



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

MAR 27 1980

47 BIAM Supp. 3, Release 3

Memorandum

To: Holders of 47 BIAM Supplement 3  
From: Commissioner of Indian Affairs  
Subject: 47 BIAM Supplement 3, Financing by Customary Lenders

This release abolishes 47 BIAM Supplement 3, Financing by Customary Financial Institutions.

We have reviewed the Supplement and find it is no longer necessary and of little use since it contains criteria information on other Federal Agency programs, and this information is continually changing. The supplement also contains regulations of other Bureau Offices, such as the Office of Trust Responsibilities, and these regulations are available to the field staff. The credit staffs' primary involvement with customary financial institutions is with real estate and leasehold mortgages offered by the applicant as loan security. Such mortgages are subject to regulations within the Office of Trust Responsibilities.

*William Hallett*  
Commissioner of Indian Affairs

Filing Instructions:

- (a) Remove superseded material:  
47 BIAM Supplement No. 3 (23 sheets)  
Release 1, dated 5-8-72
- (b) Insert new material submitted:  
None
- (c) Pen-and-ink changes:  
None

*Filed 5/22/80  
R.J.W.*

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ADMINISTRATION

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Washington, D.C. 20242

47 BIAM Supp. 3, Release 2

August 29, 1972

Memorandum

To: Holder of 47 BIAM Supplement No. 3  
From: Commissioner of Indian Affairs  
Subject: 47 BIAM Supplement No. 3

The material transmitted herewith, (1) amends Section 1.6 to include the mortgage of leasehold interests in tribal owned lands; (2) changes formats for commitments to approve mortgages on trust or restricted land in Section 1.5J(1) and of a leasehold interest in Section 1.6B(1); (3) clarifies the redelegation by Area Directors of authority cited in Section 1.6 and 1.6A; and (4) amends Section 1.10 to provide for appeals relating to action on instruments encumbering a leasehold interest in trust or restricted lands and the period in which an appeal of a decision must be filed.

  
Deputy Commissioner

Filing Instructions:

- (a) Remove superseded material:  
47 BIAM Supplement 3, Sec. 1.5J(1) - 1.10 (2 Sheets)
- (b) Insert new material transmitted:  
47 BIAM Supplement 3, Sec. 1.5J(1) - 1.10 (3 Sheets)
- (c) Pen-and-ink changes:  
Add at the end of Section 1.5 and 1.5D of 47 BIAM Supplement No. 3, the following "(See Section 1.6 and 1.6A below)."

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execution of a commitment, later obtains information which would make it impossible for him to approve a mortgage and still perform his proper duty under the laws governing such matters.

(1) Form of Commitment.

"In accordance with 25 CFR 121.61 and authority delegated to the undersigned by the Commissioner of Indian Affairs by 10 BIAM 3.1, the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a mortgage on the trust or restricted land owned and offered by \_\_\_\_\_, as security for a loan to be made by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, provided no cause for not approving the mortgage occurs subsequent to the date of this commitment, and provided that the loan is made prior to \_\_\_\_\_, 19\_\_\_\_.

Date \_\_\_\_\_  
Area Director"

K. Form of Approval. Mortgages of trust or restricted land shall be approved in the following manner:

"Pursuant to the Act of March 29, 1956 (70 Stat. 62, 63; 25 U.S.C. 483a), and authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior (25 CFR 121.61, 23 Federal Register 6493-6495, August 22, 1958), and 10 BIAM 2.1, Sec. 13(b), Order 2508, and to Area Directors by 10 BIAM 3.1, the foregoing mortgage is hereby approved on behalf of the Secretary of the Interior. Approval of the foregoing mortgage shall not be construed to be an agreement or assurance that the lands covered by the mortgage will remain in a trust or restricted status during the period of the mortgage agreement."

1.6 Mortgages of Leasehold Interest. Leasehold interests in tribal and individually owned trust or restricted lands may be mortgaged as security for loans.

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25 CFR 131.12(c) (26 F.R. 10966, November 23, 1961, as amended by 29 F.R. 2542, February 18, 1964) provides:

"With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument must be approved by the Secretary. x x x x."

10 BIAM 2.1, Section 13(n) of Order 2508, delegates to the Commissioner "All those matters set forth in 25 CFR 131." The Commissioner's authority was redelegated to Area Directors by 10 BIAM 3.1. Where such authority was redelegated to Superintendents by Area Redelegation Orders, forms of commitment and approval will have to be modified accordingly.

- A. General Approval of Mortgages. Any encumbrance instrument of a leasehold interest executed pursuant to 25 CFR 131.12(c) may, in his discretion, be approved by the Area Director. Where such authority was redelegated to Superintendents by Area Redelegation Orders, forms of commitment and approval will have to be modified accordingly. Details and procedures as prescribed in 1.5E, F, G, H and I above should be followed.
- B. Commitment that a Mortgage will be Approved. When a lender is considering an application of an Indian for a loan secured by a leasehold interest, the Area Director may issue a commitment on the form below assuring the lender that a mortgage will be approved provided the loan is made. Whatever investigation is necessary to determine whether or not the mortgage will be approved should be made before the commitment is signed (see 1.5I above for outline of information upon which to base action). It should be made clear to the Indian applicant and the lender that failure to approve a mortgage after a commitment has been made, will be justified only if an exceptional case should occur in which the Area Director, after having made a full investigation in good faith as a basis for execution of a commitment, later obtains information which would make it impossible for him to approve a mortgage and still perform his proper duty under the laws governing such matters.

(1) Form of Commitment.

"In accordance with 25 CFR 131.12(c) and authority delegated to the undersigned by the Commissioner of Indian Affairs by 10 BIAM 3.1, the undersigned hereby

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agrees, on behalf of the Secretary of the Interior, to approve a mortgage of leasehold interest subject to the terms and provisions of the Lease, dated \_\_\_\_\_, 19\_\_\_\_, entered into between \_\_\_\_\_, as lessor, and \_\_\_\_\_, as lessee, as security for a loan to be made by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, provided no cause for not approving the mortgage occurs subsequent to the date of this commitment, and provided that the loan is made prior to \_\_\_\_\_, 19\_\_\_\_.

Date \_\_\_\_\_  
Area Director"

- C. Form of Approval. Mortgages of leasehold interest shall be approved in the following manner:

"Pursuant to 25 CFR 131.12(c) and authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior (10 BIAM 2.1, Section 13(n) of Order 2508) and to Area Directors (10 BIAM 3.1), the foregoing mortgage of leasehold interest is hereby approved on behalf of the Secretary of the Interior upon the condition that the mortgage is subject to the terms and provisions of the lease described therein and the regulations of the Secretary of the Interior relating to the leasing of tribal and individually owned trust or restricted lands and upon the condition that the mortgage relates only to the leasehold estates and is not to be construed as an encumbrance or lien against tribe's or individual owner's title to the land involved."

- 1.7 Filing or Recording. All securing documents given as security for loans should be filed or recorded in the appropriate county or other recording office in accordance with State or Federal law. Upon filing or recording, all securing documents should be forwarded to the Bureau's Title and Record Section for recording. It is the lender's responsibility to accomplish filing or recording.

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- 1.8 Foreclosure. In the event of default of the Indian borrower who has given trust or restricted property as security for a loan, foreclosure action by the lender shall be on the same basis as a non-Indian case. Area Directors and Superintendents are authorized to give every assistance to lenders when they have a right to proceed to levy upon security.
- 1.9 Satisfaction. Lenders shall file or record releases or satisfactions of all securing documents in the appropriate county or other recording office in accordance with State or Federal law, upon payment of the obligation which the document is given to secure. Credit employees of the Bureau will make certain that there is compliance with this section where trust lands are involved.
- 1.10 Appeal. If the Superintendent cannot execute, approve or recommend that the Area Director execute a commitment to approve, or approve a mortgage of trust or restricted land or of a leasehold interest in trust or restricted land given as security for a loan, he will advise the applicant in writing, together with reasons why he cannot recommend approval. His letter will also advise that the applicant may appeal the Superintendent's decision to the Area Director within twenty days of the mailing of the Superintendent's decision. The Superintendent at his discretion may notify the lender of his action. All appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with a record of the case.

If the Area Director cannot give a commitment to approve, or approve a mortgage of trust or restricted land or of a leasehold interest in trust or restricted land given as security for a loan from a lender, he will advise the applicant in writing, together with reasons why he cannot approve or give a commitment to approve a mortgage. His letter will include information that the applicant may appeal his decision to the Commissioner within twenty days of the mailing of the Area Director's decision. The Area Director at his discretion may advise the lender. Appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with the record in the case, and by the Area Director to the Commissioner.

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If the Commissioner cannot give a commitment to approve, or approve a mortgage of trust or restricted land or of a leasehold interest in trust or restricted land given as security for a loan from a lender, he will advise the applicant in writing, together with reasons why he cannot approve the same. His letter will include information that the applicant may appeal his decision to the Secretary within twenty days of the mailing of the Commissioner's decision. The Commissioner at his discretion may advise the lender. Appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with the record in the case, and by the Area Director to the Commissioner, and by the Commissioner to the Secretary. The action of the Secretary shall be final.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
Washington, D. C. 20242

47 BIAM, Supp. 3, Release 1

May 8, 1972

Memorandum

To: Holder of 47 BIAM

From: Commissioner of Indian Affairs

Subject: 47 BIAM Supplement No. 3, Financing by Customary Financial  
Institutions

The material transmitted herewith replaces in its entirety material presently in 47 IAM 5, Financing by Customary Financial Institutions and 47 IAM 6, Loans to Veterans.

