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# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

IN REPLY REFER TO:

47 BIAM Supp. 2, Release 4

MEMORANDUM

DEC 01 1980

To: Holders of 47 BIAM Supplement 2

From: Commissioner of Indian Affairs

Subject: Revision of 47 BIAM Supplement 2, United States Direct Loans and Loans by Tribes and Relending Organizations

This release revises 47 BIAM Supplement 2 to (1) require prior Central Office authorization for accepting loan applications; and (2) establish loan limitations for partnerships and closely held corporations.

This release also revises (1) requirements for applications to include a submission of a business plan which provides detailed information of the operation of the enterprise, and (2) loan interest rates to add two percent to all direct loans except those for relending programs and tribal enterprises.

*William Hallett*  
Commissioner of Indian Affairs

Filing Instruction:

- (a) Remove superseded material:
  - 47 BIAM Supplement 2, dated 10-15-75
  - 0. through 1.8 B(2) (5 sheets)
  - 2.1 through 2.5A (1 sheet)
  - 3.1 through 3.3B(3) (1 sheet)
  - 3.3I(1) through 3.5 (1 sheet)
  - Bulletin 1 (Dated 08-04-80) (1 sheet)
- (b) Insert new material transmitted:
  - 47 BIAM Supplement 2, dated 12-01-80
  - 0. through 1.9C (5 sheets)
  - 2.1 through 2.5A (1 sheet)
  - 3.1 through 3.3B(3) (1 sheet)
  - 3.3I(1) through 3.5 (1 sheet)

*Copies  
of  
08-04-80  
3-3B(3)  
3-3I(1)  
3-5  
(3)*

(c) Pen-and-ink change:

Change page number 1.8C(2) to 1.9C(2) and page number 1.8C(8) to 1.9C(8)

Re-number sections 1.9 through 1.13 to 1.10 through 1.14

Section 3.14H, line 8, place a period after Assistance and delete the remaining portion of the sentence

Section 4.3F(5), line 3, change "1.7B" to "1.9B"

Section 4.7, line 2, change "SF-1084" to "SF-1034"

Section 4.12, line 3, change "1.8B" to "1.9B" and add "and 4.3F(5)"

Section 5.3, last line, change "1.4 and 1.5" to "2.2"

Section 5.4A, paragraph 3, change "June 30" to "September 30" and parenthetical reference "1.6" to "3.1D"

Section 6.2I, last line, change "1.5F" to "2.3"

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1. DIRECT LOANS TO TRIBES, INDIAN ORGANIZATIONS AND  
INDIVIDUALS AND LOANS BY RELENDING ORGANIZATIONS TO MEMBERS

1.1 Purpose. The purpose of this section is to prescribe terms and conditions of loans by the United States from the Revolving Fund and by Indian organizations (regardless of whether United States revolving or tribal funds are used) to individuals and partnerships, including loans for education and financing of economic enterprises and organizations. All financing of enterprises must be in accordance with authority contained in the constitution and bylaws or charter or other organization papers of the organization.

1.2 Application. To assure proper fund control, applications for Revolving Fund loans shall be authorized by the Commissioner. Applications authorized will be listed in the Revolving Loan Fund status report issued by the Central Office.

1.3 Eligible Applicants. The following are eligible to borrow funds from the Revolving Fund:

A. Indian Tribes. The governing bodies of those Indian tribes which have been federally recognized as being eligible for services from the Bureau of Indian Affairs are eligible to borrow from the United States Revolving Fund. Tribes with funds available, Treasury or other, shall utilize such funds to the extent possible before receiving a loan from the United States.

B. Indian Organizations. An Indian organization consisting of three or more Indians having a form of organization which is satisfactory to the Commissioner is an eligible applicant. Indian organizations include any entity which, for purposes of the Act, has been established or recognized by the governing body of an Indian Tribe which is Federally recognized as being eligible for services from the Bureau of Indian Affairs.

C. Individuals and Partnerships. Individual Indians who are members of tribes which are not making loans to its members and are not members of or eligible for membership in an organization which is making loans to its members are eligible for direct loans. Partnerships, organized under formalized agreements, providing that the enterprise is owned 51 percent or more by eligible Indians or tribes, are eligible for direct loans.

1.4 Purpose of Loan. With the exception of loans made by a relending organization under provisions of 3.12B of this Supplement, loans, whether made directly by the United States or through a tribally recognized relending organization, may be made only for legal purposes which will have a direct economic benefit to a tribe or to its members residing on

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a reservation or which will promote the economic development of a reservation and its resources. Such loans include:

A. Business or Commercial Enterprises. Loans may be made to business or commercial enterprises only when the business plan provides that the enterprise will be operated in accordance with sound business practices and principles including an adequate accounting system and qualified management.

B. Agriculture. Loans may be made to acquire inventory, livestock, equipment, and operating capital needed to develop and operate all types of farming or other agricultural activities which will contribute directly to the economy of the reservation.

C. Relending or Investments. Loans may be made to enable Indian organizations to make loans to its members or to make loans to or investments in non-Indian organizations, provided that not more than 50 percent of any such loan may be used for this purpose.

D. Purchase of Land. Loans may be made to purchase land or interest in land located within or outside the boundaries of an Indian reservation when the land will be used by the applicant in the direct operation of the applicants business. The applicant must reside on the reservation.

E. Education. Loans may be made to individual Indians for educational purposes.

F. Homes. Loans may be made to purchase, construct, remodel, maintain, or repair homes on an Indian reservation, including trailer homes, to be occupied by the borrower. Housing loans for each relending program and direct loan program are subject to limitations and restrictions imposed by the Commissioner through periodic directives.

1.5 Number of Loans. Not more than one loan agreement may be in effect with a particular individual (including spouse) at any time, unless an exception in each specific case is authorized by the Area Director, in writing, a copy of which shall be attached to or be made a part of the loan agreement. The Area Director may not, however, authorize more than two loan agreements to be in effect with a particular individual at any time. Justification for more than one loan shall be the result of changed economic conditions, natural disaster, or conditions beyond management's control. Exceptions may be authorized by the Commissioner. All indebtedness of a cooperative or corporation shall be contained in one loan agreement, unless otherwise specifically authorized by the Commissioner. In considering the number of loan agreements in effect with a particular borrower, educational and short-term loans need not be considered.



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1.6 Additional Loans to Organizations. Where an organization is indebted to the United States for a loan and applies for an additional loan from the Revolving Fund, the existing indebtedness under the old loan may be transferred to the new loan. This procedure requires that the old loan also be modified to authorize the transfer. Such transfers will provide for the same repayment terms called for in the original loan.

A sample request for modification to transfer funds from one contract to another is included in this Supplement as Illustration 3. The illustration is furnished as a guide only and will require adaptation to meet the requirements of particular organizations and specific situations.

1.7 Loan Modifications. In lieu of submitting applications for new loans, modifications of loan agreements may be requested for any legitimate purpose, e.g., increase in the amount of the loan; change in repayment terms; extension of maturity dates; change in an operating plan, etc. An application for modification should originate with the borrower and should follow the same procedure and have the same number of copies as in the case of the original application.

If an organization is indebted under more than one loan agreement and needs additional funds, it is ordinarily desirable to consolidate the indebtedness and increase the amount of the loan by modification. However, loans to encourage industry or loans to permit an organization to invest in a particular enterprise requiring long-term financing and requiring annual operating loans should not be consolidated. Illustration 4 of this Supplement is a sample request for modification to combine an organization's indebtedness under more than one loan agreement. Illustration 5 shows how to request an increase in the amount of a loan and also combine an organization's indebtedness into one loan agreement. Either illustration will require adaptation to meet the requirements of particular organizations and specific situations and are provided as guides only.

Where a loan agreement 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 noncontractual material may have found its way into the agreement. In such instances, the existing 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. No form is prescribed for requests for modifications. Requests necessarily must be adapted to the particular need involved. It is essential to show:

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Number. CF agreements or contract number.

Payments. Itemized list of payments scheduled on original agreements, payments made, both principal and interest; date to which interest has been paid; and accrued but unpaid interest.

Changes. Changes desired in plans and repayment dates and any other pertinent data.

1.8 Justification of Loan. No loan shall be made until it has been established to the satisfaction of the approving official that:

A. The loan will promote the economic development of the applicant.

B. There is a reasonable prospect of repayment of the loan in the judgment of the approving official.

C. The applicant has satisfactorily established that financing from other sources on reasonable terms and conditions including loans guaranteed or insured by the Bureau of Indian Affairs are not obtainable.

If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant will be able to obtain a loan from other sources, the Commissioner will require the applicant to furnish letters from two customary lenders in the area showing they are unable or unwilling to make a loan to the applicant, on reasonable terms and conditions, for the amount and purposes for which the applicant has applied for a United States direct loan before a direct loan may be approved for the applicant.

D. Applicants have or can be provided competent management and technical assistance needed to successfully operate the enterprise being funded.

1.9 Loan Provisions.

A. Maturity. Maturity dates of loans by the United States will be determined by the purpose for which funds are to be used, the type of security, and the repayment capability, except that 30 years shall be the maximum maturity term. See 4.3F(6) of this Supplement for maturity of educational loans.

(1) Loans to Organizations for Economic Enterprises.

(a) Land, building, and permanent fixtures may be scheduled for maturity not exceeding 30 years.

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(b) Loan funds used for capital items not listed above, including machinery, equipment, livestock, and motor vehicles, shall be scheduled for maturity not to exceed the lesser of 10 years or the remaining useful life of the capital item at date of purchase.

(c) Operating expense loans should be repaid at the end of the operating year, but not to exceed two years.

(2) Relending. Preferably, loans should be scheduled to mature over not more than 30 years. When justified, approving officials may defer principal payments not to exceed the first three years of the scheduled maturity.

(3) Loans to Individuals. (See Section 4.3.)

B. Interest. Pursuant to Section 104 of the Indian Financing Act of 1974 (P.L. 93-262, 88 Stat. 77), the Secretary of the Treasury will determine an interest rate for United States direct loans. The interest rate will be determined monthly and shall be effective for all advances made on loans during that particular month. This rate shall apply to all direct loans for funding relending programs and tribal enterprises. For all other direct loans, two percent shall be added to the monthly interest rate that is determined by the Secretary of the Treasury. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s). Organizations that borrow funds for relending shall charge borrowers at least the rate the organization pays the United States. Organizations shall increase borrowers' interest rates by an amount adequate to cover costs of operating the program, such as losses and administrative expenses.

(1) Educational loans may provide for waiver of interest accruals while the borrower is in school or in the armed forces of the United States. For special instructions for waiving interest accruals and reinstating interest on educational loans, see 4.3F(5) of this Supplement. If a relending organization adopts these same procedures, and is indebted for a loan from the United States, interest will not be charged by the United States on the amount the organization has outstanding in educational loans during the period the organization is not charging its borrowers interest.

(2) Amounts for payment of interest on old loans may be included in new loans. However, a borrower ordinarily should be required to pay, from his/her own funds, interest accrued on all principal indebtedness to be included in a new loan. Unless borrowers can at least pay interest on their old loans, refinancing may not be feasible.

(3) Loans to be used in obtaining expert assistance for preparation and trial of Indian claims may be made at an interest rate of

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5-1/2 percent to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of Section 1 of the Act of November 4, 1963 (P.L. 88-168, 77 Stat. 301; 25 U.S.C. 70n-1), as amended by the Act of September 19, 1966 (P.L. 89-592, 80 Stat. 814), and Section 2 of the Act of May 24, 1973 (P.L. 93-37, 87 Stat. 73).

C. Security. United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(1) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 121.34 and the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the loan in case of default. Land purchased by a tribe with the proceeds of a loan from the Revolving Loan Fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe, may not be mortgaged as security for a loan.

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2. MANAGEMENT AND TECHNICAL ASSISTANCE

2.1 General. Concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure that competent management and technical assistance is available to the applicant consistent with the applicant's knowledge and experience and the nature and complexity of the economic enterprise being financed. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, tribes, or other sources which the Commissioner considers competent to provide 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 shall be in 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 Policy and Scope. Concurrent with the making of a loan to fund the development of an economic enterprise, the Commissioner shall insure that the loan applicant is provided competent management and technical assistance consistent with the nature of the enterprise being funded and the needs of the applicant. The purpose is to assist all applicants to the extent mutually agreed to assure success in any business venture and to assure orderly repayment of loan obligations.

2.3 Applicability. In each instance where an applicant is to receive a United States direct loan pursuant to 25 CFR 91, a determination must be made of the applicant's need for management and technical assistance.

2.4 Determination of Need. When funds are requested to finance an economic enterprise, the application will include an evaluation by the Agency Superintendent of the applicant's need for management and technical assistance as well as an indication as to who will provide such assistance. The Agency Superintendent will develop a program with the applicant to see that the applicant is provided such needed assistance. Requests for Bureau assistance will be made on Form 5-4745, Request for Management and/or Technical Assistance (see Illustration No. 1).

2.5 Types and Sources 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, or 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 comes under the Bureau's vocational training program.

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The foregoing are examples and should not restrict the assistance which may be needed on an individual basis.

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

B. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, tribes, 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 the required 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, shall be in 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).

## 2.6 Restrictions.

A. Funds shall not be used to pay a fee charged for the "packaging" of a loan application. Paid assistance under Title V of Public Law 93-262, Indian Financing Act of 1974, can only be concurrent with or subsequent to the approval of a loan.

B. Funds shall not be used to pay salaries of officials or employees of an enterprise as such payment is beyond the scope of assistance.

