



Indian Loan Guarantee and Insurance Program - Tribal Consultation

Dec. 1, 2020

U.S. Department of the Interior

Office of the Assistant Secretary – Indian Affairs
Office of Indian Energy and Economic Development
Division of Capital Investment

Consultation Session Intentions



EXPLORE OPPORTUNITIES TO
MAXIMIZE THE PROGRAM



SOLICIT FEEDBACK ON
HOW CAN WE DO BETTER

Indian Loan Guarantee and Insurance Program

25 U.S.C. §1481, *et seq.*
25 C.F.R. Part 103

*(A recital of statutory authorities is included at
the end of this slide deck)*





Our Program Encourages Lending to Tribal Communities

The Program works with Lenders to
Navigate:

- Unfamiliar Federal laws
- Unfamiliar Tribal laws
- Tribal court jurisdiction
- Construction or business on trust property
- Borrower inexperience
- Borrower credit history
- Inadequate collateral
- Remote locations

What We Offer

- Loan Guarantee: third-party assumption of debt obligation in the event of a borrower default
- Insured Loans: loan protection against default through insurance payment if the debtor defaults

How to Get Involved

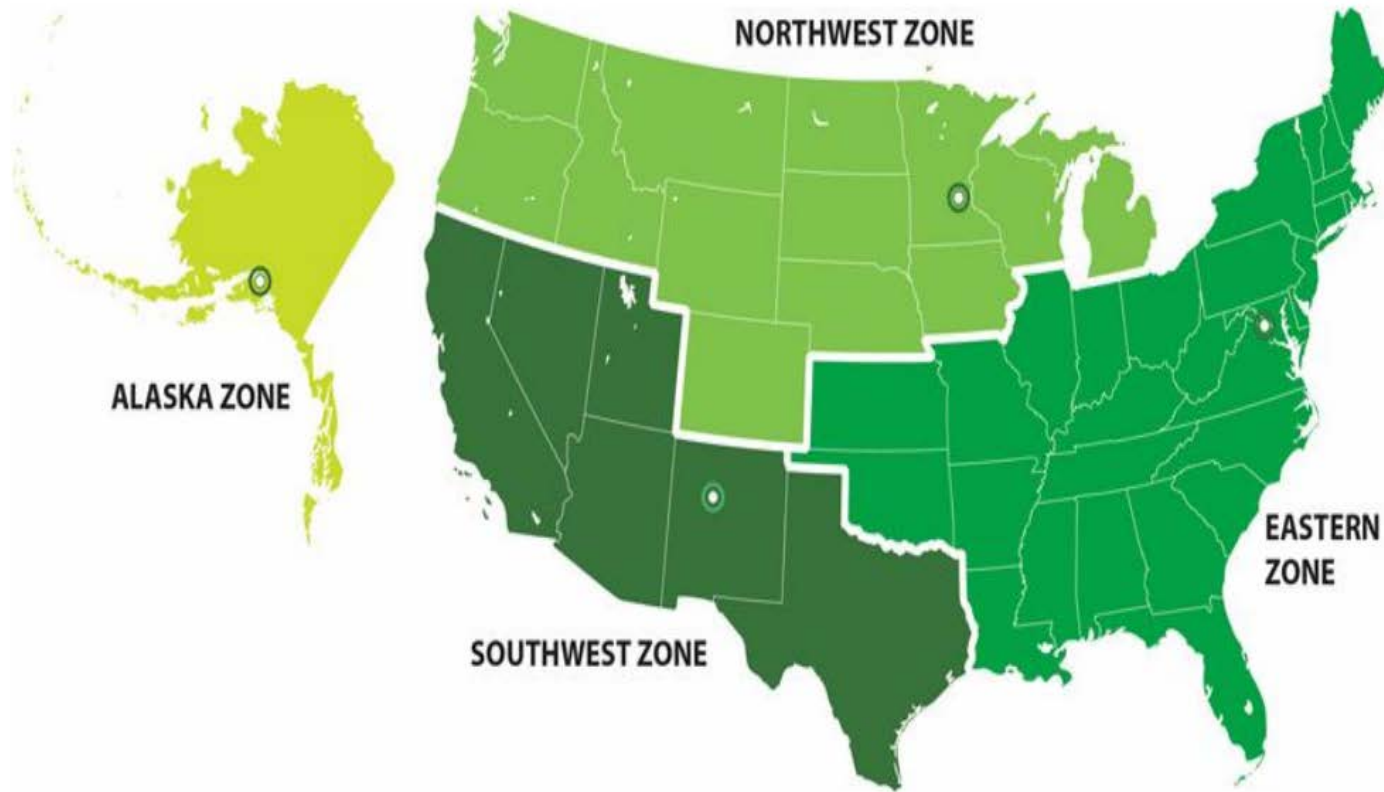
- Individual Borrowers – develop a business plan and work with your bank or other qualified lending institution
- Lenders – applications can be sent to our Zone offices, based on where the project is located

