loans to individual Indians: *Provided*, That, where the Secretary determines a rejection of a loan application from a member of an organization making loans to its membership from moneys borrowed from the fund is unwarranted, he may, in his discretion, make a direct loan to such individual from the fund. The fund shall also be available for administrative expenses incurred in connection therewith, or, in the discretion of the Secretary of the Interior, as a contribution to the Indian Loan Guaranty and Insurance Fund authorized by section 217 of this Act [25 USCS § 1497], or for the payment of interest subsidies authorized by section 301 of this Act [25 USCS § 1511].

§ 1462. Economic development; educational loans; limitation of loans to or investments in non-Indian organizations

Loans may be made for any purpose which will promote the economic development of (a) the individual Indian borrower, including loans for educational purposes, and (b) the Indian organization and its members including loans by such organizations to other organizations and investments in other organizations regardless of whether they are organizations of Indians: *Provided*, That not more than 50 per centum of loan made to an organization shall be used by such organization for the purpose of making loans to or investments in non-Indian organizations.

§ 1463. Repayment of loan; financing from other sources

Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment, and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions.

§ 1464. Maturity of loans; interest rate; interest deferral on educational loans

Loans shall be for terms that do not exceed thirty years and shall bear interest at (a) a rate determined by the Secretary of the Treasury taking into consideration the market yield on municipal bonds: *Provided*, That in no event shall the rate be greater than the rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus (b) such additional charge, if any, toward covering other costs of the program as the Secretary may determine to be consistent with its purpose: *Provided*, That educational loans may provide for interest to be deferred while the borrower is in school or in the military service.

§ 1465. Modification of amount of loan and document securing loan in collection of loan or in best interests of the United States

The Secretary may cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof heretofore or hereafter made from the revolving loan fund established by this *title* [25 USCS §§ 1461 et seq.] and its predecessor constituent funds which he determines to be uncollectable in whole or in part, or which is collectable only at an unreasonable cost, or when such action would, in his judgment, be in the best interests of the United States. He may also adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken to secure such loans.

§ 1466. Land and personal property title

Title to any land purchased by a tribe or by an individual Indian with loans made from the revolving loan fund may be taken in trust unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchasers without any restriction on alienation, control, or use. Title to any personal property purchased with a loan from the revolving loan fund shall be taken in the name of the purchaser.

§ 1467. Security for loan; assignment of securities; reasonable assurance of repayment

Any organization receiving a loan from the revolving loan fund shall be required to assign to the United States as security for the loan all securities acquired in connection with the loans made to its members from such funds unless the Secretary determines that the repayment of the loan to the United States is otherwise reasonably assured.

§ 1468. Authorization of appropriations

There is authorized to be appropriated, to provide capital and to restore any impairment of capital for the revolving loan fund \$ 50,000,000 exclusive of prior authorizations and appropriations.

§ 1469. Rules and regulations

The Secretary shall promulgate rules and regulations to carry out the provisions of this *title* [25 USCS §§ 1461 et seq.].

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LOAN GUARANTY AND INSURANCE

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§ 1481. Loan guaranties and insurance

(a) In general. In order to provide access to private money sources which otherwise would not be available, the Secretary may--

(1) guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; or

(2) insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.

(b) Eligible borrowers. The Secretary may guarantee or insure loans under subsection (a) to both for-profit and non-profit borrowers.

§ 1482. Premium charges; deposits in Indian Loan Guaranty and Insurance Fund

The Secretary shall fix such premium charges for the insurance and guarantee of loans as are in his judgment adequate to cover expenses and probable losses, and deposit receipts from such charges in the Indian Loan Guaranty and Insurance Fund established pursuant to section 217(a) of this *title* [25 USCS § 1497(a)].

§ 1483. Interest rate

Loans guaranteed or insured pursuant to this *title* [25 USCS §§ 1481 et seq.] shall bear interest (exclusive of premium charges for insurance, and service charge, if any) at rates not to exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable taking into consideration the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

§ 1484. Application for loan; approval by Secretary; issuance of certificate; limitations on amount of loans to individual Indians or economic enterprises; review by Secretary

The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for approval. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. The Secretary may review each loan application individually and independently from the lender. 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 3 [25 USCS § 1452]) 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.

§ 1485. Sale or assignment of loans and underlying security

(a) In general. All or any portion of a loan guaranteed or insured under this *title* [25 USCS §§ 1481 et seq.], 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 *title* [25 USCS §§ 1481 et seq.] after the date of enactment of this subsection [enacted Dec. 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 *title* [25 USCS §§ 1481 et seq.] shall be incontestable.

(d) Damages. Notwithstanding section 3302 of title 31, *United States Code*, the Secretary may recover from a lender of a loan under this *title* [25 USCS §§ 1481 et seq.] 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 *title* [25 USCS §§ 1481 et seq.] prohibits the pooling of whole loans or interests in loans transferred under this section.

(2) Regulations. In promulgating regulations under subsection (i), 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 the date of enactment of this subsection [enacted Dec. 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.

(i) [Redesignated]

§ 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 the Internal Revenue Code of 1954, as amended [26 USCS § 1 et seq.] shall not be eligible for guaranty or insurance hereunder.

§ 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.

§ 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 206 [25 USCS § 1486]. The liability under the guaranty shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation.

§ 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.

§ 1490. Maturity of loans

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

§ 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.

§ 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.

§ 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.

§ 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 Act [25 USCS §§ 1451 et seq.] 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.

§ 1495. Land and personal property titles

Title to any land purchased by a tribe or by an individual Indian with loans guaranteed or insured pursuant to this *title* [25 USCS §§ 1481 et seq.] may be taken in trust, unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchaser without any restriction on alienation, control, or use. Title to any personal property purchased with loans guaranteed or insured hereunder shall be taken in the name of the purchaser.