  
Deputy Commissioner

Filing Instruction:

- (a) Remove superseded material:  
47 IAM 5 (22 sheets)  
47 IAM 6 (10 sheets)
- (b) Insert new material transmitted:  
File separately as a handbook
- (c) Pen-and-ink changes:  
Not applicable



**U. S. DEPARTMENT OF THE INTERIOR**  
**Bureau of Indian Affairs**

**FINANCING BY CUSTOMARY FINANCIAL INSTITUTIONS**

**HANDBOOK**

**47 BIAM Supplement 3**

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CREDIT AND FINANCING  
Financing by Customary Financial Institutions

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- 1.1 Program. The policy of the Bureau as stated in 47 BIAM 1.2 is to help Indians and Indian organizations obtain justified financing needed to promote their economic development from the same lending institutions serving other citizens.
- 1.2 Restrictions. No Bureau employee may impose any restriction on either the purpose for which an Indian may borrow funds from a non-Bureau lender, or the security given for the loan, unless the encumbrance instrument requires approval by a Government employee. Lenders are to be cautioned to make certain that the security taken for a loan to an Indian is unencumbered by checking proper county and other public records.
- 1.3 Indians' Right to Contract. An Indian is a citizen (8 U.S.C. 1401). The fact that an individual is an Indian has no bearing on his right to enter into a contract. Certain United States statutes, however, place limitations on the alienation or encumbrances of some Indian-owned property. Approval of the Commissioner or his authorized representative is required in some instances.
- 1.4 Security. The security which Indians may offer for loans will vary with individual applicants, as in the case of non-Indian applicants. It is impossible to issue instructions which will cover all types of security which may be offered for loans, other than to outline in general terms the broad classes of Indian property which may be offered as security. This section outlines generally the security which may be given for loans, except for mortgages of trust or restricted land which are discussed in detail in 1.5 below.
- A. Non-Trust and Unrestricted Property. Indians may deal with non-trust or unrestricted property, both real and personal, in the same manner as any other citizen. Such property may be given as security for loans without the consent or approval by a Government employee (see 1.2 above). Lenders are to be advised to take all reasonable precautions to satisfy themselves that the property given as security by Indians is unencumbered by checking proper county and other public records. Though an Indian may conduct his operations in whole or in part on trust or restricted land, he may nevertheless deal freely with non-trust and unrestricted property of all classes. Indians are to be encouraged to establish and maintain good credit ratings. The Bureau cannot act as a collection agent for general creditors.
- B. Crops Grown on Trust or Restricted Land. Crops grown on trust or restricted land of an Indian may, prior to severance from the land, be mortgaged as security for a loan from any lender, with

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the approval of the Superintendent. Crops grown on such land may, after severance from the land, be given as security for loans without the consent of a Bureau employee.

An Indian may conduct his operations on tribal or individually owned trust or restricted land leased from the tribe or another Indian. Security agreements on crops grown thereon are to be handled in the same manner as security agreements given to secure loans to non-Indians. The lender is responsible to determine if the terms of the lease are such that the security agreement will provide adequate protection for the loan. If the lender requires, the Superintendent may, prior to severance of the crops from the land, approve a security agreement on the crops. Such approval shall indicate that the sole reason for the Superintendent's approval is because title to the land is in the United States in trust for a tribe or individual Indian, and that his approval in no way indicates any assumption of responsibility for enforcement of the terms of the security agreement.

If an Indian has received an assignment of tribal land on which his operations are conducted, the lender is responsible to determine from the assignment if the Indian assignee has the rights to give a security interest in the crops grown thereon. The provisions of assignments vary from tribe to tribe, and different types of assignments may give the assignee land use rights in varying degrees. Generally, lenders have equal protection in the case of security interests in crops grown on assigned tribal lands as they would have on crops grown on leased tribal lands. If lenders are in doubt as to the authority of the assignee to give a security interest in the crops grown on assigned tribal land, they may require that the security agreement be approved by the governing body of the tribe to which the lands belong, and by the Superintendent. The Superintendent will make clear to the lenders that his approval in no way indicates any assumption of responsibility for enforcement of the terms of the security agreement.

When obtaining security interests in crops the lender will use the same precautions on loans to Indians as he would on loans to non-Indians. In States having the Uniform Commercial Code, security interests in crops as well as other chattels will be obtained under the provisions of Article 9 of the Uniform Commercial Code. All securing documents shall comply with State laws, and be filed in accordance with such laws.

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- C. Trust or Restricted Chattels. The Indian owners may deal with trust or restricted chattels in the same manner as if the chattels were non-trust or unrestricted. Lenders are to be advised to use the same precautions in taking trust chattels as security as they would in the case of non-trust chattels. Lenders are responsible to check appropriate State or County records to make certain that the property is unencumbered. All security interests in trust or restricted chattels will be prepared and filed in accordance with State law. Indians will be encouraged to maintain records to substantiate claims that title to livestock owned by them is in a trust status.
- D. Assignments of Income. With the approval of the Superintendent, assignments of income from trust land may be given as security for loans by execution of Form 5-4719 (formerly Form 5-845) "Assignment of Income From Trust Property," except income from:
- (1) Trust land of individuals who are indebted for loans made pursuant to 25 CFR 91.
  - (2) Restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma. Such land was made subject to jurisdiction of the Oklahoma State Courts by the Act of August 4, 1947 (61 Stat. 731).

Section 5 of Form 5-4719 provides that, "The rights, powers, and authority granted herein shall be exercised only if payments on my loan are not made as agreed upon, or if I otherwise default on the provisions of the loan agreement." This provision may be deleted from the form if the borrower contemplates repayment of the loan direct from the assigned income. This deletion authority, however, may be exercised only on income to be received within one year of the date of execution of the assignment, unless otherwise authorized in writing by the Area Director for each specific case.

The terms of printed assignment forms may be altered with the approval of the Area Director, when justified by the terms of a particular loan.

- E. Title of Property Purchased with Loans. Unless a loan is otherwise secured adequately, a non-Bureau lender probably would require that the property purchased with the loan be given as security therefor. The manner in which title is taken, therefore, is important from a security standpoint.

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- (1) Chattels. Title to chattels purchased with a loan from a non-Bureau lender should be taken in the name of the borrower.

Some lenders may not be willing to finance Indians unless all of the borrowers' property of the same class which is capable of being intermingled is placed in the same title status. As an example, an Indian owning cattle title to which is in the United States in trust for him applies for a loan from a non-Bureau lender to purchase additional cattle. Title to the cattle to be purchased with the loan would be taken in the name of the borrower. The lender requires a security interest in all of the Indian's cattle and that they be in the same title status. The trust cattle could be placed in the same title status as the cattle being purchased upon approval of an application submitted on Form 5-4722 (formerly Form 5-848) by the owner. Order 2508, Sec. 11 (z)(3), (10 BIAM 2.1), delegates authority to the Commissioner to approve the release of the United States interests in any trust or restricted property of an Indian, except land. The authority of the Commissioner was redelegated to Area Directors by 10 BIAM 3.1.

If the borrower in the foregoing example also owned sheep, title to which was in the United States in trust for him, it would not be necessary to place the sheep in the same title status as the cattle.

- (2) Land. Title to land purchased with loans from non-Bureau lenders may be taken in a fee simple status or, when permitted by law, and if satisfactory to the lender, in a trust status. Superintendents and Area Directors should check with the Field Solicitor regarding authority to take title in a trust status. Regardless of title, the land may be mortgaged to the lender as security. Indians may be permitted to own land in both a trust or restricted and in a fee simple status.

If an Indian clearly is able to handle his own affairs without assistance and receives a loan from a non-Bureau lender to purchase additional land, he ordinarily should be required to take title to the

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land in a fee simple status, even though it may be legally permissible to take title in a trust status. However, the location of the land, for example, if it is within the exterior boundaries of a reservation, may justify trust title.

If an Indian is unable to manage his own affairs without assistance and receives a loan from a non-Bureau lender to purchase additional land, he may be permitted to take title to the land in a trust status, if the lender is willing to make the loan and permit title to the land to be taken in this manner, and provided legal authority exists to take title in a trust status.

Lenders determine the conditions under which they are willing to make loans to Indians. Even though the applicant, the Council, and Bureau officials feel it would be to the borrower's advantage to take title to the land in a trust status, and even though it may be legally permissible to do so, title may nevertheless, have to be taken in fee if the lender is unwilling to make the loan unless title to the land being purchased is taken in fee.

- (3) Bills of Sale. Encourage borrowers to obtain and retain bills of sale on chattels purchased with loans.

- 1.5 Mortgages of Trust or Restricted Land. Individually owned trust or restricted land may be mortgaged as security for loans. Public Law 450, 84th Congress, approved March 29, 1956 (70 Stat. 62, 63; 25 U.S.C. 483a), provides:

"That the individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States, are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State \* \* \* in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceedings, and any conveyance of the land pursuant to the proceeding, shall divest the



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United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed."

25 CFR 121.61 (23 F.R. 6493), August 22, 1958, formerly 25 CFR 241.52 as amended December 24, 1953 (18 F.R. 8896), provides:

"The Commissioner of Indian Affairs or his authorized representative may approve mortgages or deeds of trust on any individually owned trust or restricted land whenever such lands under any law or treaty may be sold with the approval of the Secretary of the Interior or his duly authorized representative. The approval of such a mortgage or deed of trust terminates the trust or restricted status of the land only with respect to such mortgage or deed of trust and only for the purpose of permitting foreclosure or sale pursuant to the mortgage or deed of trust in accordance with the laws of the State \* \* \* in which the land is situated."

10 BIAM 2.1, Section 13(b) of Order 2508, delegates to the Commissioner "All those matters set forth in 25 CFR Part 121." The Commissioner's authority was redelegated to Area Directors by 10 BIAM 3.1.

