

107TH CONGRESS
2^D SESSION

S. 2017

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

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2002

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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 Amendments of 2002”.

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

7 (a) FINDINGS.—Congress finds that—

8 (1) the Indian Financing Act of 1974 (25
9 U.S.C. 1451 et seq.) was intended to provide Native
10 American borrowers with access to commercial cap-

1 ital sources that, but for that Act, would not be
2 available through loans guaranteed by the Secretary
3 of the Interior;

4 (2) although the Secretary of the Interior has
5 made loan guarantees available, acceptance of loan
6 guarantees by lenders to benefit Native American
7 business borrowers has been limited;

8 (3) 27 years after enactment of the Act, the
9 promotion and development of Native American-
10 owned business remains an essential foundation for
11 growth of economic and social stability of Native
12 Americans;

13 (4) acceptance by lenders of the loan guaran-
14 tees may be limited by liquidity and other capital
15 market-driven concerns; and

16 (5) it is in the best interest of the guaranteed
17 loan program to—

18 (A) encourage the orderly development and
19 expansion of a secondary market for loans
20 guaranteed by the Secretary; and

21 (B) expand the number of lenders origi-
22 nating loans under that Act.

23 (b) PURPOSES.—The purposes of this Act are—

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

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

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

9 (4) to provide for the appointment by the Sec-
10 retary of a qualified fiscal transfer agent to admin-
11 ister a system for the orderly transfer of the loans;

12 (5) to authorize the Secretary to—

13 (A) promulgate regulations to encourage
14 and expand a secondary market program for
15 loans guaranteed by the Secretary; and

16 (B) allow the pooling of the loans as the
17 secondary market develops; and

18 (6) to authorize the Secretary to establish a
19 schedule for assessing lenders and investors for the
20 necessary costs of the fiscal transfer agent and sys-
21 tem.

22 **SEC. 3. LOAN GUARANTEES.**

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

1 (1) by inserting “(a) IN GENERAL.—” before
2 “Any loan”; and

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

4 “(b) TRANSFER OF LOANS AND UNGUARANTEED
5 PORTIONS OF LOANS.—

6 “(1) TRANSFER.—

7 “(A) IN GENERAL.—The lender of a loan
8 guaranteed under this title may transfer to any
9 person—

10 “(i) all of the rights and obligations of
11 the lender under the loan, or in an
12 unguaranteed portion of the loan; and

13 “(ii) the security given for the loan or
14 unguaranteed portion.

15 “(B) REGULATIONS.—A transfer under
16 subparagraph (A) shall be consistent with such
17 regulations as the Secretary shall promulgate
18 under subsection (g).

19 “(C) NOTICE.—A lender that completes a
20 transfer under subparagraph (A) shall give no-
21 tice of the transfer to the Secretary (or a des-
22 ignee of the Secretary).

23 “(2) EFFECT OF TRANSFER.—On any transfer
24 under this subsection, the transferee shall—

1 “(A) be considered to be the lender under
2 this title;

3 “(B) become the secured party of record;
4 and

5 “(C) be responsible for—

6 “(i) performing the duties of the lend-
7 er; and

8 “(ii) servicing the loan or portion of
9 the loan, as appropriate, in accordance
10 with the terms of guarantee of the Sec-
11 retary of the loan or portion of the loan.

12 “(c) TRANSFER OF GUARANTEED PORTIONS OF
13 LOANS.—

14 “(1) TRANSFER.—

15 “(A) IN GENERAL.—The lender of a loan
16 guaranteed under this title, and any subsequent
17 transferee of all or part of the guaranteed por-
18 tion of the loan, may transfer to any person—

19 “(i) all or part of the guaranteed por-
20 tion of the loan; and

21 “(ii) the security given for the guar-
22 anteed portion transferred.

23 “(B) REGULATIONS.—A transfer under
24 subparagraph (A) shall be consistent with such

1 regulations as the Secretary shall promulgate
2 under subsection (g).

3 “(C) NOTICE.—A lender that completes a
4 transfer under subparagraph (A) shall give no-
5 tice of the transfer to the Secretary (or a des-
6 ignee of the Secretary).

7 “(D) ACKNOWLEDGEMENT.—On receipt of
8 notice of a transfer under subparagraph (C),
9 the Secretary (or a designee of the Secretary)
10 shall issue to the transferee the acknowledge-
11 ment of the Secretary of—

12 “(i) the transfer; and

13 “(ii) the interest of the transferee in
14 the guaranteed portion of a loan that was
15 transferred.

16 “(2) EFFECT.—Notwithstanding any other pro-
17 vision of law, with respect to any transfer under this
18 subsection, the lender shall—

19 “(A) remain obligated under the guarantee
20 agreement between the lender and the Sec-
21 retary;

22 “(B) continue to be responsible for serv-
23 icing the loan in a manner consistent with the
24 guarantee agreement; and

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

1 “(d) FULL FAITH AND CREDIT.—

2 “(1) IN GENERAL.—The full faith and credit of
3 the United States is pledged to the payment of all
4 loan guarantees made under this title.

5 “(2) VALIDITY.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the validity of a guarantee
8 of a loan under this title shall be incontestable
9 if the guarantee is held by a transferee of a
10 guaranteed obligation whose interest in a guar-
11 anteed loan has been acknowledged by the Sec-
12 retary (or a designee of the Secretary) under
13 subsection (c)(1)(D).

14 “(B) FRAUD OR MISREPRESENTATION.—
15 Subparagraph (A) shall not apply in a case in
16 which the Secretary determines that a trans-
17 feree of a loan or portion of a loan transferred
18 under this section has actual knowledge of
19 fraud or misrepresentation, or participates in or
20 condones fraud or misrepresentation, in connec-
21 tion with the loan.

22 “(e) DAMAGES.—The Secretary may recover from a
23 lender any damages suffered by the Secretary as a result
24 of a material breach of an obligation of the lender under
25 the guarantee of the loan.

1 “(f) FEE.—The Secretary may collect a fee for any
2 loan or guaranteed portion of a loan transferred in accord-
3 ance with subsection (b) or (c).

4 “(g) REGULATIONS.—Not later than 180 days after
5 the date of enactment of this subsection, the Secretary
6 shall promulgate such regulations as are necessary to fa-
7 cilitate, administer, and promote the transfer of loans and
8 guaranteed portions of loans under this section.

9 “(h) CENTRAL REGISTRATION.—On promulgation of
10 final regulations under subsection (g), the Secretary
11 shall—

12 “(1) provide for the central registration of all
13 loans and portions of loans transferred under this
14 section; and

15 “(2) contract with a fiscal transfer agent—

16 “(A) to act as a designee of the Secretary;

17 and

18 “(B) on behalf of the Secretary—

19 “(i) to carry out the central registra-
20 tion and paying agent functions; and

21 “(ii) to issue acknowledgements of the
22 Secretary under subsection (c)(1)(D).

23 “(i) POOLING.—

1 “(1) IN GENERAL.—Nothing in this title pro-
2 hibits the pooling of whole loans, or portions of
3 loans, transferred under this section.

4 “(2) REGULATIONS.—The Secretary may pro-
5 mulgate regulations to effect orderly and efficient
6 pooling procedures under this title.”.

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