



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

47 BIAM Supp. 1, Release 4

MEMORANDUM

NOV 25 1980

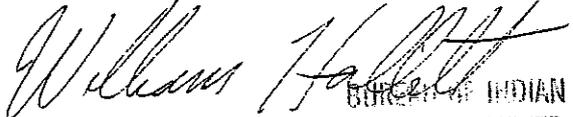
To: Holders of 47 BIAM Supp. 1  
From: Commissioner of Indian Affairs  
Subject: Revision of 47 BIAM Supplement 1, Guaranteed and Insured Loans

This release incorporates into 47 BIAM Supplement 1 a provision that specific loan servicing requirements will be made conditions of approval of a request by a lender for a loan guaranty and that the lender accept the conditions before a guaranty can become effective. Although loan servicing by lenders is required by the Guaranty Agreement, identifying servicing requirements as a condition of approval will inform lenders of what is expected in the area of servicing loans guaranteed by the Bureau.

The release incorporates in the supplement sentences which state that Area Directors are responsible for verifying the accuracy of guarantee premiums paid by lenders and the amounts of interest subsidy requested by lenders and paid by the Bureau.

The release also revises the requirement for plans of operation for business enterprises to require a complete business plan for the enterprise to include specific and pertinent data on the enterprise's operations.

Further, this release provides more detailed procedures on the handling of loans assigned to the Bureau.

  
BUREAU OF INDIAN AFFAIRS  
Commissioner of Indian Affairs

NOV 29 1980

Filing Instruction:

- (a) Remove superseded material:  
47 BIAM Supplement 1, dated 9-24-75  
1.12A (1) through 1.19C  
3.1 through 3.1I  
4.2 through 4.2B

ALBUQUERQUE AREA OFFICE  
OFFICE SERVICES

✓ (3 sheets)  
✓ (1 sheet)  
✓ (1 sheet)

(b) Insert new material submitted:

- ✓ 47 BIAM, Supplement 1, dated 11-25-80
- ✓ 1.12A(1) through 1.19 (3 sheets)
- ✓ 3.1 through 3.1I (1 sheet)
- ✓ 4.2 through 4.3 (2 sheets)

(c) Pen-and-ink Changes:

- ✓ Section 3.6, last line, change 1.10A to 3.3A
- ✓ Section 3.8, line 2, change 144410 to 14X4410
- ✓ Section 3.9A, second paragraph:
  - line 1, change comma to and
  - line 2, delete "and 47 BIAM, Supplement 4, 1.10C,"
- ✓ Section 3.9B, second paragraph, line 2, change 1.10 to 3.3
- ✓ Section 4.1A, delete (5) in its entirety

*Filed - 12-29-80*  
*R.F.W.*

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CREDIT AND FINANCING  
Guaranteed and Insured Loans

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Insurance and Approval on loans insured under a general insurance agreement. Interest subsidies paid to lenders by the United States on behalf of the borrowers shall continue to be paid over the remaining life of the original term of a loan even if the lender elects to discontinue the guaranty or insurance or otherwise causes the termination of the guaranty or insurance by failure to make guaranty or insurance premium payments as required in §93.43. Interest subsidy payments by the United States shall be discontinued on such loans when one of the following occurs:

- (1) The loan is paid in full prior to the expiration of the original term.
- (2) The loan is refinanced by a new loan.
- (3) The repayment schedule on the principal balance owing is extended beyond the original term, unless an exception is approved by the Commissioner. The interest subsidy shall only be discontinued as to the balance which has been extended beyond the original term of the loan.
- (4) The lender on a defaulted loan is reimbursed for a guaranteed or insured loss. The date of the check shall be the date of reimbursement.

B. The lender shall notify the Commissioner that it has made or modified an insured loan under the provisions of this insurance agreement within 20 days of such action and provide the Commissioner with the following information:

- (1) The name and address of the borrower.
- (2) Tribal affiliation of the borrower.
- (3) Amount of the loan and purpose(s).
- (4) The repayment schedule.
- (5) The interest rate charged the borrower.
- (6) The date(s) funds were advanced.

C. After receiving notice from the lender, the Commissioner will establish the interest subsidy rate and notify the lender of the rate established.

At the option of the lender, interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semi-annually, quarterly, or monthly. Using Form 5-4749, Lenders Report of Premiums and Interest Subsidies Due, Illustration 11 of this Supplement, lenders shall

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notify the Commissioner of loan payments received from borrowers and shall request payment of the subsidy. The interest subsidy, computed to the date payment was made by the borrower, will be paid to the lender. Interest Subsidies may not be prepaid. Lenders shall promptly notify the Commissioner when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement. The Area Director shall verify accuracy of the interest subsidy payment requested by lenders.

1.13 Lender's Service Charge (25 CFR 93.44). Lenders may charge borrowers reasonable fees for appraisals and compliance inspections; for lien searches and filing and recording; for tax assessments and similar items necessary to protect the integrity of the loan; for insurance premiums, survey costs, title examinations and insurance; and for such other charges as may be authorized by the Commissioner at the time a loan is made. Service charges, if any, may be paid from the proceeds of a guaranteed or insured loan when authorized in the loan agreement if the borrower cannot pay the charges from his or her own funds. However, if this is done, lenders may not charge interest on the amount advanced to pay service charges.

A Borrower shall not be required to pay points, finder's fees, loan origination fees, bonuses, commissions, or similar charges.

1.14 Premium (25 CFR 93.43). A premium will be charged lenders on the unpaid principal balance of guaranteed and insured loans at a rate established by the Commissioner.

A. Premium charges will not be charged to, collected from, or otherwise passed on to borrowers. The Commissioner will establish the premium rate to be charged on guaranteed and insured loans made during a specified period of time and will notify lenders of the rate which will be charged during the period established. By advance written notice to lenders making guaranteed or insured loans, the Commissioner may change or continue the rate established for the preceding period. The premium rate established for loans made during a given period of time will remain in effect for the duration of the loan. The Commissioner may require a change in the premium rate on refinanced guaranteed and insured loans to the rate in effect at the time of refinancing.

B. The initial premium on guaranteed and insured loans shall be remitted, payable to the Bureau of Indian Affairs, to the Superintendent of the local Agency within 10 days of the advance of loan funds to the borrower. The premium shall be for the six months or portion of six months in which the loan is made. Thereafter, premiums will be paid as of June 30 and December 31 on the principal balance outstanding at the end of each semi-annual period. The guaranty or insurance of a new loan, or of additional advances on existing loans, will not be effective until the Commissioner receives the premium due. The Area Director shall verify the accuracy of premium payments submitted by lenders.

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The guarantee of a loan shall cease to be effective if the premium is not remitted within 30 days of the close of the semi-annual period. Semi-annual premiums on insured loans are to be remitted within 30 days, and the insurance of the loan shall cease if the premium is not paid within 60 days following the end of the semi-annual period.

1.15 Loan Servicing (25 CFR 93.46). The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 93.44. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar-type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

Specific loan servicing requirements will be made conditions of approval of the request for guaranty. These requirements shall document Bureau expectations regarding periodic financial reports, frequency of lender visits and reports on the visits, methods for controlling disbursement of loan proceeds, etc. Approval conditions must be accepted by the lender before a guaranty can become effective.

1.16 Modification on Loan Agreements (25 CFR 93.12). Guaranteed and insured loans may be modified with the approval of the parties of the original loan agreement. The Commissioner's approval is required to modify guaranteed loans and insured loans only if the modification (1) changes the repayment schedule, (2) changes the prime security, (3) changes the interest rate, (4) changes the use of loan funds, (5) increases the principal amount of a loan, except as provided in § 93.22, (6) changes the plan of operation, (7) amends or changes the borrower's organization papers, (8) changes a partnership agreement, or (9) changes the location of an enterprise. When loans have been made under provisions of an approved insurance agreement, not requiring the Commissioner's approval for insurance of individual loans, lenders shall exercise the same prudence in approving requests for modifications of loan agreements and follow the same customary procedures and practices as have been established in connection with uninsured loans. Modifications are to be in compliance with the provisions of §§ 93.14, and 93.24. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative

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associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner.

1.17 Sale or Assignment of Guaranteed Loans. Lenders may sell or assign a guaranteed loan, including the security and guaranty certificate, to any other financial institution that is subject to examination and supervision by an agency of the United States, a state or the District of Columbia. The institution acquiring the loan shall notify the Commissioner in writing within 30 days after acquisition. The submission of completed Form 5-4758, Notice of Acquisition of Loan, Illustration 8 of this Supplement, to the Superintendent of the Agency Office servicing the guaranteed loan, shall constitute written notice to the Commissioner. Failure of the acquiring lender to furnish such notice within the 30-day period will void the guaranty unless the Commissioner authorizes an exception because of extenuating circumstances.

Lenders shall submit the original and two copies of Form 5-4758 to the Agency Superintendent who is assigned responsibility for record-keeping and servicing of the loan. The Superintendent will immediately acknowledge receipt on the bottom of the form and return a copy to the acquiring lender. The Superintendent will retain one copy for the records and submit the original, through the Area Director, to the Central Office, Division of Financial Assistance.

1.18 Release of Security (25 CFR 93.35). The prime security for a loan will not be released unless the property is to be sold and the net proceeds applied to the loan. When approved by the Commissioner, the prime security may be released when the proceeds from property sold are to be used to purchase property of similar nature and use and of at least equal value and lien priority, and when the lender, borrower, and Commissioner agree that the sale and such use of the proceeds are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require prior approval of the Commissioner.

1.19 Preparation of Applications. It is immaterial whether an applicant makes arrangements for a loan with the lender first or approaches the Bureau first. The following sets forth in general the responsibility of the applicant, lender, and the Bureau.

A. Loan Applicant's Responsibility. The applicant will need to obtain written proof of eligibility for a guaranteed or insured loan. To evidence eligibility of an applicant for a guaranteed or insured loan, an Eligibility Certificate for Guaranteed or Insured Loan, Form 5-4752, Illustration 1 of this Supplement, will be issued at the request of an applicant, by the Superintendent of the reservation on which the applicant resides or

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which will benefit from the business venture. In addition, each applicant will be responsible for developing data to prepare a loan application.

B Lender's Responsibility. The lender shall make the necessary credit evaluation to determine if an applicant is a good credit risk and if a loan applicant has a reasonable chance to repay a loan. If the lender decides to make a loan, provided the Bureau will guarantee or insure it, the lender will prepare the Request for Loan Guaranty or Insurance and Approval, Form 5-4755, Illustration 3 of this Supplement.

(1) Guaranteed Loans. The lender will attach required financial statements and the loan application to Form 5-4755 and submit the docket to the local Agency Superintendent requesting a guarantee certificate.

(2) Insured Loans. After entering into an agreement to make insured loans, the lender will process loans in accordance with the agreement. The lender need only notify the Bureau of loans made within its approval authority. On loans that require the Commissioner's approval, the lender will prepare the Request for Loan Guaranty or Insurance and Approval, and transmit it with attachments to the local Agency Office for processing.

C. Bureau Responsibility. Indian applicants may seek advice and assistance from the Bureau, as to probable lenders, necessary plans, financial data, feasibility reports, etc., in preparing a loan docket. Upon request, the Bureau credit staff will, to the extent possible, advise Indian applicants regarding the feasibility of a proposal. Care shall be exercised not to discourage Indian applicants. However, it is a disservice to burden an applicant with a debt and business responsibilities beyond the applicant's capability. If it is apparent that the venture has a good possibility of success, the Bureau will assist the borrower in securing the necessary financing. Such assistance may include a referral to an approved lender for a guaranteed or insured loan. Bureau employees will not refer Indian applicants to lenders if it is apparent that the loan could not be approved.

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CREDIT AND FINANCING  
Processing Applications

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3. PROCESSING APPLICATIONS

3.1 Loan Applications. Applicants will deal directly with lenders for loans to be guaranteed or insured. The application form will therefore be a form suitable to the lender. Requests for guarantee or insurance of a loan, requiring approval of the Commissioner, shall be accompanied by a copy of the loan application. In addition to the information contained on Form 5-4755, Request for Loan Guaranty or Insurance and Approval, Illustration 3 of this Supplement, the following information or documents, if not contained in the application, shall be submitted as attachments to the application.

A. Security. A schedule of collateral to be taken as security and the approximate value of the collateral shall be furnished.

B. Insurance. A statement shall be included regarding any requirements for hazard, liability, or other insurance and endorsements thereto.

C. Title to Property. Documentation shall include the manner in which title to property to be purchased with the loan will be taken, the person(s) or name of business in which title will be taken and whether title is to be restricted or unrestricted.

D. Repayment Source. The source and adequacy of funds to be used in repaying the loan shall be identified.

E. Financial Statements. If the applicant is not yet in business, a personal balance sheet shall be furnished. If the applicant has an existing business, financial statements, including balance sheets and operating statements for the past two years of operation or applicable period shall be submitted.

F. Pro Forma Financial Statements. Pro forma statements, including balance sheets and operating statements and cash flow statements for at least three years succeeding the date the loan is made, shall be submitted.

G. Personal Investment. Personal investments to be made by the borrower in a business venture shall be described and the dollar value shown.

H. Other Charges. An itemized schedule of all charges to the borrower indicating which, if any, are to be paid from the loan funds, will accompany the application. Charges may be made for legal and architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recording costs, insurance premiums, taxes, loan service charges and other charges as the Commissioner may authorize at the time the loan is made. Lenders may not charge borrowers points, finder's fees, loan origination fees, bonuses, commissions, or similar charges.

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CREDIT AND FINANCING  
Processing Applications

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I. Late Charges. Lenders may assess penalties against borrowers for payments made more than 30 days after the due date only when provided for in the loan agreement. The rate charged must also be provided for in the loan agreement. Late charges may not be guaranteed or insured nor can interest be charged on such charges.

J. Business Plan. When a loan is for a business enterprise, documentation supporting the request for guaranty shall include a complete business plan. This plan shall include sections addressing production, marketing, finance, profitability, and management and organization.

K. Compliance with Federal Acts. Where loan funds are to be used in any manner involving the disturbance of land on known or reported historical or archaeological sites for construction or purchase of buildings or improvements, lenders will indicate what is or will be done to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (P.L. 93.291; 88 Stat. 174), relating to the preservation of historical and archaeological data and the Flood Disaster Protection Act of 1973 (P.L. 93.234; 85 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (P.L. 93-190; 42 U.S.C. 4321), and Executive Order 11514. Lenders may request assistance and guidance from the Agency Superintendent in assuring compliance with the requirements of these Acts.

L. Technical and Management Ability. The lender will state its opinion on whether the applicant has the technical and management ability to reasonably assure success of the business venture. The lender will identify any areas where the applicant is lacking and state whether or not assistance needed to overcome these deficiencies can be furnished by the lender.

M. Project Feasibility. The lender will state its opinion of project feasibility and furnish a copy of any feasibility study which may have been prepared for use in considering the application.

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receipt of the check, the Superintendent will make certain the subrogation agreement is in order and that appropriate forms are completed to assign the note and security. Assistance of the Field Solicitor may be needed to assure that proper procedures are followed.

4.2 Assumption of Loan by the United States. At the time a lender is paid the percentage of loss to which he is entitled on a guaranteed or insured loan, he shall complete and execute Form 5-4759, Assignment of Interest, Illustration 9 of this Supplement, and furnish the Agency Superintendent the original and one copy, together with the promissory note and all documents executed and taken by the lender as security for the loan. Any other documents which the Solicitor may consider necessary to perfect the assignment of the security and loan to the United States will also be executed by the lender. At this time, the Agency Superintendent will become responsible for servicing the loan. He will take such action as the Commissioner deems appropriate to provide maximum recovery upon rights subrogated to the United States in the assigned security. Securities, mortgages and related documents shall be county recorded where appropriate.

The Commissioner may establish a date on which interest accrual will cease. In the case of guaranteed loans, this date may not be later than the date of judgment and decree of foreclosure or sale if such action has taken place. The date interest shall cease on all other loans shall be the date of the claim for loss, except where the borrower works out a loan repayment plan with the Bureau.

Loans assigned to the United States shall be recorded in the accounting records as assets of the fund at the full face value of the loan, which is the unpaid principal owed by the borrower to the lender at the time the loan was assigned, plus any unpaid accrued interest.

A. Liquidation by Lender. Where the lender has either partially or totally liquidated the borrower's assets, the assumption documents shall be referred to the Field Solicitor for a determination of the possibility of further collection. If the Solicitor rules no further collection action is possible, the loan shall be recommended for cancellation in accordance with Section 3.4 of Supplement 4. If the Solicitor determines the loan is collectible, it should be referred to the U. S. Attorney for further action.

B. No Liquidation by Lender. When the lender elects to submit a claim for loss the Superintendent shall, upon receipt of the claim, make an inspection of the borrower's business site to determine if there is any possibility of working with the present borrower, leasing the business to another individual, or if the Bureau should proceed with liquidation. A closure order should be obtained as necessary and the business closed and secured.

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(1) If it is determined that leasing the business or liquidation is the preferred method, the loan shall be recorded in our records at the full face value at the time of the claim for loss.

(2) Where there is sufficient indication that continued operation of a particular enterprise for which the loan was made would probably permit a borrower to repay his obligation and where the continued operation will not increase the risk or amount of probable loss to the United States, the Commissioner may, upon written request of the borrower, delay foreclosure for a specified period of time to provide the borrower an opportunity to correct the problem(s) for which the loan was defaulted. Borrowers must clearly understand that this arrangement will be temporary and that every effort will be made to sell the loan to another lender if existing problems can be resolved. The borrower will be required to indicate in writing his willingness to execute documents with a new lender at such time as requested and to pay the new rate of interest less the amount of interest subsidy for which a new loan would qualify under provisions of the Act.

If it is determined that the loan will be temporarily serviced as a loan of the guaranty program while a new lender is located, the terms of the loan may be rewritten to assure repayment. The terms shall include accrued interest from the date of the borrower's last payment to the lender to the day the new agreement is signed. This rate of interest will be the rate set forth in the promissory note less the rate of interest subsidy established when the loan was made. This amount may be paid immediately, set up as a non-interest bearing note with payments applied to this note first, or paid through monthly payments simultaneously with the payment on the new note.

The principal balance remaining at the time of default will be set up on a new promissory note at either the rate of interest established by Treasury in the month the loan is modified, or the borrower's rate on the subsidized loan, whichever is lower. New securing documents will be recorded as appropriate.

If the condition of the loan has improved sufficiently during the time granted by the Commissioner, the Superintendent will aggressively seek a lender to purchase the loan. Where such efforts are unsuccessful and fully documented, the Commissioner may approve a second period of time.

C. Loan Servicing. Loans assigned to the United States will be serviced until they are sold, paid in full, liquidated or cancelled, under provisions of 47 BIAM Supplement 2.

D. Liquidation. Loans will be liquidated in accordance with conditions specified in loan agreements, real estate mortgages, deed of trust

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and other securing documents and in accordance with applicable tribal regulations and state laws. Guidance of the Regional or Field Solicitor will be obtained to resolve legal questions. Loans in default and which cannot be otherwise liquidated shall be referred to the Solicitor for legal action.

Proceeds from the sale of assets received under an Assignment of Interest shall be receipted for on a Bill of Collection, by an authorized Agency collector and deposited to the fund. Adjustments to reflect the sale of assets will be made to the asset accounts.

4.3 Adjustments and Cancellations. Recommendations for cancellation of loan indebtedness will be submitted by the Agency Superintendent in accordance with guidelines contained in 47 BIAM Supplement 2, Section 6.3.



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20242

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS  
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JUN - 7 1979

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ALBUQUERQUE AREA OFFICE  
OFFICE SERVICES

47 BIAM Supp. 1 Release 3

Memorandum

To: Holders of 47 BIAM Supplement 1  
From: Acting Deputy Commissioner  
Subject: Loan Guaranty Limitations

This release changes paragraph 1.8A to document our policy regarding limitations on loans guaranteed for partnerships and closely held corporations.

Filing Instructions:

- (a) Remove superseded material:  
47 BIAM Supplement 1, 1.7H - 1.9C (1 sheet)  
(Dated 9-24-75)
- (b) Insert new material transmitted:  
47 BIAM Supplement 1, 1.7H - 1.9C (1 sheet)  
(Dated 4-9-79)
- (c) Pen-and-ink changes:  
None

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CREDIT AND FINANCING  
Guaranteed and Insured Loans

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H. Term Restrictions. Loans with repayment terms exceeding 30 years may not be guaranteed or insured.

I. Educational Loans. Loans for educational purposes are not eligible under the Guarantee and Insurance Program. If no other source is available, applicants may apply through their tribal relending programs; or, if eligible, for a direct loan from the United States (see 47 BIAM, Supplement 2, 4.3F).

1.8 Amount of Guaranty (25 CFR 93.13). The percentage of a loan to be guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90% of the unpaid principal and interest.

A. The liability under the guaranty shall increase or decrease with any increase or decrease in the unpaid principal of the obligation. Loans to individual Indians, partnerships, and closely held corporations may not be guaranteed where the principal amount exceeds \$100,000. Closely held corporations are corporations having 10 or fewer stockholders and corporations having total paid-in capital of less than \$20,000. In addition, loans to individuals may not be guaranteed where the principal amount is less than \$2,500 or where payment terms are less than one year.

B. Applications of minors as determined by applicable state and Federal laws, may not be approved unless the natural parents or legal guardians, with reputations of being responsible individuals, co-sign the promissory note(s) and securing documents.

C. Not more than one guaranteed loan may be in effect with the same borrower at any time without prior approval of the Commissioner.

1.9 Amount of Insurance (25 CFR 93.14). The insurance provisions apply to loans made by a lender under the terms of an insurance agreement entered into between the Commissioner and the lender.

A. The insurance procedure will be used primarily for loans to finance small economic enterprises. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90% of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15% of the aggregate of insured loans made by it under a particular agreement.

B. Regardless of amounts, loans made by tribes from their own funds to other tribes or Indian organizations will not be insured without prior approval of the Commissioner. Insured loans to finance

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an economic enterprise in an amount in excess of \$50,000 will require prior approval of the Commissioner. Loans to individual Indians may not be insured where the total unpaid principal would exceed \$100,000. Any insured loan to an individual Indian in excess of \$50,000 will require prior approval of the Commissioner. Loans to individuals in amounts less than \$2,500 or for terms of less than one year may not be insured. Loans to tribes or Indian organizations in amounts less than \$10,000 or where repayment terms are less than one year may not be insured.

C. Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents.

D. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

1.10 Management and Technical Assistance (25 CFR 93.4). Concurrent with the insuring or guaranteeing of any loan under these instructions, the Commissioner shall insure that the applicant shall be provided competent management and technical assistance (see Section 2 of this Supplement for detailed instructions).