2.7 Assistance Provided by the Bureau of Indian Affairs. The Bureau of Indian Affairs officer assisting an applicant for a United States direct loan shall see that the applicant has been apprised of all possible sources of assistance for the type of enterprise being funded. 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:

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3. RECEIVING AND PROCESSING, U.S. DIRECT LOANS TO TRIBES  
AND ORGANIZATIONS AND LOANS BY ORGANIZATIONS TO MEMBERS

3.1 Purpose. The following provisions apply to receiving, processing of applications, and approval or disapproval of loans by the United States to tribes and Indian organizations and to loans made by relending organizations to members.

3.2 Form of Application. Tribes and Indian organizations applying for loans from the Revolving Fund shall submit their application on Form 5-4737, Application of Indian Tribe, Credit Association, Cooperative Association or Other Organization for Loan of Revolving Funds from the United States.

Requests for modification of existing loan agreements will vary depending on the purpose of the request. They must, however, be in writing and contain adequate justification. Illustrations 3 and 4 of this Supplement are examples to be used as guidelines in the preparation of specific types of requests. Requests to modify loans made to tribes, tribal enterprises, and to relending organizations must also be supported by a resolution adopted by the authorized governing body of such tribe, enterprise or relending organization requesting such modification. Illustration 2 is a sample resolution authorizing a request for modification of an enterprise application.

3.3 Preparation of Application and Exhibits. The application form must be fully completed including the proper preparation of exhibits establishing the applicant's eligibility and the intended use of the fund. The justification for making the loan and the amount thereof together with other justifying factors must also be established. All loan applications must as a minimum provide the following:

A. Name of Applicant. The correct name of the applicant must be given. Applications of Indian organizations must set forth the name of the organization as it is set forth in its charter or other organizational papers or as recognized by the Commissioner.

B. Exhibit A. Amount, Purpose and Term of Loan.

(1) Operation of Project. The application shall contain a business plan covering all aspects of the enterprise being funded. Sections in the plan must provide detailed information on production, marketing, finance, profitability, management, and organization.

(2) Development Cost. These costs include, but are not limited to those for acquisition, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land, easements, rights-of-ways; payments of appraisal, engineering, and legal fees; administrative costs; and payment of start-up operating costs.

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(3) Relending. Applications for loans to establish a relending program will be supported by a Declaration of Policy and Plan of Operation adopted by the organization and approved by the Commissioner. Where a tribe is conducting a relending program, either with borrowed funds or tribal funds, the current Declaration of Policy and Plan of Operation may need to be amended to comply with the Act. The Plan of Operation shall require that all loans are for economic development purposes; that the applicant can demonstrate, based upon credit evaluation, that the loan can be repaid; and that the loan is unobtainable from the normal sources as evidenced by letters of rejection, if deemed necessary.

The Plan of Operation shall include the following: (a) Method of administering the program and authority to approve loans--Council, Loan Committee or Credit Manager; (b) Eligibility requirement and types of loans to be made as provided in 1.4 of this Supplement; (c) Terms and interest rates (however, the interest rate shall not be less than the rate the organization pays on its loan(s) from the United States); (d) Loan servicing and collection procedures including handling of defaults which shall be covered in a special section of the plan; and (e) Any special conditions in making loans. See Illustration 6, which should be used only as a guide in developing a Plan of Operation.

(4) Investment in Other Organizations. Tribes may receive loans from the Revolving Fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation shall be accompanied by (1) audited balance sheets and operating statements of the other organization for the immediate three preceding years; (2) annual pro forma operating statements reflecting the results of operations for a three-year period after injection of the additional funds and showing repayment ability if the funds are advanced as a loan or a conditional or temporary investment; (3) names of owners, or if a corporation and stock has been issued, names of major stockholders; (4) a copy of the articles of incorporation and bylaws, if incorporated; (5) names of members of the board of directors and officers with resume of education and experience, and the number of shares of stock owned by each in the corporation; (6) purpose for which loan or investment will be used; and (7) if for manufacturing, selling, or providing services, a market and capacity report will



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(1) Business Enterprise. Ordinarily such assets of the enterprise available for security shall be pledged as security for the loan. Care shall be taken to make sure the enterprise has the authority to pledge the security, that the tribe has transferred its interest in the assets over to the enterprise, and said assets are not pledged as collateral to some other lender. In cases where it is necessary to pledge the building or land as security, the enterprise shall obtain a business or agricultural lease on the land. The lease shall be of a term sufficient to amortize the loan and contain authority to mortgage and assign the leasehold interests to the lender as security for the loan. The applicant shall list the collateral to be offered as security showing the type, age, and original acquisition price. Credit staff shall inspect the security offered and assign a reasonable value. If in doubt as to the value of the security, the Bureau may require the security to be appraised.

Securing documents shall be filed or recorded in accordance with applicable state or Federal laws including compliance with the requirements of the Uniform Commercial Code except those customarily filed in Bureau of Indian Affairs offices. If the enterprise operation does not appear to have enough security to properly protect the loan, the Bureau may require the tribe to pledge additional security in the manner of a specific assignment.

(2) Relending. Loans for relending shall contain a provision that all loans made by the tribe shall be assigned to the United States as security. Here again, it may be advisable to obtain additional security in the manner of a specific assignment of income.

J. Exhibit I. Exceptions.

K. Exhibit J. Compliance with Other Federal Laws and Regulations.

L. Exhibit K. Other. Include here other exhibits which may be necessary to accurately evaluate the application, e.g., a management contract for a tribal owned enterprise requesting a loan from the Revolving Fund. Illustration 10 of this Supplement is a sample to be considered in developing a contract for management and operation of an enterprise.

3.4 Preparation and Execution. The original and three copies of all applications shall be prepared, executed by the applicant, and submitted to the Agency Superintendent. The Superintendent shall make certain that the application of an Indian organization has been properly executed in accordance with a written resolution (see Illustration 2 through 4), enacted by the authorized governing body which authorizes the applicant to obtain the requested loan. Copies of the minutes of the meeting at which the governing body enacted the resolution shall not be a part of the application but will be available for Bureau inspection.

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3.5 Approval or Disapproval of Loan Applications. Applications for loans from the United States will be approved by the issuance of a Commitment Order, Form 5-4707. On applications for loans from relending organizations, loans may be approved or disapproved by clearly stating the action on the appropriate part of the application. Regardless of who the lender is, the approving officer must list any conditions of approval and cite the authority to act on the application. All loans must be approved subject to availability of funds. When a Superintendent and/or Area Director does not have authority to act on the application, specific recommendation for approval or disapproval action will be made on the application before forwarding to the next higher authority. The following officials, subject to limitations, have been authorized to approve or disapprove applications for loans and modifications of loans. However, such authorities may not be exercised when acting on loans made by relending organizations if they are in conflict with provisions of the Declaration of Policy and Plan of Operation of the particular lender. For specific authority refer to 10 BIAM.

Loans, or modifications to loans, made to individuals, partnerships, or closely held corporations may not be approved where the borrower's total indebtedness to the lender will exceed \$100,000. For purposes of this limitation, "closely held corporations" shall mean corporations with ten or fewer stockholders and corporations with total paid-in capital of less than \$20,000. Limitations in this section apply to loans made by the United States and to loans made by relending organizations using funds borrowed from the United States.

A. Superintendent. The Agency Superintendent may approve or disapprove loans and modifications of loans in amounts authorized in area redelegation orders.

B. Area Director. The Area Director may approve or disapprove loans and modifications of loans in accordance with limitations authorized in redelegation orders from the Commissioner.

C. Commissioner. The Commissioner may approve or disapprove all loans and modifications above those redelegated to Area Directors. The Commissioner may also act on any application within the limitations of authority redelegated to Area Directors.

3.6 Preparation of Commitment Order, Form 5-4707. Funds will not be committed to cover long term future needs for financing relending organizations, tribal enterprises, or other tribal projects. Commitments to advance funds from the Revolving Fund, at a future time, will be restricted



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

47 BIAM Supp. 2, Release 3

MEMORANDUM

OCT 15 1975

To: Holders of 47 BIAM  
From: Commissioner of Indian Affairs  
Subject: Revision of 47 BIAM Supplement 1 and 2

The transmitted material combines procedural instructions of both Supplements 1 and 2 into a revised Supplement 2 and incorporates applicable changes required by the Indian Financing Act of 1974. The basic parts of 47 BIAM, other supplements and table of contents, are in the process of being rewritten and will be transmitted when the revisions have been completed and approved.

  
Commissioner of Indian Affairs

Filing Instructions:

(a) Remove superseded material:

47 BIAM Supplement No. 1, dated 8/1/73,  
0.0 through 2.1T and 6 Illustrations (46 Sheets)

47 BIAM Supplement No. 2, dated 9/5/72,  
0.0 through 3.13 and 3 Illustrations (54 Sheets)

(b) Insert new material submitted:

47 BIAM Supplement 2, 0 through 6.3C  
and 11 Illustrations ( Sheets)

(c) Pen-and-ink changes:

None



Save Energy and You Serve America!

*Complete*

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1. DIRECT LOANS TO TRIBES, INDIAN ORGANIZATIONS AND  
INDIVIDUALS AND LOANS BY RELENDING ORGANIZATIONS TO MEMBERS

1.1 Purpose. The purpose of this section is to prescribe terms and conditions of loans by the United States from the Revolving Fund and by Indian organizations (regardless of whether U.S. revolving or tribal funds are used) to individuals and partnerships, including loans for education, and financing of economic enterprises and organizations. All financing of enterprises must be in accordance with authority contained in the constitution and bylaws, or charter, or other organization papers of the organization.

1.2 Eligible Applicants. The following are eligible to borrow funds from the Indian revolving loan fund:

A. Indian Tribes. The governing body of those Indian tribes which have been Federally recognized as being eligible for services from the Bureau of Indian Affairs is eligible to borrow from the United States revolving loan fund. Tribes with funds available, Treasury or other, shall utilize such funds to the extent possible before receiving a loan from the United States.

B. Indian Organizations. An Indian organization consisting of three or more Indians having a form of organization which is satisfactory to the Commissioner is an eligible applicant. Indian organizations include any entity which, for purposes of the Act, has been established or recognized by the governing body of an Indian Tribe which is Federally recognized as being eligible for services from the Bureau of Indian Affairs.

C. Individuals and Partnerships. Individual Indians who are members of tribes which are not making loans to its members and are not members of or eligible for membership in an organization which is making loans to its members are eligible for direct loans. Partnerships, organized under formalized agreements, providing that the enterprise is owned 51 percent or more by eligible Indians or tribes, are eligible for direct loans.

1.3 Purpose of Loan. With the exception of loans made by a relending organization under provisions of 3.12B of this Supplement, loans, whether made directly by the United States or through a tribally recognized relending organization, may be made only for legal purposes which will have a direct economic benefit to a tribe or to its members residing on a reservation or for economic development of a reservation and its resources. Such loans include:



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A. Education. Loans may be made to individual Indians for educational purposes.

B. Homes. Loans may be made to purchase, construct, remodel, maintain, or repair homes on an Indian reservation, including trailer homes, to be occupied by the borrower.

C. Agriculture. Loans may be made to acquire inventory, livestock, equipment and operating capital needed to develop and operate all types of farming or other agricultural activities, which will contribute directly to the economy of the reservation.

D. Business or Commercial Enterprises. Loans may be made to business or commercial enterprises only when the plan of operation provides that the enterprise will be conducted on a cash basis or, where the nature of the business requires the use of credit, receivable and payable accounts will be controlled in accordance with sound business principles.

E. Relending or Investments. Loans may be made to enable Indian organizations to make loans to its members or to make loans to or investments in non-Indian organizations, provided, that not more than 50% of any such loan may be used for this purpose.

F. Purchase of Land. Loans may be made to purchase land or interest in land located within or outside the boundaries of an Indian reservation, when to be used directly by an applicant, residing on a reservation, in the direct operation of his economic operation. Loans may not be made to acquire land exclusively or substantially for holding, investment or speculative purposes.

1.4 Number of Loans. Not more than one loan agreement may be in effect with a particular individual (including spouse) at any time, unless an exception in each specific case is authorized by the Area Director, in writing, copy of which shall be attached to or be made a part of the loan agreement. The Area Director may not, however, authorize more than two loan agreements to be in effect with a particular individual at any time. Justification for more than one loan shall be the result of changed economic conditions, natural disaster, or conditions beyond management's control. Exceptions may be authorized by the Commissioner. All indebtedness of a cooperative or corporation shall be contained in one loan agreement, unless otherwise specifically authorized by the Commissioner. In considering the number of loan agreements in effect with a particular borrower, educational loans and short-term loans need not be considered.

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1.5 Additional Loans to Organizations. 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. This procedure requires that the old loan also be modified to authorize the transfer. Such transfers will provide for the same repayment rates called for in the original loan.

A sample request for modification to permit transfer of funds from one contract to another is included in this Supplement as Illustration 3. This will require adaption to meet the requirements of particular organizations and specific situations, and is furnished as a guide only.

1.6 Loan Modifications. In lieu of submitting applications for new loans, modifications of loan agreement contracts may be requested for any legitimate purpose, i.e., increase in the amount of the loan; change in repayment terms; extension of maturity dates; change in an operating plan, etc. An application for modification should originate with the borrower, and the same procedure should be followed as in the case of the original application. The same number of copies is required as of the original agreement.

If an organization is indebted under more than one loan agreement and needs additional funds it is ordinarily desirable to consolidate the indebtedness and increase the amount of the loan by modification. Loans to encourage industry or loans to permit an organization to invest in a particular enterprise requiring long term financing and requiring annual operating loans should not be consolidated, however. Illustration 4 of this Supplement is a sample request for modification to combine an organization's indebtedness under more than one loan contract. Illustration 5 shows how to request an increase in the amount of a loan and also combine an organization's indebtedness into one loan agreement contract. Either illustration will require adaption to meet the requirements of particular organizations and specific situations and are provided as guides only.