- A. Trust Period. The approval of a mortgage on restricted Indian land is an individual act confined entirely to the particular transaction, and is intended merely to give approval to the transfer of title which may result from the mortgage involved in the particular transaction. The approval thus given does not purport to extend the trust period on the lands.
- B. Issuance of Patent in Fee. Section 5 of the General Allotment Act requiring the United States upon expiration of the trust period to convey title to the land "free of all charge or encumbrance whatever" contemplated only such charges of encumbrances as might be created by any act of the United States, but not such charges or encumbrances as might be created by an allottee's own act. A mortgage on restricted land is given by an Indian with his consent. Moreover, this provision of the General Allotment Act has in effect been qualified by subsequent legislation such as the Act of March 1, 1907 (34 Stat. 1018, 25 U.S.C. 1946 ed., sec. 405); section 1 of the Act of June 25, 1910 (36 Stat. 855, 25 U.S.C. 1946 ed., sec. 372); and March 29, 1956 (70 Stat. 62, 63, 25 U.S.C. 483a), which authorizes encumbrances. Once a patent

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in fee is issued, it would necessarily be subject to all existing encumbrances and, as the mortgages would be recorded, it would not be necessary to note their existence in any patent in fee issued.

- C. Advantages of Mortgage of Trust Land. A mortgage of trust land by an Indian owner has advantages over issuance of a patent in fee in some instances. An Indian may wish to continue his land in a trust status, and still utilize the land as security for a loan. If forced to obtain a patent in fee before his land could be utilized as security for a loan, an Indian would be faced with the decision of which he wanted most; to continue to hold his land in trust, or to obtain the financing needed. If the former were selected, he probably would then apply to his tribe for financing or to the Government, thus increasing his dependence upon the United States, either directly or indirectly, for financing. Mortgaging of his trust land provides a means whereby an Indian can utilize his chief asset, land, as security for justified financing, and still retain the benefit of tax exemption of his land, at least for a time.
- D. General Approval of Mortgages. Any mortgage or deed of trust executed pursuant to 25 CFR 121.61 may, in his discretion, be approved by the Area Director.
- E. Guidelines for Approval. Area Directors may, pursuant to 25 CFR 121.61, approve mortgages or deeds of trust, given as security for loans to finance productive enterprises operated by borrowers; to provide housing facilities for borrowers; for the purchase or construction of other improvements to be utilized by borrowers; and for other purposes which will promote Indian economic development.
- F. Restrictions. If there are prior liens or other encumbrances against the land to be mortgaged, such as probate fees, irrigation charges, assignments of income, other mortgages, leases or rights of way, the Area Director shall not approve the mortgage unless it contains a reference to such prior liens or other encumbrances and is expressly made subject to them. The Area Director's authority to approve mortgages may not be redelegated to Superintendents (see 10 BIAM 3.3 F (4)(a)).
- G. General Instructions. Before approving a mortgage to secure a loan which is to finance housing or the purchase or construction of other improvements, the Area Director shall be reasonably

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certain that the borrower will have income from some source with which to repay the loan without levying upon the land to be mortgaged. As examples, an applicant might have steady wage employment which would enable him to make periodic installments on a loan for the construction of a home. Another applicant might desire to construct a garage, barn, a limited amount of fencing, or to make other improvements for which he could not make immediate payment from his income.

He might have income from trust or restricted land, which he is not using personally, from which a loan for the purchase or construction of a home could be repaid. Area Directors shall use caution in approving mortgages as security for loans where the proceeds of the loans are to be used for housing and improvements which are not part of a productive enterprise.

The relation of the proposed mortgage to the value of the land also should be carefully considered. Excessive security for a loan should not be approved. For example, if an Indian had three tracts of land valued at \$10,000, \$9,000, and \$11,000 respectively, and was applying for a loan of \$4,000, a mortgage on the tract valued at \$10,000 would provide adequate security for the loan without encumbering the other tracts. In recommending approval or in approving a mortgage, careful consideration of all factors surrounding the particular transaction is essential. Approval of mortgages of trust land must not be permitted to become a mechanism whereby improvident Indians may be separated from their lands.

- H. Productive Loans. For the purposes of 1.5 E above, a productive loan is defined as one to finance a self-liquidating enterprise, i.e., where the plan of the borrower shows that the enterprise is capable of producing income sufficient to cover operating and living expenses of the borrower and his family, and repay the loan within the terms and conditions imposed by the lender. As an example, a loan for agricultural purposes, granted favorable climatic conditions, industry, and managerial ability on the part of the borrower, may be classed as a productive loan. There are other factors to be considered, however, such as the size of unit, size of loan, whether the farm will produce enough to cover expenses and repay the loan, etc., but if these factors as shown by the farm plan of the borrower, are satisfactory, the loan may be considered productive. A loan for the construction of a home ordinarily would not be considered as productive, as the home in itself would not produce an income with which to pay operating and living

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expenses and repay the loan. If the home were required to enable the Indian to live on and operate his land, which he would otherwise not be able to operate, and if his enterprise, as shown by his farm plan, will provide sufficient income to cover expenses and repay the loan within the terms imposed by the lender, it may be considered productive. Even though home loans may not be a part of productive loans, they nevertheless shall receive equal consideration.

- I. Information to be Furnished Lenders. When an Indian applies to a lender for financing, and offers a mortgage on trust land as security, the applicant and the lender should work out, insofar as is possible, all necessary information and arrangements between them. When a mortgage of trust land is involved, however, it is necessary for employees of the Bureau to furnish some information and assistance. Efforts should be directed towards cooperating with and assisting "outside" lenders in every possible way (1.1 above).

The following outlines some of the information lenders may require. Before the Area Director approves a mortgage of trust or restricted land, or before he recommends that the Commissioner approve a mortgage, he should have the following information available upon which to base his approval or recommendation:

- (1) General Information. The applicant's work habits, credit rating, farming, ranching, or business experience (if any), managerial ability, and any other information pertinent to consideration of the application.
- (2) Health Information. Any known health problems of the applicant and his family.
- (3) Statute Under Which Land Held. A reference to the statute under which the applicant holds title to his land.
- (4) Statute Authorizing Mortgage Approval. A reference to the statute which authorizes the Secretary of the Interior to approve the mortgage of the land of the applicant, i.e., the Act of March 29, 1956 (70 Stat. 62, 63).

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- (5) Legal Description of Land. The legal description of the land to be mortgaged, title status or abstract of title, and an appraisal of the land and improvements. A title status report on trust or restricted individually owned land can be obtained from the Bureau's title and record sections. 1/
  - (6) Liens. A copy of any existing lien, and the amount of the outstanding balance of the lien.
  - (7) Taxability of Land. Whether or not the land is taxable.
  - (8) Compensation. Whether the applicant receives any compensation from the Bureau of Indian Affairs.
  - (9) Funds. Whether the applicant has exclusive control over his own funds, or whether any of his funds are subject to control of the Bureau of Indian Affairs. If any of the applicant's funds are subject to control of the Bureau, the lender should be furnished a complete report on such funds, and a statement as to whether any funds may be released and used by the applicant for payment of the proposed loan.
  - (10) Financial Condition. The applicant's financial condition.
- J. Commitment That A Mortgage Will Be Approved. When a lender is considering an application of an Indian for a loan secured by a mortgage of trust or restricted land, the Area Director may issue a commitment on the form set forth herein assuring the lender that a mortgage will be approved provided the loan is made. Whatever investigation is necessary to determine whether or not the mortgage will be approved should be made before the commitment is signed. It should be made clear to the Indian applicant and to the lender that failure to approve a mortgage after a commitment has been made, will be justified only if an exceptional case should occur in which the Area Director, after having made a full investigation in good faith as a basis for

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1/Title and Record Sections for the Bureau are located at Aberdeen, Albuquerque, Billings and Portland. Records are not available on lands of Indians in the State of Alaska and of the Five Civilized Tribes, Eastern Band of Cherokee Indians, Osage Indians, Seminole Tribe of Florida, Oneida Tribe of Wisconsin, White Earth Band of Chippewa Indian Tribe of Michigan (Isabella Reservation).

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execution of a commitment, later obtains information which would make it impossible for him to approve a mortgage and still perform his proper duty under the laws governing such matters.

(1) Form of Commitment.

"On the basis of a thorough investigation by the Bureau of Indian Affairs it has been determined that

\_\_\_\_\_ is sufficiently competent to execute a mortgage to secure a loan to be made by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ for the purpose of \_\_\_\_\_.

In accordance with 25 CFR 121.61 and authority delegated to the undersigned by the Commissioner of Indian Affairs by 10 BIAM 3.1, the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a mortgage on the trust or restricted land offered by the Indian owner thereof, provided no cause for not approving the mortgage occurs subsequent to the date of this commitment, and provided that the loan is made prior to \_\_\_\_\_, 19 \_\_.

Date \_\_\_\_\_  
Area Director"

K. Form of Approval. Mortgages of trust or restricted land shall be approved in the following manner:

"Pursuant to the Act of March 29, 1956 (70 Stat. 62, 63), 25 U.S.C. 483a, and authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior (25 CFR 121.61, 23 Federal Register 6493-6495, August 22, 1958), and 10 BIAM 2.1, Sec. 13(b), Order 2508, and to Area Directors by 10 BIAM 3.1, the foregoing mortgage is hereby approved on behalf of the Secretary of the Interior. Approval of the foregoing mortgage shall not be construed to be an agreement or assurance that the lands covered by the mortgage will remain in a trust or restricted status during the period of the mortgage agreement."

1.6 Mortgages of Leasehold Interest. Leasehold interests in individually owned trust or restricted lands and tribal lands subject to Federal restrictions may be mortgaged as security for loans.

