

107TH CONGRESS  
1ST SESSION

# H. R. 3407

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2001

Mrs. BONO (for herself, Mr. HAYWORTH, Mr. KILDEE, Mr. CAMP, and Mr. KENNEDY of Rhode Island) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

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 Act  
5 Reform Amendment”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The Indian Financing Act of 1974 (Public  
9 Law 93–262; 88 Stat. 77 et seq.) was intended to

1 provide Native American borrowers with access to  
2 commercial capital sources which otherwise would  
3 not be available through loans guaranteed by the  
4 Secretary of the Interior.

5 (2) Although the Secretary has made loan guar-  
6 antees available, their use by lenders to benefit Na-  
7 tive American business borrowers has been limited.

8 (3) 27 years after the date of the enactment of  
9 the Indian Financing Act of 1974, the promotion  
10 and development of Native American-owned business  
11 remains an essential foundation for growth of eco-  
12 nomic and social stability of Native Americans.

13 (4) Commercial lenders' use of the available  
14 loan guarantees may be limited by liquidity and  
15 other capital market-driven concerns.

16 (5) It is in the best interest of the Secretary's  
17 guaranteed loan program to encourage the orderly  
18 development and expansion of a secondary market,  
19 for loans guaranteed by the Secretary of the Inte-  
20 rior, and expand the number of lenders originating  
21 loans under the Indian Financing Act of 1974.

22 (b) PURPOSE.—It is the purpose of this Act to reform  
23 and clarify the Indian Financing Act of 1974 in order to—

1           (1) stimulate the use by lenders of secondary  
2 market investors for loans guaranteed by the Sec-  
3 retary;

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

6           (3) clarify that a good faith investor in loans  
7 guaranteed by the Secretary will receive appropriate  
8 payments;

9           (4) provide for the appointment by the Sec-  
10 retary of a qualified fiscal transfer agent which will  
11 establish and administer a system for the orderly  
12 transfer of such loans;

13           (5) authorize the Secretary to develop regula-  
14 tions to encourage and expand a secondary market  
15 program for loans guaranteed by the Secretary and  
16 to allow the pooling of such loans as the secondary  
17 market develops; and

18           (6) authorize the Secretary to establish a sched-  
19 ule for assessing lenders and investors for the nec-  
20 essary costs of the fiscal transfer agent and system.

21 **SEC. 3. AMENDMENT OF THE INDIAN FINANCING ACT.**

22           Section 205 of the Indian Financing Act of 1974 (25  
23 U.S.C. 1485) is amended—

24           (1) by inserting “(a)” before “Any loan”; and

1           (2) by adding at the end the following new sub-  
2           sections:

3           “(b)(1) The lender of a loan guaranteed under this  
4 title may transfer to any individual or legal entity all of  
5 the lender’s rights and obligations in such loan or in the  
6 unguaranteed portion thereof, and the security given  
7 therefor. Such transfer shall be consistent with such regu-  
8 lations as the Secretary shall establish, and the lender  
9 shall give notice of such transfer to the Secretary or the  
10 Secretary’s designee.

11          “(2) Upon any transfer permitted by this subsection,  
12 the transferee shall be deemed to be the lender under this  
13 title, shall become the secured party of record, and shall  
14 be responsible for performing the duties of the lender and  
15 for serving the loan in accordance with the terms of the  
16 Secretary’s guarantee thereof.

17          “(c)(1) The lender of a loan guaranteed under this  
18 title, and any subsequent transferee of all or part of the  
19 guaranteed portion of such loan, may transfer to any indi-  
20 vidual or legal entity all or part of the guaranteed portion  
21 of such loan and the security therefor. Such transfer shall  
22 be consistent with such regulations as the Secretary shall  
23 establish, and the transferor shall give notice of such  
24 transfer to the Secretary or the Secretary’s designee. The  
25 Secretary or the Secretary’s designee shall issue to the

1 transferee the Secretary's acknowledgement of the trans-  
2 fer and of the transferee's interest in the guaranteed por-  
3 tion of the loan.

4       “(2) Notwithstanding any transfer permitted by this  
5 subsection, the lender shall—

6               “(A) remain obligated on its guarantee agree-  
7 ment with the Secretary;

8               “(B) continue to be responsible for servicing the  
9 loan in a manner consistent with such guarantee  
10 agreement; and

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

12       “(d) The full faith and credit of the United States  
13 is pledged to the payment of all loan guarantees made  
14 under this title. The validity of a guarantee shall be incon-  
15 testable in the hands of a transferee of the guaranteed  
16 obligations whose interest in a guaranteed loan has been  
17 acknowledged by the Secretary, or by the Secretary's des-  
18 ignee, except if the transferee has actual knowledge of  
19 fraud or misrepresentation, or participates in or condones  
20 fraud or misrepresentation in connection with the loan.

21       “(e) The Secretary may recover from the lender any  
22 damages suffered by the Secretary as a result of a mate-  
23 rial breach of the lender's obligations under the Sec-  
24 retary's guarantee of the loan.

1       “(f) The Secretary may collect a fee for any loan or  
2 guaranteed portion thereof transferred in accordance with  
3 subsection (g).

4       “(g) Not later than 180 days after the date of the  
5 enactment of this subsection, the Secretary shall develop  
6 such procedures and shall adopt such regulations as are  
7 necessary for the facilitation, administration, and pro-  
8 motion of transfers of loans and guaranteed portions  
9 thereof under this section.

10       “(h) Upon adoption of final regulations, the Sec-  
11 retary shall provide for a central registration of all loans  
12 transferred pursuant to this section and shall contract  
13 with a fiscal transfer agent to act as the Secretary’s des-  
14 ignee and to carry out on behalf of the Secretary the cen-  
15 tral registration and paying agent functions and issuance  
16 of the Secretary’s acknowledgement required by sub-  
17 section (b).

18       “(i) Nothing in this title prohibits the pooling of  
19 whole loans or interests in loans transferred under this  
20 section. The Secretary may issue regulations to effect or-  
21 derly and efficient pooling procedures.”.

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