What We Don't Do

- Casinos
- Tobacco and Vaping Products
- Alcohol Manufacturing and Products (with ABV > 20%)

Key Differences from other Federal Loan Guarantee Programs

- Operates in both rural and urban areas
 - Focuses solely on federally-recognized Tribes and Tribal communities
 - Less cumbersome application process
 - Fewer regulations to navigate
 - Wide range of business usage opportunities
- Internal familiarity with and expertise on Indian country matters
 - Ability to internally pursue collections
 - Reasonable prospect of repayment standards
 - Lenders can submit a claim without liquidating collateral



Providing National Support

- **Alaska**: Alaska & Hawaii
- **Eastern**: Alabama; Arkansas; Connecticut; Delaware; Florida; Georgia; Illinois; Indiana; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Mississippi; Missouri; New Hampshire; New Jersey; New York; North Carolina; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Carolina; Tennessee; Vermont; Virginia; West Virginia
- **Northwest**: Colorado; Idaho; Iowa; Michigan; Minnesota; Montana; Nebraska; North Dakota; Oregon; South Dakota; Washington; Wisconsin; Wyoming
- **Southwest**: Arizona; California; New Mexico; Nevada; Texas; Utah

Fast Facts

- 1) Is there a typical loan amount?
- 2) What are the top loan uses?
- 3) What are typical repayment periods?
- 4) What lenders issue the most program loans?

- Businesses of all sizes use the program for nearly any lawful purpose **except** gaming, tobacco and/or vaping, and some alcohol products. Common uses are for construction, refinancing, hotels, C-stores.
- Amortization periods range from less than one year, all the way up to 30 years
- Some of the most active lenders include Native American Bank; First National Bank, Alaska; Turtle Mountain State Bank; Cherokee Nation Economic Development Trust Authority; and Northrim Bank
- Guaranteed loans have ranged from \$1,000 to \$55,000,000



Indian Country has used the Program to pursue a broad range of economic development projects

ArXoticA

Indian owned businesses have gotten funding for manufacturing plants, like this small cosmetics firm in Bethel, Alaska.



Navajo Tribal Utility Authority

Secured a loan to purchase a controlling interest in the company that supplies cell and broadband services to the Navajo Nation



Huna Totem Corporation

Obtained a loan to build
a deep-water dock so
cruise ships could stop
in Hoonah, Alaska



Reno-Sparks Indian Colony

Several Tribes have obtained loans to build health clinics, and cultural centers.



Coyote Valley Convenience Store

Loans have also been secured for hotels, convenience stores, and even bowling alleys.