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 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.

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No form is prescribed for requests for modifications. Requests necessarily must be adapted to the particular need involved. It is essential to show:

Number. CF agreements or contract number.

Payments. Itemized list of payments scheduled on original agreements, payments made, both principal and interest; date to which interest has been paid; and accrued but unpaid interest.

Changes. Changes desired in plans and repayment dates and any other pertinent data.

1.7 Justification of Loan. No loan shall be made until it has been established to the satisfaction of the approving official that:

- A. The loan will promote the economic development of the applicant.
- B. There is a reasonable prospect of repayment of the loan in the judgment of the approving official.
- C. The applicant has satisfactorily established that financing from other sources on reasonable terms and conditions including loans guaranteed or insured by the Bureau of Indian Affairs are not obtainable.

If local lending conditions and/or the information in an application for a loan indicates a probability that an applicant will be able to obtain a loan from other sources, the Commissioner will require the applicant to furnish letters from two customary lenders in the area showing they are unable or unwilling to make a loan to the applicant, on reasonable terms and conditions, for the amount and purposes for which the applicant has applied for a United States direct loan before a direct loan may be approved for the applicant.

D. Applicants have or can be provided competent management and technical assistance needed to successfully operate the enterprise being funded.

1.8 Loan Provisions.

A. Maturity. Maturity dates of loans by the United States will be determined by the purpose for which funds are to be used, security, and repayment capability, except that 30 years shall be the maximum. See 4.3F(6) of this Supplement for maturity of educational loans.

(1) Loans to Organizations for Economic Enterprises.

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(a) Land, buildings, and permanent fixtures may be scheduled for maturity not exceeding 30 years.

(b) Loan funds used for capital items not listed above, including machinery, equipment, livestock, and motor vehicles, shall be scheduled for maturity, not to exceed the lesser of, 10 years or the remaining useful life of the capital item at date of purchase.

(c) Operating expense loans should be repaid at the end of the operating year, but not to exceed two years.

(2) Relending. Preferably loans should be scheduled to mature over not more than 30 years. When justified, approving officials may defer principal payments not to exceed the first three years of the scheduled maturity.

(3) Loans to Individuals. (See section 4.3.)

B. Interest. Interest charged on advances made prior to April 12, 1974, shall be at the rate shown on the promissory note and shall remain in effect until the loan is paid in full, refinanced, or modified to extend the repayment terms. The current interest rate shall be used when loans are refinanced or modified to extend the repayment terms. Unless specifically authorized by a loan contract approved prior to April 12, 1974, all advances on loans made thereafter, by the United States, shall be at a rate determined by the Secretary of the Treasury in accordance with Section 104, Title I of the Indian Financing Act of 1974 ( P.L. 93-262, 88 Stat. 77). The interest rate shall be determined monthly and shall be effective on advances made on loans during the current calendar month. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s). Organizations that borrow funds for relending should not charge its borrowers less than the rate the organization pays the United States. The rate thus established should be increased by a percentage adequate to cover losses on loans and administrative expenses of the program.

(1) Educational loans may provide for waiver of interest accruals while the borrower is in school or in the armed forces of the United States. For special instructions for waiving interest accruals and reinstating interest on educational loans see 4.3F(5) of this Supplement. If a relending organization adopts these same procedures, and is indebted for a loan from the United States, interest will not be charged by the United States on the amount the organization has outstanding in educational loans during the period the organization is not charging its borrowers interest.

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(2) Amounts for payment of interest on old loans may be included in new loans. However, a borrower ordinarily should be required, to pay, from his own funds, interest accrued on all principal indebtedness to be included in a new loan. Unless borrowers can at least pay interest on their old loans, refinancing may not be feasible.

(3) Loans to be used in obtaining expert assistance for preparation and trial of Indian claims may be made at an interest rate of 5-1/2 percent to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of Section 1 of the Act of November 4, 1963 (P.L. 88-168, 77 Stat. 301; 25 U.S.C. 70n-1), as amended by the Act of September 19, 1966 (P.L. 89-592, 80 Stat. 814), and Section 2 of the Act of May 24, 1973 (P.L. 93-37, 87 Stat. 73).

C. Security. United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(1) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 121.34 and the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the loan in case of default. Land purchased by a tribe with the proceeds of a loan from the revolving loan fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe may not be mortgaged as security for a loan.

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(2) Mortgages of leasehold interests in land held in trust or restricted status by an individual Indian, may be taken for the purpose of borrowing capital for the development and improvement of the leased premises when permitted in the lease or lease modification agreement. Such mortgages must be approved by the lessor and Commissioner. (70 Stat. 62 (25 U.S.C. 483a)).

(3) Individuals may give assignments of income from trust property as security for loans. Tribes may give assignments of trust income as security for loans provided that the assignment shall be specific as to the source(s) of income being assigned. All assignments of trust income require approval by the Commissioner before becoming effective.

(4) Chattels may be given as security for a loan. A mortgage on chattels, the title to which is known to be in trust, requires Commissioner approval. Non-trust chattels may be mortgaged without approval of any Federal official.

(5) Crops grown on lands held in trust or restricted status for the benefit of an individual Indian may be given as security for a loan when approved by the Commissioner. Crops grown on leased, trust or restricted land may be given as security for a loan when permitted by the provisions of a lease or when the owner gives written consent. Approval of the lien document by the Commissioner is required. Crops grown on trust or restricted land held by a tribe which has been assigned to an individual for use may be given as security for a loan, provided the terms of the assignment permit the assignee to give the crops as security for a loan or the tribe's governing body specifically gives consent. The lien document requires Commissioner approval. Crops grown on non-trust or non-restricted land may be mortgaged without the approval of any Federal official.

(6) Title to any personal property purchased with a loan shall be taken in the name of the purchaser and mortgaged to secure the loan unless the loan is otherwise adequately secured. Tribes must adhere to the provisions of their constitutions and bylaws, corporate charters, or other organizational documents when mortgaging tribal property and assigning trust income as security for loans.

(7) Relending organizations receiving a loan from the United States for relending shall be required to assign to the United States as security for the loan all securities acquired in connection with loans made to its members, sub-organizations, or associations from such

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funds, unless the Commissioner determines that repayment of the loan to the United States is otherwise reasonably assured. Funds advanced to finance a tribal economic enterprise shall be secured by an assignment of net income and net assets of the economic enterprise, unless the Commissioner determines that it is not feasible to require an assignment or that repayment of the loan to the United States is otherwise reasonably assured. The approving official may require additional security from the tribe in the form of a specific assignment of income.

(8) Securing documents or financing statements shall be filed or recorded in accordance with applicable state or Federal laws except for those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the customs house designated as the home port of the vessel as shown on the marine documents.

1.9 Manner of Acquiring Title with Revolving Loan Funds. The title to any land purchased by a tribe or by an individual Indian with revolving loan funds may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control or use. Title to all personal property purchased with revolving loan funds shall be taken in the name of the borrowers.

1.10 Cancellation, Adjustment, Compromise or Reduction of Loan. In accordance with the procedures prescribed by the Act of July 1, 1932 (47 Stat. 564, 25 U.S.C. § 386(a)), the Secretary may cancel, adjust, compromise, or reduce the amount of any loan heretofore or hereafter made from the revolving loan fund established by the Indian Financing Act of 1974, or any of its predecessor constituent funds, if the Secretary determines that:

- A. The loan is uncollectible in whole or in part; or,
- B. The loan is collectible only at an unreasonable cost; or,
- C. Such action would be in the best interest of the United States.

The Secretary may also adjust, compromise, subordinate or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken to secure such loans.

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1.11 Compliance with Other Federal Laws and Regulations. Approving officials will be responsible for compliance with other Federal laws and regulations affecting loans and modifications made pursuant to this Supplement. Compliance with the following listed laws and regulations is required, where applicable:

A. Truth-in-Lending - Consumer Cost Disclosure - Federal Reserve Regulation Z (12 CFR 226). Regulation Z (12 CFR 226) issued by the Board of Governors of the Federal Reserve System will affect loans to individual Indians and Indian-owned economic enterprises. Credit transactions to which the regulation applies must be conducted in accordance with the regulations. Penalties are provided for non-compliance.

B. Fair Credit Reporting Act. Title VI of the Consumer Credit Protection Act (P.L. 91-508, 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. The Act provides that:

(1) Disclosure must be made to the borrower when financing is denied on the basis of information obtained from a third party.

(2) 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.

C. Environmental and Flood Disaster Acts. The funds on an approved United States direct loan and requests for modification thereof and loans made by an organization through a relending program, will not be advanced until there is assurance of compliance with the applicable provisions of the Flood Disaster Protection Act of 1973 (P.L. 92-234, 87 Stat. 975), and the National Environmental Policy Act of 1969 (P.L. 91-190), 42 U.S.C. 4321 and Executive Order 11514. The body authorized to act on loans for an organization conducting a relending program using revolving loan funds will when considering loan applications and modifications of loans make necessary inquiries and/or investigations to determine the applicability of any of the provisions of these Acts to applications and modifications of loans under consideration for action and take or require appropriate action to assure the required compliance. In the event of insufficient assurance of compliance on United States direct loans or loans made by an organization conducting a relending program, including modifications, the Commissioner may refuse



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to authorize the advance of the loan funds until assurance of compliance has been determined. Applicants for loans from the revolving fund, whether United States direct or from a relending program, will be informed of the requirements of these Acts when making applications for a loan or requesting modification of a loan which might require compliance.

D. Preservation of Historical and Archaeological Data. On United States direct loans from the revolving loan fund and modifications thereof which provide funds for financing which will involve excavations, road or street construction, land development or the disturbance of land on known or reported historical or archaeological sites, the Commissioner will take or require appropriate action to assure compliance with the 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). On loans made by an organization conducting a relending program the body authorized to act on loan applications and modifications of loans will at time of taking action or acceptance of an application or request for modification, inform the applicant of the applicability of any provisions of this Act to the loan and advise the Commissioner of compliance required, if any, and who will make the necessary arrangements to assure compliance.

1.12 Assignment. Borrowers from organizations may not assign their loan agreements, or any interest therein, to third parties without the consent of the governing bodies of the organizations and the Area Director. Borrowers from the United States likewise may not make such assignments without the consent of the Area Director.

1.13 Charters and Amendments Thereto. Credit and other cooperative associations in Oklahoma, except those operating in Osage County, may receive charters of incorporation from the Commissioner as prescribed in the Act of June 26, 1936 (25 U.S.C. 504). 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, and any amendments thereto, is required where cooperative associations are indebted to or are applying for loans from the United States, corporations, tribes or bands.

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2. MANAGEMENT AND TECHNICAL ASSISTANCE

2.1 General. Concurrent with the approval of a U. S. direct loan to finance an economic enterprise, the Commissioner will assure that competent management and technical assistance is available to the applicant consistent with the applicant's knowledge and experience and the nature and complexity of the economic enterprise being financed. 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. 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 Policy and Scope. Concurrent with the making 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. The purpose is to assist all applicants to the extent mutually agreed to assure success in any business venture and to assure orderly repayment of loan obligations.

2.3 Applicability. In each instance where an applicant is to receive a U. S. direct loan pursuant to 25 CFR 91, a determination must be made of the applicant's need for management and technical assistance.

2.4 Determination of Need. When funds are requested to finance an economic enterprise the application will include an evaluation of the applicant's need for management and technical assistance, and will show who will provide such assistance. The Agency Superintendent will develop a program with the applicant to see that the applicant is provided such needed assistance. Requests for Bureau assistance will be made on Form 5-4745, Request For Management and/or Technical Assistance (See Illustration No. 1).

2.5 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

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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.

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).

#### 2.6 Restrictions.

A. Funds shall not be used to pay a fee charged for the "packaging" of a loan application. Paid assistance under Title V of Public Law 93-262, Indian Financing Act of 1974, can only be concurrent with or subsequent to the approval of a loan.

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.

2.7 Assistance Provided by the Bureau of Indian Affairs. The Bureau of Indian Affairs officer assisting an applicant for a U.S. Direct 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:

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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 will provide:

(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 will circulate through Real Property Management employees before the Credit Officer makes any recommendations thereon. This procedure is devised 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 will clear 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 purchase, remodeling, and construction of buildings.

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2.8 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 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 made under this program.

(3) Minority Vendors Program. This program identifies minority 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.

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(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.

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, provide 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.

2.9 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.

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2.10 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)
- 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) - Effective July 15, 1975, both Score and ACE were transferred back to the SBA from ACTION by Executive Order 11871, as published in the Federal Register on July 24, 1975. However, the catalog still shows these programs under 72.006.

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3. RECEIVING AND PROCESSING, U. S. DIRECT LOANS TO TRIBES  
AND ORGANIZATIONS AND LOANS BY ORGANIZATIONS TO MEMBERS

3.1 Purpose. The following provisions apply to receiving, processing of applications, and approval or disapproval of loans by the United States to tribes and Indian organizations and to loans made by relending organizations to members.

3.2 Form of Application. Tribes and Indian organizations applying for loans from the Indian revolving loan fund shall submit their application on Form 5-4737, Application of Indian Tribe, Credit Association, or Other Organization for Loan of Revolving Funds from the United States.

Requests for modification of existing loan agreements will vary depending on the purpose of the request. They must, however, be in writing and contain adequate justification. Illustrations 3 through 4 of this Supplement are examples to be used as guidelines in the preparation of specific types of requests. Requests to modify loans made to tribes, tribal enterprises, and to relending organizations must also be supported by a resolution adopted by the authorized governing body of such tribe, enterprise or relending organization requesting such modification. Illustration 2 is a sample resolution authorizing a request for modification of an enterprise application.