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25 CFR 131.12 (c) (26 F.R. 10966, November 23, 1961, as amended by 29 F.R. 2542, February 18, 1964) provides:

"With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument must be approved by the Secretary. x x x x."

10 BIAM 2.1, Section 13(n) of Order 2508, delegates to the Commissioner "All those matters set forth in 25 CFR 131." The Commissioner's authority was redelegated to Area Directors by 10 BIAM 3.1.

- A. General Approval of Mortgages. Any encumbrance instrument of a leasehold interest executed pursuant to 25 CFR 131.12 (c) may, in his discretion, be approved by the Area Director. Details and procedures as prescribed in 1.5 E, F, G, H and I above should be followed.
- B. Commitment that a Mortgage will be Approved. When a lender is considering an application of an Indian for a loan secured by a leasehold interest, the Area Director may issue a commitment on the form below assuring the lender that a mortgage will be approved provided the loan is made. Whatever investigation is necessary to determine whether or not the mortgage will be approved should be made before the commitment is signed (see 1.5 I above for outline of information upon which to base action.) It should be made clear to the Indian applicant and the lender that failure to approve a mortgage after a commitment has been made, will be justified only if an exceptional case should occur in which the Area Director, after having made a full investigation in good faith as a basis for execution of a commitment, later obtains information which would make it impossible for him to approve a mortgage and still perform his proper duty under the laws governing such matters.

(1) Form of Commitment.

"On the basis of a thorough investigation by the Bureau of Indian Affairs it has been determined that

is sufficiently competent to execute a mortgage of

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leasehold interest subject to the terms and provisions of the lease, dated \_\_\_\_\_ entered into between \_\_\_\_\_ as lessor, and \_\_\_\_\_ as lessee, to secure a loan to be made by \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ for the purpose of \_\_\_\_\_.

In accordance with 25 CFR 131.12(c) and authority delegated to the undersigned by the Commissioner of Indian Affairs by 10 BIAM 3.1, the undersigned hereby agrees, on behalf of the Secretary of the Interior, to approve a mortgage of leasehold interest offered by the lessee thereof. Provided no cause for not approving the mortgage occurs subsequent to the date of this commitment, and provided that the loan is made prior to \_\_\_\_\_, 19 \_\_.

Date \_\_\_\_\_

Area Director"

- C. Form of Approval. Mortgages of leasehold interest shall be approved in the following manner:

"Pursuant to 25 CFR 131.12(c) and authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior (10 BIAM 2.1, Section 13(n) of Order 2508) and to Area Directors (10 BIAM 3.1), the foregoing mortgage of leasehold interest is hereby approved on behalf of the Secretary of the Interior upon the condition that the mortgage is subject to the terms and provisions of the lease described therein and the regulations of the Secretary of the Interior relating to the leasing of tribal and individually owned trust or restricted lands and upon the condition that the mortgage relates only to the leasehold estates and is not to be construed as an encumbrance on lien against tribe's or individual owner's title to the land involved."

- 1.7 Filing or Recording. All securing documents given as security for loans should be filed or recorded in the appropriate county or other recording office in accordance with State or Federal law. Upon filing or recording, all securing documents should be forwarded to the Bureau's Title and Record Section for recording. It is the lender's responsibility to accomplish filing or recording.



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- 1.8 Foreclosure. In the event of default of the Indian borrower who has given trust or restricted property as security for a loan, foreclosure action by the lender shall be on the same basis as a non-Indian case. Area Directors and Superintendents are authorized to give every assistance to lenders when they have a right to proceed to levy upon security.
- 1.9 Satisfaction. Lenders shall file or record releases or satisfactions of all securing documents in the appropriate county or other recording office in accordance with State or Federal law, upon payment of the obligation which the document is given to secure. Credit employees of the Bureau will make certain that there is compliance with this section where trust lands are involved.
- 1.10 Appeal. If the Superintendent cannot recommend that the Area Director execute a commitment to approve, or approve a mortgage of trust or restricted land given as security for a loan, he will advise the applicant in writing, together with reasons why he cannot recommend approval. His letter will also advise that the applicant may appeal the Superintendent's decision to the Area Director within ten days of receipt of the Superintendent's letter. The Superintendent at his discretion may notify the lender of his action. All appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with a record of the case.

If the Area Director cannot give a commitment to approve, or approve a mortgage of trust or restricted land given as security for a loan from a lender, he will advise the applicant in writing, together with reasons why he cannot approve or give a commitment to approve a mortgage. His letter will include information that the applicant may appeal his decision to the Commissioner within ten days of receipt of the Area Director's decision. The Area Director at his discretion may advise the lender. Appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with the record in the case, and by the Area Director to the Commissioner.

If the Commissioner cannot give a commitment to approve, or approve a mortgage of trust or restricted land, he will advise the applicant in writing, together with reasons why he cannot approve the same. His letter will include information that the applicant may appeal his decision to the Secretary. The Commissioner at his discretion may advise the lender. Appeals shall be filed with the Superintendent, and be transmitted by him promptly to the Area Director with the record in the case, and by the Area Director to the Commissioner, and by the Commissioner to the Secretary. The action of the Secretary shall be final.

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- 1.11 Special Provisions Regarding Livestock Loans. Title to some livestock may be in the United States in trust for a tribe instead of in the United States in trust for an individual Indian. Consent of the tribe to the sale would be required in such cases. Unauthorized sale by an Indian in possession of such livestock would be in violation of 18 U.S.C. 1163 which prohibits the embezzlement or conversion of any property belonging to an Indian tribal organization and provides a criminal penalty for both the converter and receiver of the goods with knowledge of the embezzlement or conversion.

In applying for livestock loans, an Indian applicant may authorize the lender to enter immediately upon his trust or restricted land on which the livestock are run, upon default in his loan agreement, and to operate thereon the mortgaged cattle or other livestock repossessed for not to exceed 180 days pursuant to the terms of the mortgage. The authorization shall be contingent upon approval of the loan.

In the event the Indian's livestock are run on: (a) trust or restricted land of another Indian; (b) fee land; or (c) tribal lands, a similar privilege may be granted lenders with the consent of the landowner, which at the lender's option, may be required prior to making the loan.

- 1.12 Superintendent's Records. Superintendents shall maintain or cause to be maintained, files containing copies of all mortgages approved either by the Superintendent, Area Director, or Commissioner; copies of all assignments of income from trust or restricted land approved by the Superintendent; and copies of releases and satisfactions. All mortgages of trust or restricted land, and all assignments of income from trust or restricted land, shall be recorded in the tract book at the Agency to safeguard against the conveyance of the mortgaged land, or land against which an assignment of income is in effect. Upon release of the mortgage, or payment of the loan for which the assignment was given as security, entries likewise shall be made in the tract books to indicate that the liens have been released.

- 1.13 Tribal Guaranty Agreements. Many tribes do not have a sufficient volume of credit business to make their credit operations economic. Earnings are insufficient to employ necessary assistance, keep accounting records, pay for audits, etc., and build up necessary reserves to absorb losses on bad loans. These small uneconomic credit systems are expensive to operate.

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Two classes of tribal funds are used in tribal credit operations; (1) income paid directly to the tribe (hereafter called "local" funds); and (2) funds deposited in the Treasury and advanced to the tribe for credit purposes under authority of 25 CFR 91.12.

Tribal governing bodies generally are in a uniquely privileged position in connection with their control over funds paid directly to the tribe, i.e., "local" funds. The Act of August 1, 1956 (18 U.S.C. 1163) 2/ provides penalties for embezzlement and theft from Indian organizations, thus providing some protection for the funds. When "local" funds are used for credit operations, such operations are not subject to regulation, inspection, or control such as are applicable to usual lenders. If credit operations are conducted under the Secretary's regulations, some inspection and control are provided. Upon request of the tribe, "local" funds may be used for credit purposes under the regulations of the Secretary.

Funds advanced to tribes from the Treasury for credit purposes, upon agreement by the tribes, are subject to regulations of the Secretary in 25 CFR 91. These regulations, as stated above, in some measure, take the place of the supervision and inspection to which other banking and loan institutions are subject. Some credit systems, even though conducted under Secretarial regulations, also have their shortcomings such as insufficient volume, lack of trained personnel, tribal political consideration in action on loans, etc.

2/ 18 U.S.C. 1163 provides:

"Embezzlement and theft from Indian tribal organizations. Whoever embezzles, steals, knowingly converts to his use or the use of another, wilfully misapplies, or wilfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or "Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied, or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another - "Shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of the property does not exceed the sum of \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

"As used in this section the term 'Indian tribal organization' means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws."

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Although, as stated in 47 BIAM 1.1 and 5.1, Indians should be encouraged and assisted in seeking financing from the same lenders serving other citizens in the areas in which they reside, there are some deserving Indians in need of financing who are unable to obtain financing from these same lenders. Rather than for tribes to conduct small uneconomic credit operations, even though such operations are conducted under Secretarial regulations, the procedures outlined in this section may be preferable. Arrangements are outlined whereby tribal funds could be used to protect "outside" lenders against loss, and thus enable lenders to finance Indians unable otherwise to obtain loans from "outside" lenders. It should be made clear to the tribes that the arrangements set forth herein will entail some cost. Such costs, however, probably would be less than the costs of administration of tribal credit systems, and would have the advantage of educating Indians in obtaining financing from the same sources available to other citizens, and meeting the same standards and assuming the same obligations.