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Division of Capital Investment

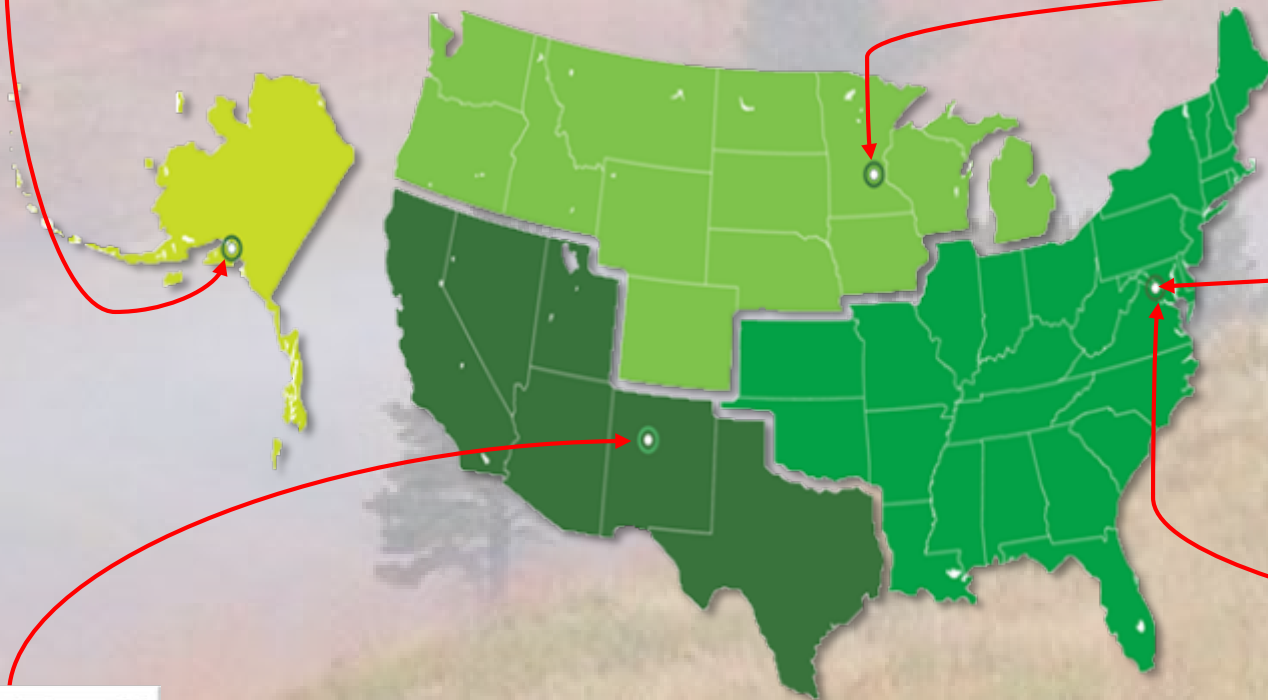
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Authorities ripe for review:

• 25 U.S.C. §1497(a)

• 25 U.S.C. §1497a

• Some statutory language can be clearer

• 25 CFR Part 103 needs updating

Unused authorities with potential:

• 25 U.S.C. §1485, concerning a formal secondary market

• 25 U.S.C. §1499, concerning the guarantee of (taxable) bonds





Questions?

25 U.S. Code § 1481

Loan Guaranties and Insurance

(a) In general

- In order to provide access to private money sources which otherwise would not be available, the Secretary may—
 - (1) guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; or
 - (2) insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.
- (b) Eligible borrowers The Secretary may guarantee or insure loans under subsection (a) to both for-profit and nonprofit borrowers.

(Pub. L. 93–262, title II, § 201, Apr. 12, 1974, 88 Stat. 79; Pub. L. 98–449, § 4, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 109–221, title IV, § 401(a), May 12, 2006, 120 Stat. 341.)

25 U.S. Code § 1482

Premium Charges; Deposits in Indian Loan Guaranty and Insurance Fund

- The Secretary shall fix such premium charges for the insurance and guarantee of loans as are in his judgment adequate to cover expenses and probable losses, and deposit receipts from such charges in the Indian Loan Guaranty and Insurance Fund established pursuant to section 1497(a) of this title.

(Pub. L. 93–262, title II, § 202, Apr. 12, 1974, 88 Stat. 79.)

25 U.S. Code § 1483

Interest Rate

- Loans guaranteed or insured pursuant to this subchapter shall bear interest (exclusive of premium charges for insurance, and service charge, if any) at rates not to exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable taking into consideration the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(Pub. L. 93–262, title II, § 203, Apr. 12, 1974, 88 Stat. 79.)