3.3 Preparation of Application and Exhibit. The application form must be fully completed including the proper preparation of exhibits establishing the applicant's eligibility and the intended use of the fund. The justification for making the loan and the amount thereof together with other justifying factors must also be established. All loan applications must as a minimum provide the following:

A. Name of Applicant. The correct name of the applicant must be given. Applications of Indian organizations must set forth the name of the organization as it is set forth in its charter or other organizational papers or as recognized by the Commissioner.

B. Exhibit A. Amount, Purpose and Term of Loan.

(1) Operation of Project. The project will be supported by a narrative describing the project, the nature of the business of service (industrial or commercial), economic data showing feasibility of the project method of operating and management and development cost.

(2) Development Cost. These costs include, but are not limited to those for acquisition, construction, repair or enlargement



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of the proposed facility; purchase of buildings, machinery, equipment, land, easements, rights-of-ways; payments of appraisal, engineering, and legal fees; administrative costs; and payment of start-up operating costs.

(3) Relending. Applications for loans to establish a relending program will be supported by a Declaration of Policy and Plan of Operation adopted by the organization and approved by the Commissioner. Where a tribe is conducting a relending program, either with borrowed funds or tribal funds, the current Declaration of Policy and Plan of Operation may need to be amended to comply with the Act. The Plan of Operation shall require that all loans are for economic development purposes; that the applicant can demonstrate, based upon credit evaluation, that he can repay the loan; and that he is unable to obtain the loan from the normal sources as evidenced by letters of rejection, if deemed necessary.

The Plan of Operation shall include the following: (a) Method of administering program and authority to approve loans--Council, Loan Committee or Credit Manager; (b) Eligibility requirement and types of loans to be made. This must comply with list of eligible loans as provided in 1.3 of this Supplement; (c) Terms and interest rates; however, the interest rate shall not be less than the rate the organization pays on its loan(s) from the United States; (d) Loan servicing and collection procedures including handling of defaults which shall be covered in a special section of the plan; (e) Any special conditions in making loans. See Illustration 6, which should be used only as a guide in developing a Plan of Operation.

(4) Investment in other Organizations. Tribes may receive loans from the revolving loan fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation will be accompanied by (1) audited balance sheets and operating statements of the other organization for the immediate three preceding years; (2) annual pro forma operating statements reflecting the results of operations for a three-year period after injection of the additional funds and showing repayment ability if the funds are advanced as a loan or a conditional or temporary investment; (3) names of owners or if a corporation and stock has been issued, names of major stockholders; (4) a copy of the articles of incorporation and bylaws, if incorporated; (5) names of members of the board of directors and officers with resume of education and experience, and the number of shares of stock owned by each in the corporation; (6) purpose for which loan or investment will be used; and (7) if for manufacturing, selling or providing services, a market and capacity report will

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be prepared. If a proposed operation is to be established, the information in (2) through (7) will be furnished. The Commissioner may require additional information on the other organization, if needed, to adequately evaluate the benefits which the Indian organization will receive and the economic benefits which will accrue to a reservation. If the loan is for relending to other organizations, the application must show what security is being offered. If the loan is for investment in other organizations, the equity to be obtained must be shown. Copies of all agreements, contracts or other documents to be executed by the Indian organization and the other organization in connection with a loan or investment are to be submitted with the application for a loan and will require Commissioner approval prior to disbursement of loan funds to the Indian organization unless an exception is approved by the Commissioner.

(5) Terms. The organization officials will include in this exhibit a suggested repayment schedule for the loan requested.

C. Exhibit B. Organizational Papers. A statement containing the following information shall be included: (1) Nature and form of applicant's organization; (2) type of document under which applicant was organized; (3) date upon which Commissioner formally approved the applicant's organization; and (4) any amendments or modifications of the organization, including those which may be pending. A copy of such organizational papers need not be included as a part of the application unless the organizational documents have not been approved previously by the Commissioner.

D. Exhibit C. Officers. In this exhibit set forth the names; titles and addresses of the applicant's officers; the date and manner of their election; and the term of office for each officer.

E. Exhibit D. Authorization. Authority to borrow and limitations of amount and purposes for which a governing body may obligate the Tribe are usually contained in the constitution and bylaws or in the charter in the case of incorporated tribes. If authority given to the governing body is insufficient or non-existent a general council meeting of eligible voters should be held and the authority obtained or the appropriate document should be modified before an application may be submitted.

Include in exhibit D a written resolution enacted by the applicant's governing body authorizing the applicant to obtain the requested loan. The resolution must be carefully worded to clearly evidence the Indian organization's authority to borrow the requested funds for the stated

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purpose. The resolution shall authorize designated officers to execute the application and all other documents necessary to evidence the loan and the applicant's obligation to repay such loan. The resolution shall authorize such officer to pledge specified property belonging to the applicant and to execute the necessary documents on behalf of the applicant to provide the lender with a valid lien or security interest in such property. Illustrations 7 and 8 provide guidelines for writing a resolution to authorize filing an application for loan. Illustration 8 provides guidelines for developing a resolution to accompany a request to modify an existing loan.

F. Exhibit E. Financial Statements. A current budget, balance sheet and profit and loss statement will be included and shall consist of the applicant's balance sheet at the close of the organization's last fiscal year or at such later date as a balance sheet may be available. If there are any special factors which may alter the present or future valuation of any asset shown on the application, these factors shall be carefully noted on the attached statement. An audit statement may be used if available. If prior to the date of the application, the applicant has been operating an economic enterprise for which loan funds are being requested, operating budgets, profit and loss statement and balance sheets covering the last two fiscal years of operation shall be submitted with the application. Pro forma budgets, balance sheets and operating statements including cash flow statements shall be included showing the projected results of two years operation after loan funds would be advanced.

G. Exhibit F. Loan Justification. A detailed statement justifying the making of the particular request will be included as Exhibit F. The justification must establish the need for the requested loan, the amount of the loan, the manner in which the loan will promote the economic development of individual Indians or Indian organizations; that there is a reasonable prospect that the loan will be repaid; and that the applicant has been unable to obtain financing from other sources on reasonable terms and conditions. A resume of the applicant's management experience will be included in this exhibit.

H. Exhibit G. Procedures for Handling the Loan. In this exhibit include specific conditions on how the loan funds will be handled including the use of Deposit Agreements, Form 5-4712 or Form 5-4713.

I. Exhibit H. Security. The purpose of the loan and the related documents will dictate the type of security required. For examples of various types of securing assignments see Illustration 9 of this Supplement.

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(1) Business Enterprises. Ordinarily such assets of the enterprise available for security shall be pledged as security for the loan. Care shall be taken to make sure the enterprise has the authority to pledge the security, that the tribe has transferred its interest in the assets over to the enterprise, and said assets are not pledged as collateral to some other lender. In cases where it is necessary to pledge the building or land as security, the enterprise should obtain a business or agricultural lease on the land. The lease should be of a term long enough and contain authority to mortgage and assign the leasehold interests to the lender as security for the loan. The applicant will list the collateral to be offered as security showing the type, age, and original acquisition price. Credit staff shall inspect the security offered and assign a reasonable value. If in doubt as to the value of the security, the Bureau may require the security to be appraised.

Securing documents shall be filed or recorded in accordance with applicable state or Federal laws including compliance with the requirements of the Uniform Commercial Code except those customarily filed in Bureau of Indian Affairs offices. If the enterprise operation does not appear to have enough security to properly protect the loan, the Bureau may require the tribe to pledge additional security in the manner of a specific assignment.

(2) Relending. Loans for relending shall contain a provision that all loans made by the tribe will be assigned to the United States as security. Here again, it may be advisable to obtain additional security in the manner of a specific assignment of income.

J. Exhibit I. Exceptions.

K. Exhibit J. Compliance with Other Federal Laws and Regulations.

L. Exhibit K. Other. Include here other exhibits which may be necessary to accurately evaluate the application, i.e., a management contract for a tribal owned enterprise requesting a loan from the revolving fund. Illustration 10 of this Supplement is a sample to be considered in developing a contract for management and operation of an enterprise.

3.4 Preparation and Execution. The original and three copies of all applications shall be prepared, executed by the applicant, and submitted to the Agency Superintendent. The Superintendent shall make certain that the application of an Indian organization has been properly executed in accordance with a written resolution (See Illustrations 2 through 4), enacted by the authorized governing body, which authorizes the applicant

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to obtain the requested loan. Copies of the minutes of the meeting at which the governing body enacted the resolution shall not be a part of the application but will be available for Bureau inspection.

3.5 Approval or Disapproval of Loan Applications. Applications for loans from the United States will be approved by the issuance of a commitment order Form 5-4707, Commitment Order. On applications for loans from relending organizations, loans may be approved or disapproved by clearly stating the action on the appropriate part of the application. Regardless of who is the lender the approving officer must list, above his signature, any conditions of approval and cite his authority to act on the application. All loans must be approved subject to availability of funds. When a Superintendent and/or Area Director does not have authority to act on the application he will specifically recommend, on the application, approval or disapproval action before forwarding it to the next higher authority. The following officials, subject to limitations, have been authorized to approve or disapprove applications for loans and modifications of loans. However, such authorities may not be exercised, when acting on loans made by relending organizations, if they are in conflict with provisions of the Declaration of Policy and Plan of Operation of the particular lender. For specific authority refer to 10 BIAM.

Loans, or modifications of loans, made to individuals by the United States or by relending organizations using funds borrowed from the United States may not be approved where the borrower's total indebtedness to the lender will exceed \$100,000.

A. Superintendent. The Agency Superintendent may approve or disapprove loans and modifications of loans in amounts authorized in area redelegation orders.

B. Area Director. The Area Director may approve or disapprove loans and modifications in accordance with limitations authorized in redelegation orders from the Commissioner.

C. Commissioner. The Commissioner may approve or disapprove all loans and modifications above those redelegated to Area Directors. The Commissioner may also act on any application within the limitations of authority redelegated to Area Directors.

3.6 Preparation of Commitment Order, Form 5-4707. Funds will not be committed to cover long term future needs for financing relending organizations, tribal enterprises, or other tribal projects. Commitments to advance funds from the revolving fund, at a future time, will be restricted

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to cases where the future advance will be essential to the beneficial use of the first advance. Section 2 of Form 5-4737, Application of Indian Tribe, Credit Association, Cooperative Association or Other Organization for Loan of Revolving Funds from the United States, limits the term of a commitment to two years. Only under extenuating circumstances, beyond the control of the borrower, may an extension of the two year limit be justified and approved. A commitment may be extended only once and only for a one year period. Any remaining unobligated balance of the commitment will be automatically cancelled at the end of the year.

Commitment orders will not be used to modify a loan. An "Action of Commissioner" or "Action of Area Director" will be issued. Commitment orders will be issued subject to availability of funds and will state the action taken, authority under which action is taken and amount of the approval. It will also clearly set forth all conditions of approval and special loan closing instructions not otherwise a part of the application, including:

- A. Manner of handling funds, if different from application.
- B. Execution of promissory note, repayment schedule, interest rate and instructions on dating.
- C. Execution of security document, including a schedule of collateral to be taken, insurance requirements, assignment of leases, real estate mortgages, assignment of specific income, etc.
- D. Reporting requirements, etc.
- E. The approving official when applicable, shall authorize land to be taken in trust as an exception to Item 4 of the application (Form 5-4737).

3.7 Acceptance of Conditions. Applicants will have 60 days to accept the conditions of approval. If the conditions are not accepted within this time the commitment will be automatically cancelled.

3.8 Loan Closing. Upon approval of the loan, all documents will be returned to the loan servicing Agency for a formal loan closing session with the borrower. All parties authorized to act for the borrower, plus the manager, board of directors, or committeemen who have responsibility for administration of the loan, shall attend. The Agency Superintendent or Agency Credit Officer shall explain the conditions of approving the loan to the borrowers. He shall also explain all securing documents, accountability for security, manner of handling the loan and repayment of the loan.

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3.9 Contract and CF (Credit Fund) Numbers. Contract numbers will be assigned only to loans made by the United States. CF numbers will be assigned both to loans made by the United States and loans made by organizations. Contract and CF numbers will be assigned when commitment orders become effective. CF numbers will run consecutively. Where more than one organization is making loans under the same Agency, each shall have a separate series of CF numbers. The same numbers will not be used twice, except that cancelled CF numbers assigned to particular loans may be used for subsequent loans. An organization should be able to tell from its last CF number how many loans it has made. Likewise, the Superintendent should be able to tell from the last CF number used on loans by the United States, how many direct loans have been made. The same series of CF numbers shall be used for educational loans and loans to enterprises, as on loans for other purposes.

A contract number will be assigned to each loan made by the United States. Each modification of a loan agreement contract entered into by the United States 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 agreement contracts are modified pursuant to part 1.6 of this Supplement, it is advisable to identify the modification by a letter, i.e., "Modification A" and to identify subsequent modifications A-1, A-2, etc.

3.10 Request for Funds. Upon acceptance of all conditions of approval of a loan from the United States, Form SF-1034, Public Voucher for Purchases Other than Personal, shall be submitted to the Area Finance Office through Area Credit and Financing. The check shall be made payable to the borrower and mailed, in care of the Agency Superintendent. When the Superintendent receives the loan check, he shall have the authorized representatives sign the promissory note and securing document. The check shall be held pending filing of securing documents, except when items to be taken as security are to be purchased with loan funds, and then turned over to the borrower for use or deposited in a controlled bank or IIM account.

3.11 Distribution of Application and Related Documents. After the loan has been closed, the application and related documents shall be distributed as follows:

A. Loans by Relending Organizations.

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(1) Loan Application. (Form 5-4738, with attachments).