1.11 Interest (25 CFR 93.41). Interest rates charged by lenders on guaranteed and insured loans, exclusive of loan service charges, if any, shall not exceed such percent per annum on the principal obligation outstanding as the Commissioner determines to be reasonable and legal at the time a loan is guaranteed or insured, taking into account the rates prevailing in the private market for similar loans and the risks assumed by the United States. Each loan shall show the rate of interest to be charged. Interest shall be payable at least annually. Once a loan is closed, the interest rate may not be increased, even though the lender increases the rate on new loans. Lenders may not charge interest on loan funds used for payment of loan service charges.

1.12 Interest Subsidy (25 CFR 93.42). The Commissioner will pay an interest subsidy to lenders on loans which are guaranteed or insured under 25 CFR 93 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with Title 1, Section 104, of the Indian Financing Act of 1974 (P.L. 93-262, 88 Stat. 77).

A. The rate of interest subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner, or at the time of approval of Form 5-4755, Request for Loan Guaranty or



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D. C. 20245

*File*

IN REPLY REFER TO:

47 BIAM Supp. 1, Release 2

Memorandum

SEP 24 1975

To: Holders of 47 BIAM  
From: Commissioner of Indian Affairs  
Subject: 47 BIAM, Supplement 1

The transmitted material sets forth procedural instructions for processing applications, paying interest subsidies and otherwise servicing loans made by approved lenders and guaranteed or insured under Titles II and III of the Indian Financing Act of 1974.

*Morris Thompson*  
Commissioner of Indian Affairs

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Filing Instructions:

- (a) Remove superseded material:  
None
- (b) Insert new material submitted:  
47 BIAM, Supplement 1,  
dated  
0 through 4.3 and 11 Illustrations (29 Sheets) ✓
- (c) Pen-and-ink changes:  
None



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*Complete*

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CREDIT AND FINANCING  
Guaranteed and Insured Loans

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1. GENERAL INFORMATION

1.1 Purpose. This supplement sets forth the types of loans eligible for guarantee or insurance pursuant to Title II of the Indian Financing Act of April 12, 1974 (88 Stat. 77, 25 U.S.C. 1461 et. seq.), and the Federal Regulations applicable thereto, 25 CFR 93, and the procedures for processing, approving and servicing such loans. The Act provides for guaranteeing up to 90% of a loan made by eligible lenders to Indians and Indian organizations, or an agreement may be entered into whereby 15% of the aggregate of loans made by a lender may be insured but not to exceed 90% of any one loan. In addition the Act provides for paying an interest subsidy on such loans guaranteed or insured to reduce the rate of interest paid by the borrower to the cost of borrowing from the United States. The guaranty or insurance is subject to payment of a premium by the lender to the Bureau of Indian Affairs.

1.2 Responsibility. The full faith and credit of the United States Government, acting through the Commissioner of Indian Affairs, is responsible for all obligations entered into herein. Accordingly, Bureau employees have a responsibility to carefully review and analyze applications and supporting documents to assure compliance with the regulations and recommend or approve loans that indicate applicants have a reasonable prospect for repayment, based upon sound customary lending criteria. The Indian applicant has a responsibility and obligation to repay the amount borrowed, and the lender assumes the responsibility of servicing the loan adequately and effectively, exerting every reasonable means in default cases to assist the borrower against loss of his home, farm, or business. The Bureau of Indian Affairs, on behalf of the United States, must require that all parties fully discharge these responsibilities.

1.3 Eligible Lender (25 CFR 93.9). Those financial institutions subject to examination and supervision by an Agency of the United States, a state or the District of Columbia, having the capacity to evaluate, process, disburse and service loans and Indian tribes making loans from their own funds to other tribes or organizations of Indians are eligible to have loans insured under these regulations. Loans may be guaranteed for any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and who is satisfactory to the Commissioner.

1.4 Eligible Organizations (25 CFR 93.7). Loans to tribes and Indian organizations having a form of organization satisfactory to the Commissioner and recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs are eligible to be guaranteed or insured when there is reasonable assurance of repayment of the loan.

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Cooperative associations, corporations and partnerships shall be organized pursuant to state, Federal or tribal law. Cooperative associations, corporations and partnerships applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

1.5 Eligible Individuals (25 CFR 93.8). Only Indians who are members of tribes recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, whose tribes are not making loans to members, and who are not members of or eligible for membership in an organization which is making loans to its members are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe and state and Federal laws, if applicable.

Only those individual Indians who are members of tribes not conducting a relending program are eligible. Most major tribes do conduct relending programs. Care must, therefore, be exercised, as their members are precluded from participating in the program, regardless of the fact that the Indian applicant may be far removed from his reservation. An Eligibility Certificate for Guaranteed or Insured Loan, Form 5-4752, Illustration 1 of this Supplement may be obtained from the Agency having jurisdiction over the area in which the applicant resides.

1.6 Eligible Loans (25 CFR 93.3). Loans to eligible organizations and individuals for financing economic enterprises which will contribute to the economy of a reservation and loans for housing on a reservation to be occupied by the borrower may be guaranteed or insured. The following loans, when meeting the criteria of the preceding sentence, may be guaranteed or insured.

A. Business. Loans to purchase land, buildings, supplies, equipment, machinery, tools, inventory and for working capital to be used in a business enterprise or in pursuing a gainful occupation may be insured or guaranteed.

B. Agriculture. Loans to acquire lands, buildings, livestock, equipment, machinery, supplies and operating capital necessary to develop and operate all types of farming, ranching or other agricultural enterprises are eligible.

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C. Land. Loans to purchase and develop land, within or adjacent to a reservation, to be used by an economic enterprise owned by the borrower may be guaranteed or insured if there is economic benefit to the reservation.

D. Home. Loans to purchase, construct, alter or repair a dwelling on a reservation to be owned and occupied by the borrower are eligible only where the Commissioner has determined that loans from other sources on reasonable terms are not available.

E. Refinance. Funds loaned to refinance unsecured debts may be guaranteed or insured only when it is clearly justified by the financial condition of the borrower and is clearly in his benefit.

F. Non-Recoverable Items. Funds included in loans for non-recoverable items may be guaranteed or insured only if the items are required in the direct operation of an economic enterprise.

1.7 Ineligible Loans (25 CFR 93.3 and 93.10). The following loans may not be guaranteed or insured:

A. Payment of Personal Bills. Amounts included in loans to pay personal bills or obligations may not be guaranteed or insured.

B. Non-Recoverable Items. Amounts included in loans for purchase of furniture, passenger-carrying automobiles, trucks or pickups, household appliances, and similar items may not be guaranteed or insured.

C. Refinance. Funds included to refinance debts to reduce the debt exposure of the lender may not be guaranteed or insured.

D. Financing a Relending Program. Loans for financing a relending program may not be guaranteed or insured.

E. Loans by Other Federal Agencies. Loans made by any agency or instrumentality of the Federal Government may not be guaranteed or insured.

F. Funds Borrowed from the United States. Loans made by an organization of Indians making loans from funds borrowed from the United States may not be guaranteed or insured.

G. Non-Taxable Interest Income. Loans may not be guaranteed or insured where the interest income from the loans is not taxable income under Chapter 1 of the Internal Revenue Code of 1954, as amended.

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H. Term Restrictions. Loans with repayment terms exceeding 30 years may not be guaranteed or insured.

I. Educational Loans. Loans for educational purposes are not eligible under the Guarantee and Insurance Program. If no other source is available, applicants may apply through their tribal relending programs; or, if eligible, for a direct loan from the United States (see 47 BIAM, Supplement 2, 4.3F).

1.8 Amount of Guaranty (25 CFR 93.13). The percentage of a loan to be guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90% of the unpaid principal and interest.

A. The liability under the guarantee shall increase or decrease with any increase or decrease in the unpaid principal of the obligation. Loans to individual Indians may not be guaranteed where the principal amount exceeds \$100,000. Loans to individuals may not be guaranteed where the principal amount is less than \$2,500 or where repayment terms are less than one year. An exception to these limits on time and amounts may be approved by the Commissioner.

B. Applications of minors as determined by applicable state and Federal laws, may not be approved unless the natural parents or legal guardians, with reputations of being responsible individuals, co-sign the promissory note(s) and securing documents.

C. Not more than one guaranteed loan may be in effect with the same borrower at any time without prior approval of the Commissioner.

1.9 Amount of Insurance (25 CFR 93.14). The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender.

A. The insurance procedure will be used primarily for loans to finance small economic enterprises. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90% of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15% of the aggregate of insured loans made by it under a particular agreement.

B. Regardless of amounts, loans made by tribes from their own funds to other tribes or Indian organizations will not be insured without prior approval of the Commissioner. Insured loans to finance an economic enterprise

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in an amount in excess of \$50,000 will require prior approval of the Commissioner. Loans to individual Indians may not be insured where the total unpaid principal would exceed \$100,000. Any insured loan to an individual Indian in excess of \$50,000 will require prior approval of the Commissioner. Loans to individuals in amounts less than \$2,500 or for terms of less than one year may not be insured. Loans to tribes or Indian organizations in amounts less than \$10,000 or where repayment terms are less than one year may not be insured. An exception may be made to these limitations of amounts and time, if approved by the Commissioner.

C. Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents.

D. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

1.10 Management and Technical Assistance (25 CFR 93.4). Concurrent with the insuring or guaranteeing of any loan under these instructions, the Commissioner shall insure that the applicant shall be provided competent management and technical assistance (see Section 2 of this Supplement for detailed instructions).

1.11 Interest (25 CFR 93.41). Interest rates charged by lenders on guaranteed and insured loans, exclusive of loan service charges, if any, shall not exceed such percent per annum on the principal obligation outstanding as the Commissioner determines to be reasonable and legal at the time a loan is guaranteed or insured, taking into account the rates prevailing in the private market for similar loans and the risks assumed by the United States. Each loan shall show the rate of interest to be charged. Interest shall be payable at least annually. Once a loan is closed, the interest rate may not be increased even though the lender increases the rate on new loans. Lenders may not charge interest on loan funds used for payment of loan service charges.

1.12 Interest Subsidy (25 CFR 93.42). The Commissioner will pay an interest subsidy to lenders on loans which are guaranteed or insured under 25 CFR 93 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with Title 1, Section 104, of the Indian Financing Act of 1974 (P.L. 93-262, 88 Stat. 77).

A. The rate of interest subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner, or at the time of approval of Form 5-4755, Request for Loan Guaranty or

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Insurance and Approval on Loans insured under a general insurance agreement. Interest subsidies paid to lenders by the United States on behalf of borrowers shall continue to be paid over the remaining life of the original term of a loan even if the lender elects to discontinue the guaranty or insurance or otherwise causes the termination of the guaranty or insurance by failure to make guaranty or insurance premium payments as required in § 93.43. Interest subsidy payments by the United States shall be discontinued on such loans when one of the following occurs:

(1) The loan is paid in full prior to the expiration of the original term.

(2) The loan is refinanced by a new loan.

(3) The repayment schedule on the principal balance owing is extended beyond the original term, unless an exception is approved by the Commissioner. The interest subsidy shall only be discontinued as to the balance which has been extended beyond the original term of the loan.

(4) The lender on a defaulted loan is reimbursed for a guaranteed or insured loss. The date of the check shall be the date of reimbursement.

B. The lender shall notify the Commissioner that he has made or modified an insured loan under the provisions of this insurance agreement within 20 days of such action and provide the Commissioner with the following information:

(1) The name and address of the borrower.

(2) Tribal affiliation of the borrower.

(3) Amount of the loan and purpose(s).

(4) The repayment schedule.

(5) The interest rate charged the borrower.

(6) The date(s) funds were advanced.

C. After receiving notice from the lender, the Commissioner will establish the interest subsidy rate and notify the lender of the rate established.

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At the option of the lender, interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semi-annually, quarterly or monthly. Using Form 5-4749, Lenders Report of Premiums and Interest Subsidies Due, Illustration 11 of this Supplement, lenders should notify the Commissioner of loan payments received from borrowers and request payment of the subsidy. The interest subsidy, computed to the date payment was made by the borrower, will be paid to the lender. Interest subsidies may not be prepaid. Lenders shall promptly notify the Commissioner when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement.

1.13 Lender's Service Charge (25 CFR 93.44). Lenders may charge borrowers reasonable fees for appraisals and compliance inspections; for lien searches and filing and recording; for tax assessments and similar items necessary to protect the integrity of the loan; for insurance premiums, survey costs, title examinations and insurance; and for such other charges as may be authorized by the Commissioner at the time a loan is made. Service charges, if any, may be paid from the proceeds of a guaranteed or insured loan when authorized in the loan agreement if the borrower cannot pay the charges from his own funds. However, if this is done, lenders may not charge interest on the amount advanced to pay service charges.

Borrowers shall not be required to pay points, finder's fees, loan origination fees, bonuses, commissions or similar charges.

1.14 Premium (25 CFR 93.43). A premium will be charged lenders on the unpaid principal balance of guaranteed and insured loans at a rate established by the Commissioner.

A. Premium charges will not be charged to, collected from, or otherwise passed on to borrowers. The Commissioner will establish the premium rate to be charged on guaranteed and insured loans made during a specified period of time and will notify lenders of the rate which will be charged during the period established. By advance written notice to lenders making guaranteed or insured loans, the Commissioner may change or continue the rate established for the preceding period. The premium rate established for loans made during a given period of time will remain in effect for the duration of the loan. The Commissioner may require a change in the premium rate on refinanced guaranteed and insured loans to the rate in effect at the time of refinancing.

B. The initial premium on guaranteed and insured loans shall be remitted, payable to the Bureau of Indian Affairs, to the Superintendent

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of the local Agency within 10 days of the advance of loan funds to the borrower. The premium shall be for the six months or portion of six months in which the loan is made. Thereafter, premiums will be paid as of June 30 and December 31 on the principal balance outstanding at the end of each semi-annual period. The guaranty or insurance of a new loan, or of additional advances on existing loans, will not be effective until the Commissioner receives the premium due.

The guarantee of a loan shall cease to be effective if the premium is not remitted within 30 days of the close of the semi-annual period. Semi-annual premiums on insured loans are to be remitted within 30 days and the insurance of the loan shall cease if the premium is not paid within 60 days following the end of the semi-annual period.

1.15 Loan Servicing (25 CFR 93.46). The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 93.44. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

1.16 Modification of Loan Agreements (25 CFR 93.21). Guaranteed and insured loans may be modified with the approval of the parties of the original loan agreement. The Commissioner's approval is required to modify guaranteed loans and insured loans which required the Commissioner's approval only if the modification (1) changes the repayment schedule, (2) changes the prime security, (3) changes the interest rate, (4) changes the use of loans funds, (5) increases the principal amount of a loan, except as provided on §93.22, (6) changes to the plan of operation, (7) amendment or changes in the organization papers of the borrower, (8) changes in partnership agreements, or (9) changes the location of an enterprise. When loans have been made under provisions of an approved insurance agreement, not requiring the Commissioner's approval for insurance of individual

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loans, lenders shall exercise the same prudence in approving requests for modifications of loan agreements and follow the same customary procedures and practices as have been established in connection with uninsured loans. Modifications are to be in compliance with the provisions of §§ 93.14, and 93.24. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner.

1.17 Sale or Assignment of Guaranteed Loans. Lenders may sell or assign a guaranteed loan, including the security and guaranty certificate, to any other financial institution that is subject to examination and supervision by an agency of the United States, a state or the District of Columbia. The institution acquiring the loan shall notify the Commissioner in writing within 30 days after acquisition. Form 5-4758, Notice of Acquisition of Loan, Illustration 8 of this Supplement, furnishes the required information and when furnished to the Superintendent of the Agency Office servicing the guaranteed loan shall constitute written notice to the Commissioner. Failure of the acquiring lender to furnish such notice within the 30 day period will void the guaranty unless the Commissioner authorizes an exception because of extenuating circumstances.

Lenders should submit the original and two copies of Form 5-4758 to the Agency Superintendent who is assigned responsibility for record-keeping and servicing of the loan. The Superintendent will immediately acknowledge receipt on the bottom of the form and return a copy to the acquiring lender. The Superintendent will retain one copy for his records and submit the original, through the Area Director, to the Central Office, Division of Financial Assistance.

1.18 Release of Security (25 CFR 93.35). The prime security for a loan will not be released unless the property is to be sold and the net proceeds will be applied to the loan. When approved by the Commissioner, the prime security may be released when the proceeds from property sold are to be used to purchase property of similar nature and use and of at least equal value and lien priority, and when the lender, borrower and Commissioner agree that the sale and such use of the proceeds are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require prior approval of the Commissioner.

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CREDIT AND FINANCING  
Guaranteed and Insured Loans

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1.19 Preparation of Applications. It is immaterial whether an applicant makes arrangements for a loan with the lender first or approaches the Bureau. The following sets forth in general the responsibility of the applicant, lender and the Bureau of Indian Affairs (BIA).

A. Loan Applicant. The applicant will need to obtain written proof that he is eligible to obtain a guaranteed or insured loan. To evidence eligibility of an applicant for a guaranteed or insured loan, an Eligibility Certificate for Guaranteed or Insured Loan, Form 5-4752, Illustration 1 of this Supplement, will be issued at the request of an applicant, by the Superintendent of the reservation on which the applicant resides or which will benefit from the business venture. In addition, each applicant will be responsible to develop data to prepare a loan application. Many Indians have dealt with commercial lenders for some time either as an individual or in business, and they should continue to do so.

B. Lender's Responsibility. The lender shall make the necessary credit evaluation to determine if an applicant is a good credit risk and if a loan applicant has a reasonable chance to repay a loan. If the lender feels he could make a loan, providing that the Bureau will guarantee or insure it, he will prepare the Request for Loan Guaranty or Insurance and Approval, Form 5-4755, Illustration 3 of this Supplement.

(1) Guaranteed Loans. The lender will attach required financial statements and the loan application to Form 5-4755 and submit the docket to the local Agency Superintendent requesting a guarantee certificate.

(2) Insured Loans. After entering into an agreement to make insured loans, the lender will process loans in accordance with the agreement. The lender need only notify the Bureau of loans made within his approval authority. On loans that require Commissioner's approval, he will prepare the Request for Loan Guaranty or Insurance and Approval, and transmit it with attachments to the local Agency Office for processing.

C. Bureau Responsibility. Indian applicants may seek advice and assistance from the Bureau, as to probable lenders, necessary plans, financial data, feasibility reports, etc., in preparing a loan docket. Upon request, the Bureau credit staff will, to the extent possible, advise Indian applicants regarding the feasibility of a proposal. Care shall be exercised not to discourage Indian applicants. However, it is a disservice to burden a person with a debt and business responsibilities

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beyond the capability of the applicant. If it is apparent that the venture has a good possibility of success, the Bureau will assist the borrower in securing the necessary financing. Such assistance will include a referral to an approved lender for a guaranteed or insured loan. Bureau employees will not refer Indian applicants to approved lenders if it is apparent that the loan could not be approved, or if the Indian is ineligible due to the fact that he is a member of a tribe conducting a relending program.

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CREDIT AND FINANCING  
Management and Technical Assistance

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2. MANAGEMENT AND TECHNICAL ASSISTANCE

2.1 General. Concurrent with the guaranteeing or insuring of a loan, to fund the development of an economic enterprise, the Commissioner shall insure that the loan applicant shall be provided competent management and technical assistance consistent with the nature of the enterprise being funded and the needs of the applicant. Assistance may be provided by available Bureau of Indian Affairs staff, other Government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Fund limitations require that contracting for management and technical assistance be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable sections of the Federal Procurement Regulations and where applicable compliance with the Act of April 30, 1908, chapter 153 (35 Stat. 71), as amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

2.2 Determination of Need. When requesting the guarantee or insurance of a loan to finance an economic enterprise, the lender will inform the Agency Superintendent of his evaluation of the applicant's need for management and technical assistance and will indicate whether he will provide such assistance to the borrower. When loans are made under authority of a general insurance agreement the lender will make the determination of an applicant's needs for management and technical assistance. He will notify the Agency Superintendent in writing of the specific areas of need and whether the assistance will be provided by the lender. Where the lender is unable to furnish the assistance determined to be needed to assure success of the business venture, and where a loan is to be guaranteed or insured, the Superintendent will develop a program with the applicant to assure that the applicant will be provided such assistance. Requests for Bureau assistance will be made on Form 5-4745, Request for Management and/or Technical Assistance, Illustration 2 of this Supplement.

2.3 Types and Source of Assistance. Assistance shall be of a professional nature, such as, expert individual specialists giving advice or guidance to the borrower, a management consultant firm providing a business assessment, an accounting firm establishing a set of books or providing cost information to the borrower, a marketing specialist giving advice or preparing a market study for an enterprise. The assistance could consist of short intensive courses for the Indian manager or other technicians. However, extensive educational training will come under the Bureau's vocational training program. The foregoing are examples and should not restrict the assistance which may be needed on an individual basis.

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A. Assistance may be provided by non-Bureau lenders depending on their capabilities, desires, and applicant's needs.

B. Assistance may be provided by available Bureau of Indian Affairs staff, other Government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide needed assistance.

C. It is intended that contracting for management and technical assistance be used only when adequate assistance is not available without cost. Contracts for providing management and technical assistance shall be in accordance with applicable sections of the Federal Procurement Regulations, and, where applicable, compliance with the Act of April 30, 1908, chapter 153 (35 Stat. 71), as amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

#### 2.4 Restrictions.

A. The "packaging" of a loan application by an individual or consulting firm is not considered eligible, as paid assistance under Title V of Public Law 93-262, Indian Financing Act of 1974, can only be made "concurrent" with the approval of a loan or grant.

B. Funds shall not be used to pay salaries of officials or employees of an enterprise as this would go beyond the scope of assistance.

2.5 Assistance Provided by the Bureau of Indian Affairs. The Bureau of Indian Affairs officer assisting an applicant for a guaranteed or insured loan shall see that the applicant has been apprised of all possible sources of assistance for that type of enterprise. The credit staffs at most Agencies are capable of providing adequate assistance in establishing bookkeeping systems for small uncomplicated enterprises. However, the following other branches (with brief outline of related capabilities) should be called upon to assist in developing a program outline for providing applicants with available, and needed, management and technical assistance:

A. Employment Assistance. Provisions are made for courses in management training, part scholastic and part on-the-job, with local colleges and businesses; also, assistance in locating and securing the services of consultants for the loan clients.

B. Office of Trust Responsibilities.

(1) Land Operations can provide:

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Management and Technical Assistance

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- (a) A plan of conservation operations for agriculturally-oriented loans.
- (b) A plan of farm and home management on farm or cattle loans where this service is not available from extension service personnel.
- (c) Flood plain studies for enterprise loans.
- (d) Soil testing data to determine suitability for construction of buildings and determining the type of sewage disposal needed.

(2) Real Property Management. Applications for the purchase of trust or restricted land must be circulated through Real Property Management employees before the credit officer makes any recommendations thereon. This procedure is to make certain that the loans are in conformance with established policy for the acquisition of land by Indians. All mortgages of trust or restricted individually owned land offered as security for loans pursuant to 25 CFR 121.34 must be cleared through Real Property Management employees before any recommendations are made by the credit officer.