- A. Sample Agreement. The following proposed "Guaranty Agreement" is a sample only, and is furnished to provide a "starting point" for development of an agreement with a particular financial institution and the tribe, to take care of specific circumstances surrounding specific needs and transactions. It outlines, however, the general procedure and rights of each party. In case an agreement were entered into with a Production Credit Association, the Guaranty Fund would be deposited in a separate bank. Provisions for payment of charges by the bank for handling the fund; authority for the transfer or sale of Class B stock in the Production Credit Association; provisions for discounting any paper covered by the Agreement with the Federal Intermediate Credit Bank, and other additional provisions probably would be necessary.

GUARANTY AGREEMENT

THIS AGREEMENT, which shall not be effective until approved by the Area Director of the Bureau of Indian Affairs (hereafter called the "Area Director"), by and between the \_\_\_\_\_  
Tribe, \_\_\_\_\_  
(hereafter called the "Tribe"), acting through its governing body (hereafter called the "Council"), as evidenced by a resolution certified copy of which is attached hereto, and the bank of \_\_\_\_\_ (hereafter called the "Bank"):

WITNESSETH THAT:

WHEREAS there is a present and future need among members of the Tribe for loans which the Bank cannot make under its ordinary and usual requirements; and

WHEREAS it is the desire and wish of the Tribe to arrange a guaranty for the Bank to enable it to lend money to such members;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereafter set forth, the Tribe hereby agrees to indemnify the Bank for any loss it may suffer or sustain on account of any loan made by it to any member of the Tribe which loan comes within the terms and conditions of this Agreement, but not to exceed the amount of the Guaranty Fund, plus any accruals thereto; and

IT IS MUTUALLY UNDERSTOOD AND AGREED BY THE PARTIES:

- (1) Guaranty Fund. The Tribe shall post a Guaranty Fund of \$ \_\_\_\_\_ with the Bank, of which \$ \_\_\_\_\_ shall be deposited in the name of the Tribe. The remaining \$ \_\_\_\_\_ shall be deposited with the Bank in the form of bonds of the United States Government, of such series and in such denominations as may be mutually agreed upon by the parties hereto. The bonds shall be properly endorsed by the Tribe so as to be saleable. Interest paid on said bonds shall be deposited in the Tribe's account with the Bank, and be available for the same purposes as the original deposit.
- (2) Screening Committee. The Tribe shall establish a Screening Committee of three members (hereafter called the "Committee"), and select the members thereof from outside the Council membership. The Committee shall have full authority to act for and on behalf of the Tribe under this agreement. All members shall be required to accept their authorities and responsibilities under this agreement in writing before they take office. Members shall hold office until their successors are appointed. Members may be removed by the Council with the approval of the Bank. The members shall select a Chairman from among themselves. Actions by the Committee may be taken only at meetings. The Chairman may call meetings and shall call meetings upon the request in writing of the other two members. Two members shall constitute a quorum. A uniform vote of at least two members shall be required in order for any action of the Committee to be effective. A record shall be kept

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of all meetings, which shall be available to the Bank and the Superintendent of the \_\_\_\_\_ Agency of the Bureau of Indian Affairs or his authorized representative (hereafter called the "Superintendent") at all times. With the exception of the Superintendent or his authorized representative, representatives of the Bank, and a clerk to keep records, attendance at meetings of the Committee shall be by invitation of the Committee only.

- (3) Procedure. When a member of the Tribe desires a loan from the Bank to be guaranteed in whole or in part as to principal or interest or both, an application shall be submitted to the Committee in such form and with such information as the Committee may require, in order to determine, on a preliminary basis, whether it would be willing to issue a Guaranty Certificate. The Committee shall require the member to furnish evidence that the loan cannot be obtained without the benefit of a Guaranty Certificate. The Committee may, after full consideration of the member's request, and in its discretion, supply the applicant with a statement indicating, without commitment, that in the event a loan is made to the member of the Bank, it will consider issuance of a Guaranty Certificate in an amount to be definitely set forth in such statement.

The Bank shall be under no obligation to consider applications from members of the Tribe without such a statement from the Committee.

Applicants to whom the Committee issues statements may then make application for a loan from the Bank, and shall supply such information as the Bank may require in connection with approval of a loan. The Bank may make its approval of a loan conditional upon the issuance of a Guaranty Certificate by the Committee in a specified amount.

The application, after action by the Bank, shall be forwarded by the Bank to the Committee. If the Committee then determines that the loan warrants a guarantee, it will then issue a Certificate of Guaranty committing the Guaranty Fund. The Certificate shall be dated, signed by two members

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of the Committee, and unless otherwise stated or renewed, shall be valid for a period of three months from its date. It shall be issued in duplicate. It shall set forth the maximum contingent liability of the Guaranty Fund thereunder, and shall describe the loan to which the guaranty attaches. The Committee shall promptly return the application and the original and one copy of the Certificate of Guaranty to the Bank for its subsequent validation and distribution by the Bank.

The Bank may then proceed to close the loan in accordance with its regular practice and requirements. The loan shall be considered closed when the first disbursement thereunder is made. The Bank shall then validate the Certificate of Guaranty, retain the original to support any claim for indemnification thereunder which may subsequently be made against the Guaranty Fund, and return one endorsed copy to the Committee.

- (4) Policy. It shall be the policy of the parties hereto that any applicant must not only be a member of the Tribe, but must have a reputation for honesty, integrity, and industry, and shall have had at least some experience in the type of farming, ranching, or other industry for which the loan is to be used. Every borrower shall be required to comply with the terms of his loan agreement. The Committee or the Bank may require the borrower, in his agreement, to agree to such conditions as either party may deem necessary for the protection of the loan.
- (5) Foreclosure. Whenever the Bank determines that a borrower is not adhering to the terms of his loan agreement, and that its interests in the loan, without reference to the Certificate of Guaranty, are endangered, it shall carry through foreclosure proceedings, including the sale of the property given as security in such manner as it shall see fit. The Tribe, by its signature attached to this agreement, gives its consent to the Bank to enter upon the reservation of the Tribe to exercise its rights under its security, and the Tribe agrees

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that it will assist the Bank in every way possible in the exercise of such rights. Foreclosure and sales shall be in accordance with the regular policies of the Bank in the collection of loans in the usual course of its business. The Bank shall reduce its claim against the borrower to judgment for any deficiency; and after exhaustion of its usual methods of collection, it may then proceed to obtain reimbursement from the Guaranty Fund.

- (6) Withdrawals from Tribe's Account. The Bank may withdraw funds from the Tribe's account to reimburse itself for a loss suffered on a loan, upon execution of an affidavit by an authorized officer of the Bank that a loan was properly made to a member of the Tribe and for which a Certificate of Guaranty was issued. The affidavit shall be presented to the Tribe by personal service or ordinary mail, and shall be accompanied by a statement of account with said borrower showing advances, repayments, accrued and accruing interest, costs and expenses incurred (including reasonable attorney's fees if an attorney actually has been employed in connection with the Bank's efforts to make collection), disposition of property given as security and balance owing and unpaid and determined by the Bank to be the amount of its loss. An Assignment of the Bank's evidence of the indebtedness to the Tribe also shall accompany the affidavit, as well as the validated original Certificate Guaranty. Withdrawals may be made from the Tribe's account at any time after the affidavit and attachments have been delivered to the Tribe. Copy of the affidavit and statement shall be furnished the Superintendent. If the Bank subsequently makes any collections of delinquent accounts or judgments on behalf of the Tribe after the Bank has been fully indemnified, the account thereof shall be deposited in the Tribe's account.

The Tribe may withdraw funds from its account, provided that before it may do so, the matter of withdrawal shall be submitted to popular referendum and be approved by a majority vote of the Tribe at an election in which at least 30 percent of the adult members residing on the reservation shall



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vote. A certificate signed by the Superintendent stating that such approval in an election has been granted, shall constitute authority for the Bank to permit withdrawals. Any withdrawal by the Tribe shall be made only with the consent of the Bank, and the Bank shall have the right to retain such funds as it may deem essential to protect its interests in Loans covered by Certificates of Guaranty.

In the event this agreement is terminated in accordance with section (9), the Bank shall return any unobligated funds and bonds to the Superintendent, after all loans covered by the Tribe's guaranty have been fully repaid to the Bank.

- (7) Withdrawal of Bonds. The Bank may execute an affidavit asserting that the cash remaining in the Tribe's account is insufficient to meet the obligations against said account. It may then market all or part of such bonds for cash, using reasonable diligence to obtain the market price. The proceeds shall be deposited in the Tribe's account, and be subject to disbursement in accordance with section (6).

The Tribe may withdraw bonds upon presentation to the Bank of a written request therefor; provided that any such withdrawals shall be subject to the same provisions as withdrawals from the Tribe's account in accordance with section (6).

- (8) Notices and Reports. The Bank shall furnish the Tribe full information regarding all deposits and withdrawals from the Guaranty Fund in accordance with section (1), (6), and (7), and shall report to the Tribe at the close of each calendar year, all loans and the status thereof covered by the Guaranty Fund, and the status of the Fund. In the event of termination, a full accounting for the Guaranty Fund shall be rendered by the Bank to the Tribe. Copies of all information furnished hereunder shall be sent to the Superintendent.

- (9) Termination. Either party may terminate this agreement at any time by giving written notice to the other party by registered mail, provided that

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any notice by the Tribe shall require approval of the Area Director in order to be effective. Copy of all termination notices shall be furnished the Superintendent. The giving of such notice shall not affect the right of the Bank to demand payment under Certificates of Guaranty as to any loan then existing and in force on its books.

IN WITNESS WHEREOF, Parties hereto have caused their names to be affixed and their seals to be attached by their respective officers thereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Bank

\_\_\_\_\_  
Tribe

By \_\_\_\_\_ (Authorized Officer) \_\_\_\_\_ (Authorized Officer)

Note: A statement should be attached showing the authority of the officers of the Bank to execute the agreement for and on behalf of the Bank. This could be in the form of a resolution of the Board of Directors. A copy of a resolution of the authorized governing body of the Tribe also should be attached authorizing its officers to execute the agreement for and on behalf of the Tribe.

