

Calendar No. 558107TH CONGRESS
2^D SESSION**S. 2017****[Report No. 107-249]**

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, Mr. INOUE, Mr. DOMENICI, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

AUGUST 28, 2002

Reported under authority of the order of the Senate of July 29, 2002, by Mr. INOUE, with an amendment

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

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 Amendments of 2002”.

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

5 (a) FINDINGS.—Congress finds that—

6 (1) the Indian Financing Act of 1974 (25
7 U.S.C. 1451 et seq.) was intended to provide Native
8 American borrowers with access to commercial cap-
9 ital sources that, but for that Act, would not be
10 available through loans guaranteed by the Secretary
11 of the Interior;

12 (2) although the Secretary of the Interior has
13 made loan guarantees available, acceptance of loan
14 guarantees by lenders to benefit Native American
15 business borrowers has been limited;

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

21 (4) acceptance by lenders of the loan guaran-
22 tees may be limited by liquidity and other capital
23 market-driven concerns; and

24 (5) it is in the best interest of the guaranteed
25 loan program to—

1 (A) encourage the orderly development and
2 expansion of a secondary market for loans
3 guaranteed by the Secretary; and

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

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

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

10 (2) to preserve the authority of the Secretary to
11 administer the program and regulate lenders;

12 (3) to clarify that a good faith investor in loans
13 guaranteed by the Secretary will receive appropriate
14 payments;

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

18 (5) to authorize the Secretary to—

19 (A) promulgate regulations to encourage
20 and expand a secondary market program for
21 loans guaranteed by the Secretary; and

22 (B) allow the pooling of the loans as the
23 secondary market develops; and

24 (6) to authorize the Secretary to establish a
25 schedule for assessing lenders and investors for the

1 necessary costs of the fiscal transfer agent and sys-
 2 tem.

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

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

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

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

9 “(b) TRANSFER OF LOANS AND UNGUARANTEED
 10 PORTIONS OF LOANS.—

11 “(1) TRANSFER.—

12 “(A) IN GENERAL.—The lender of a loan
 13 guaranteed under this title may transfer to any
 14 person—

15 “(i) all of the rights and obligations of
 16 the lender under the loan; or in an
 17 unguaranteed portion of the loan; and

18 “(ii) the security given for the loan or
 19 unguaranteed portion.

20 “(B) REGULATIONS.—A transfer under
 21 subparagraph (A) shall be consistent with such
 22 regulations as the Secretary shall promulgate
 23 under subsection (g).

24 “(C) NOTICE.—A lender that completes a
 25 transfer under subparagraph (A) shall give no-

1 tice of the transfer to the Secretary (or a des-
2 ignee of the Secretary).

3 ~~“(2) EFFECT OF TRANSFER.—~~On any transfer
4 under this subsection, the transferee shall—

5 ~~“(A) be considered to be the lender under~~
6 this title;

7 ~~“(B) become the secured party of record;~~
8 and

9 ~~“(C) be responsible for—~~

10 ~~“(i) performing the duties of the lend-~~
11 er; and

12 ~~“(ii) servicing the loan or portion of~~
13 the loan, as appropriate, in accordance
14 with the terms of guarantee of the Sec-
15 retary of the loan or portion of the loan.

16 ~~“(e) TRANSFER OF GUARANTEED PORTIONS OF~~
17 LOANS.—

18 ~~“(1) TRANSFER.—~~

19 ~~“(A) IN GENERAL.—~~The lender of a loan
20 guaranteed under this title, and any subsequent
21 transferee of all or part of the guaranteed por-
22 tion of the loan, may transfer to any person—

23 ~~“(i) all or part of the guaranteed por-~~
24 tion of the loan; and

1 “(ii) the security given for the guar-
2 anteed portion transferred.

3 “(B) REGULATIONS.—A transfer under
4 subparagraph (A) shall be consistent with such
5 regulations as the Secretary shall promulgate
6 under subsection (g).

7 “(C) NOTICE.—A lender that completes a
8 transfer under subparagraph (A) shall give no-
9 tice of the transfer to the Secretary (or a des-
10 ignee of the Secretary).

11 “(D) ACKNOWLEDGEMENT.—On receipt of
12 notice of a transfer under subparagraph (C),
13 the Secretary (or a designee of the Secretary)
14 shall issue to the transferee the acknowledge-
15 ment of the Secretary of—

16 “(i) the transfer; and

17 “(ii) the interest of the transferee in
18 the guaranteed portion of a loan that was
19 transferred.

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

23 “(A) remain obligated under the guarantee
24 agreement between the lender and the Sec-
25 retary;

1 “(B) continue to be responsible for serv-
2 icing the loan in a manner consistent with the
3 guarantee agreement; and

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

5 “(d) FULL FAITH AND CREDIT.—

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

9 “(2) VALIDITY.—

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

18 “(B) FRAUD OR MISREPRESENTATION.—

19 Subparagraph (A) shall not apply in a case in
20 which the Secretary determines that a trans-
21 feree of a loan or portion of a loan transferred
22 under this section has actual knowledge of
23 fraud or misrepresentation, or participates in or
24 condones fraud or misrepresentation, in connec-
25 tion with the loan.

