

INDIAN FINANCING ACT REFORM AMENDMENT

SEPTEMBER 4, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3407]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3407) to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The Indian Financing Act of 1974 (Public Law 93-262; 88 Stat. 77 et seq.) was intended to provide Native American borrowers with access to commercial capital sources which otherwise would not be available through loans guaranteed or insured by the Secretary of the Interior.

(2) Although the Secretary has made loan guarantees and insurance available, their use by lenders to benefit Native American business borrowers has been limited.

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

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

(5) It is in the best interest of the Secretary’s insured and guaranteed loan program to encourage the orderly development and expansion of a secondary market, for loans guaranteed or insured by the Secretary of the Interior, and expand the number of lenders originating loans under the Indian Financing Act of 1974.

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

- (1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured by the Secretary;
- (2) preserve the authority of the Secretary to administer the program and regulate lenders;
- (3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;
- (4) provide for the appointment by the Secretary of a qualified fiscal transfer agent which will establish and administer a system for the orderly transfer of such loans;
- (5) authorize the Secretary to develop regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary and to allow the pooling of such loans as the secondary market develops; and
- (6) authorize the Secretary to establish a schedule for assessing lenders and investors for the necessary costs of the fiscal transfer agent and system.

SEC. 3. AMENDMENT OF THE INDIAN FINANCING ACT.

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

(b) **SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.**—Section 205 of such Act (25 U.S.C. 1485) is amended—

- (1) by inserting “(a)” before “Any loan”;
- (2) by inserting “insured or” before “guaranteed”; and
- (3) by adding at the end the following new subsections:

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

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

“(c)(1) The lender of a loan insured or guaranteed under this title, and any subsequent transferee of all or part of the insured or guaranteed portion of such loan, may transfer to any individual or legal entity all or part of the insured or guaranteed portion of such loan and the security therefor. Such transfer shall be consistent with such regulations as the Secretary shall establish, and the transferor shall give notice of such transfer to the Secretary or the Secretary’s designee. The Secretary or the Secretary’s designee shall issue to the transferee the Secretary’s acknowledgement of the transfer and of the transferee’s interest in the guaranteed or insured portion of the loan.

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

- “(A) remain obligated on its guarantee agreement or insurance agreement with the Secretary;
- “(B) continue to be responsible for servicing the loan in a manner consistent with such guarantee agreement or insurance agreement; and
- “(C) remain the secured creditor of record.

“(d) 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 after the date of the enactment of this subsection. The validity of a guarantee of, or insurance of, a loan shall be incontestable in the hands of a transferee of the guaranteed or insurance obligations whose interest in a guaranteed loan or insurance has been acknowledged by the Secretary, or by the Secretary’s designee, except if the transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation in connection with the loan.

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

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

“(g) Not later than 180 days after the date of the enactment of this subsection, the Secretary shall develop such procedures and shall adopt such regulations as are necessary for the facilitation, administration, and promotion of transfers of loans and guaranteed and insured portions thereof under this section.

“(h) Upon adoption of final regulations, the Secretary shall provide for a central registration of all guaranteed or insured loans transferred pursuant to this section

and shall contract with a fiscal transfer agent to act as the Secretary's designee and to carry out on behalf of the Secretary the central registration and paying agent functions and issuance of the Secretary's acknowledgement required by subsection (b).

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

PURPOSE OF THE BILL

The purpose of H.R. 3407, as ordered reported, is to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

BACKGROUND AND NEED FOR LEGISLATION

The Indian Financing Act of 1974 was the legislative vehicle that brought Indian and tribal entrepreneurs access to private capital for economic activities. Any tribal member who lives on a reservation, or any tribe as a whole, may participate in the loan program established under the Indian Financing Act. Loans under the program may only be used for the creation or expansion of a small business on tribal property. The only business a loan cannot be used for is casino gaming.

Although the Indian Financing Act of 1974 created new access to private capital for Indian tribes, lenders have had a hard time selling their Native American small business loans to a secondary market because secondary purchasers of Indian loans currently have no guarantee or investor protection from loss. Thus, lenders have tied up capital in already existing Native American loans without the ability to liquidate them in order to make new loans.

H.R. 3407 amends the Indian Financing Act of 1974 to authorize the Secretary of the Interior to provide for a secondary market for small business loans that are guaranteed by the Bureau of Indian Affairs (BIA) and to expand the number of lending banks that can purchase existing Native American small business loans. The legislation provides for the transfer of guaranteed loans, requires that the Secretary of the Interior be notified of such transfers, allocates responsibility to the Secretary on the guarantee agreement for servicing, and makes the Secretary the secured creditor of record after such transfers are made.