§ 1496. Powers of Secretary; finality of financial transactions and property acquisitions, management, and dispositions

The financial transactions of the Secretary incident to or arising out of the guaranty or insurance of loans and surety bonds, and the acquisition, management, and disposition of property, real, personal, or mixed, incident to such activities, shall be final and conclusive upon all officers of the Government. With respect to matters arising out of the guaranty or insurance program authorized by this *title* [25 USCS §§ 1481 et seq.], and notwithstanding the provisions of any other laws, the Secretary may--

- (a) sue and be sued in his official capacity in any court of competent jurisdiction;
- (b) subject to the specific limitations in this *title* [25 USCS §§ 1481 et seq.], consent to the modification, with respect to the rate of interest, time of payment on principal or interest or any portion thereof, security, or any other provisions of any note, contract, mortgage, or other instrument securing a loan or surety bond which has been guaranteed or insured hereunder;
- (c) subject to the specific limitations in this *title* [25 USCS §§ 1481 et seq.], pay, or compromise, any claim on, or arising because of any loan or surety bond guaranty or insurance;
- (d) subject to the specific limitations in this *title* [25 USCS §§ 1481 et seq.], pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including, but not limited to, any equity or right of redemption;
- (e) purchase at any sale, public or private, upon such terms and for such prices as he determines to be reasonable, and take title to property, real, personal, or mixed; and similarly sell, at public or private sale, exchange, assign, convey, or otherwise dispose of such property; and
- (f) complete, administer, operate, obtain, and pay for insurance on, and maintain, renovate, repair, modernize, lease, or otherwise deal with any property acquired or held pursuant to the guaranty or insurance program authorized by this *title* [25 USCS §§ 1481 et seq.].

§ 1497. Indian Loan Guaranty and Insurance Fund

(a) Establishment of revolving fund. There is hereby created an Indian Loan Guaranty and Insurance Fund (hereinafter referred to as the "fund") which shall be available to the Secretary as a revolving fund without fiscal year limitation for carrying out the provisions of this *title* [25 USCS §§ 1481 et seq.].

(b) Aggregate loans or surety bonds limitation. The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans or surety bonds guaranteed or insured under this *title* [25 USCS §§ 1481 et seq.], but the aggregate of such loans or surety bonds which are insured or guaranteed by the Secretary shall be limited to \$ 1,500,000,000.

(c) Assets, liabilities, and obligations of fund; loan and surety bond servicing and purchasing agreements; terms and conditions. All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the fund. The Secretary is authorized to make agreements with respect to servicing loans or surety bonds held, guaranteed, or insured by him under this *title* [25 USCS §§ 1481 et seq.] and purchasing such guaranteed or insured loans or surety bonds on such terms and conditions as he may prescribe.

(d) Utilization of fund for diverse payments. The Secretary may also utilize the fund to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans or surety bonds which are guaranteed or insured under this *title* [25 USCS §§ 1481 et seq.] or held by the Secretary, to acquire such security property at foreclosure sale or otherwise, and to pay administrative expenses.

(e) Authorization of appropriations. There are authorized to be appropriated for each fiscal year beginning in fiscal year 1985 such sums as may be necessary to fulfill obligations with respect to losses on loans or surety bonds guaranteed or insured under this *title* [25 USCS §§ 1481 et seq.]. All collections and all moneys appropriated pursuant to the authority of this subsection shall remain available until expended.

§ 1497a. Supplemental surety bond guarantee

(a) Amount; eligibility. The Secretary is authorized to provide a supplemental surety bond guarantee, not to exceed 20 percent of any loss, for any Indian individual or economic enterprise eligible for a surety guarantee under section 411 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, 694b), so that the aggregate of the two guarantees is 100 percent.

(b) Conditions. The Secretary may provide a supplemental guarantee under this section only if the Secretary determines that--

- (1) the Indian individual or economic enterprise has secured or will likely secure a surety bond guarantee under section 411 of the Small Business Investment Act of 1958, as amended [15 USCS § 694b];
- (2) the supplemental guarantee is necessary for the Indian individual or economic enterprise to secure a surety bond;
- (3) no more than 25 percent of the surety's business is comprised of bonds guaranteed pursuant to this section; and
- (4) the surety will provide appropriate technical assistance and advice to, and monitor the performance of, the Indian individual or economic enterprise for the prevention or mitigation of a loss.

(c) Fees and charges. The rules and regulations promulgated by the Secretary to carry out this section shall include the setting of reasonable fees to be paid by the Indian individual or economic enterprise and reasonable premium charges to be paid by sureties. In setting fees and charges, the Secretary may take into consideration the cost to the surety of providing the services required by paragraph (4) of subsection (b). The receipts from the fees and charges shall be deposited in the Fund established by section 217(a) of this Act [25 USCS § 1497(a)].

§ 1498. Rules and regulations

The Secretary shall promulgate rules and regulations to carry out the provisions of this *title* [25 USCS §§ 1481 et seq.].

§ 1499. Issue of bonds, debentures, or similar obligations

(a) The Secretary may guarantee not to exceed 90 percent of the unpaid principal and interest due on an issue of bonds, debentures, or similar obligations issued by an organization satisfactory to the Secretary. Such an issue shall be deemed a loan for purposes of sections 202, 203, 204, 205, 206, 209, 210, 211, 213, 214, 215, 216, and 217 of this Act [25 USCS §§ 1482-1486, 1489-1491, 1493-1497].

(b) The method by which an issue of bonds guaranteed under this section may be sold shall be subject to approval by the Secretary.