(a) Original shall be retained by the lender.

(b) Copies shall be furnished to the borrower and Agency Superintendent. Area Credit and Financing shall receive copies of applications acted on or recommended by the Area Director. Area Directors will have the option to require that copies of all other applications be furnished to him. Copies of applications approved by the Commissioner will be furnished to the Central Office, Division of Financial Assistance.

(2) Promissory Note. (Form 5-4743). Promissory notes, both originals and copies, shall be distributed in the same manner as the loan application. See above paragraph.

B. Loans by the United States.

(1) Loan Application. (Form 5-4737 with attachments).

(a) Original shall be retained by the Superintendent.

(b) Copies shall be furnished to the borrower, Area Credit and Financing, the appropriate Bureau Finance Office, and to the Central Office, Division of Financial Assistance.

(2) Promissory Note. (Form 5-4742). Promissory notes, both originals and copies, shall be distributed in the same manner as the loan application except that a copy of promissory note need not be furnished to the Bureau Finance Office.

(3) Commitment Order. (Form 5-4707). Commitment Orders, both originals and copies, shall be distributed in the same manner as loan applications. See B(1), (a) and (b) of this section.

(4) Modifications. Copies of approved modifications to existing loans shall be distributed in the same manner as the loan application. See B(1), (a) and (b) of this section.

After furnishing the borrower a copy, the Agency shall forward copies to Area Credit and Financing for distribution in the manner prescribed in this section.

Agency Superintendents are designated to be official custodians of loan records and shall be responsible for seeing that they are filed separately



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and retained in a place of safekeeping. Care should be exercised, to the extent possible, to provide safeguards against loss by fire, theft or mishap.

### 3.12 Tribal Funds.

A. Tribal trust funds may be advanced to tribes when authorized by Congress, requested by the governing body, and approved by the Commissioner for the establishment, operation or expansion of economic enterprises and for relending in accordance with this section and section 3.13. No interest shall be paid to the United States on such funds. The Commissioner may require the tribe to prepare a plan of operation for the enterprise and a plan establishing the policies and procedures for making loans to members from tribal funds.

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. However, the total of such loans may not exceed the total of tribal funds to the lending program. Interest may be waived on such loans. These loans, unless otherwise authorized by the Commissioner, shall be accounted for separately by the tribe and administered under a separate plan of operation from the plans governing housing, business, education and agricultural loans.

C. In order for individuals to be eligible for loans of tribal funds, they must be members of the tribe to which the funds belong.

D. Failure of a tribe to use tribal funds advanced under paragraph A of this section in accordance with the regulations and purposes for which requested shall be grounds for any 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 in the account of an economic enterprise or tribal relending program under the control of the tribe.
- (4) Withdraw any unobligated funds from the tribe and deposit the same in the Treasury.

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(5) Require that all repayments on loans made by the tribe be used to replace funds advanced to the tribe from the Treasury.

(6) In the case of tribal economic enterprises operated with tribal funds, liquidate or operate or arrange for the operation of the enterprise until all tribal trust funds advanced to the tribe have been replaced in the tribe's treasury account, 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.

3.13 Relending by Borrower.

A. A tribe or credit association may reloan funds lent to it by the United States with the approval of the Commissioner. The Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

B. 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 as security for such loans in accordance with 25 CFR 121.34 and the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Securing documents shall be filed or recorded in accordance with state law, except those customarily filed at a Bureau of Indian Affairs office.

C. Title to personal property purchased with loans received from relending organizations using revolving loan funds in its relending program shall be taken in the name of the borrower.

D. The term of a loan made by an organization conducting a relending program shall not extend beyond the maturity date of its loan from the United States, unless the organization has funds available from which to make scheduled repayment on its loan from the United States.

E. When an organization making loans to its membership from moneys borrowed from the United States rejects a loan application from an eligible member, the Commissioner may, in his discretion, make a direct loan from the revolving fund to the applicant if he determines that the rejection is unwarranted. In making this determination, the Commissioner will review in detail the reasons why the organization rejected the application; the soundness and feasibility of the applicant's proposal; and the applicant's repayment ability, industry and work habits.

3.14 Loans for Expert Assistance. Applications of organizations for loans for the purposes authorized by the Act of November 4, 1963 (77 Stat.

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301, 25 U.S.C. 70n-1), as amended, may be submitted pursuant to this section.

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 to be eligible for a loan for expert assistance. 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, Application of Indian Organization for a Loan from the United States to Procure Expert Assistance. The form shall be accompanied by a resolution of the governing body of the applicant as Exhibit A, and a justification for the loan as Exhibit B.

The justification shall include statements from the organization's attorney regarding the need for the loan. The application shall be accompanied by a statement signed by an authorized officer of the applicant certifying that the applicant does not have adequate funds available to obtain and pay for the expert assistance needed. The Superintendent and the Area Director will attest to the accuracy of the statement or point out any inaccuracies.

C. Approval. Applications will receive approval, in whole or in part, by issuance of a commitment order on Form 5-4707 by the Commissioner. Area Directors may not approve loans for expert assistance.

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. 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 the Area Director shall attest to the accuracy of the certification or point out any inaccuracies. The authorized official shall execute voucher Form 1034. A copy of the claim, submitted by the expert, shall accompany the request. Funds shall be deposited in a special IIM 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 IIM account to meet obligations under contracts for expert assistance approved by the Commissioner, under authority of section 4, Form 5-4706. In the case of

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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 Supplement 4.

H. Procedure, Central Office. Applications will be submitted to the Division of Financial Assistance for processing. They will be checked for adherence to regulations and instructions and be referred by memorandum to the Division of Tribal Government Services. The latter will prepare a memorandum to the Division of Financial Assistance with recommendations for approval or disapproval in whole or in part. Final processing will then be the responsibility of the Division of Financial Assistance, including reports to the Committee 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 Financial Assistance will include a separate section in its status reports on the revolving fund for loans for expert assistance showing the status of the fund, copy of which will be furnished to the Division of Tribal Government Services. Each request for allotment will go to the Division of Financial Assistance for approval prior to processing.

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

The Division of Tribal Government Services will advise the Division of Financial Assistance 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.

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4.1 Purpose. The following provisions apply to receiving, processing applications, and approval or disapproval of loans from the United States to individual Indians and partnerships.

4.2 Eligibility. Individual Indian means any person who is a member of any Indian Tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act (85 Stat. 688).

Loans may be made to individual Indians directly from the revolving fund only under a direct relending program which has been approved by the Commissioner. Approval of a direct program may be requested by Agency Superintendents only where a relending program is not being conducted by a tribe or credit association and where existing sources of financing are shown to be inadequate for development of the economy and resources of a reservation and its people.

Requests for approval of a direct revolving program will be accompanied by information reflecting: (1) total estimated financing needed by the reservation and its people, itemized by type and amount; (2) the sources of financing presently available, such as, banks, Farmers Home Administration, Small Business Administration, Production Credit Association, Federal Land Banks and others, and identify the extent to which the needs for the various types of financing are being met by these sources; and (3) an estimate of the amounts and types of financing to be furnished through the direct program. Unless an exception is specifically authorized by the Commissioner, requests will be accompanied by a plan of operation showing the purposes for which direct loans may be made and establishing procedures for processing applications and servicing loans.

A. General Requirements. Indian applicants are eligible for loans if they are members of tribes or Indian organizations, eligible for services from the Bureau of Indian Affairs, not conducting a relending program and are not members of, or eligible for membership in, a credit association. Loans may be made only when, in the judgment of the Secretary, there is reasonable prospect of repayment, and only to applicants who, in the opinion of the Commissioner, are unable to obtain financing from other sources on reasonable terms and conditions.

B. Individual Indians. Individual Indians who are members of tribes which are not making loans to its members and are not members of or eligible for membership in an organization which is making loans to its members are eligible for direct loans. Where the Commissioner determines

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a rejection of a loan application from a member of an organization making loans to its membership from moneys borrowed from the fund is unwarranted, he may make a loan to such individual from the fund.

C. Partnerships. Applications of partnerships shall be prepared in the same manner as applications for individuals. However, copies of the partnership agreements will be included as a part of the application.

D. Signature. Only eligible Indians may sign applications. Ineligible spouses, however, will be required to sign the promissory notes and securing documents. Applications of partnerships require the signatures of all partners.

E. Form of Application. Forms 5-4738, 5-4739, 5-4740 and 5-4741 are largely self-explanatory and are to be used for applications by individuals and partnerships.

4.3 Purpose and Maturity of Loans. All individual applications for agricultural, business, housing and land will be submitted on Form 5-4738 (Application for Loan), and supported by information statements relative to the particular loan involved.

A. Agricultural Loans. Loans shall be available for the purchase of livestock, poultry, farm equipment, land purchase and major improvements to the farm, and operating expenses. Loan applications will be accompanied by Informational Statement by Applicant, Form 5-4741, and if the request exceeds \$5,000, a Farm and Home Plan developed with the help of technical assistance available.

(1) Maturity. Consideration shall be given to the security offered and the repayment ability reflected by projected operating statements. Loans should be scheduled to mature at the earliest practical date but not to exceed 10 years.

(a) Operating Loans. Operating loans shall normally be scheduled for repayment at the end of the operating year but not to exceed two years.

(b) Equipment and Machinery. Loans for purchase of equipment and machinery shall be scheduled for maturity, not to exceed the lesser of 10 years or the remaining useful life of the item at the date of purchase.

(c) Livestock. Loans for purchase of livestock shall be scheduled for maturity within 10 years.

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(2) Security. Financing statements and security agreements shall be executed on crops, livestock and farm equipment. Bills of sale shall be filed in the borrower's loan folder. The approving official may require a real estate mortgage or mortgage of leasehold interest on any loan.

(3) Accounting for Security. The Credit Officer shall be responsible to see that all collateral offered as security shall be properly maintained and accounted for. Proceeds from the sale of basic security shall be applied on the loan or expended for security of equal value. Sale of calves, crops, etc., normally sold for income, may be sold subject to the money (check) received being made payable to the seller and the secured party (United States).

(4) Applicants for agricultural loans shall when possible, be required to show proof of tenure for farm and grazing land for the time of the loan. Limiting provisions of 25 CFR 131.8 and 25 CFR 151.14 restrict the duration of farming and grazing leases limiting the borrowers ability to show proof of long term tenure. Tribal governing bodies may also restrict the duration of leases. Credit Officers should contact Agency Land Operations and Realty personnel for applicable provisions of land tenure.

Detailed farm and home management plans shall be required on application for agricultural loans exceeding \$5,000.

B. Business and Commercial Loans. Loans will be available for all types of business which are legal. Loan applications will be accompanied by Form 5-4740, Informational Statement by Applicant, together with any economic data the approving official deems necessary to evaluate the proposal.

If prior to the date of application, the applicant has been operating an economic enterprise for which loan funds are being requested, operating budgets, profit and loss statements and balance sheets covering the last two fiscal years of operation shall be submitted with the application. Pro forma budgets, balance sheets and operating statements including cash flow statements shall be included showing the projected results of two years operation after loan funds would be advanced. Such applications must also be accompanied by a plan of operation, for the enterprise, satisfactory to the approving officer and a resume of the applicant's management and experience.

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(1) Maturity. Consideration shall be given to the security offered and to the repayment capacity reflected by the projected operating statements. Business and commercial loans should be scheduled to mature at the earliest practical date but not to exceed 10 years.

(a) Operating Loans. Funds advanced for operating expenses shall normally be scheduled for repayment at the end of the operating year but not to exceed two years.

(b) Equipment and Machinery. Loans for purchase of equipment and machinery shall be scheduled for maturity, not to exceed the lesser of 10 years or the remaining useful life of the item at the date of purchase.

(2) Security. A security agreement and financing statement should be executed on goods and inventory of the business and on equipment and machinery if purchased with loan funds. A real estate mortgage on available real estate may be required.

(3) Accounting for Security. The Credit officer shall be responsible to see that all collateral offered as security is properly maintained and accounted for. Proceeds from the sale of basic security shall be applied on the loan or expended for security of equal value.

(4) Management and Technical Assistance. Loan approval officials must have evidence that the applicant has the ability to successfully manage and operate the business. If the applicants need management or technical assistance, arrangements must be made to provide such assistance.

C. Housing Loans. Housing loans shall include new home construction, remodel or repairs of existing homes and purchase of existing homes to be occupied by the borrowers. Applications for loans will be accompanied by Form 5-4739 (Informational Statement by Applicant, Non-Business). Assistance of the Branch of Plant Management is to be acquired to assure that plans and specifications meet the required minimum. To ensure compliance, buildings will be inspected during construction.

(1) Plans and Specifications. Plans and specifications shall meet minimum FHA specifications. The loan application shall be accompanied by at least three sets of each.

(2) Certificate Relative to Roads and Utilities. Homes shall be serviced by adequate roads to meet the needs of the family. Adequate utilities shall be available. For rural areas, water in sufficient quantity and quality shall be available prior to start of home construction.



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(3) All work shall be under written contract with adequate reference to plans and specifications, stating terms of payment, inspections, restrictions as to changes in plans or specifications and guarantee on work and any equipment furnished. The approving official will determine whether or not the contractor must furnish a payment and performance bond.

(4) Applications for the purchase or construction of homes, and major repairs, those in excess of \$5,000, to homes on trust lands shall be accompanied by:

(a) A land status report showing the borrower as sole owner shall accompany the loan application.

(b) A long term homesite lease may be required where the borrower is not sole owner or plans to build on leased land.

(5) A commitment for policy of title insurance shall accompany applications for the purchase or construction of homes, and major repair, those exceeding \$5,000, to homes on non-trust land.