1 “(e) DAMAGES.—The Secretary may recover from a
 2 lender any damages suffered by the Secretary as a result
 3 of a material breach of an obligation of the lender under
 4 the guarantee of the loan.

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

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

13 “(h) CENTRAL REGISTRATION.—On promulgation of
 14 final regulations under subsection (g), the Secretary
 15 shall—

16 “(1) provide for the central registration of all
 17 loans and portions of loans transferred under this
 18 section; and

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

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

21 and

22 “(B) on behalf of the Secretary—

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

1 “(ii) to issue acknowledgements of the
2 Secretary under subsection (e)(1)(D).

3 “(i) POOLING.—

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

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

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Indian Financing*
12 *Amendments Act of 2002”.*

13 **SEC. 2. FINDINGS AND PURPOSE.**

14 (a) *FINDINGS.—Congress finds that—*

15 (1) *the Indian Financing Act of 1974 (25 U.S.C.*
16 *1451 et seq.) was intended to provide Native Amer-*
17 *ican borrowers with access to commercial sources of*
18 *capital that otherwise would not be available through*
19 *the guarantee or insurance of loans by the Secretary*
20 *of the Interior;*

21 (2) *although the Secretary of the Interior has*
22 *made loan guarantees and insurance available, use of*
23 *those guarantees and that insurance by lenders to*
24 *benefit Native American business borrowers has been*
25 *limited;*

1 (3) 27 years after the date of enactment of the
2 *Indian Financing Act of 1974 (25 U.S.C. 1451 et*
3 *seq.)*, the promotion and development of Native Amer-
4 *ican-owned business remains an essential foundation*
5 *for growth of economic and social stability of Native*
6 *Americans;*

7 (4) use by commercial lenders of the available
8 loan insurance and guarantees may be limited by li-
9 quidity and other capital market-driven concerns;
10 and

11 (5) it is in the best interest of the insured and
12 guaranteed loan program of the Department of the
13 Interior—

14 (A) to encourage the orderly development
15 and expansion of a secondary market for loans
16 guaranteed or insured by the Secretary of the In-
17 terior; and

18 (B) to expand the number of lenders origi-
19 nating loans under the *Indian Financing Act of*
20 *1974 (25 U.S.C. 1451 et seq.)*.

21 (b) *PURPOSE.*—The purpose of this Act is to reform
22 and clarify the *Indian Financing Act of 1974 (25 U.S.C.*
23 *1451 et seq.)* in order to—

24 (1) stimulate the use by lenders of secondary
25 market investors for loans guaranteed or insured

1 *under a program administered by the Secretary of the*
2 *Interior;*

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

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

8 (4) *provide for the appointment by the Secretary*
9 *of a qualified fiscal transfer agent to establish and*
10 *administer a system for the orderly transfer of those*
11 *loans; and*

12 (5)(A) *authorize the Secretary to promulgate reg-*
13 *ulations to encourage and expand a secondary market*
14 *program for loans guaranteed or insured by the Sec-*
15 *retary; and*

16 (B) *allow the pooling of those loans as the sec-*
17 *ondary market develops.*

18 **SEC. 3. AMENDMENTS TO INDIAN FINANCING ACT.**

19 (a) *LIMITATION ON LOAN AMOUNTS WITHOUT PRIOR*
20 *APPROVAL.*—*Section 204 of the Indian Financing Act of*
21 *1974 (25 U.S.C. 1484) is amended in the last sentence by*
22 *striking “\$100,000” and inserting “\$250,000”.*

23 (b) *SALE OR ASSIGNMENT OF LOANS AND UNDER-*
24 *LYING SECURITY.*—*Section 205 of the Indian Financing*
25 *Act of 1974 (25 U.S.C. 1485) is amended—*

1 (1) *by striking “Any loan guaranteed” and in-*
2 *serting the following:*

3 “*(a) IN GENERAL.—Any loan guaranteed or insured*”;
4 *and*

5 (2) *by adding at the end the following:*

6 “*(b) INITIAL TRANSFERS.—*

7 “*(1) IN GENERAL.—The lender of a loan guaran-*
8 *teed or insured under this title may transfer to any*
9 *individual or legal entity—*

10 “*(A) all rights and obligations of the lender*
11 *in the loan or in the unguaranteed or uninsured*
12 *portion of the loan; and*

13 “*(B) any security given for the loan.*

14 “*(2) ADDITIONAL REQUIREMENTS.—With respect*
15 *to a transfer described in paragraph (1)—*

16 “*(A) the transfer shall be consistent with*
17 *such regulations as the Secretary shall promul-*
18 *gate under subsection (i); and*

19 “*(B) the lender shall give notice of the*
20 *transfer to the Secretary.*

21 “*(3) RESPONSIBILITIES OF TRANSFEREE.—On*
22 *any transfer under paragraph (1), the transferee*
23 *shall—*

24 “*(A) be deemed to be the lender for the pur-*
25 *pose of this title;*

1 “(B) become the secured party of record;

2 and

3 “(C) be responsible for—

4 “(i) performing the duties of the lender; and

5 “(ii) servicing the loan in accordance
6 with the terms of the guarantee by the Secretary of the loan.