25 U.S. Code § 1484

Application for loan; approval by Secretary; issuance of certificate; limitations on amount of loans to individual Indians or economic enterprises; review by Secretary.

- 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 1452 of this title](#)) in excess of \$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.

([Pub. L. 93–262, title II, § 204, Apr. 12, 1974, 88 Stat. 79](#); [Pub. L. 98–449, § 5, Oct. 4, 1984, 98 Stat. 1725](#); [Pub. L. 100–442, § 1, Sept. 22, 1988, 102 Stat. 1763](#); [Pub. L. 101–644, title III, § 303\(b\), Nov. 29, 1990, 104 Stat. 4668](#); [Pub. L. 107–331, title I, § 103\(a\), Dec. 13, 2002, 116 Stat. 2836](#).)

25 U.S. Code § 1485

Sale or Assignment of Loans and Underlying Security

(a) In general

- All or any portion of a loan guaranteed or insured under this subchapter, including the security given for the loan—
 - (1) may be transferred by the lender by sale or assignment to any person; and
 - (2) may be retransferred by the transferee.

(b) Transfers of Loans

- With respect to a transfer described in subsection (a)—
 - (1) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (h); and
 - (2) the transferee shall give notice of the transfer to the Secretary.

(c) Full Faith and Credit

(1) In general

- The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this subchapter after December 13, 2002.

(2) Validity

- Except as provided in regulations in effect on the date on which a loan is made, the validity of a guarantee or insurance of a loan under this subchapter shall be incontestable.

25 U.S. Code § 1485

Sale or Assignment of Loans and Underlying Security (cont.)

(d) Damages

- Notwithstanding section 3302 of title 31, the Secretary may recover from a lender of a loan under this subchapter any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

(e) Fees

(1) In general

- The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

(2) Compensation of fiscal transfer agent

- A fiscal transfer agent designated under subsection (f) may be compensated through any of the fees assessed under this section and any interest earned on any funds or fees collected by the fiscal transfer agent while the funds or fees are in the control of the fiscal transfer agent and before the time at which the fiscal transfer agent is contractually required to transfer such funds to the Secretary or to transferees or other holders.

25 U.S. Code § 1485

Sale or Assignment of Loans and Underlying Security (cont.)

(f) Central registration of loans

- On promulgation of final regulations under subsection (h), the Secretary shall—
 - (1) provide for a central registration of all guaranteed or insured loans transferred under this section; and
 - (2) enter into 1 or more contracts with a fiscal transfer agent—
 - (A) to act as the designee of the Secretary under this section; and
 - (B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions under this section.

(g) Pooling of loans

(1) In general

- Nothing in this subchapter prohibits the pooling of whole loans or interests in loans transferred under this section.

(2) Regulations

- In promulgating regulations under subsection (i), 1 the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

25 U.S. Code § 1485

Sale or Assignment of Loans and Underlying Security (cont.)

(h) Regulations Not later than 180 days after December 13, 2002, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.

(Pub. L. 93–262, title II, § 205, Apr. 12, 1974, 88 Stat. 80; Pub. L. 100–442, § 2, Sept. 22, 1988, 102 Stat. 1763; Pub. L. 107–331, title I, § 103(b), Dec. 13, 2002, 116 Stat. 2836; Pub. L. 109–221, title IV, § 401(b), May 12, 2006, 120 Stat. 342.)

25 U.S. Code § 1486

Loans Ineligible for Guaranty or Insurance

- Loans made by any agency or instrumentality of the Federal Government (not including an eligible Community Development Finance Institution), or by an organization of Indians from funds borrowed from the United States, and loans the interest on which is not included in gross income for the purposes of chapter 1 of title 26 shall not be eligible for guaranty or insurance hereunder.

(Pub. L. 93–262, title II, § 206, Apr. 12, 1974, 88 Stat. 80; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 109–221, title IV, § 401(c), May 12, 2006, 120 Stat. 342.)