(6) Applications will be accompanied by a current appraisal on homes to be purchased and for homes on which major improvements, those exceeding \$5,000, are to be made.

(7) Loans for the purchase of homes on non-trust lands shall be closed through escrow.

(8) The amount of the loan should not exceed, substantially, the value of other homes in the same area. This is to provide a likelihood that a loss would not be taken if liquidation of the loan through sale of the property becomes necessary.

(9) Loans shall be scheduled for repayment over the shortest period possible consistent with the borrower's capability, but not to exceed 30 years.

(10) As security, a mortgage (real estate or leasehold) shall be required on all housing loans. A certificate of title or origin is required on mobile homes. Where permitted by law, liens will be recorded on the title and recorded in the appropriate county or state office.

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(11) Fire insurance in an amount adequate to protect the lender shall be obtained and maintained by the applicant, and such policies shall contain a loss payable clause to the Bureau of Indian Affairs and be deposited with the Agency Credit Officer.

(12) Application for minor repair (\$5,000 or less) need not require all the provisions above, but the approving official must be assured that the applicant will get beneficial use from the loan and that the loan is adequately secured.

D. Land Purchase and Improvement Loans. Where lands are to be utilized directly by the applicant, loans may be made for the purchase of land located within and adjacent to the reservation boundary and for the financing of major improvements to the land. Loan applications will be accompanied by Form 5-4741, Informational Statement by Applicant if the land is to be used for agricultural purposes or Form 5-4740, Informational Statement by Applicant if the land is to be used for a commercial business.

(1) Loans for the purchase of land or interest therein shall have a maturity not exceeding 30 years.

(2) Loans for major improvements, amounts exceeding \$5,000, shall be scheduled for repayment within 15 years, sooner when possible.

(3) A real estate mortgage or mortgage of leasehold interests shall be taken on property purchased with loan funds. Additional security may be required by the approving officer.

(4) An appraisal will accompany all applications for purchase of land.

(5) Title insurance in an amount satisfactory to cover the amount of the mortgage, will be required on land purchased in unrestricted status.

(6) A land status report shall accompany all applications for the purchase of land held in trust or restricted status.

E. Commercial Building Loans. Applications for loans for construction or purchase of commercial buildings (business or farm) will be accompanied by applicable information contained in Section 4.3 (c) of this supplement. Depending on the type of business, consideration must be given to adequate insurance coverage on buildings, essential equipment, vehicles and liability.

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F. Educational Loans. Loans may be made to individuals for attending institutions of higher learning or recognized special trade schools which will provide the student employment opportunities.

(1) Eligibility. Individuals who are not members of or eligible for membership in a tribe, corporation or band that is making loans and who are unable to obtain financing from other sources are eligible.

(2) Application. Applicants shall complete Form 5-4729, Application for Educational Loan, in consultation with a representative of the Office of Education, Employment Assistance, and Credit and Financing.

(a) Unless justified in writing and an exception made by the approving officer, applicants who are minors must have co-signers on the loan agreement. Co-signers must have the ability to repay the obligation in case of default of the borrower.

(3) Approval. Representatives of the Office of Education and Credit and Financing should recommend approval before an application is approved. Approval will be made on Form 5-4730, Educational Loan Agreement.

(4) Advance of Funds. Applicants must present a letter of acceptance in the institution or trade school before advance of funds. Funds shall be advanced on a quarter or semester basis, evidenced by a satisfactory academic standing for the preceding period.

(5) Interest. The interest rate shall be determined on the date of each advance of funds and shall be in accordance with the provisions of 1.7 B of this Supplement. Interest charges shall begin on the first day of the month following one year from the date of completion of the course for which the loan was made. In the event of noncompletion of the course, interest shall start on the first day of the month following the date the borrower dropped out of school. Interest will not accrue while borrowers are in schools of higher learning. Interest will also not accrue during an initial enlistment in the military service or for four years of such enlistment, whichever is less. Interest charges will resume on the first day of the month after leaving the school of higher learning, or following completion of an initial enlistment or discharge from the service, or after the four years have expired.

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(6) Terms. Repayment of loans shall be scheduled at not less than \$20 per month per \$1,000 of indebtedness calculated to the nearest even dollar. (Example: \$1,500 would require monthly payments of \$30; \$1,550 would also require \$30; and \$1,551 would require minimum payments of \$32). Repayments shall start on the first day of the month following one year from the date of completion of the course for which the loan was made. In the event of non-completion, the entire loan will be due and payable on the first day of the month following the date the borrower drops out of school. If, upon completion of the course for which the loan is made, the borrower enrolls in a school of higher learning or enters the armed forces monthly payments shall not be required. Unless specifically authorized by the Commissioner, such suspension may not exceed the lesser of the time the borrower is in school, the initial enlistment in the armed forces, or four years. Monthly payments shall again be due on the first of the month following the date the borrower completes the course, completes the initial enlistment or is otherwise discharged from the armed forces, or at the end of four years, whichever is earlier.

(7) Repayments. All repayments must be applied first on interest and the balance to principal. It is possible that each advance made on an educational loan may be at a different interest rate. It is necessary that interest be accrued on each outstanding advance and paid current before any principal may be reduced. Principal payments shall be applied to the oldest advance outstanding. See 47 BIAM Supplement 4 for additional information on application of payments to loans.

4.4 Procedures for Handling the Loan. The approving official shall provide instructions for closing the loan. Procedures shall include, but not be limited to, the following:

A. The depository for the proceeds of the loan, including the use of a Deposit Agreement, Form 5-4712, an Individual Indian Money (IIM) Account, or a controlled bank account, shall be set out.

B. Procedures for disbursement of loan funds, i.e., restricted or unrestricted advances, check, time schedule for disbursement, authorization needed for disbursement, etc., shall be covered.

C. Persons authorized to disburse the funds shall be identified.

D. The proposed repayment schedule for the loan and other terms to be included on Form 5-4742, Promissory Note for Loan from the Revolving Fund, shall be included.

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E. Security required and manner of perfecting security documents including requirement to execute Form 5-4719, Assignment of Income From Trust Property, and Form 5-4720, Assignment of Trust Property and Power to Lease, shall be covered.

4.5 Loan Approval Authority. Within limitations, authority to approve loans and modifications of loans, has been redelegated by the Commissioner to Area Directors. Within limitations this authority has been redelegated to Superintendents. The capability of the Credit staff places limits on the amount of authority to be redelegated. For specific authorities to approve loans and modifications of loans refer to 10 BIAM and to 3.5 of this Supplement.

4.6 Loan Closing. Upon approval of the loan, all documents will be held by or returned to the loan servicing agency for a formal closing session with the borrower. The Agency Superintendent or Agency Credit Officer shall explain the conditions of loan approval to the borrowers. He will also explain the procedures for handling the loan and all required securing documents.

4.7 Request for Funds. Upon acceptance of all conditions of approval Voucher Form SF-1084, shall be initiated for advance of funds. Unless otherwise stipulated in the loan approval, the check shall be made payable to the borrower and forwarded to him in care of the Agency Superintendent. Upon receipt of the check, the promissory note and all securing documents will be dated and endorsed by the borrower. Where appropriate, the check shall be held pending county or state recording of security documents, then turned over to the borrower or deposited under procedures established under 4.4 of this Supplement.

4.8 Distribution of Application Forms and Related Documents. After approval and complete signing and dating of all loan documents, copies of the application will be completed showing signatures were obtained on originals by "S/" followed by the typed name of the person signing and corresponding dates inserted on the copies.

A. Loan Application. (Form 5-4738 with attachments).

- (1) The original shall be retained by the Agency Superintendent.
- (2) One copy shall be furnished to the borrower. Area Directors and the Commissioner will be furnished a copy if they acted upon or recommended approval of the application.

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Area Directors may require that copies of all applications with supporting documents be furnished to him.

B. Promissory Notes. (Form 5-4742). Promissory notes, both originals and copies, shall be distributed in the same manner as the loan application.

C. Modifications. Copies of approved modifications to existing loans shall be distributed in the same manner as the original loan application, see 4.8A above.

After furnishing the borrower a copy, the Agency shall forward copies to Area Credit and Financing for distribution in the manner prescribed in this section. Agency Superintendents are designated to be official custodians of loan records and shall be responsible for seeing that they are filed separately and retained in a place of safekeeping.

4.9 Contract and CF Numbers. At the time a loan is approved, it will be assigned both a contract number and a CF loan number. CF numbers shall be assigned in consecutive order by Superintendents, enabling the last number assigned to reflect the number of loans to individuals made at a particular agency. Modifications of a particular contract shall also be numbered consecutively.

4.10 Compliance with Other Federal Laws and Regulations. Approving officials will be responsible for compliance with other Federal laws and regulations affecting loans and modifications made pursuant to this Supplemental.

4.11 Manner of Acquiring Title with Revolving Loan Funds. The title to all land purchased by a tribe or individual Indian with revolving loan funds may be taken in trust status if the land is located within the established boundaries of an Indian reservation. Title to any such land located outside the established boundaries of an Indian reservation or outside of a tribal consolidation area approved by the Secretary of the Interior may only be taken in trust if the purchaser was the owner of a trust or restricted interest in the land before it was purchased; otherwise, the title shall be taken in the name of the purchaser without any restriction on the alienation, control, or use of the land.

Title to all personal property purchased with revolving loan funds shall be taken in the name of the borrowers.

4.12 Interest. The interest rate shall be determined monthly and shall be effective on loan funds advanced during the month. For other guidelines, see section 1.8B.

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5. SERVICING AND COLLECTION OF U. S. DIRECT LOANS

5.1 Purpose. The following provisions apply to collecting, reporting, and servicing direct loans to individuals and partnerships, tribes, and Indian organizations.

5.2 Responsibility. The responsibility of loan servicing will rest with the Agency Credit Officer or other Bureau representative designated by the Superintendent. He will be responsible for the following:

A. He will assure that funds are used only for approved purposes. Any deviation in use of funds must be approved in advance by the Bureau official authorized to approve or modify such loans.

B. He will see that a record of all insurance requirements is maintained and assure that all insurance policies are kept in force and up to date. Insurance policies shall contain a loss payable clause in favor of the Bureau of Indian Affairs.

C. He will assure that all collateral offered for security is properly accounted for, that security documents are current, and that the security is not diminished in any way.

D. He will assure that the project plan is adhered to and that any changes that would materially affect the loan, collateral, etc., are approved, in advance, by the person having authority to approve such loans.

E. He will see that collections are made in accordance with repayment schedule(s). Borrowers shall be advised of payments coming due and corrective action necessary to prevent the delinquency. Borrowers shall be notified after loan is past due and aggressive collection measures will be applied.

F. He will see that separate subsidiary loan cards (as shown by Illustration 11 of this Supplement) are maintained on each loan, that the card contains pertinent loan information and that payments are promptly and accurately posted to reflect the current status of the loan at all times.

5.3 Repayments. Repayments on loans made by the United States shall be made to the designated collection officer of the Bureau of Indian Affairs who shall issue an official receipt for the payment and deposit the collection in the revolving loan fund. For procedures to be used in applying payments to loans made by the United States see 47 BIAM Supplement 4, 1.4 and 1.5.

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5.4 Records and Reports. The accounting or record keeping system is ordinarily most effective when established by the firm or individual who will audit the accounts. The Commissioner may, when in his opinion it is justified, require that an applicant install a particular type of accounting system or make specific changes in one presently in use. He may also require special reports.

A. Organizations. All borrowers will be required to submit annual financial statements to the Superintendent within 20 days following the close of the business year. Tribal enterprises using funds borrowed from the revolving funds shall be required to submit quarterly financial statements to the Superintendent within 20 days of the close of the quarter.

Unless an exception is specifically authorized by the Commissioner, all borrowers will furnish three copies of an annual audit, to the Superintendent within 90 days of the close of the business year. The audit is to be performed, and the audit report distributed, as provided in 47 BIAM Supplement 4, 1.3A.

Tribes conducting relending programs are required to submit a cumulative report of loans made, collections, unpaid accrued interest, delinquencies, and loans outstanding as of June 30, each year. (See 47 BIAM Supplement 4, 1.6).

B. Corporations, Partnerships and Individuals. Loan contracts between the United States and corporations, partnerships or individuals will require that borrowers establish and maintain accounting and operating records that are satisfactory to the approving officer and submit reports as he may require.

Unless specifically authorized by the Commissioner, loans from the revolving fund used to finance economic enterprises will require that the borrower submit to the Superintendent within 30 days of the end of the quarter, quarterly financial statements. Unless an exception is authorized by the Superintendent, three copies of an annual audit of the enterprise records will be submitted to the Superintendent within 90 days of the close of the business year to be distributed as specified in 47 BIAM Supplement 4, 1.3A. Such audits should be performed by a certified public accountant or other qualified accountant satisfactory to the approving officer. Audits should be arranged for and paid for by the borrower.



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5.5 Collections and Vouchers. Receipts and disbursements are to be handled under procedures of 42 BIAM.

5.6 Computing Delinquencies. A loan is delinquent if a payment is not received on or before the day following the date payment was scheduled to be made.

To compute the amount of the delinquency of an amortized loan, multiply the number of payments due by the amount of each payment and subtract the total of payments received, both principal and interest. The balance after deducting any unpaid accrued interest, to date of computation, will represent delinquent principal. If a loan is delinquent in principal so is the accrued interest.

As an example, assume a promissory note amortizes an \$1,800 indebtedness with \$60 monthly payments beginning October 15, 1972. On June 30, 1974, date on which delinquency is being computed, a total of \$1,120 (\$990 principal and \$130 interest) has been applied on the loan. Unpaid interest on June 30, 1974, is \$26.