(3) Forestry. Counseling and guidance will be provided to forest related enterprises and will serve as a contact with the United States Forestry Service which can also provide assistance. Further, logging cost accounting information and bid preparation data will be provided to individuals.

(4) Appraisals. Where real property is to be purchased a current appraisal will be obtained.

C. Office of Indian Education Programs. Assistance will be provided in the arrangement for classes to teach management sciences.

D. Plant Management. Assistance should be obtained on the purchase, remodeling, and construction of buildings.

## 2.6 Assistance Provided by Other Federal Agencies.

A. Small Business Administration. The Small Business Administration has the capability to furnish either direct or indirect guidance for individual management counseling and information services to present and prospective owners and managers of small businesses. They advise small businessmen of all SBA and other Government agency assistance and services, including workshops for prospective small business owners; management

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counseling including assistance from SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives) and graduate and undergraduate students of business management schools; management courses, conferences and clinics; and publications to assist in management of small businesses. The following are other Small Business Administration sponsored, or funded, programs with staff which can provide management and technical assistance in various specialized fields.

(1) Minority Business Development Procurement Assistance. This program utilizes authority provided to SBA under section 8(a) of the Small Business Act to enter into procurement contracts with other Federal agencies and to subcontract to others the performance of contracts SBA has obtained.

(2) Management and Technical Assistance for Disadvantaged Businessmen. This program provides management and technical assistance through public or private organizations to existing or potential businessmen who are economically or socially disadvantaged or who are located in areas of high concentration of unemployment. Grants may be under this program.

(3) Minority Vendors Program. This program identifies monthly businesses capable of supplying goods or services to major corporations and identifies new business venture opportunities in which the minority business community can engage.

B. Department of Commerce. Assistance may be obtained from the Department of Commerce under the following programs:

(1) Office of Minority Business Enterprise (OMBE). This agency has the staff capability of assisting minority entrepreneurs in (a) local business development, including outreach, "packaging" of loan and grant applications, and advice and counseling, (b) provision for general and specialized management services and technical assistance (through in-house volunteer and subcontract capabilities), and (c) business management education and training.

(2) Fishery Cooperative Services, National Oceanic and Atmospheric Administration. This agency provides technical advice and assistance in organizing and operating fishery cooperatives.

(3) Business Assistance, Services and Information. This agency of the Department of Commerce provides economic and technical assistance and advice concerning industries, commodities and trade; guidance on pending legislation and regulations, marketing data and assistance concerning Government procurement.

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C. Department of Agriculture. The Cooperative Extension Service of the Department of Agriculture makes grants to state land-grant institutions which, through state and county extension service personnel, provides educational programs based upon local needs which include agricultural production and marketing and rural development.

D. General Services Administration. The Businesses Services Branch of GSA provides information and counseling to assist business firms in developing the Government market potential for their products and services, to obtain contracting opportunities, and to purchase surplus property.

2.7 Contract for Management and Technical Assistance. Contracting for management and technical assistance is to be used only when adequate assistance is not available without cost. It is a last resort action, and requires justification indicating that all other possible sources have been explored. Upon determination that services will be required on an individual case, the loan officer will decide and outline specifically what services will be needed and who is adequately able to provide them. The Agency Property Management officer should be contacted to determine the best method of procuring the service. He may possibly be able to do this on a purchase order contract with local approval authority. If it is necessary to proceed through a formal contract, the following regulations would govern:

A. Personal or Professional Services. Purchases and contracts for personal or professional services may be negotiated without resorting to formal advertising under the provisions of 41 CFR 1-3.204.

B. Services of Educational Institutions. Purchases and contracts for the services of educational institutions may be negotiated without formal advertising under the provisions of 41 CFR 1-3.205.

\* \* \* \* \*

2.8 Catalog of Federal Domestic Assistance. The "Catalog of Federal Domestic Assistance" provides a comprehensive listing and description of Federal programs, activities, and funding which relate to management and technical assistance. For ready reference the following pertinent Agency program titles as shown in the catalog are listed:

- 10.500 - Department of Agriculture - Cooperative Extension Service
- 11.104 - Department of Commerce - Domestic and International Business Administration (Business Assistance Services and Information)

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CREDIT AND FINANCING  
Management and Technical Assistance

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- 11.303 - Economic Development Administration, U.S. Department of  
Commerce (Technical Assistance)
- 11.411 - National Oceanic and Atmospheric Administration,  
Department of Commerce (Fishery Cooperative Services)
- 11.800 - OMBE - Office of Minority Business Enterprise
- 39.001 - General Services Administration (business services)
- 59.005 - SBA - Management Assistance to Small Business
- 59.006 - SBA - Minority Business Development - Procurement Assistance
- 59.007 - SBA - Management and Technical Assistance for Disadvantaged  
Businessmen
- 59.019 - SBA - Minority Vendors Program
- 72.006 - Action (SCORE and ACE)

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3. PROCESSING APPLICATIONS

3.1 Loan Applications. Applicants will deal directly with lenders for loans to be guaranteed or insured. The application form will therefore be a form suitable to the lender. Requests for guarantee or insurance of a loan, requiring approval of the Commissioner, shall be accompanied by a copy of the loan application. In addition to the information contained on Form 5-4755, Request for Loan Guaranty or Insurance and Approval, Illustration 3 of this Supplement, the following information or documents, if not contained in the application, shall be submitted as attachments to the application.

A. Security. A schedule of collateral to be taken as security and the approximate value of the collateral shall be furnished.

B. Insurance. A statement shall be included to reflect any requirements for hazard, liability or other insurance and endorsements thereto.

C. Title to Property. The manner in which title to property, to be purchased with the loan, will be taken shall be shown. Show the person(s) or name of business in which title will be taken and whether title is to be restricted or unrestricted.

D. Repayment Source. The source and adequacy of funds to be used in repaying the loan shall be identified.

E. Financial Statements. If the applicant is not yet in business a personal balance sheet shall be furnished. If the applicant has an existing business, financial statements, including balance sheets and operating statements for the past two years of operation or applicable period shall be submitted.

F. Pro Forma Financial Statements. Pro forma statements, including balance sheets and operating statements and cash flow statements for at least three years succeeding the date the loan is made, shall be submitted.

G. Personal Investment. Personal investments to be made by the borrower in a business venture shall be described and the dollar value shown.

H. Other Charges. An itemized schedule of all charges to the borrower, indicating which, if any, are to be paid from the loan funds, will accompany the application. Charges may be made for legal and

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CREDIT AND FINANCING  
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architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recording costs, insurance premiums, taxes, loan service charges and other charges as the Commissioner may authorize at the time the loan is made. Lenders may not charge borrower's points, finder's fees, loan origination fees, bonuses, commissions or similar charges.

I. Late Charges. Lenders may assess penalties against borrowers for payments made more than 30 days after the due date only when provided for in the loan agreement. The rate charged must also be provided for in the loan agreement. Late charges may not be guaranteed or insured nor can interest be charged on such charges.

J. Plan of Operation. A plan of operation, covering management, operations, record-keeping, reporting, etc., and signed by the borrower shall be submitted with the application when a loan is for a business enterprise. In cases of applications from tribes or Indian organizations, a plan of operation shall have been adopted by the borrower and approved by the lender and the Commissioner.

K. Compliance with Federal Acts. Where loan funds are to be used in any manner involving the disturbance of land on known or reported historical or archaeological sites for construction or purchase of buildings or improvements lenders will indicate what is or will be done to assure compliance with applicable provisions of the Act of June 27, 1960 ( 74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (P.L. 93-291; 88 Stat. 174), relating to the preservation of historical and archaeological data and the Flood Disaster Protection Act of 1973 (P.L. 93-234; 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C. 4321), and Executive Order 11514. Lenders may request assistance and guidance from the Agency Superintendent in assuring compliance with the requirements of these Acts.

L. Technical and Management Ability. The lender will indicate whether, in his opinion, the applicant has the technical and management ability to reasonably assure success of the business venture. He will identify any areas in which he feels the applicant is lacking and will state whether or not assistance needed to overcome these deficiencies can be furnished by the lender.

M. Project Feasibility. The lender will state whether or not he believes the project is feasible and furnish a copy of any feasibility study which may have been prepared for use in considering the application.

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N. Organizational Documents. Where loans are to be made to cooperative associations and corporations copies of the organizational documents will be submitted. In the case of partnerships, a copy of the partnership agreement should be furnished.

3.2 Loan Guaranty Agreement. A Loan Guaranty Agreement, Form 5-4753, Illustration 5 of this Supplement, must be executed by an eligible lender and approved by the Commissioner before loans may be guaranteed for the lender. Multiple loans may be guaranteed under a single guaranty agreement so long as the Loan Guaranty Certificate, Illustration 6 of this Supplement, adequately identifies the agreement under which the loan is guaranteed. Guaranty Certificates must, however, be approved for each guaranteed loan. The guaranty shall become effective only after approval of Form 5-4755, Request for Loan Guaranty or Insurance and Approval, Illustration 3 of this Supplement, and Form 5-4756, Loan Guaranty Certificate, Illustration 6 of this Supplement, have been approved by the Commissioner, loan funds have been advanced by the lender and the premium has been paid to the Bureau of Indian Affairs.

3.3 Loan Insurance Agreement. The same Loan Insurance Agreement, Form 5-4754, Illustration 4 of this Supplement, will be used for an "individual" agreement, as is used for a "general" agreement. Where the insurance of a loan is approved as an exception to limitations of 1.8 of this Supplement, an individual agreement will be executed by the lender and approved by the Commissioner. The insurance will become effective under an individual agreement when the Request for Loan Guaranty or Insurance and Approval has been approved by the Commissioner, the loan funds have been advanced by the lender, and the premium has been paid to the Bureau.

Where a lender wishes to have a number of loans in a combined stated amount, made over a specified time period, insured without obtaining approval on each individual loan, a general insurance agreement may be executed by an eligible lender and approved by the Commissioner. Loans may then be processed under the terms and conditions of the agreement. Insurance, on each loan made, is effective at the time the Bureau receives notice from the lender on Form 5-4757, Loan Made - Premium Due Insured Loans, Illustration 7 of this Supplement, and the insurance premium is paid. Form 5-4757 shall be furnished by the lender to the Commissioner no later than 20 days following the date a loan was made.

3.4 Approval. Lenders wishing to participate in either the guaranteed or insured program should contact and process requests through the Agency Superintendent having jurisdiction over the reservation which will realize economic benefit from the loan or loans to be guaranteed or insured. Superintendents will furnish preliminary information as requested by applicants and lenders.

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CREDIT AND FINANCING  
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A. Superintendent. Without regard for an applicant's tribal affiliation, Superintendents with jurisdiction over the reservation receiving economic benefit from an enterprise being funded or upon which a home is to be purchased or constructed, will accept and process requests for the guaranty or insurance of loans.

(1) When requested, Agency Superintendents will, after obtaining a certificate of enrollment from the Superintendent of the applicant's home Agency or from officials of the tribe in which he is enrolled, furnish the applicant or the lender with the Eligibility Certificate for Guaranteed or Insured Loan, Illustration 1 of this Supplement.

(2) Superintendents will assure that loan dockets or requests for approval of guaranty certificate or guaranty or insurance agreements are complete. Incomplete applications will not be forwarded to the Area Director but will be returned to the lender for completion. Superintendents shall add or request additional documents from the lender or applicant which he considers necessary for complete evaluation of the project. He will recommend the action to be taken and submit the application to the Area Director.

B. Area Director. Area Directors will review and evaluate loan dockets and requests for guaranty or insurance agreements submitted by Superintendents. Where he determines that an application is incomplete or that information or documents furnished are inadequate or lacking sufficient detail he will return the application to the Superintendent with instructions for correcting the deficiency and resubmittal of the application. The Area Director will evaluate applications and requests and submit them, with his recommendation, to the Commissioner.

C. Commissioner. All Requests for Loan Guaranty or Insurance, Loan Guaranty Agreements, Loan Insurance Agreements, and Loan Guarantee Certificates must be approved by the Commissioner. The documents will be approved as submitted or returned to the Area Director advising that the documents cannot be approved as submitted and the reason(s) why.

3.5 Distribution of Copies. Upon approval of the Commissioner, the loan application with attachments will be returned to the Agency Superintendent through the Area Director. Copies of other documents will be distributed as follows:

A. Loan Guaranty or Insurance Agreement. Agencies will prepare these documents, have them executed in duplicate by the lender, attach a Superintendent's recommendation and submit the original and one copy, through the Area Director, to the Commissioner. Upon approval, the copy will be retained by the Central Office, Division of Financial Assistance, and the original will be returned to the Superintendent, through the Area

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Director. The Superintendent may reproduce the approved document for his records and present the original to the lender.

B. Request for Loan Guaranty or Insurance and Approval. Lenders will prepare the front side of this form, in duplicate, and present it to the Agency Superintendent for processing. The request will then be processed and copies distributed as set forth in 3.5A, above. The reverse side of the request will be completed by the Central Office, Division of Financial Assistance, prior to being approved by the Commissioner. The request will provide under part (f) that the guaranty or insurance is not to become effective until the loan funds are advanced and the guarantee or insurance premium paid to the Bureau of Indian Affairs.

C. Loan Guaranty Certificate. Concurrent with the approval of a request for loan guaranty, the Commissioner will issue a Loan Guaranty Certificate, the original and one copy. The Central Office, Division of Financial Assistance will retain the copy and the original will be attached to and be distributed with the Request for Loan Guaranty or Insurance and Approval form.

3.6 Interest Subsidy Obligation. When notice is received that the lender has made a guaranteed or insured loan and the premium has been collected, the Area Director or Agency Superintendent, at the option of the Area Director will send, to the Division of Financial Assistance, Central Office, a Request for Allotment for the interest subsidy payments projected for the life of the loan. When the allotment has been received, he will establish the obligation for payment of interest subsidy by processing a Miscellaneous Obligation Record (MOR). The MOR shall show the Loan Guaranty Certificate number or the Loan Insurance Agreement number and identify the loan by name of borrower. An amount sufficient to pay the interest subsidy for the life of the loan and at the terms of the promissory note will be entered into the Bureau's accounting system pursuant to instructions of 42 BIAM. All payments of interest subsidy will be posted against this obligation. The obligation shall be adjusted, as necessary, when a loan is prepaid or modified to increase the amount or to change the repayment terms. Before increasing established obligations it is necessary that additional allotments be requested from the Central Office. The Agency or Area Office shall notify the Central Office, Division of Financial Assistance of each obligation established or adjusted. This notice may be furnished by memorandum or by copy of the MOR and may be submitted at the time of issuance or with the Guaranteed and Insured Loans - Monthly Report required by 47 BIAM, Supplement 4, 1.10A.

3.7 Reserve for Losses. When the Central Office, Division of Financial Assistance has been informed that a guaranteed or insured loan has been

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CREDIT AND FINANCING  
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made or modified, a reserve for possible losses on loans will be established. The account will be adjusted for payments received on loans and for actual losses on loans.

3.8 Loan Guaranty and Insurance Fund. The Loan Guaranty and Insurance Fund, appropriation 144410, activity 1320, shall be utilized for all guaranty and insurance operations.

A. Receipts. Guaranty and insurance premiums collected from lenders and other receipts from program operations will be receipted on Form DI-1040, Bill of Collection, for deposit to the fund. Coding for receipts will be in accordance with 42 BIAM. A copy of each DI-1040, issued during the month, will be attached to Form 5-4746, Guaranteed and Insured Loans - Monthly Report to be forwarded through the Area Director to the Central Office, Division of Financial Assistance.

B. Disbursements. All disbursements incident to administration of guaranteed or insured loans shall be made from the fund by Voucher Form SF-1034. Interest subsidies paid by the Commissioner to lenders for credit of the borrower shall be paid from the fund and charged against an "interest subsidy account" as an expense of the fund. Coding for disbursements will be in accordance with 42 BIAM. A copy of each Form SF-1034 drawn during the month will be attached to Form 5-4746, Guaranteed and Insured Loans - Monthly Report, Illustration 7, Supplement 4, to be forwarded through the Area Director to the Central Office, Division of Financial Assistance.

C. Assets. All cash, claims, notes, mortgages, contracts, and property acquired by the Bureau through assignments, assumptions or otherwise shall constitute the assets of the fund. All liabilities and obligations of such assets shall be liabilities and obligations of the fund.

3.9 Records and Reports.

A. Lenders. Lenders will maintain adequate records, in the generally accepted manner, to provide essential information for servicing and reporting on guaranteed and insured loans. The lender's records of guaranteed or insured loans will be made available, upon request of the Commissioner, at any reasonable time during regular business days and hours, for examination.

Reports required by their Loan Guarantee or Insurance Agreement, by Section 3.3 of this Supplement and 47 BIAM, Supplement 4, 1.10C, are required of the lender. The Commissioner may from time to time make reasonable changes to the types, dates and forms of reports to be furnished by lenders.

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B. Bureau. Financial accounting for the Guaranty and Insurance Fund will be done through the Bureau's accounting system as detailed in 42 BIAM. In addition, field credit officers will maintain records on guaranteed and insured loans adequate to furnish reports to the Commissioner and for audit and examination purposes. Format for loan cards and report forms are furnished in 47 BIAM, Supplement 4.

Agency and Area Offices will submit reports required by 47 BIAM, Supplement 4, 1.10, and other reports as may be requested by the Commissioner.

## CREDIT AND FINANCING

## Default, Adjustment and Cancellation of Loans

## 4. DEFAULT, ADJUSTMENT AND CANCELLATION OF LOANS

4.1 Default on Loans. Within 45 days of the date a borrower defaults in one or more provisions of his loan agreement the lender will notify the Bureau, using Form 5-4760, Notice of Default/Claim for Loss Guaranteed and Insured Loan, Illustration 10 of this Supplement, and proceed under provisions of the loan guarantee or insurance agreement and conditions of the loan agreement.

A. Allowable Liquidation Charges. Lenders may charge the following against the gross amount collected from the sale of security in determining the amounts to be claimed under a guarantee certificate or insurance agreement:

- (1) Reasonable and necessary expenses for preservation of the security.
- (2) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.
- (3) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.
- (4) Other expenses or fees approved in advance by the Commissioner.
- (5) Accrued unpaid interest to the date of judgment and decree of foreclosure of sale, or the date established by the Commissioner that accrued interest shall cease pursuant to CFR 93.36 and 93.37.

B. Claim for Loss and Assignment to the United States. The lender will submit a claim for loss on the Form 5-4760, Notice of Default/Claim for Loss - Guaranteed and Insured Loans, to the Agency Superintendent.

(1) The Superintendent will verify the amount claimed. He will submit a Request for Allotment to the Central Office, Division of Financial Assistance, in the amount verified. The Central Office will furnish an Advice of Allotment and adjust the Reserve for Losses account by the amount set aside in the account for the loan. On receipt of the allotment, a voucher will be prepared for payment of the applicable percentage of the unpaid principal balance and of unpaid accrued interest to the date of notice. The voucher will direct that the check be made payable to the lender, in care of the Superintendent, and will be forwarded to the Area Credit Officer for processing. The check will be drawn and delivered through the Area Credit Officer to the Superintendent. Upon

## CREDIT AND FINANCING

## Default, Adjustment and Cancellation of Loans

receipt of the check, the Superintendent will make certain the subrogation agreement is in order and that appropriate forms are completed to assign the note and security. Assistance of the field solicitor may be needed to assure that proper procedures are followed.

4.2 Assumption of Loan by the United States. At the time a lender is paid the percentage of loss to which he is entitled, on a guaranteed or insured loan, he shall complete and execute Form 5-4759, Assignment of Interests, Illustration 9 of this Supplement, and furnish the Agency Superintendent the original and one copy, together with the promissory note and all documents executed and taken by the lender as security for the loan. Any other documents which the Solicitor may consider necessary to perfect the assignment of the security and loan to the United States will also be executed by the lender. At this time, the Agency Superintendent will become responsible for servicing the loan. He will take such action as the Commissioner deems appropriate to provide maximum recovery upon rights subrogated to the United States in the assigned security. Securities, mortgages and related documents shall be county recorded where appropriate.

The Commissioner may establish a date on which interest accrual will cease. In the case of guaranteed loans, this date may not be later than the date of judgment and decree of foreclosure or sale if such action has taken place. Unless interest accrual has been stopped, or the terms of the note are modified, the interest charged after loan assumption shall be the rate set forth in the promissory note less the rate of interest subsidy established when the loan was made.

Loans assigned to the United States shall be picked up on the accounting records as assets of the fund at the full face value of the loan, which is the unpaid principal owed by the borrower to the lender at the time the loan was assigned, plus any unpaid accrued interest.

A. Modification. Where there is sufficient indication that continued operation of a particular enterprise for which the loan was made would probably permit a borrower to repay his obligation and where the continued operation will not increase the risk, or amount of probable loss to the United States, the Commissioner may, upon written request of the borrower, delay foreclosure for a specified period of time to provide the borrower an opportunity to correct the problem(s) for which the loan was defaulted. Borrowers must clearly understand that this arrangement will be temporary and that every effort will be made to sell the loan to another lender if existing problems can be resolved. The borrower will be required in writing to indicate his willingness to

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CREDIT AND FINANCING  
Default, Adjustment and Cancellation of Loans

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execute papers with a new lender at such time as requested and to pay the new rate of interest less the amount of interest subsidy for which a new loan would qualify under provisions of the Act.

In cases where the terms of a promissory note are to be extended or otherwise modified the borrower will be required to execute a new promissory note at the rate of interest set by the Secretary of the Treasury, for the month in which the modification is approved, in accordance with Title I, Section 104, of the Indian Financing Act of 1974 (P.L. 93-262, 83 Stat. 77). New securing documents will be recorded as appropriate.

If the condition of the loan has improved sufficiently during the time granted by the Commissioner, the Superintendent will aggressively seek another financing source to which the loan may be sold to replenish the fund. Where such efforts are unsuccessful and fully documented the Commissioner may approve a second period of time.

B. Loan Servicing. Loans assigned to the United States will be serviced until they are sold, paid in full, liquidated or cancelled, under provisions of 47 BIAM, Supplement 2.

C. Liquidation. Loans will be liquidated in accordance with conditions specified in loan agreements, real estate mortgages, deed of trust and other securing documents and in accordance with applicable tribal regulations and state laws. Guidance of the regional or field solicitor will be obtained to resolve legal questions. Loans in default and which cannot be otherwise liquidated shall be referred to the Solicitor for legal action.

The receipt of funds resulting from the sale of assets received under an Assignment of Interests shall be receipted for on a Bill of Collection, by an authorized Agency collector and deposited to the fund. Adjustments to reflect the sale of assets will be made to the asset accounts.

