

Union Calendar No. 379

107TH CONGRESS
2^D SESSION

H. R. 3407

[Report No. 107-630]

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

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

SEPTEMBER 4, 2002

Additional sponsors: Mr. BACA and Mr. GALLEGLY

SEPTEMBER 4, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on December 5, 2001]

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Indian Financing Act*
3 *Reform Amendment”.*

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 *(a) FINDINGS.—Congress finds the following:*

6 *(1) The Indian Financing Act of 1974 (Public*
7 *Law 93–262; 88 Stat. 77 et seq.) was intended to pro-*
8 *vide Native American borrowers with access to com-*
9 *mercial capital sources which otherwise would not be*
10 *available through loans guaranteed or insured by the*
11 *Secretary of the Interior.*

12 *(2) Although the Secretary has made loan guar-*
13 *antees and insurance available, their use by lenders*
14 *to benefit Native American business borrowers has*
15 *been limited.*

16 *(3) 27 years after the date of the enactment of*
17 *the Indian Financing Act of 1974, the promotion and*
18 *development of Native American-owned business re-*
19 *remains an essential foundation for growth of economic*
20 *and social stability of Native Americans.*

21 *(4) Commercial lenders’ use of the available loan*
22 *insurance and guarantees may be limited by liquidity*
23 *and other capital market-driven concerns.*

24 *(5) It is in the best interest of the Secretary’s in-*
25 *sured and guaranteed loan program to encourage the*
26 *orderly development and expansion of a secondary*

1 *market, for loans guaranteed or insured by the Sec-*
2 *retary of the Interior, and expand the number of lend-*
3 *ers originating loans under the Indian Financing Act*
4 *of 1974.*

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

7 *(1) stimulate the use by lenders of secondary*
8 *market investors for loans guaranteed or insured by*
9 *the Secretary;*

10 *(2) preserve the authority of the Secretary to ad-*
11 *minister the program and regulate lenders;*

12 *(3) clarify that a good faith investor in loans in-*
13 *sured or guaranteed by the Secretary will receive ap-*
14 *propriate payments;*

15 *(4) provide for the appointment by the Secretary*
16 *of a qualified fiscal transfer agent which will estab-*
17 *lish and administer a system for the orderly transfer*
18 *of such loans;*

19 *(5) authorize the Secretary to develop regulations*
20 *to encourage and expand a secondary market pro-*
21 *gram for loans guaranteed or insured by the Sec-*
22 *retary and to allow the pooling of such loans as the*
23 *secondary market develops; and*

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

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

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

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

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

13 (2) by inserting “insured or” before “guaran-
14 teed”; and

15 (3) by adding at the end the following new sub-
16 sections:

17 “(b)(1) The lender of a loan insured or guaranteed
18 under this title may transfer to any individual or legal en-
19 tity all of the lender’s rights and obligations in such loan
20 or in the unguaranteed or uninsured portion thereof, and
21 the security given therefor. Such transfer shall be consistent
22 with such regulations as the Secretary shall establish, and
23 the lender shall give notice of such transfer to the Secretary
24 or the Secretary’s designee.

1 “(2) Upon any transfer permitted by this subsection,
2 the transferee shall be deemed to be the lender under this
3 title, shall become the secured party of record, and shall be
4 responsible for performing the duties of the lender and for
5 serving the loan in accordance with the terms of the Sec-
6 retary’s guarantee thereof.

7 “(c)(1) The lender of a loan insured or guaranteed
8 under this title, and any subsequent transferee of all or part
9 of the insured or guaranteed portion of such loan, may
10 transfer to any individual or legal entity all or part of the
11 insured or guaranteed portion of such loan and the security
12 therefor. Such transfer shall be consistent with such regula-
13 tions as the Secretary shall establish, and the transferor
14 shall give notice of such transfer to the Secretary or the
15 Secretary’s designee. The Secretary or the Secretary’s des-
16 ignee shall issue to the transferee the Secretary’s acknowl-
17 edgement of the transfer and of the transferee’s interest in
18 the guaranteed or insured portion of the loan.

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

21 “(A) remain obligated on its guarantee agree-
22 ment or insurance agreement with the Secretary;

23 “(B) continue to be responsible for servicing the
24 loan in a manner consistent with such guarantee
25 agreement or insurance agreement; and

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

2 “(d) The full faith and credit of the United States is
3 pledged to the payment of all loan guarantees and loan in-
4 surance made under this title after the date of the enactment
5 of this subsection. The validity of a guarantee of, or insur-
6 ance of, a loan shall be incontestable in the hands of a
7 transferee of the guaranteed or insurance obligations whose
8 interest in a guaranteed loan or insurance has been ac-
9 knowledged by the Secretary, or by the Secretary’s designee,
10 except if the transferee has actual knowledge of fraud or
11 misrepresentation, or participates in or condones fraud or
12 misrepresentation in connection with the loan.

13 “(e) Notwithstanding section 3302 of title 31, United
14 States Code (commonly known as the ‘Miscellaneous Re-
15 ceipts Act’), the Secretary may recover from the lender any
16 damages suffered by the Secretary as a result of a material
17 breach of the lender’s obligations under the Secretary’s
18 guarantee or insurance of the loan.

19 “(f) The Secretary may collect a fee for any loan or
20 guaranteed or insured portion thereof transferred in accord-
21 ance with subsection (g).

22 “(g) Not later than 180 days after the date of the enact-
23 ment of this subsection, the Secretary shall develop such
24 procedures and shall adopt such regulations as are nec-
25 essary for the facilitation, administration, and promotion

1 *of transfers of loans and guaranteed and insured portions*
2 *thereof under this section.*

3 “(h) Upon adoption of final regulations, the Secretary
4 shall provide for a central registration of all guaranteed
5 or insured loans transferred pursuant to this section and
6 shall contract with a fiscal transfer agent to act as the Sec-
7 retary’s designee and to carry out on behalf of the Secretary
8 the central registration and paying agent functions and
9 issuance of the Secretary’s acknowledgement required by
10 subsection (b).

11 “(i) Nothing in this title prohibits the pooling of whole
12 loans or interests in loans transferred under this section.
13 The Secretary may issue regulations to effect orderly and
14 efficient pooling procedures.”.

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