- B. Funds Used for Guaranty Agreements. Local funds may be used for Guaranty funds within the limitations of tribal constitutions, bylaws, or charters. Most charters include restrictions upon the amount of money involved in contracts which may be entered into without the approval of the Secretary or his authorized representative. The organization papers of each tribe proposing to enter into a guaranty agreement should be examined to determine its power to enter into an agreement. Tribal funds on deposit in the Treasury may be advanced to tribes under authority of various appropriation acts for such purposes as may be designated by the governing body of the tribe involved and approved by the Secretary. The Secretary's authority has been delegated to the Commissioner under section 11(m) of Order 2508 (10 BIAM 2.1), and the Commissioner's

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authority redelegated to Area Directors by 10 BIAM 3.1. All advances of Treasury funds to enable tribes to enter into Guaranty Agreements also would be governed by the limitations in tribal organization papers. Revolving loan funds may not be loaned to tribes to enable the tribes to enter into Guaranty Agreements.

- C. Approval of Guaranty Agreements. Guaranty Agreements require approval of the Area Director, except where constitutions, bylaws, or charters permit tribes to enter into contracts involving up to specific amounts of funds without such approval. Proposed agreements may be submitted to the Area Director either before or after execution by the parties thereto. In the event of the former, the Area Director's approval will be given, where justified, subject to execution by the parties thereto. Six copies of all executed agreements will be prepared, which will be distributed to the governing body of the tribe, the second party, the tribal screening committee, the Area and Agency Offices, and the Commissioner.

- 1.14 Farmers Home Administration Loans to Indians. Applications from Indians for loans will be handled by FHA in the same manner as applications from non-Indians, except in those instances where Indian trust or restricted property is involved. When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FHA, the BIA will assist FHA to the fullest extent necessary in accordance with the statutory requirements affecting such property. This will include furnishing advice requested by FHA as to conditions under which BIA will furnish relevant information which it has with respect to the property and the individual loan applicant including that on his reputation for industry and payment of debts.

- 1.15 Veterans Administration Loans to Indian Veterans. Indian veterans are entitled to the same rights and privileges as other veterans. They should be encouraged to deal with the Veterans Administration on the same basis as other veterans. However, Bureau employees should give them all possible assistance in dealing with the Veterans Administration, and likewise should assist the Veterans Administration in dealing with Indian veterans.

- A. Title III, Servicemen's Readjustment Act. The loan guaranty and insurance provisions of Title III of the Servicemen's Readjustment Act of 1944, as amended (58 Stat. 291, 38 U.S.C. 694), are applicable to loans made to Indian veterans the same as to other veterans. Indian veterans may apply to persons and firms, associations and corporations, either State or Federal, for loans subject to guaranty or insurance under the act.

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- B. Loans by Tribes and Credit Associations. If a tribe or credit association is making loans from revolving funds borrowed from the United States, Indian veterans shall be required to present evidence that they are unable to obtain a loan from the same institutions in the area making loans to other veterans before an application is considered by the tribe or association. If a tribe is making loans from tribal funds, such evidence need not be required.

The loan guaranty or insurance provisions of the Servicemen's Readjustment Act should be invoked on loans made to Indian veterans by tribes and credit associations. If an Indian veteran fails to qualify for such loan guaranty or insurance, such failure should not prevent his receiving a loan from a tribe or association, provided the loan is justified and is sound.

- C. Veterans' Organizations. The assistance of veterans' organizations should be enlisted by Indian veterans and employees of the Bureau of Indian Affairs in disseminating the information contained in this chapter to banks and other lenders in the respective areas. Certain United States statutes, however, place limitations on the alienation or encumbrances of some Indian-owned property. Approval of the Commissioner or his authorized representative is required in some instances.
- D. Guaranty and Insurance. Area and Agency offices have been supplied with copies of the "Lenders Handbook" issued by the Veterans Administration. Both the loan guaranty and insurance provisions of the Servicemen's Readjustment Act of 1944, as amended, and the regulations of the Veterans Administration are covered fully in this Handbook. Any questions Indian veterans may have regarding loan guaranty and insurance which cannot be answered at the Agency or by referral to local offices of the Veterans Administration, should be referred to the Area Office. Area and Agency credit employees will check at definite intervals with local offices of the Veterans Administration to make certain that the copies of the "Lenders Handbook" in the Area are up to date.
- E. Direct Loans. Sections 512 and 513 of the Servicemen's Readjustment Act govern direct loans to veterans. <sup>3/</sup> Indian veterans eligible for loans under this program will be given all possible assistance by Bureau employees to obtain justified financing.

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<sup>3/</sup> The act is contained in the Lenders Handbook. Technical Bulletins regarding direct loans have been furnished Area Offices and further information issued by the Veterans Administration also will be furnished Area Offices.

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- F. Security. The security which Indian veterans may offer for loans guaranteed or insured under the provisions of Title III of the Servicemen's Readjustment Act of 1944, as amended, and for direct loans from the Veterans Administration will vary with individuals. It is impossible to issue instructions that will cover all types of security which may be offered for loans, other than to outline in general terms the broad classes of Indian property which may be offered as security for loans. Details, procedures, forms, etc., are given in 1.4, 1.5, and 1.6, above.
- G. Soldiers' and Sailors' Civil Relief Act of 1940. The Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended (50 U.S.C. 501 et seq.), provides in general for the temporary suspension of legal proceedings against persons inducted into military service. Similar benefits are afforded persons secondarily liable on the inductee's obligation. The act also provides that unless certain procedures such as mortgage foreclosures and property repossessions taken against such inductees comply with the specific provisions of the act, persons instituting such procedures will be subject to criminal prosecution. Where the United States, tribes, or credit associations contemplate taking action against delinquent borrowers who are in military service, they should consult with the Field Solicitor or their own attorneys for advice as to the appropriate procedure to be followed.
- (1) Procedure. While everything should be done to favor Indian borrowers who enter military service, at the same time, interests of the lenders must be protected. In general, the policy should be to suggest settlement of outstanding indebtedness, either to the United States or to tribes and credit associations, in a manner that will best serve the interests of both parties concerned. The advisable course of action will, of course, have to be decided in the light of the particular circumstances of each transaction. In some cases it might be to the best interests of both parties to liquidate the indebtedness. In some instances liquidation of the credit-financed enterprises may not be feasible or desirable. It may be possible, in such cases, to have the borrower select responsible parties as agents to carry on the enterprise and to gradually liquidate the indebtedness. The selection of the agent should be subject to the approval of the lending organization and the Bureau official who approved the loan in the first instance. If there are co-signers or guarantors on the loan, they should be consulted and

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their interests protected also. If a borrower is delinquent or otherwise has failed to conform to the terms of the loan agreement, and is likely to be called for military service, prompt action ordinarily should be taken to declare the loan in default and commence liquidation proceedings in accordance with the provisions of the loan agreement. Delinquencies in such instances should, of course, receive the usual consideration for revision of repayment schedules if they are due to circumstances over which the borrower has no control. These actions must be taken prior to the time the borrower receives orders to report for induction (or for military service), since the benefits of the statute apply upon the receipt of such orders.

- H. Loans to Indian Lessees of Trust or Restricted Land. The memorandum of understanding which follows is essentially that approved by the Commissioner April 20, 1965, and by the Administrator of Veterans' Affairs May 7, 1965.

"MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMISSIONER OF INDIAN  
AFFAIRS AND THE ADMINISTRATOR OF VETERANS' AFFAIRS

Subject: Veterans Administration Guaranteed, Insured or  
Direct Loans to Indian Lessees of Trust or  
Restricted Land

I. Purpose.

This memorandum of understanding sets forth the policies that will be followed by the Bureau of Indian Affairs (BIA) and the Veterans Administration (VA) with respect to applications from Indians for VA guaranteed, insured or direct loans for which leasehold interests in trust or restricted land are offered as security.

II. Lease Requirements.

Where leasehold interests in trust or restricted land are offered as security for direct VA loans or for loans to be guaranteed or insured by the VA, leases shall meet the following requirements.

1. Each lease must have an unexpired term of at least 50 years from the date of the execution of the mortgage. The conditions of this requirement will

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be considered as having been met in those cases where, as a result of Federal restriction on Indian leasehold limits, a lease is executed as of the date of the execution of the mortgage for a term of 25 years with provision for renewal thereof automatically and without notice on the same terms and conditions for an additional term of 25 years.

2. Each lease shall be in a form which has been approved by the Veterans Administration, the Bureau of Indian Affairs, and the Federal National Mortgage Association.

### III. BIA Mortgage Approval Commitment and Certificate.

1. Upon approval of the proposed loan transactions the BIA will issue a commitment stating that the mortgage will be approved upon issuance of a commitment by the VA. The BIA commitment will be in the following form:

(Form used should be that shown in 1.5J(1) above.)

2. The following certification to be executed by the authorized representative of the Secretary will be inserted after the jurat at the end of the mortgage.

(The certificate used should be that shown in 1.5K above.)

### IV. Credit Information.

Upon request of either the mortgagee or the VA, and with the consent of the Indian applicant, the BIA will furnish information relative to its credit experience, if any, with the Indian applicant. Included in this information will be a statement as to whether the funds may be released and used by the applicant for payment of the proposed mortgage loan.

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V. Servicing VA Guaranteed, Insured or Direct Mortgage Loans.