25 U.S. Code § 1487

Loans Eligible for Insurance

- Any loans insured hereunder shall be restricted to those made by a financial institution subject to examination and supervision by an agency of the United States, a State, or the District of Columbia, and to loans made by Indian organizations from their own funds to other tribes or organizations of Indians.

(Pub. L. 93–262, title II, § 207, Apr. 12, 1974, 88 Stat. 80.)

25 U.S. Code § 1488

Lenders Authorized to Make Loans; Decrease or Increase of Liability Under the Guaranty

- Loans guaranteed hereunder may be made by any lender satisfactory to the Secretary, except as provided in section 1486 of this title. The liability under the guaranty shall decrease or increase pro rata with any decrease or increase in the unpaid portion of the obligation.

(Pub. L. 93–262, title II, § 208, Apr. 12, 1974, 88 Stat. 80.)

25 U.S. Code § 1489

Loans Made by Certain Financial Institutions without Regard to Limitations and Restrictions of Other Federal Statutes with Respect to Certain Particulars

- Any loan made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia, at least 20 per centum of which is guaranteed hereunder, may be made without regard to the limitations and restrictions of any other Federal statute with respect to (a) ratio of amount of loan to the value of the property; (b) maturity of loans; (c) requirement of mortgage or other security; (d) priority of lien; or (e) percentage of assets which may be invested in real estate loans.

(Pub. L. 93–262, title II, § 209, Apr. 12, 1974, 88 Stat. 80.)

25 U.S. Code § 1490

Maturity of Loans

- The maturity of any loan guaranteed or insured hereunder shall not exceed thirty years.

(Pub. L. 93–262, title II, § 210, Apr. 12, 1974, 88 Stat. 80.)

25 U.S. Code § 1491

Defaults; Written Notification; Pro Rata Payments; Subrogation and Assignment
Rights of Secretary; Cancellation of Uncollectable Portion of Obligations;
Forbearance for Benefit of Borrower; Interest or Charges Cessation Date

- In the event of a default of a loan guaranteed hereunder, the holder of the guaranty certificate may immediately notify the Secretary in writing of such default and the Secretary shall thereupon pay to such holder the pro rata portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guaranty and receive an assignment of the obligation and security. The Secretary may cancel the uncollectable portion of any obligation, to which he has an assignment or a subrogated right under this section. Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower as may be agreed upon by the parties to the loan and approved by the Secretary. The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

(Pub. L. 93–262, title II, § 211, Apr. 12, 1974, 88 Stat. 80; Pub. L. 98–449, § 6, Oct. 4, 1984, 98 Stat. 1725.)

25 U.S. Code § 1492

Claims for Losses; Submission to Secretary; Reimbursement: Single and Aggregate Loss Limitations, Conditions; Assignment of Note or Judgment; Collection or Cancellation by Secretary; Interest or Charges Cessation Date

- When a lender suffers a loss on a loan insured hereunder, including accrued interest, a claim therefor shall be submitted to the Secretary. If the Secretary finds that the loss has been suffered, he shall reimburse the lender therefor: Provided, That the amount payable to the lender for a loss on any one loan shall not exceed 90 per centum of such loss: Provided further, That no reimbursement may be made for losses in excess of 15 per centum of the aggregate of insured loans made by the lender: Provided further, That before any reimbursement is made, all reasonable collection efforts shall have been exhausted by the lender, and the security for the loan shall have been liquidated to the extent feasible, and the proceeds applied on the debt. Upon reimbursement, in whole or in part, to the lender, the note or judgment evidencing the debt shall be assigned to the United States, and the lender shall have no further claim against the borrower or the United States. The Secretary shall then take such further collection action as may be warranted, or may cancel the uncollectable portion of any debt assigned pursuant hereto. The Secretary may establish a date upon which accrual of interest or charges shall cease.

(Pub. L. 93-262, title II, § 212, Apr. 12, 1974, 88 Stat. 80.)