4.3 Adjustments and Cancellations. Recommendations for cancellation of loan indebtedness will be submitted by the Agency Superintendent in accordance with guidelines contained in 47 BIAM, Supplement 2, Section 6.3.

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ELIGIBILITY CERTIFICATE FOR GUARANTEED OR INSURED LOAN

To:

\_\_\_\_\_  
Lender

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Zip Code

Pursuant to the eligibility requirements of the Indian Financing Act of 1974, the above named applicant is , is not , eligible for a loan, from an approved lender, to be guaranteed or insured by the United States Government for the following reasons:

1. Applicant is , is not , a member of the \_\_\_\_\_  
\_\_\_\_\_  
Tribe, recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, which is , is not , presently conducting a program of extending loans to its members.
2. Is , is not , a tribe or organization having a form of organization satisfactory to the Commissioner, recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs:
3. Is , is not , an economic enterprise which is at least 51% owned by eligible Indians.

BUREAU OF INDIAN AFFAIRS

Date \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Agency.

DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS (BIA)

REQUEST FOR MANAGEMENT AND/OR TECHNICAL ASSISTANCE

The undersigned anticipates obtaining financing from the Bureau of Indian Affairs under the provisions of the Indian Financing Act of 1974, and hereby requests management and/or technical assistance.

It is understood that said assistance shall be provided to me free of charge and that I am not obligated to reimburse BIA for any expense incurred by either party.

BIA, for reasonable cause, may terminate the management and/or technical assistance upon written notice to the undersigned. The undersigned may request termination of the management and/or technical assistance when, in his opinion, he is capable of managing the business being assisted without further assistance.

In consideration of the processing of this request and/or the services specified, I hereby waive all claims arising therefrom against BIA or the individuals providing those services and agree to hold harmless BIA and said individuals from all actions brought against BIA or them for damages or injuries sustained, or alleged to have been caused by BIA's staff, or subcontractors while in the performance of or as a result of the work undertaken on behalf of me or my company.

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*(Name of Individual or Concern)*

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*(Telephone Number)*

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*Address (Include Zip Code)*

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*Signature & Title of Party Requesting Assistance*

---

*Date*

---

*Type of Business*

---

*Describe briefly nature of problem and reason for requesting Management or Technical Assistance*

REQUEST FOR LOAN GUARANTY OR INSURANCE AND APPROVAL

To:

Superintendent	Name of Borrower
Agency	Address <span style="float: right;">Zip Code</span>
Address <span style="float: right;">Zip Code</span>	Tribe.

Enterprise - Name & Address (Incl Zip Code)

Check appropriate status:

<input type="checkbox"/> Individual	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Guaranteed Loans	Application No.
<input type="checkbox"/> Tribe	<input type="checkbox"/> Partnership	<input type="checkbox"/> Insured Loans.	
<input type="checkbox"/> Corporation			

Purpose of Loan	Amount
	\$

Repayment schedule & maturity:

Percentage of Guaranty Requested	Interest Rate	Loan Service Charge, if any	Date of Approved Guaranty or Insurance Agreement
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Date of Request	Lender
Lender's Telephone No.	By

Lender's Address	Zip Code
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- Copies of the following are to be attached and made a part of this request, if applicable:
- |   |  |
|---|--|
| 1. Loan Application, Promissory Note and Security | 5. Lender's Evaluation of Feasibility                                  |
| 2. Plan of Operation                              | 6. Management Assessment   |
| 3. Current Financial Statements                   | 7. Organization Papers   |
| 4. Pro Forma Financial Statements                 | 8. Statement that loan is not available without insurance or guaranty. |

The request for BIA to Guarantee or Insure \_\_\_\_\_ % of a loan in the amount of \$ \_\_\_\_\_, with annual interest at the rate of \_\_\_\_\_ % to be made by and between \_\_\_\_\_ (Lender)

and \_\_\_\_\_ (Borrower)

is hereby approved pursuant to the Indian Financing Act of 1974 (25 U.S.C. § 1451, et seq.). The maturity date of this loan is \_\_\_\_\_.

This authorization is subject to:

- (a) Provisions of the Guaranty or Insurance Agreement between Lender and BIA dated \_\_\_\_\_.
- (b) First disbursement of the loan being made not later than \_\_\_\_\_ months, and no disbursement being made later than \_\_\_\_\_ months from the date of this Authorization, unless such time is extended pursuant to prior written consent by BIA.
- (c) Prior to each disbursement on account of the loan, Lender shall be in receipt of evidence satisfactory to it, in its sole discretion, that there has been no unremedied adverse change since the date of the application, or since any of the preceding disbursements, in the financial or any other condition of the Borrower which would warrant withholding or not making any such disbursement or any further disbursement.
- (d) The Lender paying a guaranty or insurance premium at an annual rate of \_\_\_\_\_ % of the unpaid principal to the loan, semi-annually. A first premium shall be remitted to the Commissioner on each advance made by the Lender, based on the amount advanced. The premium shall be for 6 months or portion of the 6 months in which the loan is closed. Thereafter, premiums will be remitted by the Lender within 30 days after December 31 and June 30 on the principal balance outstanding at the end of each semi-annual period. The guaranty or insurance of a loan will not be effective until the Commissioner receives the premium.
- (e) The Commissioner of Indian Affairs will pay the Lender an interest subsidy at the rate of \_\_\_\_\_ % per annum during the term of this loan. Subsidy payments will be made by the Commissioner according to scheduled payments made by the borrower, but not before.
- (f) Other conditions:

DATE

COMMISSIONER OF INDIAN AFFAIRS

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

LOAN INSURANCE AGREEMENT BETWEEN

\_\_\_\_\_

and the

BUREAU OF INDIAN AFFAIRS

This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ (Lender) and the United States acting through the Commissioner of Indian Affairs hereinafter referred to as Commissioner.

WITNESSETH:

WHEREAS, it is the intention of the parties to establish a mutual arrangement and understanding for the making by lender and the insuring by the Commissioner of loans to eligible Indian organizations and individual Indians to finance economic enterprises and housing in furtherance of developing the physical and human resources of Indians as provided by the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451 et. seq.).

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties represent and agree as follows:

1. Scope of Agreement. This agreement shall relate only to loans made after the date of this agreement which have been approved by the Lender, and the Commissioner where required, in accordance with their respective credit policies and the insuring conditions and limitations set forth in the Indian Financing Act of 1974 and the Secretarial Regulations issued pursuant thereto (25 CFR § 93).

2. Term. This agreement shall expire on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

3. Insuring Limitations. Loans insured under this agreement shall be limited to the following:

A. The aggregate total principal amount of all loans to be insured during the term of this agreement shall not exceed \$ \_\_\_\_\_.

B. The total reimbursable amount payable to the Lender on any one loan shall not exceed 90 percent of the loss, including accrued interest on that loan.

C. The total reimbursable amount payable to the Lender under this agreement shall not exceed fifteen percent (15%) of the aggregate of the total principal amount of all insured loans made.

D. Loans in excess of \$50,000 may not be insured without the written approval of the Commissioner of Indian Affairs. Loans for lesser sums may be approved by the Lender.

E. Loans to individual Indians for less than \$2,500 and loans to Indian tribes or organizations for less than \$10,000 will not be insured, unless an exception is obtained from the Commissioner.

F. Loans that will mature within one year from the date of the first advance shall not be insured, unless an exception is obtained from the Commissioner.

G. The maturity date on insured loans may not exceed 30 years from date of first advance.

H. The lender shall determine that financing is not otherwise available on reasonable terms and conditions without the benefit of insurance.

4. Eligibility. "Eligibility Certificate for Guaranteed or Insured Loans" (Form 5-4752), for Indian tribes or organizations or individual Indians shall be obtained from the Superintendent of the BIA Agency supervising the area in which the tribe or organization is located or the tribe in which the applicant is a member.

5. Request for Approval. With respect to loans that require the Commissioner's approval, the Lender shall prepare the "Request for Loan Guaranty or Insurance and Approval" (Form 5-4755), and submit duplicate copies of the Lender's loan application and attachments to the Commissioner. The Commissioner will approve the application on the reverse of the form and will return the loan docket to the Lender. If the request is disapproved, the Commissioner shall return one copy of the application to the Lender with an explanation of the reason for such disapproval.

6. Premium. The Commissioner will charge the Lender a premium on the unpaid principal amount of all loans insured at a rate to be established by the Commissioner of Indian Affairs. The Commissioner will notify the Lender in writing of the premium rate then in effect and the period of time during which the rate will be applicable to such loans. Notification of subsequent rate changes will be in the same manner. The initial premium payments shall be remitted to the Commissioner of Indian Affairs on Loan Made - Premium Due - Insured Loans (Form 5-4757), within 10 days following the first advance and will be for the six months or portion of the six months in which the loan is closed. Thereafter, premiums will be remitted by the Lender within 30 days after December 31, and June 30 on the principal balance outstanding at the end of each semi-annual period on Form 5-4749. The insurance of a loan will cease to be effective if the premium is not paid within 30 days of the end of a semi-annual period.

7. Security for Loan. The Lenders shall require borrowers to provide sufficient security, if available, to adequately secure the loan, without consideration of the loans being insured.

Title to personal property purchased with proceeds of an insured loan shall be taken in the name of the borrower, unrestricted.

The Lender shall require any property purchased with the proceeds of an insured loan, except land purchased by a tribe, title to which is taken in a trust or restricted status, to be mortgaged to the Lender as security for the loan, unless the loan is otherwise adequately secured.

8. Interest. Each loan shall show the rate of interest being charged by the Lender. Interest shall be payable at least annually. Once a loan is closed the interest rate on that loan may not be increased,

9. Interest Subsidy. The Commissioner may pay an interest subsidy to the Lender on insured loans. Upon being notified on "Loan Made - Premium Due - Insured Loans," (Form 5-4757), that a loan has been made or modified, the Commissioner will notify the Lender of the established rate of interest subsidy. The rate of interest subsidy will remain in effect during the term of the loan. Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semi-annually, quarterly or monthly depending on the time interest has been paid and as near the due date as feasible, but not before. Requests for interest subsidy payments shall be at least semi-annually (December 31 and June 30) on Form 5-4740, "Lenders Report of Premiums and Interest Subsidies Due." The form can be adapted to quarterly or monthly if requests for interest subsidy are requested more frequently than semi-annually.

10. Closing and Disbursement of Loans. Lender shall close and disburse each loan in accordance with this agreement or the terms and conditions upon which the insured loan was approved. Lender shall cause to be executed a note and any additional instruments and take such other actions which shall, consistent with prudent closing practices, be required in order to fully protect or preserve the interests of Lender and BIA in the loan.

11. Insurance Coverage Effective. Loans made pursuant to this agreement shall be insured upon the loan funds being disbursed and receipt of the premium by the Commissioner. However, immediately after the loan is closed, the Lender shall advise the BIA of (1) the name and address of the borrower, (2) tribal affiliation, (3) the principal amount of the loan and purpose, (4) repayment schedule, (5) the Lender's rate of interest upon such loan, and (6) the date funds were advanced.

12. Records and Reports. Lender agrees to maintain adequate records of the loan. The Commissioner may inspect such records at any reasonable time during regular business days or hours. The Commissioner may prescribe the reports and forms to be used in reporting information regarding insured loans.

13. Loan Servicing. The insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement

that adequate loan servicing will be performed by the Lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent Lenders in the area in servicing similar type loans. In servicing loans, Lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in computing the amount for which the Lender may be reimbursed in the event of a loss on a loan.

14. Modification of Loan Agreements. Lenders making insured loans which under the provisions of an approved insurance agreement do not require Commissioner approval shall use prudence in approving requests for modifications of loan agreements and follow the Lender's customary procedures and practices which are used in connection with non-insured loans made by it. Modifications are to be in compliance with the provisions of paragraph 3, Insuring Limitations. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan by use of Form 5-4757.

15. Protective Advances. When provided for in a loan agreement, subject to limitations on the amounts and terms, Lenders may advance, for certain purposes, up to 10 percent of the amount for which an insured loan was originally approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other purpose necessary for the protection of the interest of the Lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically insured at the same percentage rate as applied to the original amount of the loan upon the Commissioner's receiving Lender's notice on Form 5-4747 that an additional amount has been advanced, coupled with a statement as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the payment of the premium for the additional amount. The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The advance will be included as part of the borrower's loan obligation and may bear interest at the current rate.

16. Prepayments. Borrower shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in loan agreement. The Lender shall promptly notify the Commissioner of any advance payments.

17. Late Charges. Lender may assess a late charge on each loan installment, principal only, received more than 30 days after the due date, if the loan agreement at the time of approval contains an authorization to this effect. The amount of late charges assessed may not be insured. Interest may not be charged on late charges.

18. Default. Within 45 days after the borrower's default, the Lender shall notify the Commissioner of such default by certified or registered mail. Notice shall include the name of the borrower, insurance agreement number, principal balance, accrued interest to date of notice, delinquent principal and interest to date of notice, and any other failure of borrower to comply with the provisions of the loan insurance agreement.

Within 60 days after borrower's default on an insured loan, or such additional time as the Commissioner may authorize, to remedy the default, Lender shall:

(a) Make a written agreement with the borrower to extend the repayment terms or otherwise forbear for the benefit of the borrower. Such agreements shall be approved by the Commissioner.

(b) Make a written demand for BIA to reimburse the Lender's insured losses after exhausting all reasonable efforts to collect the loan and to liquidate the security to the fullest extent feasible. All proceeds realized from Lender's collection efforts shall be applied upon the borrower's debt.

In making a written demand for BIA to reimburse its insured losses on any insured loan, Lender shall thereby certify that the loan has been disbursed and serviced in compliance with this agreement and that the provisions of this agreement remain in full force and effect with respect to such loan. Lender shall also furnish such information as is necessary to establish the amount of the claimed loss. If the Commissioner finds that an insured loss has been suffered, he shall pay the Lender ninety per centum (90%) of the loss for such loan but the payment cannot exceed 15% of the aggregate amount of loans insured. Upon being reimbursed for its loss, the United States shall be subrogated to all rights and interests of the Lender in such loan. The Lender shall also assign the loan and all security for the loan or the judgment evidencing the borrower's debt to the United States. The Lender shall have no further claim against the borrower or the United States after being reimbursed for its losses as herein provided.

The Commissioner shall not refuse to pay a valid insurance claim on loans made in good faith

19. Charges upon Liquidation. Lenders may charge the following against the gross amounts collected from the sale of security in determining the amounts to be claimed under an insurance agreement:

(a) Reasonable and necessary expenses for preservation of the security.

(b) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.

(c) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.

(d) Other expenses or fees approved in advance by the Commissioner.

(e) Accrued unpaid interest to the date of judgment and decree of foreclosure or sale, or the date established by the Commissioner that accrued interest shall cease.

20. Fraud or Misrepresentation. Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure the accuracy and the validity of signatures.

There shall be no liability on the part of the United States to reimburse a Lender on an insured loan for that amount of the insured loss caused by the Lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents; the Lender's furnishing false information to induce the approval of an insured loan by the Commissioner; or the Lender's willful or negligent action which permitted a fraud, forgery or misrepresentation.

21. Management and Technical Assistance. Where a loan is made to finance an economic enterprise, the Lender shall include as part of the request for approval or separately if no approval is required, its evaluation of the applicant's need for management and technical assistance. Where such assistance is thought to be needed, the Lender shall specify the areas of need, and whether such assistance will be provided.

If subsequent to making a loan, the Lender shall determine that the borrower is in need of management and technical assistance, the Commissioner shall be notified in writing of the specific areas of need and whether such assistance will be provided.

If the Lender is not able to provide the financial or technical assistance needed, he may assist the applicant to prepare Form 5-4745, "Request for Management and/or Technical Assistance," which will be directed to the local Agency.

22. Preservation of Historical and Archeological Data. Lender will take appropriate action to assure compliance with Section 106 of the National Historic Preservation Act of 1966 (80 Stat. 915), relating to the preservation of historical and archeological data. Upon request the local Agency Superintendent will provide assistance together with any pertinent information available.

23. Flood Disaster and Environmental Protection. Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Act of 1973 (87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (83 Stat. 852), will not be approved until the Lender has received assurance of compliance with any applicable provisions of these Acts. Upon request the local Agency Superintendent will provide assistance together with any pertinent information available.

IN WITNESS WHEREOF, Lender has caused this agreement to be executed on its behalf by its duly authorized officer or officers and its corporate seal to be hereunto affixed, and Bureau of Indian Affairs has caused this agreement to be executed on its behalf by \_\_\_\_\_ Office \_\_\_\_\_, at its \_\_\_\_\_ the day and year first above written.

\_\_\_\_\_  
Lender I.D. No.

(SEAL)

ATTEST:

By \_\_\_\_\_  
Title

\_\_\_\_\_  
BUREAU OF INDIAN AFFAIRS

By \_\_\_\_\_

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

LOAN GUARANTY AGREEMENT

between

\_\_\_\_\_

and the

BUREAU OF INDIAN AFFAIRS

This agreement, made this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, by and between \_\_\_\_\_  
(Lender) and the United States, acting through the Commissioner of Indian  
Affairs hereinafter referred to as Commissioner.

WITNESSETH:

WHEREAS, it is the intention of the parties to establish a mutual arrangement and understanding for the making by the lender and the guaranteeing by the Commissioner of loans made by the Lender to eligible Indian organizations and individual Indians to finance economic enterprises and housing in furtherance of developing the physical and human resources of Indians as authorized by the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451, et seq.).

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties represent and agree as follows:

1. Scope of Agreement. This agreement shall relate only to loans made after the date of this agreement which have been approved by the Lender and the Commissioner in accordance with their respective credit policies and the conditions of guaranty set forth in the Indian Financing Act of 1974 and the regulations issued pursuant thereto (25 CFR § 93.).

2. Borrower's Eligibility. An Eligibility Certificate for Guaranteed or Insured Loan (Form 5-4752), for Indian tribes or organizations or individual Indians shall be obtained from the Superintendent of the BIA Agency supervising the Area in which the applicant is located or the tribe in which the applicant is a member.

3. Request for Loan Guaranty & Approval. Applicant will deal directly with Lender, and prepare the loan application and securing documents used by the Lender. Upon the Lender's determination that he could approve a loan to the applicant, providing the BIA will guarantee the loan, he shall prepare the Request for Loan Guaranty or Insurance and Approval (Form 5-4755), in duplicate, and transmit the loan docket to the BIA Office serving the Area. The application or attachment thereto must include or show the following:

(a) plan of operation for the economic enterprise; (b) purpose(s) and the amount of the loan; (c) security to be given; (d) hazard and liability insurance to be carried; (e) interest rate; (f) repayment schedule; (g) repayment source; (h) how title to property purchased with the loan is to be taken; (i) current financial statements of the applicant; (j) description and dollar value of the personal investment to be made by the applicant; (k) service charges; (l) pro forma balance sheets, operating statements and cash flow statements for at least three succeeding years; (m) if already in operation, balance sheets and operating statements for the two preceding years, or applicable period thereof; and (n) the lender's evaluation of the economic feasibility of the enterprise. Copies of organization papers for cooperative associations and corporations, and copies of partnership agreements, must be submitted with applications. Applications for guaranteed loans will also show the percentage of guaranty requested.

Reasonable assurance of repayment will be considered to exist:

(a) In the case of individuals, where past operations and future prospects of the applicant's operations demonstrate ability to repay the loan from production, earnings, or other assets. Full consideration will be given to the applicant's managerial ability and experience.

(b) In the case of tribes and Indian organizations, where past operation or future plans of operation indicate that the economic enterprise for which financing is requested is economically sound. Full consideration will be given to arrangements for efficient management of the economic enterprise for which financing is requested. The Commissioner shall require that a written plan of operation for economic enterprises be prepared, adopted by the borrower and approved by the Lender and the Commissioner.

4. Limits of Guaranty. The percentage of a loan that is guaranteed may not exceed 90 percent of the unpaid principal and interest.

On loans to individuals the principal amount which is to be guaranteed shall not exceed \$100,000. No loan for less than \$2,500, and a term of less than one year will be approved unless an exception is obtained from the Commissioner.

On loans to tribes or Indian organizations the principal amount which is to be guaranteed shall not be less than \$10,000 and the term of the loan shall not be for less than one year, unless an exception is obtained from the Commissioner.

No borrower shall have more than one guaranteed loan in effect at any time without the prior approval of the Commissioner.

5. Maturity. Maturity date of guaranteed loans may not exceed 30 years from date of first advance. Repayment terms on modified loans may not be extended beyond 30 years from first advance.

6. Premium. The Commissioner will charge the Lender a premium on the initial amount of any new loan and on the unpaid principal balance of all guaranteed loans made under this agreement. The premium rate shall be stated in Request for Guaranty or Insurance and Approval (Form-4755). The initial premium shall be remitted to the Commissioner within 10 days following the first advance.

Subsequent premium payments shall be due semi-annually on June 30 and December 31. A Lenders Report of Premiums and Interest Subsidies Due (Form 5-4749), will be used for the base in determining the total subsequent premium payments due. The Lender shall remit the premium due within 30 days following the due date to keep the guaranty of loans in effect.

7. Security for Loan. Lenders shall require borrowers to provide sufficient security, if available, to adequately secure the loan, without consideration of the loan guaranty.

Title to personal property purchased with proceeds of a guaranteed loan shall be taken in the name of the borrower, unrestricted.

Lenders shall require any property purchased with the proceeds of a guaranteed loan, except land purchased by a tribe, title to which is taken in trust or restricted status, to be mortgaged to the Lender as security for the loan, unless the loan is otherwise adequately secured.

8. Interest. Each loan shall show the rate of interest being charged by the Lender. Interest shall be payable at least annually. Once a loan is closed the interest rate on that loan may not be increased during the term of the loan. The Commissioner will determine if the annual rate of interest is reasonable prior to issuing a guaranty certificate.

9. Interest Subsidy. The Commissioner will pay an interest subsidy to the Lender on guaranteed loans. The rate of interest subsidy will be established by the Commissioner and set forth in Form 5-4755 approving Lender's request for guaranty. The rate of interest subsidy will remain in effect during the term of the loan.

Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semi-annually, quarterly, or monthly, depending on the time interest has been paid and as near the due date as feasible, but not before.

Requests for interest subsidy payment shall be made by the Lender at least semi-annually on Form 5-4749, Lenders Report of Premiums and Interest Subsidies Due. The report can be adapted to quarterly or monthly periods if requests for interest subsidies are requested more frequently than semi-annually.

10. Lender's Loan Service Charges. Lender may charge borrower a reasonable loan service charge when provided in the loan agreement and is authorized by the Commissioner at the time a loan is guaranteed. The Lender may not charge the borrower interest on funds included in the loan for payment of loan service fees.

11. Approval. The Commissioner will approve the application by issuance of Form 5-4755, which will show the percentage amount of the loan guaranteed, the premium to be paid to the Commissioner, and the rate of interest subsidy to be paid on the loan by the United States and any other condition the Commissioner deems necessary. If the application is not approved, the original will be returned to the Lender with an explanation.