While the servicing of a VA guaranteed, insured or direct loan is the responsibility of the lender or holder of the mortgage as required by VA regulations, upon request of the VA, the mortgagee or borrower, the BIA will assist to the extent possible in correcting difficulties that arise in connection with the obligation under the mortgage. This shall not be construed, however, as involving monetary assistance from the BIA. The BIA further agrees to cooperate within its authority in any remedial action that may be necessary or desirable."

1.16 Memorandum of Understanding with Lenders. In cases where a particular lender may have a considerable volume of loans to Indians, the work involved in loan preparation and action can be simplified and expedited by development of a memorandum of understanding outlining the conditions under which loans will be made, and the procedures that will be followed.

A. Federal Land Bank. The following is a sample of an agreement similar to the one entered into with a Federal land bank in one area. It is furnished to provide a starting point for the development of a memorandum of understanding with a particular lending institution. The provisions of any memorandum necessarily will vary from the following sample:

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE FEDERAL LAND BANK OF \_\_\_\_\_ AND THE  
DEPARTMENT OF THE INTERIOR

Subject: Federal Land Bank Loans to Indians

The purpose of this Memorandum is to outline very generally the procedure to be followed in connection with the applications of Indians for Federal Land Bank loans.

The Indians to which this Memorandum especially applies are those holding land in severalty under trust patents and patents or deeds containing restrictions against alienation subject to statutes under which they may, with the approval of the Secretary of the Interior, mortgage their lands as security for Federal Land Bank loans made under the Federal Farm Loan Act, as amended. These statutes include, but may not be limited to, the Act of March 29, 1956 (70 Stat. 62, 63).



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An Indian may make application for a loan to the National Farm Loan Association in whose territory the farm to be offered as security is located, and the Association will give the same consideration to this application as it does to any other application.

If, it is evident that the proposed loan is ineligible under the Federal Farm Loan Act, as amended, or the regulations issued pursuant thereto, as in the case of an Indian holding title to restricted land or otherwise being subject to some governmental restriction in the management of his property or business affairs, the Reservation Superintendent of the Bureau of Indian Affairs will be so advised by the Secretary-Treasurer of the Association. If it appears that a loan may be made, the Secretary-Treasurer of the Association will discuss the application with the Reservation Superintendent who will furnish a written report and recommendation containing substantially the following information and documentary material.

- (1) A statement concerning the applicant's work habits, credit rating, farming experience, managerial ability, and other similar information that is pertinent to consideration of the application.
- (2) A statement of any known health problems of the applicant and family.
- (3) A statement of the amount of the outstanding balance of any lien on the farm and the name of the lienholder.
- (4) A statement as to whether or not the land held by the applicant is taxable.
- (5) A statement as to whether the applicant receives any compensation from the Agency.
- (6) A statement as to whether the applicant has exclusive control of his own funds or if any of his funds are subject to control by the Bureau of Indian Affairs. If any of the applicant's funds are subject to control of the Agency, the Federal Land Bank of \_\_\_\_\_ will be furnished a complete report on such funds together with a statement as to whether any such funds, including grant funds, may be released and used by the applicant for payment on the proposed Federal Land Bank loan.

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- (7) A statement regarding the applicant's financial condition to the extent that such information is known by the Reservation Superintendent.
- (8) A commitment by the Department of the Interior that the Federal Land Bank mortgage will be approved provided the Indian's application for a loan is approved by the Federal Land Bank of \_\_\_\_\_ . It is understood that before the commitment is signed, the Bureau of Indian Affairs will make any investigation it considers advisable to determine if the Department of the Interior will approve the Federal Land Bank mortgage. It is understood further that failure of the Department of the Interior to approve a Federal Land Bank mortgage after a commitment has been made will be justified only if an exceptional case should occur in which the Bureau of Indian Affairs, after having made a full investigation in good faith as a basis for its execution of the commitment, later obtains information which would make it impossible for the Department of the Interior to approve the mortgage and still perform its proper duty under the laws governing its operation. The commitment will be executed by the Area Director in the form shown in Section 1.5 J(J), of 47 BIAM Supplement No. 3.
- (9) The marital status of the loan applicant(s).
- (10) Evidence of ownership of the surface and the mineral rights, and the right to mortgage the land offered as security for a loan. (When an Indian applicant's title is recorded solely in the records of the United States Department of the Interior, the Indian applicant will be required to furnish a certificate by an authorized officer of the Department of the Interior showing the description of each tract, the name(s) of the owner(s), the nature and condition of the title to each tract as disclosed by the official records of the Department of the Interior, including all liens thereon, and certified copies of all related documents recorded in the records of the Department of the Interior. When all, or a part of an Indian applicant's title is recorded in the local county records, he will be required to furnish an abstract of title, prepared by an abstractor in the county, covering the period from the beginning to

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date. A similar abstract of title as to restricted lands is required to be furnished by the Indian applicant immediately after the mortgage to the Federal Land Bank is recorded.)

Upon receipt of the above information the National Farm Loan Association will give further consideration to the application, and if it appears that a loan can be made, the application will be processed generally under the same procedure and policy that governs other applications at that time, although there will necessarily be some variations in the closing procedure.

If there should be any change in the status of the applicant, financial or otherwise, before the loan is closed, the Superintendent of the \_\_\_\_\_ Agency having jurisdiction, will notify the Secretary-Treasurer of the National Farm Loan Association and the Federal Land Bank of \_\_\_\_\_ as to the details of such change. Before the mortgage to the Federal Land Bank of \_\_\_\_\_ an approval statement substantially in the form shown in Section 1.5 K of 47 BIAM Supplement No. 3, will be added following the acknowledgments on the original mortgage which will be prepared and executed on behalf of the Secretary of the Interior by a duly authorized official of the Department of the Interior.

At the time of closing the loan the Federal Land Bank of \_\_\_\_\_ may, at its option, require an assignment of all income the Indian applicant will receive from trust property and, in the event payments are not made on the loan in accordance with the terms of the loan instruments, will request the Department of the Interior, Bureau of Indian Affairs, to pay, from such income from trust property, such amounts required to place the loan in a current condition.

In the event of default under the mortgage, the same loan servicing policy will be followed as is followed in all other cases. If foreclosure action is deemed necessary by the Federal Land Bank of \_\_\_\_\_ the bank may institute and conduct such action on the same basis as in a non-Indian case, in which event the Department of the Interior agrees to execute and deliver any deeds or other documents necessary to vest a good title in the purchaser after foreclosure sale.

This Memorandum of Understanding may be amended at any time by mutual agreement of the parties hereto, and may be terminated as to future cases by either party upon written notice to the other.

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IN WITNESS WHEREOF, the parties hereto have approved and executed this Memorandum of Understanding.

THE FEDERAL LAND BANK OF \_\_\_\_\_, DEPARTMENT OF THE INTERIOR

By \_\_\_\_\_  
Vice-President

By \_\_\_\_\_  
Area Director

\_\_\_\_\_ Area Office

Date \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary  
(CORPORATE SEAL)

Dated \_\_\_\_\_

- B. Federal Housing Administration. A memorandum of understanding has been entered into between the Commissioner, Federal Housing Administration, March 30, 1962, and the Commissioner of Indian Affairs, March 27, 1962, with reference to loans by the Federal Housing Administration to Indians. Pertinent parts of the memorandum are as follows:

"MEMORANDUM OF UNDERSTANDING BETWEEN THE  
COMMISSIONER, BUREAU OF INDIAN AFFAIRS  
AND THE  
COMMISSIONER, FEDERAL HOUSING ADMINISTRATION

Subject: Mortgage Loans to Indians and to Permittees and Lessees on Indian Trust Land

I. Purpose

This memorandum of understanding sets forth the policies that will be followed by the Bureau of Indian Affairs (BIA) and the Federal Housing Administration (FHA) with respect to applications for mortgage loans involving persons of Indian blood owning land or having leasehold interest in land in a trust or restricted status.

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II. Loan Eligibility of Indians

An Indian who holds individually all his land under fee patents or unrestricted deeds will be considered for loans in the same manner as a non-Indian. An Indian may deal with a nontrust or unrestricted property, both real and personal, in the same manner as any other citizen. Such property may be given as security for loans without the consent or approval of any Government agency. It is the responsibility of the mortgage lender to ascertain whether the Indian holds his land on a fee basis or in a trust or restricted basis.

III. Ownership of Real Estate and Land Tenure of Indians Applying for Real Estate Mortgage Loans

Provided all applicable eligibility criteria are met, FHA will insure an eligible loan secured by a first mortgage lien of real estate held by an Indian in severalty under trust patents or deeds containing restriction against alienation, provided such Indian is subject to statutes authorizing him, with the approval of the Secretary of the Interior, to execute valid and enforceable mortgage liens subject to the usual foreclosure procedures. These statutes include, but may not be limited to, the Act of March 29, 1956 (70 Stat. 62, 27 U.S.C. 483a), which provides as follows:

'The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding, the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceedings, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to

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such land heretofore approved by the Secretary of the Interior are ratified and confirmed.'

An application for mortgage insurance involving Indian-owned land in a trust or restricted status can be accepted for insurance provided the application is accompanied by a commitment issued by the BIA that the real estate mortgage will be approved upon issuance of a commitment by the FHA. It will not be necessary to convert the trust or restricted land to an unrestricted status.

Where leasehold interest in trust land are offered as security for mortgages to be insured by the FHA, such leases shall meet the following requirements:

1. The lease must have an unexpired term of at least 50 years from the date of the execution of the mortgage to be insured by the FHA. The conditions of this requirement will be considered as having been met in those cases where, as a result of Federal restriction or Indian leasehold limits, a lease is executed as of the date of the execution of the mortgage for a term of 25 years simultaneously with its initial execution.
2. The lease shall be in a form approved by the FHA.