21 months x \$60.	=	\$1,260.
less: Total Payments Rec'd.	=	<u>1,120.</u>
Delinquent Principal and Interest	=	\$ 140.
Delinquent Interest Unpaid 6/30/74	=	<u>26.</u>
Delinquent Principal	=	114.

5.7 Delinquent Loans. Special attention should be given to delinquent loans to explore all possible ways to bring the loan current by collections and to assure that risk to the United States is not increasing by a diminishing of the security. If the interests of the United States will not be additionally harmed by doing so, the borrower may be given up to 90 days in which to bring the loan current or to present a plan that will correct the problems which are causing the delinquency. If the plan presented is unrealistic or unfeasible and cannot be modified to the satisfaction of the Superintendent, he shall so document the case. The documentation shall include: (1) the length of delinquency; (2) the reason(s) for the delinquency; (3) the borrower's plan for correcting the delinquency together with reasons it is believed to be unworkable; (4) the security pledged for the loan; and (5) any other facts pertinent to the case. The Superintendent should default the loan or if not within his delegated authority he shall submit the case, along with the documentation above to the Area Director and he shall take such action if he is unable to correct the delinquency. Procedures of section 6 of this Supplement should then be followed.

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6. PENALTIES OF DEFAULT AND CANCELLATION OF LOANS

6.1 Purpose. The following provisions apply in handling defaults of direct loans made to tribes, Indian organizations, individuals and partnerships and to loans made by relending organizations. Unless otherwise provided in the loan agreement, failure on the part of a borrower to conform to the terms of his loan agreement will be deemed grounds for any one, or all, of the following steps to be taken by the Commissioner.

A. Discontinue any further advances of funds contemplated by the 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 or corporations, organizations, tribes or bands, credit associations and cooperative associations.

D. Declare the entire balance outstanding on the 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 organizations, tribes, or credit associations conducting a relending program, require that all repayments on loans be applied to liquidate the indebtedness to the United States.

H. In the case of credit associations and tribes conducting relending programs, take possession of the assets of the borrower and exercise or arrange for the exercise of its power until the Commissioner has received acceptable assurance of its repayment of the loan and compliance with the provisions of the loan agreement.

I. In the case of organizations and tribal economic enterprises and cooperative associations, 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 compliance with the loan agreement.

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6.2 Penalties on Default. As repayments on loans become due, the policy is to collect, extend, or liquidate pursuant to applicable regulations in 25 CFR 91.15.

Borrowers will be required by organizations, on loans by organizations, or by Superintendents on loans by the United States, to conform to the terms and provisions of their loan agreements, including repayment schedules therein. If an organization permits violation of agreements with its members, and fails to take appropriate liquidation action, it subjects itself to the default penalties prescribed by 25 CFR 91.15. On loans by organizations, loans will be declared in default by the bodies authorized to act for the organizations. On loans by the United States, such action will be taken by the Superintendent or Area Director with guidance from the Field Solicitor.

Relending organizations using revolving loan funds will follow prudent lending practices in making and servicing loans and will take appropriate actions to protect their interest in security taken on loans. Declarations of policies and plans of operation shall include procedures which will be followed in acting to correct a default. Relending organizations employing a general counsel will refer legal questions on foreclosure procedures and sale of security to their counsel.

A. Voluntary Surrender of Property. The preferred procedure in repossessing property given as security for a loan is for the borrower to surrender sufficient property voluntarily to liquidate the balance owing on the loan. Every effort should be made to convince the borrower that this procedure will best serve his interests and those of the lender. Where property is surrendered voluntarily, the following procedures will apply:

(1) Agreement for Voluntary Liquidation. The borrower and the authorized officer of the lender will execute Form 5-4717, Agreement for Voluntary Liquidation of Loan.

(2) Mutual Agreement on Valuation of Property. If the Superintendent and the borrower mutually agree upon a valuation of the property to be repossessed, and if a suitable buyer can be located who will purchase the property at the agreed upon valuation, such property may be sold.

On loans by organizations agreement on the valuation of the property by an authorized representative of the lender and by the borrower is required.

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(3) Appraisal Committee's Valuation of Property. If a mutual agreement cannot be reached, a committee will be selected to appraise the property. On loans by the United States, one member will be selected by the Superintendent, one by the borrower, and one by these two members. On loans by organizations, one member will be selected by the authorized officer of the lender, one by the borrower, and one by these two members. If the Appraisal Committee's valuation is satisfactory to the borrower and to the Superintendent (on loans by the United States) or the authorized officials of the lender (on loans by organizations), and if a buyer can be located who will purchase the property at the appraised value, it may be sold.

(4) Non-agreement with Appraisal. If the borrower will not agree to the appraised value, the property may be sold only in accordance with the laws of the State in which it is situated unless other sale is mutually agreed upon.

B. Involuntary Surrender of Property. If the borrower will not execute Form 5-4717 and voluntarily surrender the property given as security, it will be repossessed and sold in accordance with the laws of the State in which it is situated, except where other sale is mutually agreed upon, and except in the case of loans by some tribes which have promulgated ordinances to handle foreclosures through tribal courts. In the latter case, foreclosures may be handled through tribal courts. The Superintendent will act for and on behalf of the United States on loans by the United States. On loans by organizations, an authorized representative of the organization will act for and on behalf of the lender.

(1) On proposed foreclosures which involve the sale of individually held trust or restricted land given as security for a loan, the tribe of the reservation on which the land is located will be notified in writing at least thirty calendar days in advance of the anticipated date of sale.

C. Care of Repossessed Property. Repossessed property, regardless of whether it was repossessed voluntarily or involuntarily, will be stored in a place of safekeeping prior to sale or placed under adequate care, where depreciation in value will not be excessive, and where there is adequate protection to prevent the property from being stolen or used.

D. Disposition of Repossessed Property. All property repossessed will be sold at the earliest practicable date and shall not be retained longer than necessary to obtain a fair price therefor.

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(1) Responsibility of Superintendent. If any repossessed property on loans either by the United States or by organizations remains on hand for more than six months after the date of repossession, the Superintendent will make a report to the Area Director explaining the delay and any difficulties encountered. The Area Director will render all practicable assistance in disposing of the property.

E. Application of Proceeds of Sales. Proceeds of sales will be applied in the order below, unless such application is contrary to State law, in which case the State law will be followed.

First, for payment of expenses of the appraisal and sale, including expenses incidental to transporting, caring for, and maintaining the custody of the property sold pending sale and fees for release of county-filed securing documents.

Second, for interest in full on the borrower's loan.

Third, for payment of principal of the borrower's loan.

Fourth, any balance remaining will be paid to the borrower.

F. Report of Sale. Borrowers will be furnished reports of sales. On loans by the United States, the reports will be furnished by the Superintendent. On loans by organizations, they will be furnished by authorized representatives of the organizations. Copies of all reports will be furnished the Area Director. Each report will show:

- (1) CF number of loan involved.
- (2) Date of original loan.
- (3) Amount of original loan.
- (4) Property purchased with the loan and amount paid therefor.
- (5) Security given for the loan.
- (6) Payments made on the loan, both principal and interest.
- (7) Balance owing at time of liquidation.

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- (8) Property repossessed and the appraised or agreed upon value.
- (9) Sale. Nature of sale, listing property sold, expenses incurred, and net amount remaining, itemized.
- (10) Application. Show application of proceeds on the loan, itemized.
- (11) Balance. Amount of remaining indebtedness, or amount to borrower's credit.

G. Accounting for Property. On loans by the United States, property repossessed will be taken up on the property records of the Agency. Its appraised value will be shown on the property cards. When it is disposed of, it will be dropped from the Agency property records, and the sale price shown on the records. If the sale price is more or less than the appraised value, these instructions will serve as authority to drop the difference or to credit the excess to the borrower.

H. Protection of Lender's Interests in Property of Deceased Borrowers. Organizations and Superintendents will take all steps necessary to safeguard and protect the property of a deceased borrower in which either the organization or the United States has an interest, until the obligation is liquidated or assumed by heirs of the deceased borrower, or by other parties. The lender may collect from the ultimate owners of such property or deduct from the proceeds of the sale thereof, reasonable expenses for its care. Organizations will protect their interests by promptly notifying the Superintendent, or Hearing Examiner Probate, and the tribal court, if any, in writing, of interests in the estate of the decedent. The Superintendent similarly will protect the interests of the United States in loans made by the United States. After reserving estimated probate fees, and after payment of funeral expenses, last illness, etc., any funds accruing to the estate from income or property pledged as security for the loan, will be applied on the indebtedness to stop accrual of interest. Proceeds of sales of property purchased with credit funds will be applied on the indebtedness.

(1) Action. The action which the organization or Superintendent will take in case of deceased borrowers will be governed by the circumstances of the particular loan. In some instances, it may be necessary to declare the loan in default.

(2) Assumption of Indebtedness. If the apparent heirs of a deceased borrower (or one or more of the apparent heirs with written

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agreement from the other apparent heirs) desire to assume the indebtedness of the borrower, and will sign notes and such other guarantees of repayment as the lender may require, the property may be turned over to them.

If the lender has assumed expenses in caring for such property prior to its being taken over by the apparent heirs, the lender may collect such amounts from the heirs before turning the property over to them. If the property is sold, such expenses may be deducted from the proceeds of the sale, before credit is entered on the borrower's account.

(3) Joint Loans. The action to be taken will depend upon the right of the survivor in the property purchased with or created by the loan. Action contemplated should be checked and approved by the Field Solicitor. Generally, when one party to a joint loan dies, and the property purchased with and given as security for the loan is sufficient to cover the outstanding indebtedness, and where the remaining party desires to continue with the enterprise, it is usually advisable for the remaining party to request liquidation of the loan. A new loan may then be made to the survivor to purchase the assets. All such new loans must be judged on their own merits the same as any other applications. In case the property purchased with or given as security for the loan is insufficient to cover the outstanding indebtedness, or in case the surviving borrower does not desire to continue with the enterprise, the Field Solicitor will be consulted as to the action most advisable.

(4) Report of Indebtedness of Deceased Borrowers. Promptly following the death of an Indian indebted to an organization or the United States, steps will be taken to bring about any adjustment which may be necessary. A statement shall be drawn up on Form 5-4726, Report of Indebtedness due the United States, and Form 5-4727, Report of Indebtedness due the United States (Continuation Sheet). The title of the form shall be changed on indebtedness owing organizations. The form shall set forth CF or contract numbers, dates, original amount of agreements, repayments, repayment dates, balances due, and a list of the property purchased under the agreements. On the reverse side of this form will be set forth all adjustments between the date of death of the decedent and the date the hearing is held in connection with the determination of heirs. It also will explain what disposition has been made of all capital goods purchased under the agreements, or given as security therefor. This report should be furnished to the Hearing Examiner Probate, in triplicate, before the time of the hearing. Care must be taken that the information present in the form is accurate (see 25 CFR 15).

I. Uncollectible Loans Made by Organizations. When it becomes obvious that the balance due on a loan is uncollectible, the governing

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body of a lending organization should pass a resolution dropping the loan from the active accounting credit records of the organization. Such action will not release the borrower from his obligation for payment, but serves merely to charge off the account on the organization's active accounting records. The procedure the organization wishes to follow regarding in interest accruals will be set forth in the authorizing resolution. For more detailed information see 47 BIAM, Supplement 4, 1.5F.

J. Loans Assigned to the United States. When a loan made by an organization is assigned to the United States under the agreements included in the organization's loan contract with the United States, in order that the Department of Justice may take action against the borrower, or for any other reason, such loans will be reported by the Superintendent, transmitted through the Area Director, to the General Accounting Office so that a record of the debt may be made by that Office for offset against any claim of the debtor which may in the future come before that Office for settlement.

Where organizations are in default in loan agreements with the United States, under the terms of the general assignments (where included as part of the loan agreements with the United States) the obligations of the borrowers to the organization become obligations due the United States. Any delinquencies of borrowers from such organizations will be reported to the General Accounting Office until the indebtedness of the organization to the United States either is paid in full or the organization is declared to be no longer in default. When organizations repay their indebtedness to the United States in full, and loans made by such organizations have been reported to the General Accounting Office, that Office shall be apprised of the fact by the Superintendent reporting through the Area Director, so that it will no longer consider the original debts to the organization as debts to the United States.

6.3 Uncollectible Loans. If the Secretary determines that a loan is uncollectible in whole or in part or is collectible only at an unreasonable cost or when such actions would in his judgment be in the best interest of the United States he may cancel, adjust, compromise, or reduce the amount of any loan or any portion of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate or modify the terms of any mortgage, lease, assignment, contract, agreement or other document taken as security for such loans. However, the cancellation of all or part of a loan shall be effective only after the following steps have been taken:

A. The Secretary submits to the Congress a report on adjustments made during the preceding fiscal year with recommendations for cancella-



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tions for the current fiscal year.

B. Congress by concurrent resolution approves the cancellations within sixty legislative days after receipt of the report and recommendations, or

C. Congress does not take action approving or disapproving the cancellation within sixty legislative days after receipt of the report. (47 Stat. 564, 25 U.S.C. 386a).

For additional information on submitting such requests, see BIAM 47 Supplement 4.

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*

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*Date*

---

*Type of Business*

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

Sample Resolution Authorizing Filing of Request for Modification

NOTE: The following sample resolution will require adjustment to meet the needs of particular enterprises. It is written with the same assumptions that were made in the case of the resolution in Illustration 7.

## RESOLUTION OF THE TRIBAL COUNCIL OF THE

A Federal Chartered CorporationCOMMENTS:

In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited. In the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. Section 16 IRA organizations also will require changes.