7 “(c) *SECONDARY TRANSFERS.*—

8 “(1) *IN GENERAL.*—Any transferee under subsection (b) of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

9 “(A) all rights and obligations of the transferee in the loan or in the unguaranteed or uninsured portion of the loan; and

10 “(B) any security given for the loan.

11 “(2) *ADDITIONAL REQUIREMENTS.*—With respect to a transfer described in paragraph (1)—

12 “(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

13 “(B) the transferor shall give notice of the transfer to the Secretary.

14 “(3) *ACKNOWLEDGMENT BY SECRETARY.*—On receipt of a notice of a transfer under paragraph

1 (2)(B), the Secretary shall issue to the transferee an
2 acknowledgement by the Secretary of—

3 “(A) the transfer; and

4 “(B) the interest of the transferee in the
5 guaranteed or insured portion of the loan.

6 “(4) *RESPONSIBILITIES OF LENDER.*—Notwith-
7 standing any transfer permitted by this subsection,
8 the lender shall—

9 “(A) remain obligated on the guarantee
10 agreement or insurance agreement between the
11 lender and the Secretary;

12 “(B) continue to be responsible for servicing
13 the loan in a manner consistent with that guar-
14 antee agreement or insurance agreement; and

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

16 “(d) *FULL FAITH AND CREDIT.*—

17 “(1) *IN GENERAL.*—The full faith and credit of
18 the United States is pledged to the payment of all
19 loan guarantees and loan insurance made under this
20 title after the date of enactment of this subsection.

21 “(2) *VALIDITY.*—

22 “(A) *IN GENERAL.*—Except as provided in
23 subparagraph (B), the validity of a guarantee or
24 insurance of a loan under this title shall be in-
25 contestable if the obligations of the guarantee or

1 *insurance held by a transferee have been ac-*
2 *knowledged under subsection (c)(3).*

3 “(B) *EXCEPTION FOR FRAUD OR MISREPRE-*
4 *SENTATION.—Subparagraph (A) shall not apply*
5 *in a case in which a transferee has actual knowl-*
6 *edge of fraud or misrepresentation, or partici-*
7 *pates in or condones fraud or misrepresentation,*
8 *in connection with a loan.*

9 “(e) *DAMAGES.—Notwithstanding section 3302 of title*
10 *31, United States Code, the Secretary may recover from a*
11 *lender of a loan under this title any damages suffered by*
12 *the Secretary as a result of a material breach of the obliga-*
13 *tions of the lender with respect to a guarantee or insurance*
14 *by the Secretary of the loan.*

15 “(f) *FEEES.—The Secretary may collect a fee for any*
16 *loan or guaranteed or insured portion of a loan that is*
17 *transferred in accordance with this section.*

18 “(g) *CENTRAL REGISTRATION OF LOANS.—On pro-*
19 *mulgation of final regulations under subsection (i), the Sec-*
20 *retary shall—*

21 “(1) *provide for a central registration of all*
22 *guaranteed or insured loans transferred under this*
23 *section; and*

24 “(2) *enter into 1 or more contracts with a fiscal*
25 *transfer agent—*

1 “(A) to act as the designee of the Secretary
2 under this section; and

3 “(B) to carry out on behalf of the Secretary
4 the central registration and fiscal transfer agent
5 functions, and issuance of acknowledgements,
6 under this section.

7 “(h) *POOLING OF LOANS.*—

8 “(1) *IN GENERAL.*—Nothing in this title pro-
9 hibits the pooling of whole loans or interests in loans
10 transferred under this section.

11 “(2) *REGULATIONS.*—In promulgating regula-
12 tions under subsection (i), the Secretary may include
13 such regulations to effect orderly and efficient pooling
14 procedures as the Secretary determines to be nec-
15 essary.

16 “(i) *REGULATIONS.*—Not later than 180 days after the
17 date of enactment of this subsection, the Secretary shall de-
18 velop such procedures and promulgate such regulations as
19 are necessary to facilitate, administer, and promote trans-
20 fers of loans and guaranteed and insured portions of loans
21 under this section.”.

Calendar No. 558

107TH CONGRESS
2^D SESSION

S. 2017

[Report No. 107-249]

A BILL

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

AUGUST 28, 2002

Reported with an amendment