

## Indian Loan Guarantee, Insurance, and Interest Subsidy Program

The Indian Loan Guarantee, Insurance, and Interest Subsidy Program (Program)<sup>1</sup> provides an incentive for lenders to make loans to Indian individuals, tribes, and Indian- and tribe-owned businesses that are unable to secure loans at reasonable rates and terms. The Program provides a guarantee or insurance coverage of up to 90 percent of the unpaid principal and accrued interest due on the loan. The Program is administered by the Division of Capital Investment (DCI), part of the Office of Indian Energy and Economic Development, on behalf of the Secretary of the Interior.<sup>2</sup>

The borrower entity must be at least 51 percent native-owned, and the project must contribute to the economy of an Indian reservation or tribal service area recognized by the Bureau of Indian Affairs (BIA).

The guarantee and insurance coverage reduce repayment risk for lenders working

in Indian Country. Lenders have the option of liquidating the collateral first and subsequently submitting a claim for loss.<sup>3</sup> For lenders unfamiliar with the different legal structures in Indian Country, the lender may submit a claim to the DCI for its loss and have the DCI take responsibility to liquidate the collateral.

### Eligible Borrowers and Projects

Eligible borrowers for the Program include Indian<sup>4</sup> individuals, tribes,<sup>5</sup> and Indian- and tribe-owned business entities.<sup>6</sup> Under the statute, the business entity or tribal enterprise looking for financing may be organized as for-profit or not-for-profit,<sup>7</sup> as long as it is at least 51 percent owned by Indians. Under the regulation, the DCI may guarantee or insure any loan made by an eligible lender<sup>8</sup> to an eligible borrower to conduct a lawful business organized as a

or corporation that the Secretary of the U.S. Department of Interior acknowledges to exist as an Indian tribe and that is eligible for services from BIA. 25 CFR 103.44.

<sup>6</sup> 25 CFR 103.25.

<sup>7</sup> 25 USC 1481(b).

<sup>8</sup> An eligible lender is regularly engaged in the business of making loans, is capable of evaluating and servicing loans in accordance with reasonable and prudent industry standards, and is otherwise

<sup>1</sup> 25 USC 1481 *et seq.* and 25 CFR 103.

<sup>2</sup> 25 CFR 103.3. See also [here](#).

<sup>3</sup> 12 CFR 103.36(d)(2). For insured loans, the lender has to liquidate the collateral first prior to submitting a claim for loss.

<sup>4</sup> “Indian” means a person who is a member of a tribe, as defined in footnote 4. 25 CFR 103.44.

<sup>5</sup> “Tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, rancheria, village, community,

for-profit, with some important qualifications:

- The business must contribute to the economy of an Indian reservation or tribal service area recognized by the BIA.<sup>9</sup>
- The borrower may not use the loan for relending purposes.<sup>10</sup>
- If any portion of the loan is used to refinance an existing loan, the borrower must be current on the existing loan.<sup>11</sup>
- The DCI will not guarantee or insure a loan if it believes the lender would be willing to extend the requested financing without a guarantee or insurance coverage.<sup>12</sup>
- The borrower must have at least 20 percent equity in the project being financed immediately after the loan is funded.<sup>13</sup>
- By policy, the DCI does not guarantee or insure loans for gaming or when the primary purpose is the growth, processing, or sale of tobacco products.

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reasonably acceptable to the BIA. The following lenders are not eligible: (1) agencies of the federal government; (2) lenders that borrow federal funds for relending, other than funds borrowed from the Federal Reserve System; (3) lenders that do not include interest on the loans they make in gross income, for purposes of certain tax laws; and (4) lenders that do not keep any ownership interest in the loans they originate. 25 CFR 103.10.

<sup>9</sup> 25 CFR 103.4(a).

<sup>10</sup> 25 CFR 103.4(b).

<sup>11</sup> 25 CFR 103.4(c).

## Lender Participation

Most commercial banks will qualify for participation in the Program. Nonbank lenders may also be eligible if they meet certain Program requirements.<sup>14</sup> The DCI approves lenders through the execution of a loan guarantee agreement and/or a loan insurance agreement.<sup>15</sup>

## Loan Guarantee

The DCI can guarantee a loan or combination of loans of up to \$500,000 for a qualifying individual, or more for an acceptable Indian business entity, tribe, or tribal enterprise involving two or more persons.<sup>16</sup> Banks participating in the Program may use their own application and underwriting processes, provided they meet Program requirements. After a lender has underwritten a loan application from a qualified borrower and the lender has determined that the loan cannot be made without the guarantee, the lender must submit the loan guarantee application to the DCI.<sup>17</sup> Applications may be sent to DCI Zone Offices in Anchorage, Alaska; Albuquerque, N.M.; Minneapolis; or Reston, Va. As part of the application, the lender must provide an explanation of why it needs the guarantee and the minimum loan guarantee percentage it will accept.<sup>18</sup>

<sup>12</sup> 25 CFR 103.4(d).

<sup>13</sup> 25 CFR 103.7.

<sup>14</sup> 25 CFR 103.10.

<sup>15</sup> 25 CFR 103.11.

<sup>16</sup> 25 CFR 103.5.

<sup>17</sup> See 25 CFR 103.12 and 103.26 for items to be included in the application.

<sup>18</sup> 25 CFR 103.12.

Once approved, the lender will receive a Loan Guarantee Certificate with specified conditions of approval. The certificate is not valid until the loan closes and the premium payment has been received.

### Loan Insurance

Loan insurance<sup>19</sup> coverage, as opposed to a guarantee, may be a good choice for some loans, especially when lenders are insuring six or more smaller loans in their portfolio. The DCI will insure up to 15 percent of aggregate insured loans made by a lender, with the insurance coverage not to exceed 90 percent on any one loan.<sup>20</sup> The loan premium for insurance coverage is lower than it is for a loan guarantee. The lender is required to liquidate collateral before pursuing a claim on losses as a result of default.