12. Guaranty Certificate. At the time of approval of the guaranty, the Commissioner will issue a guarantee certificate. However, the guaranty of a loan will not become effective until the Commissioner receives the premium that is due.

13. Closing and Disbursement of Loans. Lender shall close and disburse each loan in accordance with the terms and conditions upon which the loan and the guaranty were approved. Lender shall cause to be executed a note and any additional instruments and take such other actions, consistent with prudent closing practices, which may be required in order to fully protect or preserve the interest of Lender and the United States in the loan.

14. Loan Servicing. The guaranty of a loan by the Commissioner and the issuance of a guaranty agreement will be based on the requirement that adequate loan servicing will be performed by the Lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent Lenders in the area in servicing similar type loans. In servicing loans, Lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in computing the amount for which the Lender may be reimbursed in the event of a loss on a loan.

15. Modification. Guaranteed loan agreements may be modified with the approval of the parties to the original loan agreement and approval of the Commissioner.

16. Protective Advances. Subject to the limitations on the amounts and terms of loans, the Lender may advance, for certain purposes, up to 10 percent of the amount for which a guaranteed loan was originally approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other purpose necessary for the protection of the interest of the lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically guaranteed at the same percentage rate as applied to the original amount of the loan upon the Commissioner receiving notice from the Lender that an additional amount has been advanced coupled with a statement

as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the payment of the premium for the additional amount. The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The advance will be included as a part of the borrower's loan obligation and may bear interest at the current rate.

17. Prepayments. Borrower shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in the loan agreement. The Lender shall promptly notify the Commissioner of any advance payments.

18. Sale or Assignment of Guaranteed Loans. Any guaranteed loan made under the terms of this agreement, including the security and guaranty certificates, may be sold, assigned, or transferred by the Lender to any financial institution that is subject to examination and supervision by an agency of the United States, a State or the District of Columbia. The institution acquiring the loan shall notify the Commissioner in writing, on Form 5-4758, Notice of Acquisition of Loan, within 30 days after acquiring the loan.

19. Late Charges. Lender may assess a late charge on each loan installment, principal only, received more than 30 days after the due date if the loan agreement at the time of approval contains an authorization to this effect. The rate shall be specified in the loan agreement. The amount of late charges assessed may not be guaranteed. Interest may not be charged on late charges.

20. Default. Within 45 days after the occurrence of a default, the holder of the guaranty certificate shall notify the Commissioner of such default by certified or registered mail. Notice shall include the name of the borrower, guaranty certificate number, principal balance, accrued interest to date of notice, delinquent principal and interest to date of notice, and any other failure of borrower to comply with the provisions of the loan agreement.

Within 60 days after borrower's default on a guaranteed loan or such additional time as the Commissioner may authorize to remedy the default, Lender shall take one or more of the following actions:

(a) Make a written agreement with the borrower to extend the repayment terms or other forbearance for the benefit of the borrower. Such agreements shall require approval by the Commissioner.

(b) Advise the Commissioner in writing that suit or foreclosure is considered necessary to liquidate the security. On completion of the liquidation proceedings, Lender may submit a written demand, on Form 5-4760, Notice of Default/Claim for Loss, Guaranteed and Insured Loans, for reimbursement of the guaranteed percentage of the net loss suffered.

(c) Make written demand for payment of the guaranteed percentage of the net loss suffered.

In making its written demand for reimbursement of the guaranteed percentage of any loan hereunder, Lender shall thereby certify that the loan has been disbursed and serviced in compliance with this agreement and that the provisions of this agreement remain in full force and effect with respect to such loan(s). Lender will also furnish any additional information necessary to establish the amount of the claim. If the Commissioner finds that a loss has been suffered, he shall pay the holder of the guaranty certificate the guaranteed percent of such loss. Upon being reimbursed for pro rata portion of its loss, the United States shall be subrogated to all rights and interests of the Lender and holder of the guaranty certificate in the loan. The Lender shall assign the loan and security for the loan to the United States. Neither Lender nor a holder of the guaranty certificate shall have any further claim against the borrower or the United States. The Commissioner shall not refuse to pay a valid guaranty claim on loans made in good faith.

21. Charges upon Liquidation. Lenders may charge the following against the gross amounts collected from the sale of security in determining the amounts to be claimed under a guaranty agreement.

(a) Reasonable and necessary expenses for preservation of the security.

(b) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.

(c) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.

(d) Other expenses or fees approved in advance by the Commissioner.

(e) Accrued unpaid interest to the date of judgment and decree of foreclosure or sale, or the date established by the Commissioner that accrued interest shall cease pursuant to §§ 93.36 and 93.37.

There shall be no liability on the part of the United States to reimburse a Lender on a guaranteed loan for that amount of the guaranteed loss caused by the Lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents; the Lender's furnishing false information to induce the issuance of a guaranty certificate by the Commissioner; or the Lender's willful or negligent action which permitted a fraud, forgery or misrepresentation. A reduction will not be made in the amount of reimbursement on a guaranteed loss to a purchaser, assignee, or transferee who acquired the loan before maturity for value and did not directly or by agency participate in or have prior knowledge of a fraud, forgery or misrepresentation.

22. Fraud or Misrepresentation. Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure the accuracy and the validity of signatures.

23. Records and Reports. Lender agrees to maintain adequate records of the loan. The Commissioner may inspect such records at any reasonable time during regular business days or hours. The Commissioner may prescribe the reports and forms to be used in reporting information regarding guaranteed loans.

24. Management and Technical Assistance. Where a loan is made to finance an economic enterprise, the Lender shall include as part of the request for approval and guaranty certificate, or separately, its evaluation of the applicant's need for management and technical assistance. Where such assistance is thought to be needed, the Lender shall specify the areas of need, and whether such assistance will be provided by it.

If, subsequent to making a loan, the Lender shall determine that the borrower is in need of management and technical assistance, the Commissioner shall be notified in writing of the specific areas of need and whether such assistance will be provided by the Lender. If the Lender is not able to provide the financial or technical assistance needed, he may assist the applicant to prepare Form 5-4745, Request for Management and/or Technical Assistance, which will be directed to the local Agency.

25. Preservation of Historical and Archeological Data. Lender will take appropriate action to assure compliance with applicable provisions of Section 106, National Historic Preservation Act of 1966 (80 Stat. 915), relating to the preservation of historical and archeological data. Upon request, the local Agency Superintendent will provide assistance together with any pertinent information available.

26. Flood Disaster and Environmental Protection. Application for loans to purchase or construct buildings or other improvements which require compliance with any provision of the Flood Disaster Act of 1973 (87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (83 Stat. 852), will not be approved until the Lender has received assurance of compliance with the applicable provisions of these acts. Upon request, the local Agency Superintendent will provide assistance together with any pertinent information available.

27. Termination. Either party hereto, by giving not less than ten (10) days prior written notice by certified mail to the other party, may terminate the provisions of this agreement; such termination shall not apply to any loan previously authorized by BIA hereunder.

IN WITNESS WHEREOF, Lender has caused this agreement to be executed on its behalf by its duly authorized officer or officers and its corporate seal to be hereunto affixed, and Bureau of Indian Affairs has caused this agreement to be executed on its behalf by \_\_\_\_\_ at its \_\_\_\_\_ Office, the day and year first above written.

(SEAL)

\_\_\_\_\_  
LENDER

ATTEST:

BY \_\_\_\_\_  
TITLE

\_\_\_\_\_  
BUREAU OF INDIAN AFFAIRS  
By \_\_\_\_\_

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

LOAN GUARANTY CERTIFICATE

Certificate No. \_\_\_\_\_

Date \_\_\_\_\_

Loan Amount	_____	
Percent of Loan Guaranteed	_____	%
Interest Subsidy Rate	_____	%
Premium Rate	_____	%

\_\_\_\_\_  
Borrower (Last Name First)

This certificate is evidence of the loan described herein being guaranteed under the Indian Financing Act of 1974 (25 U.S.C. § 1451 et seq.) and the regulations of the Department of the Interior (25 CFR § 93 et seq.). If assigned, endorse on reverse and notify Commissioner as required in the Guarantee Agreement.

\_\_\_\_\_  
Property Address

BUREAU OF INDIAN AFFAIRS

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Lender - Name & Address

\_\_\_\_\_  
Commissioner of Indian Affairs

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

LOAN MADE - PREMIUM DUE INSURED LOANS

To:

Superintendent	Borrower
Agency	Address
Address	Zip Code
Zip Code	Tribe

Enterprise - Name and Address (Incl. Zip Code)

Insurance Agreement No. and Date

Purpose of Loan	Amount
	\$

The principal will mature on \_\_\_\_\_, \_\_\_\_\_, and is repayable at \_\_\_\_\_% interest according to the following repayment schedule.

Type of Loan	Date Funds Advanced	Premium Rate	Amount	Premium Due
New				
Additional Advance				

Lender I. D. No.

Date

By \_\_\_\_\_  
Title

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

NOTICE OF ACQUISITION OF LOAN

To:

\_\_\_\_\_  
Superintendent  
\_\_\_\_\_  
Agency  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Borrower  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Zip Code

Seller:  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Zip Code

Purchaser:  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Guaranty Certificate No. & Date I.D. No.

\_\_\_\_\_  
Date of Purchase I.D. No.

Original Amount of Loan	Balance Due		Accrued Unpaid Interest	Guaranty Prem. Rate %	Interest Subsidy Rate %
	Date	Amount			

Security Acquired:  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned has read and agrees to comply with the applicable provisions of P.L. 93-262 and 25 CFR 93, and further certifies that it is subject to examination and supervision by an agency of the United States, a State or District of Columbia.

\_\_\_\_\_  
Purchaser  
By \_\_\_\_\_  
Title

ACKNOWLEDGEMENT

Receipt, Notice of Acquisition of Loan is hereby Acknowledged.

BUREAU OF INDIAN AFFAIRS

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Title

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

ASSIGNMENT OF INTEREST

Lender	I. D. No.	Borrower
Address		Address
	Zip Code	Zip Code

Guaranty Certificate Number and Date	Insurance Agreement Number and Date
--------------------------------------	-------------------------------------

1. In consideration of \$ \_\_\_\_\_ received from the United States Government, representing \_\_\_\_\_ % of the net loss claimed by the Lender, as provided in the Guaranty Certificate or Loan Insurance Agreement executed by the Commissioner of Indian Affairs, in the amount of \$ \_\_\_\_\_, the undersigned hereby grants, conveys, transfers, and sets over unto the United States Government all its right, title and interest, now and in the future to come, in the following promissory note and collateral securing documents.
2. Promissory note executed by \_\_\_\_\_, dated \_\_\_\_\_, in the amount of \$ \_\_\_\_\_, bearing interest at the rate of \_\_\_\_\_ % per annum, having a balance this date, of \$ \_\_\_\_\_ unpaid principal and \$ \_\_\_\_\_ unpaid accrued interest.
3. The following documents are hereby assigned to the United States Government:
  - a) Promissory note dated \_\_\_\_\_, in the amount of \$ \_\_\_\_\_.
  - b)
  - c)
  - d)
  - e)
  - f)

\_\_\_\_\_  
Lender

Date \_\_\_\_\_

By \_\_\_\_\_  
Title

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

NOTICE OF DEFAULT/CLAIM FOR LOSS GUARANTEED AND INSURED LOANS

To:

Superintendent \_\_\_\_\_  
 Agency \_\_\_\_\_  
 Address \_\_\_\_\_  
 Zip Code \_\_\_\_\_

Borrower \_\_\_\_\_  
 Address \_\_\_\_\_  
 Zip Code \_\_\_\_\_  
 Business \_\_\_\_\_

Check one:  Guaranteed Loan  Insured Loan  
 Guaranty: Percent Guaranty \_\_\_\_\_ %  
 Certificate No. & Date \_\_\_\_\_

Address \_\_\_\_\_  
 Insurance Agreement \_\_\_\_\_  
 Aggregate Total Insured Loans \$ \_\_\_\_\_

1. Default - Notice sent to borrower as of \_\_\_\_\_

Date \_\_\_\_\_

Original Amount of Loan	Balance Due	Accrued Unpaid Interest	Amount Delinquent	Delinquent	
				Less Than 45 Days	More Than 60 Days

Other Reasons for Declaration of Default: \_\_\_\_\_

2. Claim for Loss

Unpaid Principal as of \_\_\_\_\_ Date \_\_\_\_\_ \$ \_\_\_\_\_  
 Unpaid Interest Computed to \_\_\_\_\_ @ \_\_\_\_\_ % \_\_\_\_\_

Total Amount Delinquent \$ \_\_\_\_\_

Proceeds from Liquidation of Assets \$ \_\_\_\_\_  
 Other Income Derived from Assets \_\_\_\_\_  
 Less: Allowable Charges Upon Liquidation (Itemize on reverse side) \_\_\_\_\_  
 Net Deduction \$ \_\_\_\_\_  
 Net Delinquent Balance \$ \_\_\_\_\_

Less: Guarantees: \_\_\_\_\_ % of Net Delinquent Balance \$ \_\_\_\_\_  
 Insurance: 90% of Net Del. Bal. or 15% of Aggregate \$ \_\_\_\_\_  
 Net Loss To Lender \$ \_\_\_\_\_

Lender \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
 Title \_\_\_\_\_

INSTRUCTIONS FOR PREPARATION OF FORM 5-4749

General: Use a separate line to reflect each loan transaction (advance on loan or payment received) during this reporting period.

At the discretion of the lender, reports may be submitted monthly, quarterly or semi-annually. Reports should be prepared as of the last day of the reporting period and submitted to reach the Superintendent or the Area Director, under which the guarantee or insurance agreement was issued, by the tenth day of the month following the reporting period.

- (1) Enter names of borrowers.
- (2) Enter guarantee certificate number if loan is guaranteed. Show "NA" if loan is insured.
- (3) Enter date of transaction effecting the loan.
- (4) Enter the previous balance on old loans. On new loans show "0."
- (5) Enter changes to principal amount during the reporting period (i.e., new advances on loans and payments received).
- (6) Enter the outstanding principal balance after any entry in Column (5) has been applied.
- (7) Enter the amount of interest paid by the borrower. Enter the rate of interest charged to the borrower.
- (8) Enter the dollar amount of interest subsidy due from the United States.
- (9) Enter the date the premium has been paid to for each loan and/or advance.
- (10) Enter the dollar amount of any premium due. If payment due is not submitted with this report explain by footnote or attachment why premium has not been paid.



*file*

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
Washington, D. C. 20242

47 BIAM Supp. 1 Release 1  
August 1, 1973

Memorandum

To: Holders of 47 BIAM Supplement No. 1

From: Assistant Secretary of the Interior

Subject: 47 BIAM Supplement No. 1, Loans and Advances by the United States to Indian Organizations

The material transmitted herewith replaces in its entirety material in 47 IAM 7, Loans and Advances by the United States to Indian Organizations and 47 IAM 12, Regulations.



Deputy Assistant Secretary of the Interior

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**Filing Instructions:**

(a) Remove superseded material:

47 IAM 7	(36 sheets)
47 IAM 12	(7 sheets)

(b) Insert new material transmitted:

47 BIAM Supplement No. 1	(46 sheets)
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(c) Pen-and-ink changes:

None

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## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

- 1.1 Purpose. The purpose of this supplement is to prescribe terms and conditions of loans to Indian organizations and advances of tribal funds to tribes for credit and financing operations. Loans from the revolving fund (see 47 BIAM 1.3) and advances of tribal funds are made to promote the economic development of such organizations and their members (see 25 CFR 91.1 and 2.1A below). All loans and advances will be for the purposes set forth in 1.4 below.
- 1.2 Eligibility. Loans of revolving funds are governed by the general eligibility requirements of 25 CFR 91.2, and loans to encourage industry are governed by 25 CFR 91.19 (see 2.1B and S below). Eligibility for advances of tribal funds is governed by 1.13 and 2.1L below. All loans and advances will be in accordance with authority contained in approved organization papers, except in the case of tribes which do not have such documents. <sup>1/</sup> Charter authority will be utilized in the case of incorporated tribes unless the Commissioner specifically authorizes the constitutional group to be the borrower. Many charters limit the purposes for which funds may be borrowed to use of funds "directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the tribe." Limitations as to purpose are thus on the applicant or borrower, and not on the United States as the lender. A tribe that has tribal funds available in the Treasury or elsewhere, or that has income accruing to it which are not budgeted or programmed for other purposes, will be required to use its own funds to the extent available, before receiving a loan from the United States. A cooperative association is eligible for a loan from the United States under the provisions of this supplement if it is unable to borrow from a tribe or if its members are unable to borrow from a tribe or a credit association, provided the association is organized pursuant to the Act of June 26, 1936

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<sup>1/</sup> The procedure to be followed by unincorporated tribes that do not have approved constitutions and bylaws in applying for loans, is the same as that traditionally followed in taking other tribal action. This usually requires that the Superintendent give notice to all members of the tribe that a general council meeting of all members of the tribe is to be held, at which the question of whether a loan application will be made and tribal assets pledged as security is to be considered. The meeting is then held, and the proposition put to vote. If it receives the assent of a majority of the qualified voters attending the meeting, it is deemed to have carried. The tribe, through its officers or other authorized spokesmen, will furnish a certificate setting forth the calling of the general council meeting, and the result of the vote taken. The certificate will be attested by the Superintendent. In case of doubt as to the eligibility of a particular organization for a loan from the United States, check will be made with the Central Office.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

(25 U.S.C. 504), or in accordance with the laws of the State in which it operates <sup>2/</sup> and provided its organization papers have been approved by the Commissioner. Organizations already indebted for loans are eligible for additional loans from the United States provided they have need for additional funds that can be used on a sound basis. <sup>3/</sup>

1.3 Application.

A. Status Reports. Quarterly reports are issued by the Central Office showing the status of the revolving fund. These reports may be issued at such other intervals deemed necessary and will summarize Indian credit needs as reported to the Central Office, and approved unallotted commitments and applications authorized. The reports govern the submittal of applications.

The report is divided into four parts: (1) Approved Unallotted Commitments; (2) Applications Authorized; (3) Estimated Financing Needs; and (4) Estimated Financing Needs for Tribal Land Purchases. Advances of funds under (1) and (2) are divided into three

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<sup>2/</sup> Loans to cooperative associations by tribes are governed by 47 BIAM 8.

<sup>3/</sup> The regulations in 25 CFR 91 (see 2.1 below) and the instructions in 47 BIAM govern loans of revolving funds and advances of tribal funds from the Treasury for credit and financing purposes, including financing of enterprises. The regulations and instructions have been amended and revised at various times. The specific regulations and instructions governing each loan contract are included as part of the contract. Section 2.1 below includes the regulations as originally approved, and amendments. Each loan contract must be examined to determine the regulations and instructions by which the borrower is bound. Some contracts include an agreement to abide by amendments or revisions of the regulations and instructions as they may be issued from time to time. The instructions in this supplement will apply to such contracts. In such instances, copy of this supplement will either be sent to the organization by registered or certified mail with return receipt requested, or handed to the authorized officer of the organization by the Area Director or Superintendent or their authorized representatives, and a receipt taken therefor. The Area Director will determine which procedure will be followed. This notification is necessary because in the event of dispute as to the regulations and instructions by which an organization is bound, in the absence of evidence that the organization had received copy of the chapter and supplement, a court might determine that the organization was not bound by the instructions herein. Where the contracts do not contain provisions that organizations will be bound by amendments to and revisions of the regulations and instructions, they are bound only by the provisions to which they agreed and which are included in their loan agreement contracts. However, in such cases steps will be taken by Area Offices to bring such contracts under the regulations and instructions in 47 BIAM by appropriate contract modifications. Such modifications should include an agreement to abide by further revisions of and amendments to the regulations and instructions as they may be issued from time to time.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

priorities. Each report will be examined by Area and Agency Credit Officers upon receipt and any needs for loans not listed thereon will be reported promptly to the Central Office for inclusion on the next report. Deletions likewise will be reported. The Central Office will, when justified, and when funds are available, authorize submittal of applications. Action pursuant to 1.5 below will not be taken until submittal is authorized on status reports or otherwise by the Commissioner. After submittal is authorized, applications will be dropped from reports as "Estimated Financing Needs" and included under "Applications Authorized." Upon approval, they will be dropped under this heading and included under "Approved Unallotted Commitments." It is very important that status reports be complete, and that applications graduate from those "Under Consideration" to "Authorized" to "Approved Unallotted Commitments." Likewise, advances contemplated will be advanced as funds become available, from third to second priority, and from second to first priority.

- B. Form. Applications of organizations will be submitted on Form 5-4737 or in the form of a request for modification to increase the amount of an existing loan. <sup>4/</sup> The total indebtedness of an organization to the United States will be consolidated into one loan agreement, unless otherwise specifically authorized by the Commissioner, or unless the additional loan is:
- (1) To encourage industry and the application is submitted pursuant to 25 CFR 91.19 (see 1.20 and 2.1S below), or
  - (2) Where an organization has received a loan to make a capital investment in a particular enterprise requiring long-term financing and also requires annual operating loans. In such instances it ordinarily is preferable to keep the loans separate.
- C. Type of Credit System. Applications for loans, or requests for advances of tribal funds from the Treasury (see 1.13 below), will not be approved if the organization is conducting a credit system with funds not governed by the regulations in

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<sup>4/</sup> Tentative drafts of proposed applications or requests for modifications may be submitted to the Area Director for advance review prior to final action by the governing body of the applicant if desired. In some instances, this procedure may be desirable because of the necessity for submittal of applications and requests in proper form, and time limits contained in some tribal organization papers for consideration of resolutions adopted by organizations.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

25 CFR 91 unless the system is governed by State or other Federal law, or unless the Commissioner authorized an exception. Ordinarily, exceptions will be confined to small emergency or other short-term type loans. Operation of dual competing-type credit systems by the same lender is inadvisable.

- D. Additional Loan. Where an organization is indebted to the United States for a loan and applies for an additional loan on Form 5-4737, the existing indebtedness under the old loan may be transferred to the new loan. 5/ This procedure requires that the old loan also be modified to authorize the transfer. 6/ Such transfers will provide for the same repayment schedule and interest rates called for in the original loan. 7/
- E. Modification. 8/ In lieu of submittal of an application for an additional loan on Form 5-4737, a request for modification may be submitted to increase the amount of an existing loan. If an organization is indebted under more than one loan agreement and needs additional funds, consolidation of indebtedness and an increase in the amount of the loan also may be accomplished by modification (see exceptions, 1.3B above).
- (1) Modernization of Contracts. Where a loan agreement contract has been in effect for several years, it usually has been amended several times. Often considerable research is necessary to determine the effective provisions. Over the years, non-contractual material may have found its way into the agreement. In such instances, the existing

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- 5/ Exhibit A of Form 5-4737 may provide: "Transferred from Contract No. \_\_\_\_\_, \$ \_\_\_\_\_."
- 6/ A sample request for modification to permit transfer of funds from one contract to another is included in this supplement as Illustration 1. This will require adaptation to meet the requirements of particular organizations and specific situations, and is furnished as a guide only.
- 7/ Exhibit A of Form 5-4737 will provide: "Refinancing of indebtedness under Contract \_\_\_\_\_, \$ \_\_\_\_\_."
- 8/ A sample request for modification to combine an organization's indebtedness under more than one loan contract is included in this Supplement as Illustration 2. Illustration 3 shows how to increase the amount of a loan and also combine an organization's indebtedness into one loan agreement contract. These illustrations will require adaptation to meet the requirements of particular organizations and specific situations, and are provided as guides only.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

contract should be replaced with a modification document containing only pertinent contractual material. The modification will contain a provision that it replaces all previous provisions of the agreement.