25 U.S. Code § 1493

Loan Refusal; Conditions; Prohibition Against Acquisition of Additional Loans; Payment of Claims on Loans Made in Good Faith

- Whenever the Secretary finds that any lender or holder of a guaranty certificate fails to maintain adequate accounting records, or to demonstrate proper ability to service adequately loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any further loans made by such lender or holder, and may bar such lender or holder from acquiring additional loans guaranteed or insured hereunder: Provided, That the Secretary shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

(Pub. L. 93–262, title II, § 213, Apr. 12, 1974, 88 Stat. 81.)

25 U.S. Code § 1494

Evidence of Eligibility of Loan For and Amount of Guaranty or Insurance; Defenses and Partial Defenses Against Original Lender

- Any evidence of guaranty or insurance issued by the Secretary shall be conclusive evidence of the eligibility of the loan for guaranty or insurance under the provisions of this chapter and the amount of such guaranty or insurance: Provided, That nothing in this section shall preclude the Secretary from establishing, as against the original lender, defenses based on fraud or material misrepresentation or bar him from establishing, by regulations in force at the date of such issuance or disbursement, whichever is the earlier, partial defenses to the amount payable on the guaranty or insurance.

(Pub. L. 93–262, title II, § 214, Apr. 12, 1974, 88 Stat. 81.)

25 U.S. Code § 1495

Land and Personal Property Titles

- Title to any land purchased by a tribe or by an individual Indian with loans guaranteed or insured pursuant to this subchapter may be taken in trust, unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of the reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase, otherwise title shall be taken in the name of the purchaser without any restriction on alienation, control, or use. Title to any personal property purchased with loans guaranteed or insured hereunder shall be taken in the name of the purchaser.

(Pub. L. 93–262, title II, § 215, Apr. 12, 1974, 88 Stat. 81.)

25 U.S. Code § 1496

Powers of Secretary; Finality of Financial Transactions and Property Acquisitions, Management, and Dispositions

- The financial transactions of the Secretary incident to or arising out of the guarantee or insurance of loans and surety bonds, and the acquisition, management, and disposition of property, real, personal, or mixed, incident to such activities, shall be final and conclusive upon all officers of the Government. With respect to matters arising out of the guaranty or insurance program authorized by this subchapter, and notwithstanding the provisions of any other laws, the Secretary may—
 - (a) sue and be sued in his official capacity in any court of competent jurisdiction;
 - (b) subject to the specific limitations in this subchapter, consent to the modification, with respect to the rate of interest, time of payment on principal or interest or any portion thereof, security, or any other provisions of any note, contract, mortgage, or other instrument securing a loan or surety bond which has been guaranteed or insured hereunder;
 - (c) subject to the specific limitations in this subchapter, pay, or compromise, any claim on, or arising because of any loan or surety bond guaranty or insurance;

25 U.S. Code § 1497

Indian Loan Guaranty and Insurance Fund

(a) Establishment of revolving fund

- There is hereby created an Indian Loan Guaranty and Insurance Fund (hereinafter referred to as the “fund”) which shall be available to the Secretary as a revolving fund without fiscal year limitation for carrying out the provisions of this subchapter.

(b) Aggregate loans or surety bonds limitation

- The Secretary may use the fund for the purpose of fulfilling the obligations with respect to loans or surety bonds guaranteed or insured under this subchapter, but the aggregate of such loans or surety bonds which are insured or guaranteed by the Secretary shall be limited to \$1,500,000,000.

(c) Assets, liabilities, and obligations of fund; loan and surety bond servicing and purchasing agreements: terms and conditions

- All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the fund. The Secretary is authorized to make agreements with respect to servicing loans or surety bonds held, guaranteed, or insured by him under this subchapter and purchasing such guaranteed or insured loans or surety bonds on such terms and conditions as he may prescribe.

25 U.S. Code § 1497

Indian Loan Guaranty and Insurance Fund (cont.)

(d) Utilization of fund for diverse payments

- The Secretary may also utilize the fund to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans or surety bonds which are guaranteed or insured under this subchapter or held by the Secretary, to acquire such security property at foreclosure sale or otherwise, and to pay administrative expenses.