An approved lender can make loans insured under the Program in one of two ways, depending on the size of the loan and threshold set by the Secretary of the Interior.<sup>21</sup> For loans under the threshold, an approved lender can make each loan in accordance with the lender's loan insurance agreement, without specific prior approval from the DCI. For loans above the threshold, an approved lender must seek the DCI's specific prior approval in each case. For

those larger loans, the lender must also submit a loan insurance coverage application request form to the DCI, together with much of the same information required for a loan guarantee.<sup>22</sup>

### Interest, Fees, and Loan Terms

A one-time premium is due within 30 days of the loan closing for both loan guarantees (2 percent of the original principal amount guaranteed) and loan insurance (1 percent of the original principal amount insured).<sup>23</sup> Lenders may pass the cost of either premium on to the borrower.<sup>24</sup> The lender may also charge a reasonable annual servicing fee, so long as the servicing fee is not included as part of the loan principal and does not bear interest.<sup>25</sup>

The interest rate on the loan may be fixed or variable. While the lender sets the interest rate on the loan, the DCI must consider that rate to be "reasonable."<sup>26</sup> A variable rate needs to be tied to a published prime rate.<sup>27</sup>

The lender may charge borrowers only for reasonable and customary costs as defined by the regulation, which include legal and architectural services, compliance inspections, and appraisals, as well as charges approved in writing by the BIA.<sup>28</sup>

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<sup>19</sup> 25 CFR 103.13.

<sup>20</sup> 25 CFR 103.6.

<sup>21</sup> See 25 CFR 103.13; see also [Helping Guarantee the Future of Indian Country](#), Division of Capital Investment

<sup>22</sup> 25 CFR 103.13 explains that when submitting an application for insurance, a lender must provide the same information required under section 103.12, except the lender does not need to provide the information required by section 103.12(a), namely, a written explanation of why the lender is requesting

the guarantee and the minimum loan guarantee percentage the lender will accept.

<sup>23</sup> 25 CFR 103.8; 25 CFR 103.19.

<sup>24</sup> 25 CFR 103.8(b).

<sup>25</sup> 25 CFR 103.15(a).

<sup>26</sup> 25 CFR 103.15(f).

<sup>27</sup> 25 CFR 103.15(g).

<sup>28</sup> 25 CFR 103.15(b).

The term of the loan is determined by the lender, based on the use of the loan and the ability of the borrower to repay. The loan term cannot exceed 30 years.<sup>29</sup>

Loans to individuals cannot exceed \$500,000. Loans to Indian business entities, tribes, and tribal entities can be larger and are at the discretion of the DCI.<sup>30</sup>

### **Interest Subsidy**

In limited instances, the DCI may make interest subsidies available for certain borrowers.

An interest subsidy under the Program is a payment the DCI makes for the benefit of the borrower to reimburse part of the interest payments the borrower has made on a loan guaranteed or insured under the Program. It is potentially available to a borrower whose projected or historical earnings before interest and taxes, after adjustment for extraordinary items, is less than the industry norm.<sup>31</sup>

Lenders request interest subsidy payments on behalf of eligible borrowers after determining that the borrower qualifies for the loan.<sup>32</sup> Typically, the lender should request the interest subsidy at the time it applies for a guarantee or insurance coverage.

### **Default and Liquidation**

Lenders must service all loans guaranteed or insured under the Program in a commercially reasonable manner, in accordance with standards and procedures adopted by prudent lenders in the BIA region in which the borrower's business is located, and in accordance with specified standards.<sup>33</sup>

The lender is responsible for sending written notification of default to the borrower, and the lender must otherwise comply with the standard of care established by the regulation. The lender must also send written notification of default to the DCI within 60 days of that default, unless the default is fully cured before the 60-day deadline.<sup>34</sup>

If a default remains uncured, the lender must send written notice to the DCI within 90 days and select one of the following remedies:

- In the case of a guaranteed loan, the lender may submit a claim to the DCI for its loss.
- In the case of either a guaranteed loan or insured loan, the lender may liquidate all collateral securing the loan and upon completion, may submit a claim to the DCI for any residual loss on the loan.
- The lender may negotiate a loan modification agreement with the borrower to permanently change the terms of the loan in a manner that will

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<sup>29</sup> 25 CFR 103.15(c).

<sup>30</sup> 25 CFR 103.5.

<sup>31</sup> 25 CFR 103.20.

<sup>32</sup> 25 CFR 103.21.

<sup>33</sup> 25 CFR 103.30.

<sup>34</sup> 25 CFR 103.35.

cure the default. The BIA must approve the agreement.<sup>35</sup>

## **Community Reinvestment Act (CRA) Consideration**

Lenders may receive CRA consideration for loans originated under the Program if they also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

Loans in amounts less than \$1 million that meet the definition of a small business loan are considered under the CRA lending test.

Loans in amounts greater than \$1 million that have a primary purpose of community development<sup>36</sup> may receive consideration as community development loans. Intermediate small banks may choose to have small business loans in amounts less than \$1 million evaluated as community development loans if the loans also have a community development purpose. Banks evaluated under the lending, investment, and service tests may receive consideration for innovative or flexible lending practices if their loans address the credit needs of low- to moderate-income individuals or geographies.

## **Resources**

- The [Division of Capital Investment](#) website provides Program descriptions, brochures, and forms. The site also provides information for contacting its four [zone offices](#).
- [Success Stories](#) on the DCI website provides descriptions of projects guaranteed by the Program.

### **Disclaimer**

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<sup>35</sup> 25 CFR 103.36(d).

<sup>36</sup> 12 CFR 25.12(g).