- F. Tribal Funds. Requests for advances of tribal funds will be handled in accordance with 1.13 below (see 25 CFR 91.12 and 2.1L below).
- G. Considerations. Applications for loans and advances will contain sufficient information to show that the applicant is in a position to operate on a sound and businesslike basis, and is capable of operating economically. The organizational structure of the applicant and the managerial ability of the parties to be entrusted with day-to-day operations will be considered. Climatic and other hazards, general market and economic conditions, security, industry of prospective borrowers (where an organization proposes to relend money), and any other factors which may have a bearing on the success of proposed operations will be considered.

Applications involving financing of enterprises or industries located on potential flood plains, including construction of new facilities thereon, shall be accompanied by a statement on the findings of competent evaluators and consideration of flood damage potential in the area.

- H. Limitations of Use. Applications for loans for promotional purposes or for merchandising will not be considered except in connection with the financing of enterprises in accordance with 47 BIAM 9, or for the encouragement of industry (see 1.20 and 2.1L below).
- I. Regulations and Instructions. Area Directors will not act upon, nor forward applications or requests for modifications to the Commissioner for action, which do not conform to the regulations in 25 CFR 91 (see 2.1 below), and the instructions in 47 BIAM. Non-conforming applications and requests will be returned to the applicants with full explanations and outlines of the revisions and changes necessary. Applications which request exceptions to the instructions may be forwarded for action, accompanied by justifications and recommendations of the Superintendent and Area Director. Exceptions to the regulations of the Secretary may not be approved. Tribes also are required to agree not to establish a credit system not governed by the Secretary's regulations and instructions

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

of the Commissioner in this chapter, unless operated in accordance with State or Federal law, or unless specifically authorized by the Commissioner. (See 1.3C above and 1.3N below.)

- (1) Truth in Lending - Consumer Credit Cost Disclosure - Federal Reserve Regulation Z. Regulation Z (12 CFR 226) issued by the Board of Governors of the Federal Reserve System will affect some operations of organizations. Credit transactions to which the regulation applies must be conducted in accordance therewith. Penalties are provided for non-compliance. The regulation will apply to applicable tribal credit transactions, even though they may not be governed by the regulations in 25 CFR 91.

The purpose of Regulation Z is to let borrowers and customers know the cost of credit so that they can compare the costs with those of other credit sources and avoid the uninformed use of credit. Regulation Z does not fix maximum, minimum, or any charges for credit. It divides all consumer credit transactions into two broad categories; (1) open-end credit and (2) credit other than open-end. The finance charge and the annual percentage rate are the two most important disclosures required by the regulation. They tell the borrower or customer at a glance, how much he is paying for credit and its relative cost in percentage terms. The finance charge generally is the sum of all charges payable directly or indirectly by the customer or borrower, and imposed directly or indirectly by the creditor or seller as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party.

- (a) Open-end Credit. The provisions of Regulation Z regarding open-end credit may be applicable to open accounts of some stores or other businesses operated by tribes (tribal enterprises), corporations, cooperatives, or individuals, if credit is extended and finance charges are made on unpaid accounts each month.
- (b) Credit other than Open-end. Credit extended for personal, family or agricultural uses, not exceeding

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

\$25,000, and all real estate transactions regardless of amount, are covered by Regulation Z. The regulation specifies the information that must be given in writing to the borrower. Agricultural purpose is defined by the regulations as:

"\* \* \* a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products. 'Agricultural products' includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof."

Loans for business or commercial purposes are not covered by the Regulation. All disclosures must be made before the transaction is consummated. Loans refinanced, consolidated, or increased, shall be handled pursuant to 12 CFR 226.8 (J).

- (2) Fair Credit Reporting Act. This Act (Public Law 91-508, Title VI of the Consumer Credit Protection Act, 84 Stat. 1127) is designed to insure fair and accurate reporting of information regarding consumers. It will affect some credit operations of the Bureau and Tribal organizations. Procurement of a report on a borrower and the handling and utilization of the information must be in accordance with the Act.
- (a) Disclosure must be made to the borrower when financing is denied on the basis of information obtained from a third party.
- (b) Written notice must be given to the borrower that an investigative report is being requested and that he may make a written request for nature and scope of the investigation.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

- J. Procedure. Five copies of all applications and requests for modifications will be prepared and submitted to the Superintendent. The Superintendent will make certain that the application or request was acted upon properly by the authorized governing body of the organization and that he has copies of the minutes of the meeting of the governing body at which the authorizing resolution was adopted available in his files. He will attach his recommendations in duplicate, and forward all copies to the Area Director. The Area Director will take action in accordance with 1.5C below, or attach his recommendations, and forward the original and one copy to the Commissioner. The Area Director will satisfy himself that the application was properly authorized by the governing body of the applicant before making any recommendations thereon, and may require that minutes of the meeting at which the application or request was acted upon be furnished him, before taking any action thereon (see 1.3K(6) below). The remaining three copies will be retained temporarily in the Area Office.
- K. Preparation of Form 5-4737, Application of Organizations. This form is largely self-explanatory. Through proper preparation of the exhibits, the justification for the loan can be fitted to the particular activity involved, the amount requested, purposes of the loan, and other pertinent factors. A more detailed justification is required to support a large loan for complicated or large operations, or involving a number of activities, than for a small loan involving one relatively simple activity. All applications will be kept as brief and simple as possible and be confined to pertinent material.
- (1) Official Name. Submit each application in the official name of the organization as set forth in its charter or other organization papers, or as recognized by the Commissioner.
  - (2) Purpose. Outline the purpose for which the loan is requested in Exhibit A (see 1.4 below). If only relending operations are contemplated, the purpose can be stated very simply, i.e., "For loans to individual members and cooperatives pursuant to 25 CFR 91, 47 BIAM 8, and the procedures in Exhibit G." Include the justification in Exhibit F. If operation of a tribal enterprise also is contemplated, funds therefor will be shown separately.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

- (3) Organization Papers. Exhibit B will be a statement regarding the approved organization papers of the applicant, showing type of document, date of approval and any amendments to or modifications thereof, including those which may be pending. Copy of the organization papers should not be included as part of the application.
- (4) Officers. Show the names, titles, addresses, and dates and manner of election of the applicant's officers, and their terms of office as Exhibit C.
- (5) Resolution. <sup>9/</sup> Include the resolution of the governing body of the applicant authorizing the filing of the application as Exhibit D. The governing body of the applicant will word the resolution carefully and adapt it to its needs and the activities contemplated. The Area Director or Commissioner may require that copy of the minutes at which the authorizing resolution was adopted be furnished before taking action on the application. The minutes will not be included as an exhibit.
- (6) Balance Sheet. Submit a balance sheet at the close of the organization's last fiscal year as Exhibit E, or at such later date as the balance sheet may be available. If there are any special factors which might alter the present or future valuation of the assets shown thereon make notation thereof. Use audited statements if available. If the organization has been operating prior to the date of the application, a profit and loss statement at the close of the organization's last fiscal year also is required.
- (7) Justification. Submit a justification for the loan as Exhibit F. This exhibit, and the procedures for handling the loan as set forth in Exhibit G (see 1.3K(8) below), are the most important parts of the application. No set justification outline can be provided. The justification necessarily must be adapted to the particular program

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<sup>9/</sup> A sample resolution is included in this Supplement as Illustration 4. This resolution will require changes to meet the requirements of particular organizations and specific situations, and is provided as a guide only.

## CREDIT AND FINANCING

## Loans and Advances by the United States to Indian Organizations

involved. Unless information has been included in a previous loan agreement and to which reference is made, general information will be included on the location and surroundings of the organization; population (estimated number of families and individuals); the land resources including classification by ownership and type (timber, mineral, oil, grazing, dry farming, irrigated, etc.); land use (acreage leased to and by Indians and amount used by Indians); productive assets (livestock, machinery, equipment, ownership pattern, etc.); liabilities and unfavorable factors; income (source and distribution); social factors; markets; management experience and capability; industrial development; and any other pertinent factors which might have a bearing on successful operations of the applicant. This background information need not be detailed, and may be in synopsis form. It should be sufficient, however, to give approving officers a basis for action on the application. If the application is for relending to individuals, there will be estimates of individual credit needs which cannot be supplied by customary lenders, i.e.;

Items needed and total estimated cost.

Credit Classification:

Number of Class "A" applicants (good character, good security).

Number of Class "B" applicants (good character, fair security).

Number of Class "C" applicants (fair to good reputation, poor security).

Anticipated use of funds requested.

Number, amount, and purpose of loans the first year.

- (8) Procedures for Handling the Loan. If the purpose of the loan is for relending to individuals, set forth the procedures the organization will follow in making loans in Exhibit G (see 1.3K(7) above), or preferably in a "Declaration of Policies and Plan of Operation" approved by the Area Director. Either Exhibit G or the Declaration must contain an agreement that as repayments on loans made by the organization become due, they will either be collected, or the loans will be extended, or the loans will be liquidated pursuant to 25 CFR 91.10 and 91.12(d) within 60 days of the due dates, unless otherwise

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specifically authorized in writing by the Commissioner (see 2.1J and L below). Do not duplicate in the application matters covered by a "Declaration." "Declarations" shall not be included as part of Exhibit G but will be incorporated therein by reference with provision that the "Declaration" may be modified from time to time subject to the approval of the Area Director without modifying the loan agreement, and that all such modifications will apply to the loan agreement to the same extent as if set forth in full therein.

- (a) Declaration of Policies and Plan of Operation. A Declaration provides a means for development of policies and procedures adapted to the needs of a particular organization, directed to requiring a minimum of reference to the manual or to the loan agreement in the organization's actual day-to-day operations. Information is required on: 10/

Use of Committees or subordinate bodies. 11/  
Policies to be followed in making loans. 12/  
Interest. This should be worded flexibly to permit rates to be adjusted in accordance with changing economic conditions.  
Depository. 13/ See section 13 of sample Declaration.  
Disbursements. See section 15 of sample Declaration.

- 10/ A sample Declaration is included in this Supplement as Illustration 6. The sample is for guidance only and will require changes and adaptation to meet the requirements of the particular organization applying for a loan. The sample may be simplified considerably and shortened in the case of some organizations with relatively small volume.
- 11/ If a credit committee, credit board, or other special body is authorized to act for the applicant on credit matters, information should be included on how it was selected or elected; the names, addresses, dates, and manner of selection or election, and terms of office. If the council of a tribe as a whole handles credit matters, similar information will be shown on all council members. Ordinarily, a committee or board authorized to act on credit matters for the organization in its behalf should be composed of individuals who are not members of the governing body of the organization, in order to separate the lending function from the governmental activities of the organization. See section 7 of sample declaration. Authority given to a credit committee will be in accordance with authority contained in the applicant's organization papers.
- 12/ The sample declaration will provide a guide regarding the matters which should be covered.
- 13/ Ordinarily, the depository of the organization should be a National or State bank which is a member of FDIC. The provisions of organization papers of applicants regarding depositories will be observed. See section 13 of the sample declaration as Illustration 6.

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Collections. See section 16 of sample Declaration.

Accounting and Audits. See section 17 of sample Declaration, 25 CFR 91.7 and 2.1G below.

Bonding of Officers. See sections 14 and 15 of sample Declaration.

Records and Reports. See sections 6(e) and 17 of sample Declaration, 25 CFR 91.7 and 2.1G below.

Fees to be charged borrowers. <sup>14/</sup> See section 27 of sample Declaration.

Filing and Recording. See section 30 of sample Declaration.

Other pertinent information and agreements, including consumer credit cost disclosure and the Fair Credit Reporting Act (see 1.3I above).

- (b) Relending to Cooperative. If the application of the organization is for relending to a cooperative association, include general information on the needs and type of loan (see 47 BIAM 8).
- (c) Financing of an Enterprise. If the application is from a tribe for the financing of an enterprise, include a general statement. Detailed plans of operations of enterprises are required in accordance with 47 BIAM 9, but will not be included in the application of a tribe for a loan, except in the case of tribes whose sole credit activity is the operation of a single enterprise, or unless otherwise specifically authorized by the Commissioner. When such specific authorization is desired, request therefor will be made and approval obtained, prior to preparation of the application.

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<sup>14/</sup> Include provision to omit fees on extensions or refinancing of individual loans with one-year maturities. Fees should, of course, be charged on any additional amounts loaned.

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- (d) Loans to Encourage Industry. If the application is for a loan to encourage industry, include general background data and information showing how the funds requested will be handled and repaid, and a statement of how the loan will assist in improvement of the economic condition of the organization and its members. The information will vary with the particular applications involved.
- (9) Securing Documents. <sup>15/</sup> Include the securing documents as Exhibit H. Security will vary from loan to loan, according to the assets available which may be offered as security and the purposes for which the loan is requested. Assignments of income should be for specific amounts and from specific sources (see 1.9 and 2.11 below). Where there is more than one securing document, they will be numbered H-1, H-2, H-3, etc. Include title provision of property to be purchased with loans. When, because of the shortage of funds and the impossibility of determining provisions which may be in effect at the time funds become available for advance, applications may provide that the security required will be determined by the Commissioner at the time advances are made.
- (10) Exceptions. Show any exceptions to the statements in sections 5 and 7 of Form 5-4737 in Exhibit I. Otherwise this exhibit may be omitted.
- (11) Additional Exhibits. Additional exhibits may be inserted and identified in Form 5-4737.
- L. Signatures and Corporate Seal. The application, note or notes, and securing documents will be properly signed by the officers of the organization authorized to do so. If the organization

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<sup>15/</sup> A sample assignment form is included in this Supplement as Illustration 5. The sample form will require changes to meet the requirements of particular organizations and specific situations, and is provided as a guide only. Executed assignments must be in accordance with authority contained in the applicant's organization papers. The officer of the organization executing the assignment for and on behalf of the organization must have been authorized to do so by appropriate resolution of the governing body of the organization.

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has a corporate seal, it should be attached to the application and to all securing instruments. Charters grant incorporated tribes the power to adopt and use a corporate seal, and to change the same at its pleasure. The corporate seal serves as the official thumb print of the corporation. The type of seal to be chosen is a matter for the governing body of the organization to decide. It may be very simple, such as a circle containing the words: "Corporate seal of the \_\_\_\_\_ Tribe, an Indian chartered corporation, incorporated \_\_\_\_\_, 19 \_\_\_\_"; it may be a colored sticker with the same words written thereon; or it may contain an artistic design or motto. A metallic impression seal, similar to those in use by a notary public, or a rubber stamp may be used if the corporation desires.

- M. Numbering and Binding. Pages of each application must be numbered consecutively and listed on a table of contents placed at the beginning of the application. A separate page numbering system for exhibits will not be used. The application will be bound at the top, and each copy will be complete in itself. The latest printed forms will be used. Superintendents will not submit applications to the Area Offices and Area Offices will not submit applications to the Commissioner which do not comply with these instructions. (See 1.3I above.) Non-compliance with instruction will result in return of the application without action.

- 1.4 Purpose of Loans. All loans must be for the purpose of promoting the economic development of the borrower. Organizations eligible for loans pursuant to 25 CFR 91.2 and 91.19 (see 2.1B and S below) may receive loans for the purposes set forth herein.

- A. Tribes. Generally, tribes may receive loans from the United States for the purpose of making loans to members and associations of members in accordance with 47 BIAM 8; to finance enterprises in accordance with 47 BIAM 9; and to encourage industries to operate in localities where such use will promote the economic development of Indians pursuant to 25 CFR 91.19 (see 2.1S below). Some charters place limitations upon the purposes for which borrowed funds may be used. Tribal funds may be advanced to tribes from moneys on deposit in the Treasury of the United States for the same purposes as funds borrowed from the United States. Other tribal funds also may be used by tribes for the same purposes.

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- B. Credit Associations. Credit associations may receive loans from the United States to make loans to members in accordance with 47 BIAM 8.
- C. Cooperative Associations. <sup>16/</sup> Cooperative associations may receive loans from the United States for any purpose which will promote the economic development of the association and its members.
- D. Other Organizations. Other Indian organizations, whose form of organization is acceptable to the Commissioner, may receive loans from the United States to encourage industries to operate in localities where such use will promote the economic development of Indians.
- 1.5 Approval. Applications will be approved by issuance of a commitment order on Form 5-4707 (formerly Form 5-807), or by approval of a request for modification. All approvals must be made subject to the availability of funds. Approvals may be conditional or unconditional. Advances of tribal funds will be approved in accordance with the procedure in 1.13 below. In order to receive approval, applications must have been authorized and shown on status reports (see 1.3A above).
- A. Loans to Encourage Industry. Loans and extensions of the repayment terms of loans to attract industries to operate in localities where such use will promote the economic development of Indians and which are made pursuant to 25 CFR 91.19 (see 2.1S below) require the same approval as other applications.
- B. Commissioner. Approval is required where the indebtedness of the borrower to the lender exceeds \$100,000 and on all modifications extending repayment terms. (Authority: Section 11(k) of Secretarial Order 2508 (10 BIAM 2.1) and 10 BIAM 3.1 and 3.3F(2)).
- C. Area Director. The Area Director may approve applications of organizations for loans, including those made to encourage industry pursuant to 25 CFR 91.19 (see 2.1S below), subject to the availability of funds, which have been shown under the heading "Applications Authorized" on status reports showing the status of the revolving fund (see 1.3A above)

<sup>16/</sup> The instructions in this supplement are confined to loans direct by the United States to cooperative associations. Instructions for loans to cooperatives by tribes are included in 47 BIAM 8.

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where the indebtedness to the lender will not exceed \$100,000. Modifications extending the repayment terms of loans may not be approved by the Area Director.

- (1) Modifications. The Area Director may approve modifications of loan agreements where the indebtedness to the United States will not exceed \$100,000, except modifications extending the repayment terms. (Authority: 47 BIAM 3.1 and 3.3F(2).)
  - (a) Restrictions. Area Directors will not approve modifications diverting funds to purposes other than the broad general purposes for which the loans originally were made even though the amount involved is less than \$100,000. As an example, a modification of a loan made to an organization to enable it to make loans to members, to permit the funds to be used for the operation of an enterprise may not be approved. The interest rates differ. A modification of a loan made for operating expenses of an enterprise to permit the organization to invest funds in capital items requiring long-term financing should not be approved unless specifically authorized by the Commissioner.
- D. Commitment Order and Action of Approving Officer. An original and four copies of commitment orders will be issued by the approving officer. Commitment orders will not be issued on modifications. An "Action of Commissioner" or "Action of Area Director" will be issued.
- E. Conditional Approval. Commitment orders and actions issued conditionally, require acceptance by the applicant. The organization's official accepting the conditions on behalf of the applicant must have been authorized to do so by appropriate resolution of the organization's governing body.
- F. Unconditional Approval. Commitment orders and actions issued without conditions, and requests for modifications approved unconditionally, do not require acceptance by the applicant.

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G. Procedure.

- (1) Action by the Commissioner. The original and three copies of all commitment orders and actions will be returned to the Area Director with the original application. The Commissioner will retain one copy of the application or request for modification and insert copy of the commitment order or action therein (see 1.3J above for number of copies submitted to the Commissioner).
- (2) Approval Action of Area Director. Upon issuance of a commitment order or action, copy will be inserted in one copy of the application or request for modification and forwarded to the Commissioner. This procedure will be followed regardless of whether the Area Director's action is conditional or unconditional.
- (3) Other Action of Area Director. The Area Director will insert the executed commitment order or action in each copy of the application or request for modification retained. He will also insert the commitment order approved by the Commissioner or the action of the Commissioner on copies of requests for modification retained by him. At this point, the Area Director will be in possession of the original and three copies of all applications, commitment orders, requests for modification, and action thereon.
- (4) Action of Area Director, Unconditional Approval. If the commitment order was issued unconditionally, the Area Director will forward the original application and commitment order to the Bureau's Accounting Office, and retain one copy of each for the Area Credit Office. The remaining two copies will be forwarded to the Superintendent. If a request for modification was approved unconditionally, the Area Director will forward the original modification to the Bureau's Accounting Office for insertion in the original loan agreement. One copy will be retained for insertion in the copy of the loan agreement in the Area's credit office, and the remaining two copies will be forwarded to the Superintendent.

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(5) Action of Superintendent, Unconditional Approval.

The Superintendent will retain one copy of each application containing a commitment order issued unconditionally, and deliver one copy to an authorized officer of the applicant.

The Superintendent will insert one copy of each modification approved unconditionally in his copy of the loan agreement contract, and deliver one copy to the authorized officer of the applicant, with instructions to place it in the organization's copy of the loan agreement contract.

(6) Action of Area Director, Conditional Approval.

If the commitment order or request for modification was issued conditionally, the Area Director will forward the original and three copies of the application containing the executed commitment order or the request for modification with action thereon to the Superintendent.

(7) Action of Superintendent, Conditional Approval.

The Superintendent will explain any conditional approvals to the authorized officers or governing body of the applicant. He will advise that the approval action will not become effective until after acceptance by the organization. No changes may be made either in applications or requests for modifications except as authorized in the commitment order or approval action.

The organization will then act, either to accept or reject the conditions of approval. In the case of rejection, the Superintendent will notify the Area Director. In the case of acceptance, copy of the acceptance action will be attached to all copies of the application containing the commitment order, or to the conditionally approved request for modification.

The organization will retain one copy of the application containing the commitment order and its acceptance of conditions, or of the executed

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request for modification and acceptance of the approval conditions, and return the original and two copies to the Superintendent. The Superintendent will retain one copy and forward the original and one copy to the Area Director.

The Superintendent will check to see that copies of requests for modifications have been properly filed in the loan agreement copies in the agency's files and the files of the organization.

(8) Action of Area Director, Accepted Conditions of Approval. The Area Director will forward the original application containing the commitment order and accepted conditions of approval to the Bureau's Accounting Office, and retain one copy for the Area Credit Office. The original request for modification with approval action thereon and evidence of acceptance by the organization will be forwarded for insertion in the original of the loan agreement by the Bureau's Accounting Office. A copy will be inserted in the copy of the loan agreement retained by the Area's Credit Office.