(e) Authorization of appropriations

- There are authorized to be appropriated for each fiscal year beginning in fiscal year 1985 such sums as may be necessary to fulfill obligations with respect to losses on loans or surety bonds guaranteed or insured under this subchapter. All collections and all moneys appropriated pursuant to the authority of this subsection shall remain available until expended.

(Pub. L. 93–262, title II, § 217, Apr. 12, 1974, 88 Stat. 82; Pub. L. 98–449, § 7, Oct. 4, 1984, 98 Stat. 1725; Pub. L. 100–442, §§ 3, 4(a), (b), 5(d), Sept. 22, 1988, 102 Stat. 1763, 1764; Pub. L. 105–362, title VIII, § 801(b), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 109–221, title IV, § 401(d), May 12, 2006, 120 Stat. 343.)

25 U.S. Code § 1497a

Supplemental Surety Bond Guarantee

(a) Amount; eligibility

- The Secretary is authorized to provide a supplemental surety bond guarantee, not to exceed 20 percent of any loss, for any Indian individual or economic enterprise eligible for a surety guarantee under section 694b of title 15, so that the aggregate of the two guarantees is 100 percent.

(b) Conditions

- The Secretary may provide a supplemental guarantee under this section only if the Secretary determines that—
 - (1) the Indian individual or economic enterprise has secured or will likely secure a surety bond guarantee under section 694b of title 15;
 - (2) the supplemental guarantee is necessary for the Indian individual or economic enterprise to secure a surety bond;
 - (3) no more than 25 percent of the surety's business is comprised of bonds guaranteed pursuant to this section; and
 - (4) the surety will provide appropriate technical assistance and advice to, and monitor the performance of, the Indian individual or economic enterprise for the prevention or mitigation of a loss.

25 U.S. Code § 1497a

Supplemental Surety Bond Guarantee (cont.)

(c) Fees and charges The rules and regulations promulgated by the Secretary to carry out this section shall include the setting of reasonable fees to be paid by the Indian individual or economic enterprise and reasonable premium charges to be paid by sureties. In setting fees and charges, the Secretary may take into consideration the cost to the surety of providing the services required by paragraph (4) of subsection (b). The receipts from the fees and charges shall be deposited in the Fund established by section 1497(a) of this title.

(Pub. L. 93–262, title II, § 218, as added Pub. L. 100–442, § 5(a), Sept. 22, 1988, 102 Stat. 1764.)

25 U.S. Code § 1498

Rules and Regulations

- The Secretary shall promulgate rules and regulations to carry out the provisions of this subchapter.

(Pub. L. 93–262, title II, § 219, formerly § 218, Apr. 12, 1974, 88 Stat. 82; renumbered § 219, Pub. L. 100–442, § 5(a), Sept. 22, 1988, 102 Stat. 1764.)

25 U.S. Code § 1499

Limitation on Guarantee of Debt Issues; Approval of Bond Issue Sale

(a) The Secretary may guarantee not to exceed 90 percent of the unpaid principal and interest due on an issue of bonds, debentures, or similar obligations issued by an organization satisfactory to the Secretary. Such an issue shall be deemed a loan for purposes of sections 1482, 1483, 1484, 1485, 1486, 1489, 1490, 1491, 1493, 1494, 1495, 1496, and 1497 of this title.

(b) The method by which an issue of bonds guaranteed under this section may be sold shall be subject to approval by the Secretary.

(Pub. L. 93–262, title II, § 220, as added Pub. L. 100–442, § 6, Sept. 22, 1988, 102 Stat. 1764.)

25 U.S. Code § 1511

Interest Subsidies; Rules and Regulations

- The Secretary is authorized under such rules and regulations as he may prescribe to pay as an interest subsidy on loans which are guaranteed or insured under the provisions of subchapter II of this chapter amounts which are necessary to reduce the rate payable by the borrower to the rate determined under section 1464 of this title.

(Pub. L. 93–262, title III, § 301, Apr. 12, 1974, 88 Stat. 82.)