COMMITTEE ACTION

H.R. 3407 was introduced on December 5, 2001 by Congresswoman Mary Bono (R-CA), and was referred to the Committee on Resources. On July 17, 2002 the full Resources Committee held a hearing on the bill, and on July 24, 2002, the Committee met to consider the legislation. Congressman James V. Hansen (R-UT) offered an amendment in the nature of a substitute to extend the concept of a secondary market to the BIA's loan insurance program; increase from \$100,000 to \$250,000 the amount of BIA insured loans a lender can offer to a borrower; provide for the return of recovered damages from a lender to the Department of the Interior; and to establish that upon the bill's enactment, all loans approved through the BIA's program will carry the full faith and credit of the United States. The amendment was agreed to by unanimous consent. There were no further amendments and the

bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. While enactment of this legislation may affect direct spending, according to the Congressional Budget Office, such effects would be insignificant.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 28, 2002.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3407, the Indian Financing Act Reform Amendment.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3407—Indian Financing Act Reform Amendment

H.R. 3407 would allow lenders of loans guaranteed or insured under the Indian Financing Act of 1974 to sell such loans to the secondary market. CBO estimates that implementing this bill would have no significant budgetary impact. Because the legislation could affect direct spending, pay-as-you-go procedures would apply, but CBO estimates that such effects would be insignificant.

Under this bill, loans transferred from lenders to secondary markets would continue to be guaranteed and insured by the federal government. Based on information from the Department of the Interior (DOI), CBO estimates that the annual cost of administering such transfers would be negligible over the 2003–2007 period. Any costs incurred by DOI to administer the program would be subject to the availability of appropriated funds.

H.R. 3407 also would authorize the Secretary of the Interior to collect a fee for any guaranteed or insured loan being transferred. Allowing the Secretary to impose fees on such transfers could reduce the subsidy cost of the guarantees and insurance that DOI has provided for existing loans under the Indian Financing Act. Based on information from DOI, CBO estimates that the change in direct spending would be negligible, however, because it is unlikely that the department would collect these fees.

H.R. 3407 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On August 27, 2002, CBO transmitted a cost estimate for S. 2017, the Indian Financing Amendments Act of 2002, as ordered reported by the Senate Committee on Indian Affairs on August 1, 2002. The two bills are very similar and our cost estimates are identical.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INDIAN FINANCING ACT OF 1974

* * * * *

TITLE II—LOAN GUARANTY AND INSURANCE

* * * * *

SEC. 204. The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for approval. The Secretary may review each loan application individually and independently from the lender. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. 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) in excess of ~~[\$100,000]~~ \$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.

SEC. 205. (a) Any loan *insured or guaranteed* under this title, including the security given for such loan, may be sold or assigned by the lender to any person.

(b)(1) *The lender of a loan insured or guaranteed under this title may transfer to any individual or legal entity all of the lender's rights and obligations in such loan or in the unguaranteed or uninsured portion thereof, and the security given therefor. Such transfer shall be consistent with such regulations as the Secretary shall establish, and the lender shall give notice of such transfer to the Secretary or the Secretary's designee.*

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

(c)(1) *The lender of a loan insured or guaranteed under this title, and any subsequent transferee of all or part of the insured or guaranteed portion of such loan, may transfer to any individual or legal entity all or part of the insured or guaranteed portion of such loan and the security therefor. Such transfer shall be consistent with such regulations as the Secretary shall establish, and the transferor shall give notice of such transfer to the Secretary or the Secretary's designee. The Secretary or the Secretary's designee shall issue to the transferee the Secretary's acknowledgement of the transfer and of the transferee's interest in the guaranteed or insured portion of the loan.*

(2) *Notwithstanding any transfer permitted by this subsection, the lender shall—*

(A) *remain obligated on its guarantee agreement or insurance agreement with the Secretary;*

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

(C) *remain the secured creditor of record.*

(d) *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 after the date of the enactment of this subsection. The validity of a guarantee of, or insurance of, a loan shall be incontestable in the hands of a transferee of the guaranteed or insurance obligations whose interest in a guaranteed loan or insurance has been acknowledged by the Secretary, or by the Secretary's designee, except if the transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation in connection with the loan.

(e) Notwithstanding section 3302 of title 31, United States Code (commonly known as the "Miscellaneous Receipts Act"), the Secretary may recover from the lender any damages suffered by the Secretary as a result of a material breach of the lender's obligations under the Secretary's guarantee or insurance of the loan.

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

(g) Not later than 180 days after the date of the enactment of this subsection, the Secretary shall develop such procedures and shall adopt such regulations as are necessary for the facilitation, administration, and promotion of transfers of loans and guaranteed and insured portions thereof under this section.

(h) Upon adoption of final regulations, the Secretary shall provide for a central registration of all guaranteed or insured loans transferred pursuant to this section and shall contract with a fiscal transfer agent to act as the Secretary's designee and to carry out on behalf of the Secretary the central registration and paying agent functions and issuance of the Secretary's acknowledgement required by subsection (b).

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

* * * * *