(9) Advice to Commissioner. The Area Office will make copies of acceptances of conditions of approval both of commitment orders and requests for modification, and forward them to the Commissioner for attachment to his copy of the loan agreement contract. If an organization rejects conditions of approval, the Commissioner will be advised. The Commissioner also will be advised of numbers assigned to loan agreements and modifications.

H. Numbers. A contract number will be assigned to each loan agreement. Each modification of a loan agreement contract will be identified by the contract number. Each loan agreement between the United States and an organization also will be numbered consecutively, 1, 2, 3, etc. Each modification of a particular contract likewise will be numbered consecutively, 1, 2, 3, etc. The Area Credit Office is responsible to see that contracts and modifications thereof are properly numbered. Where loan

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agreement contracts are modified pursuant to 1.3E(1) above it is advisable to identify the modification by a letter, i.e., "Modification A" and to identify subsequent modifications A-1, A-2, etc.

- I. Signatures. Signatures will, wherever possible, be in handwriting. Typewritten and mechanically reproduced signatures are not acceptable. Thumb mark signatures are required where signatures are not made in handwriting. Thumb mark signatures will be witnessed by at least two persons. The witnesses will actually sign their names and addresses in the presence of the person signing by thumb mark, and show that they actually were witnesses to the making of the mark. Where nontrust property is involved, and where any instruments are recorded or filed in the county office, State laws governing signatures by thumb marks also will be observed.
- J. Advance of Funds. At the time the Commissioner's copy of the loan agreement 17/, modification, or commitment order is submitted to him, the Area Director will make request for allotment of funds in accordance with the loan agreement. Advances must have been listed on the status reports (see 1.3A above) for advance under "First Priority" in order for them to be made. Advances on loans, or of tribal funds for credit and financing purposes, will be made to the bonded officer of the organization in accordance with the provisions of the organization papers of the applicant and of the loan agreement contract. No advances will be made until the Commissioner's copy of the loan agreement or modification is complete and numbered. Requests for advances on a loan agreement will be made through execution of voucher Form 1034 by the organization's authorized officials. A promissory note, Form 5-4742 will be executed as evidence for each advance made pursuant to the loan agreement unless otherwise provided therein and dated the day the funds are received by the borrower (see 1.6 below). Advances of funds should be kept as low as possible considering the organization's needs, in order to save it interest.

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17/ "Loan agreement" means an approved application, supporting papers, securing documents, commitment order, and promissory note or notes.

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- K. Bonding. Each officer or employee of an organization authorized to receive or disburse funds of the organization, must be bonded to the organization in a manner and amount satisfactory to the Area Director unless otherwise provided in the loan agreement or specifically authorized otherwise by the Commissioner.
- L. Earnings. Inspection fees and fees for the preparation and maintenance of the organization's records, may be expended for the purposes for which they were collected. Other earnings may be used only as follows:

- (1) Tribes. Such portions of the earnings as may be necessary will be used to establish an "Allowance for Uncollectible Loans." The amount of the "Allowance" will be based on anticipated losses, judged on the basis of operating experience and analysis of existing accounts, and be in an amount satisfactory to the Tribe and the Superintendent. Tribes will maintain adequate allowances, even though, as a result, the organization's balance sheet may show a deficit. The Tribe will also maintain an allowance for potential losses on enterprises. Loans which are uncollectible will be charged off against the respective allowances.

If a tribe has earnings in excess of the amount necessary for the establishment of adequate allowances, any excess will be used to reduce or eliminate any deficit which the tribe may have incurred. If the tribe does not have a deficit, any remaining earnings will be transferred to the organization's "Surplus Account." If the amount in the Surplus Account is in excess of future needs of the credit program, the excess may be transferred to the organization's local funds for such use as it may desire, in accordance with an approved tribal budget.

- (2) Associations. Earnings will be applied as provided by the organization's bylaws. Loans which are uncollectible will be charged off before any earnings are distributed.

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- 1.6 Interest. Organizations are required to pay interest annually on loans from the United States at the rate specified in their loan agreement contracts with the United States, on the basis of 360 days per annum. Interest will start on and the promissory note shall bear the date the funds are received by the borrower. Exceptions to this requirement may be permitted when cleared in advance with the Commissioner. In this latter event, any difference between the date shown on the promissory note and the date funds are received by the borrower will be adequately explained by footnote on Form 5-4742. On loans made subsequent to the date of issuance of this supplement the rates on loans by the United States to organizations are as shown below.
- A. Educational Loans. Except as otherwise provided herein, the rate on loans by the United States to organizations for the purpose of relending to individual members, cooperative associations, and subordinate bands shall apply. Organizations which charge three percent per annum on educational loans will be charged three percent per annum on the amount outstanding in educational loans and will not be charged interest on their loans from the United States on the amount the organization has outstanding in educational loans, during the authorized period the organization is not charging its borrowers interest. (See 25 CFR 91.16 and 2.1P below for periods during which interest charges may be waived.)
  - B. Relending. The rate on loans to organizations for the purpose of relending to individual members, cooperative associations and subordinate banks shall be five percent per annum.
  - C. Cooperatives. The rate on loans to cooperative associations will be five and one-half percent per annum.
  - D. All other. The interest rate on all other loans to organizations, i.e., land purchases, enterprises and loans to encourage industry, will be five and one-half percent per annum.
- 1.7 Records and Reports. Organizations operating credit systems are required to maintain accounting records in a manner, and in accordance with an accounting system satisfactory to the Area Director. All accounting systems prescribed by the Area Director

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will be in writing, and copies shall be furnished the organization, the Superintendent, and the Commissioner. Separate accounting records will be maintained for "relending operations" and for each cooperative or enterprise (see 47 BIAM 8 and 9). Such records will not be commingled with general accounts, except for an asset item "Invested in Tribal Loan Program" in the general accounts in the case of tribes, unless an exception is specifically authorized by the Area Director. Accounting records for each enterprise will be "tied" into the organization's credit accounting records. Reports of credit operations will be submitted in accordance with 47 BIAM 11.

A. Audits. Audits are required annually at the expense of the organization, unless an exception is specifically authorized by the Commissioner. Advance approval of a certified or licensed public accountant employed to conduct an audit is not required. The scope of the examination will be made in accordance with the generally accepted auditing standards. Advance approval of the Area Director is required before a noncertified or unlicensed accountant is employed. Unless otherwise authorized by the Superintendent, audit reports will be furnished within 45 days after completion of the examination of the accounting records of the organization.

(1) Checklists. Area Offices will maintain checklists to make certain that annual audits are conducted.

(2) Action on Audits. Any action on audits which may be necessary will be taken by the Area Offices. Copies of all audits will be furnished the Central Office, together with the information on the action taken by the Area Offices (see 25 CFR 91.7 and 2.1G below).

1.8 Maturity. Maturity dates of loans by the United States will be determined by the purpose for which the funds are to be used, except that 40 years will be the maximum (see 25 CFR 91.8 and 2.1H below). Loans will be scheduled for repayment at the earliest possible date consistent with the purposes for which the loan is made.

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- 1.9 Security. If an organization has security it can offer for a loan, it is required to offer it up to an amount adequate to protect the loan. If it has more than adequate security, it need only offer adequate security. If an organization does not have adequate security, approval action will depend upon the purposes for which the loan is requested, information showing that operations can be conducted on a sound basis, and information showing whether the organization is willing and has authority to assign future income to the United States as security. Even though an organization does not have adequate security, the loan may receive approval if the program the organization proposes to undertake shows that its operations, under normal conditions, will be successful, and that the loan will be repaid. Ordinarily, an assignment of income for a specific amount and from specific sources will be required as security (see sample assignment form, Illustration 5). In some instances it may be advisable, where the maturity of the loan extends beyond the time the tribe has authority in its organization papers to assign income, to provide for re-execution of assignments at the beginning of each fiscal year (see 25 CFR 91.9 and 2.11 below).
- A. Tribal Land. Tribal land or mortgages or liens thereon may not be given as security for loans. Income from tribal land may be assigned as security unless prohibited by the tribe's organization papers.
- 1.10 Evidence of Loan Indebtedness. All loans to organizations shall be evidenced by promissory notes on Form 5-4742 except loans made for expert assistance pursuant to 1.21 below. Promissory notes ordinarily should not be signed until funds are advanced to the organization. Separate promissory notes may be taken for each advance. Several promissory notes may later be consolidated into one note. In some instances, a single promissory note may be taken and advances entered on the reverse side thereof. Only the original of each note will be signed, and it will be retained by the Superintendent in a place of safekeeping. Upon repayment, it will be receipted and returned to the organization. Copies of notes will be made for all copies of the loan agreement, and show clearly that the original has been signed, i.e., "s/ \_\_\_\_\_."
- 1.11 Penalties on Default. Organizations are required to conform to the terms of their agreements. Both the Area and Agency Offices will check at periodic intervals to make certain of compliance.

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Non-compliance may subject an organization to the default penalties in 25 CFR 91.10 and 91.12(d). (See 2.1J and L(d) below.) Loan agreements between the United States and organizations may not be permitted to remain in a delinquent status, unless an exception is specifically authorized by the Commissioner. In the event payments of principal or interest are not made to the United States in accordance with the terms of its agreements, or in the event an organization violates the terms of its agreements in any other manner, the Superintendent will report the delinquency or violation promptly to the Area Director, with appropriate recommendations. The Area Director will then take appropriate action pursuant to 25 CFR 91.10 (see 2.1J below). Section 11(o) of Secretarial Order 2508 (see 10 BIAM 2.1) and 25 CFR 91.10 authorize the Commissioner to take any of the steps pursuant to the regulation. 10 BIAM 3.1 redelegates the authority to the Area Directors. Superintendents may take such action when authorized in Area Redelelegation Orders.

1.12 Assignment. Organizations may not assign agreements with the United States, or any interest herein, to a third party without the consent of the Area Director (see 25 CFR 91.11 and 2.1K below).

1.13 Tribal Funds.

A. Treasury Funds. In order for a tribe to receive an advance of tribal funds from the Treasury under authority of 25 CFR 91.12 (see 2.1L below), its governing body should pass a resolution requesting the advance. Five copies of the resolution should be submitted to the Superintendent after which it should be handled the same as an application for a loan from the revolving fund. If the tribe requesting the advance has a loan from the revolving fund, it need only refer to its loan agreement contract by number, and agree to use the tribal funds requested to supplement the borrowed funds, and under the same regulations and procedures. If the revolving loan contract is not current, however, it will be brought current at the time the advance of tribal funds is requested. If the tribe requesting the advance does not have a loan of revolving funds, the request for advance should be accompanied by a plan of operation showing information similar to that in 1.3K(8) above. However, a repayment plan is not required. Where an organization is using both revolving and tribal funds

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in its credit operations, no distinction is made between the funds in the tribe's relending activities, except that individual Indians receiving loans from the tribe are not required to present evidence that they are unable to receive financing elsewhere, unless the tribe has adopted a policy to this effect, and loans may be approved to applicants of less than one-quarter degree of Indian blood. The revolving and tribal funds will be mixed together, and the tribal funds will serve much in the same capacity as where a business which is using its own funds in conjunction with money borrowed from a bank or some other lender. Advances of tribal funds will be made in accordance with the provisions of section 1.5J above.

- B. Local Funds. Tribes having "local" tribal funds over which its governing body has control that desire to use such funds for credit purposes, will be encouraged to use them under the regulations in 25 CFR 91 (see 2.1 below), and the instructions of the Commissioner contained in 47 BIAM 7. If a tribe has received a previous advance of tribal funds from the Treasury, or a loan from the revolving fund, or both, it may be permitted to deposit local tribal funds in its credit fund, after adoption of an appropriate resolution. If the tribe does not already have an advance of tribal funds from the Treasury, or a loan of revolving funds, it should be encouraged to adopt an appropriate "Declaration" (see Illustration 6) under which the funds will be used.

- 1.14 Relending. Instructions on relending of revolving funds borrowed from the United States to individuals and cooperative associations by organizations, and of tribal funds under the regulations in 25 CFR 91, are given in 47 BIAM 8. Instructions on financing of tribal enterprises are given in 47 BIAM 9. Instructions on loans of revolving funds by the United States direct to individual Indians are also given in 47 BIAM 8, in order that all instructions regarding loans to individuals, regardless of the lender, may be available in one chapter (see 25 CFR 91.13 and 2.1M below).
- 1.15 Repayment to United States. Repayments of principal, and payments of interest, on loans by the United States, shall be accepted at any reasonable time. If the organization's funds are deposited in a bank, the authorized officer shall draw a check payable to the "Bureau of Indian Affairs" which shall be delivered to the

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Bureau of Indian Affairs designated collection officer. If the organization's funds are deposited in an Indian Money Account, the authorized officer shall execute Form 5-4709, (formerly Form 5-811), authorizing the Bureau's designated officer to issue a check payable to the "Bureau of Indian Affairs" (see 25 CFR 91.14 and 2.1N below).

- A. Official Receipt. An official receipt will be issued to the remitter for all payments, and the amount shall be taken up as a collection in accordance with existing fiscal regulations. The official receipt will show the amount of principal on which interest has been computed, the rate of interest, the inclusive dates for which interest is paid, and the application of the payment on principal and on interest, and the balance of the principal unpaid. The receipt will show computation of interest on the outstanding loan balance offset by the amount of interest suspended on educational loans. The receipt will also show the number of the contract on which payment is being made.
- B. Report to Central Office. Copies of receipts and vouchers will be accumulated by the Area Office, and the amounts of advances and collections thereof will be reported on Form 5-4701, Summary of Advances and Collections, (formerly Form 5-800). This form, together with copies of the receipts and vouchers, will be submitted to the Central Office to reach there not later than the 10th of the month following the month reported marked "Attention: Division of Credit and Financing." Area Office credit personnel will check to see that the detail on the summary agrees with the appropriate general ledger accounts maintained by the Division of Financial Management. An explanation of any differences should accompany the summary. A negative report will be submitted if the Area has no advances or collections to report.

- 1.16 Charters. Credit and other cooperative associations in Oklahoma, except those operating in Osage County, may receive charters of incorporation from the Commissioner. Cooperative associations in other States will be organized in accordance with the laws of the State in which they are to operate in order to receive loans direct from the United States. The Commissioner's approval of articles of association and bylaws where cooperative associations are indebted to or are applying for loans from the United States, corporations, tribes, or bands is required.

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- 1.17 Educational Loans. Instructions on loans by the United States and by Indian organizations for educational purposes are given in 47 BIAM 10 (see 25 CFR 91.16 and 2.1P below).
- 1.18 Amendments of Articles of Association and Bylaws. Amendments to and revocation of articles of association and bylaws of credit and cooperative associations require approval of the Commissioner.
- 1.19 Loans to Navajo and Hopi Indians. Loans to the Navajo and Hopi Tribes, or any member or association of members thereof, will be subject to the regulations in 25 CFR 91.18 (see 2.1R below). Loans to these Tribes and associations of members of these Tribes will be subject to the instructions in 47 BIAM 7. Loans to members of these Tribes by the United States or by the Tribes, will be pursuant to the instructions in 47 BIAM 8. Financing of enterprises will be pursuant to 47 BIAM 9.
- 1.20 Loans to Encourage Industry. Applications of organizations for loans to encourage industry require approval pursuant to 1.5 above.

In general, the same procedures will be followed as on applications for loans for other purposes as set forth in this supplement. Applications will include the same exhibits as other applications.

Because the types of industries for which financing may be requested may be so varied, it is not possible to provide an outline of the information which should be included. It must contain sufficient information to justify the loan and show that it will be in the public interest and conducive to the accomplishment of the purposes for which it is requested.

Loans pursuant to 25 CFR 91.19 (see 2.1S below), may be made to any of the types of organizations authorized by 25 CFR 91.2 (see 2.1B below) and to groups of Indians having a form of organization acceptable to the Commissioner. In the event of any question regarding whether a certain type of organization is or is not acceptable to the Commissioner, or concerning matters of policy and loan funds, queries should be addressed to the Central Office through the Area Office prior to submittal of an application.

- A. Prompt Action. Prompt action is imperative in preparation of industrial applications. Priority should be given thereto, and particular care used in compilation of information contained therein, in order that action can

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be taken without correspondence between the Area and Central Offices which would only delay a decision. An industry which may be interested in locating on or near a particular reservation may lose interest unless it can obtain a prompt decision on the financial assistance it may expect to receive from the Indian organization involved.

- B. Purposes. Applications for loans for any purpose which will assist in attracting industries to operate in localities where their operations will promote the economic development of the Indians will receive consideration. Creation of a payroll, for example, is a very important purpose. The charters of most incorporated tribes restrict the purposes for which money may be borrowed from the United States, i.e., for relending to individual members and associations of members and to the financing of tribal enterprises. The restriction, in such instances, is on the purposes for which some organizations may borrow money and not upon the purposes for which the United States may make loans from the revolving fund. The constitutions of unincorporated tribes generally do not contain restrictions. It is essential that the organization papers of applicants be examined carefully to determine whether authority exists to borrow money for the purposes desired. Loans may be made to an organization pursuant to 25 CFR 91.19, to enable it to make an investment in a company operating an industry where the organization papers of the group do not contain specific provisions which would prevent it from doing so. Loans may not be made to an organization to enable it to relend money to a non-Indian company operating an industry. All applications must contain sufficient information to indicate that the loan can be made on a sound basis and that it will promote the economic development of the Indians. (See 1.3G above.)

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1.21 Loans for Expert Assistance. Applications of organizations for loans for the purposes authorized by the Act of November 4, 1963 (77 Stat. 301, 25 U.S.C. 70N-1), as amended, may be submitted pursuant to this section. 18/

- A. Eligibility. An organization must have one or more pending claims of a nature and in a stage of prosecution requiring the services of expert witnesses. It must not have funds on deposit in the Treasury or elsewhere in an amount adequate to obtain the services it needs.
- B. Form. Applications shall be submitted on Form 5-4706 (formerly Form 5-806A). The procedure in 1.3J above shall be followed. The form shall be accompanied by a resolution of the governing body of the applicant as Exhibit A (see 1.3K(5) above), and a justification for the loan, as Exhibit B.

18/ The Act, as amended, provides:

"That there is hereby authorized to be appropriated the sum of \$2,700,000 for the establishment of a revolving fund from which the Secretary of the Interior may make loans to Indian tribes and bands and to other identifiable groups of American Indians residing within the territorial limits of the United States for use by them in obtaining expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission.

"Sec. 2. No loan shall be made under this Act to a tribe, band, or group if it has funds available on deposit in the Federal Treasury or elsewhere in an amount adequate to obtain the expert assistance it needs or if, in the opinion of the Secretary, the fees to be paid the experts are unreasonable in light of the services to be performed by them.

"Sec. 3. Every loan made under this Act shall be reported to the Committee on Interior and Insular Affairs of the Senate and House of Representatives within fifteen days of the time it is made.

"Sec. 4. Any loan made under this Act shall bear interest and shall, together with such interest, be repayable out of the proceeds of any judgment recovered by the tribe, band, or group on its claim against the United States. If no judgment is recovered or if the amount of the judgment recovered is inadequate to repay the loan and interest thereon, the unpaid amount may be declared non-repayable by the Secretary.

"Sec. 5. Repayments of loans made under this Act and of interest thereon shall be credited to the revolving fund established under the first section of this Act.

"Sec. 6. No liability shall attach to the United States because of a failure to make a loan in the amount requested.

"Sec. 7. After the date of approval of this Act, the Secretary of the Interior shall approve no contract which makes the compensation payable to a witness before the Indian Claims Commission contingent upon the recovery of a judgment against the United States."

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The justification shall include statements from the organization's attorney regarding the need for the loan.

- C. Approval. Applications will receive approval, in whole or in part, by issuance of a commitment order on Form 5-4707 (formerly Form 5-807) by the Commissioner. Area Directors may not approve loans for expert assistance. The procedures in 1.5G and H above shall then be followed.
- D. Advance of Funds. Funds will be advanced to meet obligations incurred by organizations under contracts for expert assistance approved by the Commissioner. Requests for allotments will be made in the usual manner (see 1.5J above). At the time each request is submitted it shall be accompanied by a certification by an authorized official of the organization that the applicant does not have other applicable funds in an amount adequate for the purposes for which the advance is requested. The Superintendent and Area Director shall attest to the correctness of the certification or point out any inaccuracies. The authorized official shall execute voucher Form 1034, and the funds shall be deposited in a special IM account of the organization upon receipt. Promissory notes are not required as evidence of indebtedness for loans for expert assistance.
- E. Disbursements. Disbursements may be made from the IM account to meet obligations under contracts for expert assistance approved by the Commissioner, under authority of Section 4, Form 5-4706 (formerly Form 5-806A). In the case of an organization with a bonded officer, authorization from such officer shall be obtained. In the case of an organization without a bonded officer, the disbursement may be made without further authorization from the organization.
- F. Contracts for Expert Assistance. All contracts for expert assistance involving payments from funds authorized by the Act of November 4, 1963, require approval of the Commissioner.
- G. Records and Reports. Accounting records shall be maintained by each organization to which a loan is approved, in a manner satisfactory to the Area Director. Organizations maintaining credit accounting records may establish subsidiary accounts for loans for expert assistance. Reports on loans will be submitted in accordance with 47 BIAM 11.

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H. Procedure, Central Office. Each application will be charged to the Division of Credit and Financing for processing. It will be checked for adherence to regulations and instructions, and be referred by memorandum to the Division of Tribal Operations. The latter will prepare a memorandum report to Credit and Financing with recommendations for approval or disapproval in whole or in part. Final processing will then be the responsibility of Credit and Financing, including reports to the Committees on Interior and Insular Affairs of the Senate and House of Representatives pursuant to Section 3 of the Act of November 4, 1963, as amended.

The Division of Credit and Financing will include a separate section in its status reports pursuant to 1.3A above on the revolving fund for loans for expert assistance showing the status of the fund, copy of which will be furnished Tribal Operations. Each request for allotment will go to the Division of Credit and Financing for approval prior to processing.

All contracts of organizations for expert assistance (see subsection F above) will go to the Division of Tribal Operations for processing. Tribal Operations will check with Credit regarding the availability of funds, and then proceed with processing of the contracts. Copies of all approved contracts will be furnished the Division of Credit and Financing.

The Division of Tribal Operations will advise the Division of Credit and Financing of all awards, or where no judgment is recovered, by the organization. The latter will then take whatever action may be required to effect repayment of loans and interest or to declare any amount of a loan to be nonpayable, pursuant to Sections 2 and 5, Form 5-4706 (formerly Form 5-806A).

2.1 Regulations. The regulations in this section were contained in 25 CFR 21 "General Credit to Indians" prior to December 24, 1957. After that date they appear in 25 CFR 91. Unless otherwise indicated, the wording is as promulgated in 25 CFR 21 December 18, 1945, and in 25 CFR 91 December 24, 1957. For convenience, the CFR numbers are shown in parentheses. Different loan agreement contracts are sometimes governed by different regulations, all of which are quoted in full herein with all amendments.