IV. Special Procedures Relating to Applications by Indians for FHA Insured Loans

- a. Upon request by either the mortgagee or the FHA, the BIA will furnish credit information relating to the Indian applicant. Included in this information will be a statement as to whether the applicant has exclusive control of his own funds or whether any of his funds are subject to control by the BIA. Information will also be supplied as to the source of the applicant's income. Where the applicant's funds are subject to control by the BIA, a complete report on such funds will be supplied, together with a statement as to whether the funds may be released and used by the applicant for payment on the proposed mortgage loan.
- b. Upon approval of the transaction by the BIA, the BIA will issue to the mortgagee a commitment in which the BIA will agree to endorse its approval on the mortgage

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upon issuance of an FHA insurance commitment.  
The BIA commitment form is shown in 47 BIAM  
5.5 J(1). 4/

- c. If the BIA receives information indicating a material change in the status of the applicant, financial or otherwise, before the FHA commitment is issued, the BIA agrees to convey this information to the FHA and to the mortgagee. BIA further agrees to cooperate in any remedial action that may be necessary or desirable.

V. BIA's Certificate of Approval

Where the Indian applicant holds title to restricted or trust lands, thereby necessitating the approval of the Secretary of the Interior in order to validate the mortgage, the following certificate of approval will be added to the standard FHA insurance mortgage form to be executed by the authorized representative of the Secretary. Certificate of Approval is shown in 47 BIAM 5.5 K. 5/

VI. Servicing FHA Insured Mortgage Loans

- A. While servicing of an FHA insured mortgage is the responsibility of the approved mortgagee as required by FHA regulations, BIA will, to the extent practical, assist the Indian borrower in discharging his obligations under the insured mortgage. This shall not, however, be construed as involving monetary assistance from the BIA. If a borrower defaults on his loan and the lender and borrower determine that conveyance of the mortgaged property either to the FHA or to a third party is advisable as an alternative to foreclosure of the loan and the FHA concurs, then such action may be taken with the consent of the BIA. The BIA will, at the request of the FHA, remove any restrictions on the property given as security for the loan that comes within its authority and will assist the Indian borrower in removing any other pertinent restrictions.

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4/ Former designation, now Section 1.5 J(1) above.

5/ Former designation, now Section 1.5 K above.

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- B. Where the insured mortgage is assigned to the FHA Commissioner, BIA will use its best efforts to facilitate voluntary transfer of title to such property to the FHA Commissioner on a basis mutually satisfactory to the Indian owner, the BIA, and the FHA.
- C. Since leaseholds involving tribal lands are generally outside the jurisdiction of state courts, the majority of legal actions involving such leaseholds must be brought in Federal courts. It should be borne in mind, therefore, that title to leased tribal lands must remain in the United States in trust for the tribe and cannot be transferred; and consequently, in cases involving such leases FHA's standard leasehold option to purchase the fee would be inoperative."
- C. Small Business Administration. A Memorandum of Understanding between the Administrator of the Small Business Administration and the Commissioner of Indian Affairs was entered into on April 27, 1971, regarding financial assistance available to Indians through the Small Business Administration. Provisions of the memorandum are as follows:

"MEMORANDUM OF UNDERSTANDING

Whereas it is the desire of the Small Business Administration and the Bureau of Indian Affairs to provide whatever assistance is possible consistent with legislative authority and published rules and regulations to encourage American Indians, Eskimos, and other Alaskan natives to participate in the economic growth of the Nation through ownership in business enterprises, it is agreed that:

1. The Bureau of Indian Affairs, tribes, and other Indian organizations are, in some instances, able to furnish equity capital either through grants or on a loan basis which can be used as a lever to increase the availability of direct loans, loan guarantees, and participation loans by the Small Business Administration for the financing of Indian-owned and operated business enterprises.
2. The Small Business Administration under its Economic Opportunity Loan Program is able, provided funds are not available from other sources, to furnish financial assistance up to \$25,000 (SBA share) in participation



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with private financial institutions or on a direct basis when no participation is available. In addition, the Small Business Administration can guaranty rentals for the life of a lease but in no event for a term in excess of 20 years under its Lease Guaranty Program. These loans and guarantees cannot be used for equity investment purposes.

3. The Bureau of Indian Affairs will take vigorous steps to encourage tribes and other Indian organizations with available funds to make equity capital loans to Indian-owned businesses on a deferred payment basis. These loans will be subject to subordination and standby agreements with the Small Business Administration.
4. The Small Business Administration is making every effort, under OPERATION BUSINESS MAINSTREAM, to provide loans and loan guarantees to Indians, Eskimos, and other Alaskan natives for borrowed capital purposes. Proceeds of these loans may be used for business construction, expansion or conversion; for purchase of machinery, equipment, facilities, supplies, or materials; or for working capital.
5. Where individual Indians are eligible for grants or direct loans from the United States, the Bureau of Indian Affairs will furnish such grants or loans for equity capital and other requirements to the extent funds are available.
6. The Bureau of Indian Affairs will take appropriate steps to determine whether equity capital financing is available from tribes and other Indian organizations, or from the Bureau, and will advise the Small Business Administration.
7. The Small Business Administration will arrange for its field office personnel to visit reservations according to prearranged schedules and will so notify reservation Superintendents and Tribal Councils.
8. The Bureau of Indian Affairs will assist the Small Business Administration in serving reservation areas including but limited to the following:
  - a. Cooperating with SBA personnel in arranging scheduled visits to reservations and arranging office space for their use.

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- b. Serving as an on-site source of information to Tribal Councils and individual Indians on SBA programs.
  - c. Assisting Indian applicants in preparing loan applications.
  - d. Advising SBA personnel on ways in which security interests in trust property can be perfected.
  - e. Providing information on the nature of an applicant's title to or interest in trust land, including copies of BIA records as appropriate.
  - f. Providing available credit information.
9. The Bureau of Indian Affairs and the Small Business Administration shall develop jointly details of operation procedures designed to carry out this agreement.
10. This agreement may be amended at any time by written agreement of both parties.
11. This agreement shall take effect upon the date of the execution thereof."

1.17 Collection Procedure on Defaulted Title I Loans Taken Over By Federal Housing Administration. A formalized procedure has been developed between the Bureau and the Federal Housing Administration for the collection, through set-off or otherwise, of debts due the United States by Indians as the result of FHA Title I improvement loans. Such loans had been made by private lending institutions and, upon default, the Government was required to pay the lending institution and take over the accounts. The procedure, as mutually agreed upon, is set forth in the letter of March 24, 1958, from the Federal Housing Administration. The letter is self-explanatory and is reproduced here in full.

By letters of April 17, 1958, to the Federal Housing Administration and the Bureau from the General Accounting Office (ref: Claims Division Z-1876090), it was stated that the regulations of the Comptroller General contemplate when an Agency has funds due a debtor of the United States which it has determined are available for set-off against a debt due another Agency, the necessary action should be taken at the administrative level to transfer the funds to the creditor-agency in accordance with its request without

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reference of the matter to the GAO. It is only when this and other administrative efforts to collect have failed that the debt is to be reported to the GAO as administratively uncollectible.

"FEDERAL HOUSING ADMINISTRATION  
WASHINGTON 25, D. C.

LEGAL DIVISION  
PLEASE REFER TO

March 24, 1958

Commissioner of Indian Affairs  
Department of the Interior  
Washington 25, D. C.

Attention: Bureau of Credit

Re: Set-off of Amounts due Indians Against  
Debts Due the United States on Title I  
Loans

Sir:

It is my understanding that amounts in the hands of your Department which are due Indians may be set off against any debts which these Indians may have to the United States. At present, such set-offs are made only when the debts are reported to the Comptroller General. This procedure is cumbersome and hardly appears justified where the amounts due the Indians in question are small and where the amount of trust property held for the Indians is of small value.

It has been found that a number of Indians are indebted to the United States on accounts being handled by this agency. These obligations have arisen out of loans made by private lending institutions to these Indians for the improvement of their property. The repayment of these loans was insured by this agency. Upon failure of the Indians to pay these obligations, the Government was required to pay the lending institutions and take over the accounts.

Obviously where an Indian has sufficient trust property or trust income in your hands to discharge such an obligation, this Administration has a duty to take steps to see that a proper set-off is made. Where the amounts being received by the Indians and the amount of trust property are both small, the amount to be obtained by such a set-off would not justify the expense involved. This would be particularly true where the Indian has

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insufficient income upon which to live and any assets taken by this Administration by way of set-off might lead to the increase in the obligation of your Department or of some other governmental agency for the support of such Indian.

Under the circumstances, I suggest the following procedure:

- A. When we have accounts against Indians which we find to be otherwise uncollectible, we will have these accounts referred to our Washington Office. We will then forward the names of these Indians to your Office in Washington for consideration of possible set-off.

Our request will include the following information:

- (1) Name
  - (2) Address
  - (3) Amount of obligation
  - (4) Any statements or commitments, verbal or written, made by borrower to representative of the Federal Housing Administration on proposed manner of repayment.
  - (5) Any additional information deemed as helpful to your Bureau in determining the merits of further efforts to collect and in expressing an opinion to the Federal Housing Administration as to whether or not action to effect set-off would be justified.
- B. If you find that no payments are being made to the Indians and you have no trust assets in your hands, or if the payments being made to the Indians and any trust property represents so little value that set-off would not, in your opinion, be justified, you would so advise this Administration and no further effort to collect through this means would be made.
- C. If there is sufficient trust property in your hands or trust income to justify further action, you would so advise this Administration and details of the proper steps to be taken to effect collection from the Indians through set-off or otherwise would be worked out on a case-by-case basis.

Very truly yours,

(SIGNED) WARREN E. COX

Warren E. Cox  
Chief Counsel, Title I"