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- A. Purpose. (25 CFR 91.1) The purpose of this part is to prescribe the terms and conditions of loans to Indian chartered corporations, unincorporated tribes and bands, credit and cooperative associations, and individual Indians from the United States, in order to promote the economic development of the borrower. (See 47 BIAM 7 for instructions on "Loans and Advances by the United States to Indian Organizations"; 47 BIAM 8 for "Loans to Individual Indians and to Cooperative Associations by Tribes"; and 47 BIAM 9 for "Financing of Enterprises.")
- B. Eligible Borrowers. (25 CFR 91.2) 19/ Loans may be made from revolving credit funds to Indian chartered corporations; 20/ recognized tribes and bands; credit associations organized pursuant to the Oklahoma Indian Welfare Act or whose form of organization has been approved by the Commissioner of Indian Affairs; other cooperative associations whose members are not eligible to borrow from incorporated or unincorporated tribes or bands; and members of Indian tribes or their descendants of at least one-quarter degree of Indian blood. Unless otherwise authorized by the Commissioner of Indian Affairs, individual Indians shall not be eligible for loans if they are members of a corporation, tribe, or band which is conducting credit operations, or if they are eligible for loans from a credit association. 21/

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19/ Promulgated as 25 CFR 21.2 December 8, 1950. This section as originally approved December 18, 1945, read:

"Eligible Borrowers. Loans may be made from revolving credit funds to Indian chartered corporations; recognized tribes and bands; credit associations organized pursuant to the Oklahoma Indian Welfare Act or whose form of organization has been approved by the Secretary; cooperative associations whose members are not eligible to borrow from incorporated or unincorporated tribes or bands; members of Indian tribes or their descendants of at least 1/4 degree of Indian blood, who are not members of a corporation, tribe, or band, which is conducting credit operations, and who are not eligible for loans from a credit association."

20/ This includes the organization of groups in Alaska having a common bond of occupation, association, or residence within a well-defined neighborhood.

21/ See 25 CFR 91.19 for additional eligibility of other borrowers for loans to encourage industry.

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- C. Application. (25 CFR 91.3) An applicant for a loan will submit an application on a form approved by the Secretary or his authorized representative. Such application will indicate the purposes for which the loan is to be used, the period of the loan, the interest to be paid, the security to be offered, and the procedures to be followed in handling and repaying the loan.
- D. Purpose of Loans. (25 CFR 91.4) 22/ Borrowers from the United States, except individual Indians, may use funds borrowed to make loans to individual members, cooperative associations, and subordinate bands, for any purpose which will promote the economic development of the group or individual, and to finance corporate or tribal enterprises. Eligible individual Indians may receive loans from the United States to promote their economic development. 23/

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22/ Promulgated as 25 CFR 21.4 February 17, 1954. This section as originally approved December 18, 1945, read:

"Borrowers from the United States may use funds to make loans to individual members, cooperative associations, subordinate bands, and enterprises of their members for any purpose which will promote the economic development of the group or individual, or to finance corporate or tribal enterprises."

This section was amended December 8, 1950, to read:

"Borrowers from the United States may use funds to make loans to individual members, cooperative associations, subordinate bands, and enterprises of their members for any purpose which will promote the economic development of the group or individual, or to finance corporate or tribal enterprises. Indian chartered corporations and recognized tribes and bands may borrow money for the purchase of cattle by relending to members under the regulations in Part 23, Title 25 CFR."

23/ See 25 CFR 91.19 on loans to encourage industry.

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- E. Approval of Loans. (25 CFR 91.5) Loan agreements must be executed on a form approved by the Secretary or his authorized representative. The borrower will furnish security, if available, up to an amount adequate to protect the loan. The Secretary or his authorized representative will approve the loan by issuing a commitment order covering the terms and conditions for making the loan. Any modification of the terms of the contract must be agreed to in writing by the borrower and the Secretary or his authorized representative.
- F. Interest. (25 CFR 91.6) <sup>24/</sup> On loans by the United States for other than educational purposes, borrowers shall pay interest at the rate specified in the loan agreement, which shall be not less than two nor more than five and one-half percent per annum.

<sup>24/</sup> 25 CFR 91.6 as amended June 26, 1963 (28 F.R. 129, 6832, 6833). This section originally approved as 25 CFR 21.6 December 18, 1945, read:

"Interest. Corporations, unincorporated tribes and bands, and credit associations shall pay one percent interest annually on loans from the date made until paid, on the basis of 360 days per annum. Individual borrowers and cooperative associations shall be charged interest at a rate of three percent annually. Borrowers from Indian organizations shall pay the rate of interest specified in the governing loan agreement but not less than one percent.

On November 17, 1950, this section was amended to read:

"Interest. Corporations, unincorporated tribes and bands and credit associations shall pay two percent interest annually on loans from the date made until paid, on the basis of 360 days per annum. Cooperative associations and individual borrowers shall be charged interest at the rate of four percent annually, except loans made to individuals for educational purposes, which shall be governed by the provisions of 21.16 of the regulations in this Part. Borrowers from Indian organizations shall pay the rate of interest specified in the governing loan agreement, but not less than two percent."

On April 13, 1953, this section was amended to read:

"Interest.

"A. On loans by the United States, borrowers shall pay interest at the rate specified in the loan agreement which shall be as follows: two percent per annum on loans made to Indian chartered corporations and unincorporated tribes and bands, where the loan is for the purpose of enabling the borrower to make loans to individual members, cooperative associations, and subordinate bands; two percent per annum on loans made to credit associations; not less than four percent per annum nor more than five percent per annum on loans made to finance corporate or tribal enterprises, except that two percent per annum shall be charged on loans to enterprises financed from the loan fund authorized by the Act of April 19, 1950 (64 Stat. 45); and not less than four percent per annum nor more than six percent per annum on loans made to individuals for other than educational purposes, and on loans made to cooperative associations, other than credit associations.

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- G. Records and Reports. (25 CFR 91.7) Borrowers shall keep separate records and accounts of their credit activities and make signed reports as directed by the Commissioner. 25/
- H. Maturity. (25 CFR 91.8) 26/ The period of maturity of the loan should be determined according to the circumstances, except that 40 years shall be the maximum.

24/ Cont.

"B. On loans by Indian organizations, borrowers shall pay interest at the rates specified in their loan agreements with such organizations, but the rates shall be not less than those charged the organization by the United States.

"C. On all of the foregoing loans, interest shall be calculated on the basis of 360 days per annum.

"D. Nothing contained in this Section shall be deemed to affect the rate of interest on loan agreements in effect on the date of promulgation of this Section."

On February 17, 1954, subsection D was amended to read:

"D. Nothing contained in this section shall be deemed to affect the rate of interest on loan agreements in effect April 13, 1953, or on the unpaid balance of such loan agreements which is made payable under another loan agreement entered into or modified after April 13, 1953. The date of maturity of any indebtedness under any loan agreement entered into prior to April 13, 1953, shall not be extended."

On August 2, 1961 (26 F. R. 151, 7093, 7094), this section was amended to read:

"On loans by the United States, borrowers shall pay interest at the rate specified in the loan agreement, which shall be two percent per annum, except that the rate on loans to finance corporate or tribal enterprises and cooperatives shall be not less than two nor more than five percent per annum, and the rate on loans made to individuals for other than educational purposes shall be not less than four nor more than five percent per annum."

25/ This section refers to borrowers other than individual borrowers from the United States.

26/ 25 CFR 91.8 as amended June 26, 1963 (28 F. R. 129, 6832, 6833). This section as approved December 18, 1945, and December 24, 1957 (see 2.1 above), provided a maximum maturity of 30 years.

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- I. Security. (25 CFR 91.9) 27/ Loans shall be secured by such securities as the Secretary or his authorized representative may require. Unless otherwise provided in the loan agreement, title to all property purchased by a borrower with a loan from the United States shall be taken in the name of the borrower. All securing documents shall be filed or recorded in accordance with State or Territorial law.
- J. Penalties on Default. (25 CFR 91.10) 28/ Unless otherwise provided in the loan agreement, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for any one or all of the following steps to be taken by the Commissioner:

27/ Promulgated as 25 CFR 21.9 February 17, 1954. This section as originally approved December 18, 1945, read:

"Security. A mortgage, chattel mortgage, lien, or conditional sales contract on property acquired with the proceeds of the loan may be required as security for the loan. Where the loan is made for the purpose of financing the advance of credit, it may be secured through the assignment of notes, mortgages, chattel mortgages, or liens, and such other securities as the Secretary or his authorized representative may approve. Unless otherwise provided in the loan agreement, title to all property purchased with loans shall be taken in the name of the United States in trust for the borrower. "

28/ Promulgated as 25 CFR 21.10 December 8, 1950. This section as originally approved December 18, 1945, read:

"Penalties on Default. Failure on the part of any borrower to conform to the terms of the loan agreement will be deemed grounds for any one or all of the following steps to be taken, at the option of the Secretary, or his authorized representative, if the loan agreement so provides:

- (a) Discontinue any further advances of funds contemplated by the loan agreement.
- (b) Take possession of any or all collateral given as security, and in the case of individuals and cooperative associations, the property purchased with borrowed funds.
- (c) Prosecute legal action against the borrower, or against officers of corporations, unincorporated tribes and bands, and credit and cooperative associations.
- (d) Declare the entire amount advanced immediately due and payable.
- (e) Prevent further disbursement of credit funds under the control of the borrower.
- (f) Withdraw any unobligated funds from the borrower.
- (g) In the case of corporations, unincorporated tribes and bands, and credit associations, require that all repayments on loans made be applied to liquidate the indebtedness to the United States.
- (h) In the case of credit associations, take possession of the assets of the borrower and exercise or arrange for the exercise of its powers until the indebtedness to the United States is liquidated or until the Secretary has received acceptable assurance of its repayment and of compliance with the loan agreement.

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- (a) Discontinue any further advances of funds contemplated by the loan agreement.
- (b) Take possession of any or all collateral given as security, and in the case of individuals and cooperative associations, the property purchased with borrowed funds.
- (c) Prosecute legal action against the borrower, or against officers of corporations, unincorporated tribes or bands, and credit and other cooperative associations.
- (d) Declare the entire amount advanced immediately due and payable.
- (e) Prevent further disbursement of credit funds under the control of the borrower.
- (f) Withdraw any unobligated funds from the borrower.  
(Note: This refers to borrowers other than individual borrowers from the United States.)
- (g) In the case of corporations, unincorporated tribes and bands, and credit associations, require that all repayments on loans be applied to liquidate the indebtedness to the United States.
- (h) In the case of credit associations, take possession of the assets of the borrower and exercise or arrange for the exercise of its powers until the Commissioner has received acceptable assurance of its repayment and of compliance with the loan agreement.

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28/ Cont.

- (i) In the case of corporate and tribal enterprises and cooperative associations, where the loan agreement so provides, to liquidate or operate, or arrange for the operation of the enterprise or association, until its indebtedness is paid, or until the Secretary has received acceptable assurance of its repayment and of compliance with the loan agreement. "

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- (i) In the case of corporate and tribal enterprises and cooperative associations, to liquidate or operate, or arrange for the operation of the enterprise or association, until its indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and of compliance with the loan agreement.
- K. Assignment. (25 CFR 91.11) A borrower may not assign his loan agreement or any interest therein to a third party without the consent of the Secretary or his authorized representative.
- L. Tribal Funds. (25 CFR 91.12) 29/
- (a) Tribal funds may be advanced to corporations and unincorporated tribes and bands, when authorized by Congress, upon request of the governing body and approval by the Commissioner, for the establishment of enterprises and for relending in accordance with subsections (b) and (c) of this section and section 91.13. No interest shall be paid to the United States on such funds.

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29/ Promulgated as 25 CFR 21.12 August 9, 1954. Sections 21.12 A through E approved December 18, 1945, read as follows:

- A. Tribal industrial assistance funds may be transferred to corporations and unincorporated tribes and bands, when authorized by Congress and agreed to by the corporation, tribe, or band, and may be used for the same purposes as revolving credit funds. No interest shall be paid to the United States on such funds.
- B. Loans of tribal industrial assistance funds may be made to individuals and cooperative associations under the same conditions as loans of revolving credit funds.
- C. Support loans may be made to old, indigent, or disabled allottees, and loans may be made for burial expenses where the deceased Indian was an allottee, from tribal industrial assistance funds. Interest may be waived on such loans.
- D. Individuals need not be of at least one-fourth degree of Indian blood in order to receive loans of tribal industrial assistance funds, but must be members of the corporation, tribe, or band to which the funds belong.
- E. Loans to Menominee Indians from Menominee tribal funds shall bear interest at 2 percent per annum.

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- (b) Support loans may be made to old, indigent, or disabled members, and loans may be made for burial expenses of members, when there is reasonable assurance that the loans will be repaid. Interest may be waived on such loans.
- (c) Individuals need not be of at least one-quarter degree of Indian blood in order to receive loans of tribal funds, but must be members of the corporation, tribe, or band to which the funds belong.

29/ Cont.

Subsection E was amended on December 8, 1950, to read:

"Loans to Menominee Indians from Menominee tribal funds shall bear interest at a rate specified by the tribe and approved by the Commissioner of Indian Affairs."

Subsections F and G were approved December 8, 1950, to read:

- F. Failure of a corporation or unincorporated tribe or band to use tribal industrial assistance funds advanced under authority of subsection A of this section of the regulations in this part in accordance with the purposes for which requested, shall be grounds for any one or all of the following steps to be taken by the Commissioner:
  - (1) Discontinue any further advances of funds requested by the corporation, tribe, or band.
  - (2) Require that the entire amount advanced to the corporation, tribe, or band be returned to the Treasury.
  - (3) Prevent further disbursement of tribal industrial assistance funds under the control of the corporation, tribe, or band.
  - (4) Withdraw any unobligated funds from the corporation, tribe, or band, and deposit the same in the Treasury.
  - (5) Require that all repayments on loans made by the corporation, tribe, or band, be used to replace funds advanced to the corporation, tribe, or band from the Treasury.
  - (6) In the case of corporate and tribal enterprises operated with tribal industrial assistance funds, to liquidate or operate, or arrange for the operation of the enterprise, until all tribal industrial assistance funds advanced to the corporation, tribe, or band have been replaced in the Treasury, or until the Commissioner has received acceptable assurance that the funds will be replaced, or that the enterprise will be operated in a manner satisfactory to him.
- G. Tribal industrial assistance funds may be advanced to corporations and tribes for the purchase of cattle for relending to members under the regulations in Part 23, Title 25, C. F. R.

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- (d) Failure of a corporation or unincorporated tribe or band to use tribal funds advanced under authority of paragraph (a) of this section in accordance with the regulations and the purpose for which requested, shall be grounds for any one or all of the following steps to be taken by the Commissioner:
- (1) Discontinue further advance of funds requested.
  - (2) Require that the entire amount advanced be returned to the Treasury.
  - (3) Prevent further disbursement of tribal funds under the control of the corporation, tribe, or band.
  - (4) Withdraw any unobligated funds from the corporation, tribe, or band and deposit the same in the Treasury.
  - (5) Require that all repayments on loans made by the corporation, tribe, or band, be used to replace funds advanced to the corporation, tribe, or band from the Treasury.
  - (6) In the case of enterprises operated with tribal funds, to liquidate or operate or arrange for the operation of the enterprise, until all tribal funds advanced to the corporation, tribe, or band have been replaced in the Treasury, or until the Commissioner has received acceptable assurance that the funds will be replaced, or that the enterprise will be operated in a manner satisfactory to him.

M. Relending by Borrowers. (25 CFR 91.13) 30/

- (a) Funds loaned by the United States to a corporation, tribe, band, or credit association may be reloaned

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30/ Promulgated as 25 CFR 21.13 February 17, 1945. This section as approved December 18, 1945, read:

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by it, with the approval of the Commissioner or his authorized representative, but the Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Such loans shall be secured by such securities as the lender and the approving officer may require. Individually owned trust or restricted land may be mortgaged for such loans in accordance with 25 CFR 121.61 of this chapter. All securing documents shall be filed or recorded in accordance with State or Territorial law.

(c) Unless otherwise authorized by the Commissioner in the case of particular loans, title to property purchased with such loans received from such relending organizations shall be taken in the name of the borrower.

N. Repayments. (25 CFR 91.14) Repayments on loans by the United States shall be made to the Bureau of Indian Affairs designated collection officer who shall issue an official receipt therefor.

O. Charters. (25 CFR 91.15) <sup>31/</sup> The Commissioner of Indian Affairs may issue charters to credit and other cooperative associations of ten or more members in Oklahoma whose articles of association and bylaws have been approved by him. (Note: Charters may be issued only to credit associations and cooperatives in Oklahoma.)

<sup>30/</sup> Cont.

"Relending by Borrower. Funds loaned by the United States to a corporation, unincorporated tribe or band, or credit association, may be relented by it, with the approval of a representative of the Commissioner, unless the Commissioner authorizes the corporation, tribe, band, or association to approve applications for particular loans up to a specified amount."

<sup>31/</sup> Promulgated as 25 CFR 21.15 December 8, 1950. This section as originally approved December 18, 1945, read:

"Cooperative Associations. The Secretary may issue charters to cooperative associations of ten or more members in Oklahoma whose articles of association and bylaws have been approved by him."

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P. Educational Loans. (25 CFR 91.16) 32/

- (a) Loans for educational purposes may be made under the regulations in this part. The interest rate on loans by the United States shall be three percent per annum. Interest shall start on the first day of the month following one year from the date of completion of the educational course for which the loan was made, or, in the event of non-completion of the course, on the first day of the month following the date the borrower drops out of school. Interest calculations shall be suspended during periods when borrowers are enrolled in schools of higher learning, and during periods of service in the armed forces of the United States.
- (b) 33/ The rate on loans by Indian organizations shall be not less than three percent per annum,

32/ 25 CFR 91.16 as amended August 2, 1961 (26 F. R. 151, 7093, 7094). This section originally approved as 25 CFR 21.16 August 21, 1947, provided:

"Educational Loans. Loans for educational purposes may be made under the regulations in this Part. Notwithstanding the provisions of 21.6, the interest rate on such loans shall be one percent per annum."

This section was amended June 25, 1948, to read:

"Educational Loans. Loans for educational purposes may be made under the regulations in this Part. The interest rate on loans by the United States shall be three percent per annum. The rate on loans by Indian organizations shall be not less than one percent per annum, and may not exceed the rate charged borrowers on loans for other purposes."

This section was further amended November 17, 1950, to read:

"Educational Loans. Loans for educational purposes may be made under the regulations in this Part. The interest rate on loans by the United States shall be three percent per annum. The rate on loans by Indian organizations shall be not less than two percent per annum, and may not exceed the rate charged borrowers on loans for other purposes."

33/ 91.16B as amended June 26, 1963 (28 F. R. 129, 6832, 6833). As approved August 2, 1961, this subsection read:

"The rate on loans by Indian organizations shall be not less than two percent per annum, and may not exceed the rate charged borrowers on loans for other purposes. Organizations which adopt the same rate and follow the same procedure in calculating interest as is followed on loans made by the United States will not be charged interest on loans from the United States on the amount outstanding in educational loans during the period the organization is not charging its borrowers interest."

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and may not exceed the rate charged borrowers on loans for other purposes. Organizations which adopt the same rate and follow the same procedure in calculating interest as is followed on loans made by the United States will not be charged interest on loans from the United States on the amount outstanding in educational loans during the period the organization is not charging its borrowers interest.

- Q. Amendments to Articles of Association and Bylaws. (25 CFR 91.17) <sup>34/</sup> The Commissioner of Indian Affairs may approve amendments to articles of association and bylaws of credit and cooperative associations originally approved by the Secretary.
- R. Loans to Navajo and Hopi Indians. (25 CFR 91.18) <sup>35/</sup> Loans to the Navajo and Hopi Tribes, or any member or association of members thereof, from the loan fund authorized by the act of April 19, 1950 (64 Stat. 45), shall be subject to the regulations of this part, except that the interest rate on any loans made to refinance loans received from the revolving fund authorized by the acts of June 18, 1934 (48 Stat. 986), and June 26, 1936 (49 Stat. 1967), as amended and supplemented, shall be at the rate of interest specified in the original loan agreement.
- S. Loans to Encourage Industry. (25 CFR 91.19) <sup>36/</sup> Loans may be made to any organization of Indians for use in attracting industries to operate in localities where such use will promote the economic development of Indians. Such loans may be made only to groups of Indians having a form of organization acceptable to the Secretary and at interest rates and under terms and conditions found by the Secretary in the particular case to be in the public interest and conducive to the accomplishment of the purpose intended. No such loans shall be effective until approved by the Secretary.

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<sup>34/</sup> Promulgated as 25 CFR 21.17 August 21, 1947.

<sup>35/</sup> Promulgated as 25 CFR 21.18 January 10, 1952.

<sup>36/</sup> Promulgated as 25 CFR 21.19 February 18, 1957.

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- T. Loans for Expert Assistance. (25 CFR 91.21) 37/  
Notwithstanding any provisions of the regulations in this Part 91 to the contrary, loans may be made to Indian tribes and bands and to other identifiable groups of Indians for use by them in obtaining expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission. Loans will be approved by issuance of a commitment order by the Secretary or his authorized representative. All loans shall bear interest at the rate of 5 1/2 percent per annum from the date the funds are advanced until repaid.

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37/ Promulgated as 25 CFR 91. 21 June 23, 1964.

REQUEST FOR MODIFICATION  
OF LOAN AGREEMENT

Contract No. \_\_\_\_\_ between the \_\_\_\_\_ Tribe and  
the United States.

The \_\_\_\_\_ Tribe, as evidenced by a resolution of its  
Council adopted at a meeting held \_\_\_\_\_ 19 \_\_\_\_, certified  
copy of which is attached hereto, requests that the unpaid balance of  
\$ \_\_\_\_\_ on said contract be transferred to the loan  
agreement resulting from its application of \_\_\_\_\_, 19 \_\_\_\_,  
for an additional loan of \$ \_\_\_\_\_. The indebtedness of  
the Tribe is presently evidenced by promissory notes identified as  
follows, bearing interest at the rates indicated:

<u>Date of Note</u>	<u>Payable on or before</u>	<u>Interest Rate</u>	<u>Amount Unpaid</u>
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This modification will not be effective until after a loan contract  
resulting from said application for an additional loan becomes  
effective, nor until a new promissory note (or notes) evidencing the  
transfer of the above indebtedness to the new loan agreement contract,  
bearing interest and with identical repayment schedules, has (have)  
been executed as evidence of the amount transferred. Upon execution  
of the new promissory note or notes, and payment of interest on the  
old notes in full, the old notes will be returned to the Tribe.

Date \_\_\_\_\_ Tribe

Attest: \_\_\_\_\_  
(Secretary)

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

\_\_\_\_\_  
Title