WHEREAS:

- (1) This corporation is a Federal chartered corporation as defined by the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 477), as amended, and
- (2) On \_\_\_\_\_ 19 \_\_\_\_, the Commissioner of Indian Affairs approved an Application and Agreement for the operation of the \_\_\_\_\_ Enterprise as authorized by Resolution \_\_\_\_\_ of the Council, and
- (3) The operations of the enterprise to date indicate the need for certain changes in the agreement; therefore

BE IT RESOLVED THAT THE TRIBAL COUNCIL OF THIS CORPORATION:

- (1) Authorizes the filing of a Request for Modification of the Enterprise Application to provide additional financing up to \$\_\_\_\_\_. The Council is familiar with provisions thereof. Of the total amount authorized, \$\_\_\_\_\_ will be reimbursable to the corporation by the enterprise, and \$\_\_\_\_\_ will be an investment in the enterprise.

In some instances "Commissioner" should be changed to "Area Director" or "Superintendent."

This resolve may not be advisable in the case of some enterprises where the Council can meet readily.

(2) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute the Request for Modification and bind the corporation to the provisions thereof. In the event the Commissioner or his authorized representative approves the same conditionally, these officers are authorized to accept such conditions on behalf of the corporation as in their judgment are warranted, or to refer acceptance to the entire council.

(3) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute additional Requests for Modification and bind the corporation to the provisions thereof, provided that the total additional amount may not exceed \$ \_\_\_\_\_ without further authorization from the Council, and provided further, that not to exceed \$ \_\_\_\_\_ of this amount will be reimbursable to the corporation by the enterprise, and \$ \_\_\_\_\_ will be invested in the enterprise.

#### CERTIFICATION

I, the undersigned, as secretary of the \_\_\_\_\_, a Federal Corporation, hereby certify that its Tribal Council is composed of \_\_\_\_\_ members, of whom \_\_\_\_\_, constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and that the foregoing resolution was duly adopted at such meeting by the affirmative vote of \_\_\_\_\_ members.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Secretary of the \_\_\_\_\_

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(A Federal Corporation)

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

Combination of Organization's Cash Indebtedness to United States into One Agreement. A Tribe is indebted for \$10,000 under contract 123 evidenced by promissory notes of \$5,000 dated August 1, 1967, and \$5,000 dated July 1, 1968, bearing interest at four percent per annum. It is indebted also for \$10,000 under contract 456 evidenced by promissory notes of \$5,000 dated August 15, 1969, and \$5,000 dated July 20, 1970, bearing interest at five percent per annum. Modifications of both loan agreements are required, supported by authorizing resolutions.

REQUEST FOR MODIFICATION  
OF LOAN AGREEMENT

Contract 123 between the United States and the \_\_\_\_\_ Tribe.

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 \$10,000 on contract 123, as evidenced by promissory notes of August 1, 1967, and July 1, 1968, of \$5,000 each, bearing interest at the rate of four percent per annum, and which are due and payable as shown below, be transferred to contract 456:

<u>Note of</u> <u>August 1, 1967</u>	<u>Note of</u> <u>July 1, 1968</u>
Due on or before	Due on or before
August 1, 1973      \$1,000	August 1, 1976      \$2,000
August 1, 1974      2,000	August 1, 1977      3,000
August 1, 1975      2,000	

A new promissory note of \$10,000 bearing interest at four percent per annum payable in accordance with the above schedules will be executed as evidence of the indebtedness transferred to contract 456, upon approval of this request for modification. Interest will be paid on the old notes to the date of execution of the new note. When the new note is executed, the notes of August 1, 1967, and July 1, 1968, will be returned to the Tribe.

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

Attest: \_\_\_\_\_ By \_\_\_\_\_  
(Authorized Officer)

\_\_\_\_\_  
Title

REQUEST FOR MODIFICATION  
OF LOAN AGREEMENT

Contract 456 between the United States and the \_\_\_\_\_ Tribe.

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 \$10,000 on contract 123, evidenced by promissory notes of \$5,000 each dated August 1, 1967, and July 1, 1968, bearing interest at the rate of four percent per annum, be transferred to contract 456. The unpaid balance on contract 456 is \$10,000 and is evidenced by promissory notes of \$5,000 each dated August 15, 1969, and July 20, 1970, bearing interest at the rate of five percent per annum, repayable as follows:

<u>Note of</u> <u>August 15, 1969</u>		<u>Note of</u> <u>July 20, 1970</u>	
Due on or before		Due on or before	
August 1, 1973	\$2,500	August 1, 1975	\$2,500
August 1, 1974	2,500	August 1, 1976	2,500

When this transfer is approved, the unpaid balance under contract 456 will then be \$20,000 and will be evidenced by two promissory notes to be executed with interest at the rates and with repayment schedules shown below. Interest on the Notes of August 15, 1969, and July 20, 1970, will be paid to the date of execution of the new notes. When the new notes are executed, the promissory notes of August 1, 1967, and July 1, 1968, evidencing the Tribe's indebtedness under contract 123, and of August 15, 1969, and July 20, 1970, evidencing the indebtedness under contract 456 will be returned to the Tribe.

<u>Note with Interest at</u> <u>4 Percent Per Annum</u>		<u>Note with Interest at</u> <u>5 Percent Per Annum</u>	
Due on or before		Due on or before	
August 1, 1973	\$1,000	August 1, 1973	\$2,500
August 1, 1974	2,000	August 1, 1974	2,500
August 1, 1975	2,000	August 1, 1975	2,500
August 1, 1976	2,000	August 1, 1976	2,500
August 1, 1977	<u>3,000</u>		
	<u>10,000</u>		<u>10,000</u>

The Tribe will be governed by the provisions of contract 456 in all of its credit operations, and will be governed by the regulations in 25 CFR 91 in effect as of the date of submittal of this request for modification, and applicable amendments thereto as they may be promulgated



by the Secretary from time to time, and instructions of the Commissioner of Indian Affairs in Part 47 of the Bureau of Indian Affairs Manual, and applicable amendments thereto and revisions thereof as they may be issued by the Commissioner from time to time.

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

ATTEST:

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

Increase in Amount of Loan and Combination of Indebtedness to United States into One Agreement. The Tribe indebted under contracts 123 and 456 as shown in Illustration 4 also is using \$20,000 of tribal funds which were advanced from the Treasury in its credit operations. It requests an additional loan of \$30,000, and modifications of certain other provisions of contract 456. Both contracts require modification. The modifications of contract 123 would be handled as illustrated above, and contract 456 as follows:

REQUEST FOR MODIFICATION  
OF LOAN AGREEMENT

Contract 456 between the United States and the \_\_\_\_\_ Tribe.

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 contract 456 be modified as follows:

1. That an additional \$30,000 be advanced thereon for relending to members, which will be repaid in accordance with the schedule shown below, with interest at the rate of five percent per annum.

<u>Repayment Schedule</u>	
On or before August 1, 1978	\$10,000
August 1, 1979	10,000
August 1, 1980	10,000

If this request is approved, the Tribe understands that advances on this additional \$30,000 will be made subject to the availability of funds, contingent upon appropriations by Congress, repayments on loans previously made by the United States, or from other sources up to the total of \$30,000. In the event the \$30,000 is not advanced within two years from the date of approval of this request for modification, by reason of the unavailability of funds, failure of the Tribe to request advances, or for any other reason, the amount not advanced will be cancelled automatically.

NOTE: In some instances it might be preferable to provide in lieu of the foregoing:

"That an additional \$30,000 be advanced thereon for relending to members. The interest rate, security, and maturity will be determined by the Commissioner at the time advances are made."

2. That all the cash indebtedness to the United States be consolidated under contract 456. The Tribe requests that the unpaid balance of

\$10,000 on contract 123, evidenced by promissory notes of \$5,000 each dated August 1, 1967, and July 1, 1968, bearing interest at the rate of four percent per annum, be transferred to contract 456.

The unpaid balance on contract 456 is \$10,000 and is evidenced by promissory notes of \$5,000 each dated August 15, 1969, and July 20, 1970, bearing interest at the rate of five percent per annum, repayable as follows:

<u>Note of</u> <u>August 15, 1969</u>		<u>Note of</u> <u>July 20, 1970</u>	
Due on or before		Due on or before	
August 1, 1973	\$2,500	August 1, 1975	\$2,500
August 1, 1974	2,500	August 1, 1976	2,500

When this transfer is approved, and the advances requested hereunder are completed, the indebtedness under contract 456 will be \$50,000 and will be evidenced by two promissory notes to be executed with repayment schedules shown below. Interest on the notes of August 15, 1969, and July 20, 1970, will be paid to the date of execution of the new five percent note. When the new notes are executed the promissory notes of August 1, 1967, and July 1, 1968, evidencing the Tribe's indebtedness under contract 123 of July 1, 1967, and August 15, 1968, evidencing the indebtedness under contract 456, will be returned to the Tribe.

<u>Note with Interest at</u> <u>4 Percent Per Annum</u>		<u>Note with Interest at</u> <u>5 Percent Per Annum</u>	
Due on or before		Due on or before	
August 1, 1973	\$2,000	August 1, 1974	\$2,500
August 1, 1974	2,000	August 1, 1975	2,500
August 1, 1975	2,000	August 1, 1976	2,500
August 1, 1976	2,000	August 1, 1977	2,500
August 1, 1977	2,000	August 1, 1978	10,000
		August 1, 1979	10,000
		August 1, 1980	10,000
	<u>10,000</u>		<u>40,000</u>

- That all credit operations of the Tribe, including the \$20,000 of tribal funds being used in its credit operations, will be governed by the regulations in 25 CFR 91 in effect as of the date of submittal of this request for modification, and applicable amendments thereto as they may be promulgated by the Secretary of the Interior from time to time, and instructions of the Commissioner of Indian Affairs in Part 47 of the Bureau of Indian Affairs Manual, and applicable amendments thereto and revisions thereof as they may be issued by the Commissioner from time to time.

- 4. That all credit operations of the Tribe will be conducted in accordance with the policies and plans contained in contract 456 and the revisions thereof requested in Exhibit \_\_\_\_\_ attached hereto. In the event there should be any conflict between the provisions of contract 456 and the revisions attached hereto, the provisions of the revisions will govern.

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

ATTEST:

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

\_\_\_\_\_  
(Title)

Attachments. Attached to each request for modification should be:

Certified copy of resolution authorizing filing of request for modification (see Illustration 4 for sample resolution).

Statement of purposes for which Tribe will make loans (see 3.3B above).

Title provisions of loans made by Tribe (see 3.3I above).

Assignment (see Illustration 9 for sample assignment form and 1.7C and 4.6E above).

Statement regarding fees and liens (see section 27 of Illustration 6).

Statement regarding officers of Tribe (see 3.3D above).

Balance sheet of Tribe (see 1.3F above).

Any changes in the justification included in contract 456 and the justification for submittal of the request for modification.

SAMPLE DECLARATION OF POLICIES AND PLAN OF OPERATION, TRIBAL CREDIT PROGRAM (Note: The following provisions are for checking purposes only and will require adjustments to meet the requirements of specific tribes. Not all of the following provisions will be required in all cases.)

1. DEFINITIONS

Wherever the following terms are used herein, they will have the meanings indicated:

- (a) "SECRETARY" means the Secretary of the Interior.
- (b) "COMMISSIONER" means the Commissioner of Indian Affairs.
- (c) "AREA DIRECTOR" means the officer in charge of the Area Office of the Bureau of Indian Affairs under which the \_\_\_\_\_ Agency is placed for administrative purposes.
- (d) "SUPERINTENDENT" means the Superintendent or other officer in charge of the \_\_\_\_\_ Agency.
- (e) "AGENCY OFFICE" means the headquarters office of the \_\_\_\_\_ Agency.
- (f) "TRIBE" means the \_\_\_\_\_ Tribe.
- (g) "TRIBAL COUNCIL" means the governing body of the Tribe.
- (h) "COMMITTEE" means the Credit Committee appointed in accordance with section 6 hereof.
- (i) "DECLARATION" means this Declaration of Policies and Plan of Operation.
- (j) "CREDIT PURPOSES" means loans to individuals and cooperatives by the Tribe, and financing of tribal enterprises.
- (k) "REHABILITATION LOAN" means a loan to an individual to finance an enterprise of a size large enough to produce an income sufficient to cover operating and living expenses on a reasonable standard, and to repay the loan over a reasonable period of time.

2. PURPOSE

The purpose of this Declaration is to establish procedures to govern all loans by the Tribe. This Declaration will be used by the Committee

in day-to-day credit operations, and will make possible a minimum of reference to the Secretary's regulations and instructions of the Commissioner in the Bureau of Indian Affairs Manual. In some instances the provisions hereof may depart from the instructions of the Commissioner contained in the Bureau of Indian Affairs Manual. In all such cases the provisions of this Declaration will govern. In the case of conflict with the regulations of the Secretary, the regulations will govern.

### 3. POLICY

It is the policy of the Tribe to consolidate its credit and financing operations under one system, and to make all loans only under the procedures herein. Loans heretofore made by the Tribe will not be disturbed so long as the borrowers adhere to their loan agreements, but all future loans will be made only as provided herein.

Loans will be made for the purpose of raising the social and economic status of members of the Tribe to a point where they can look to the same sources of financing as are looked to by other citizens. Loans may be made only upon determination that repayments can be made, based upon accepted credit analyses, and only to those members unable to obtain financing elsewhere on reasonable terms and conditions. The Tribe will make only rehabilitation loans except for (a) short-term, fully secured loans as provided herein, (b) loans to employed Indians who desire to finance small enterprises to supplement their wage income, (c) loans for the purchase or construction of homes and other buildings, (d) for the purchase or improvement of land, and (e) for educational purposes.

### 4. SCOPE

This Declaration will apply to all revolving funds borrowed from the United States; to all tribal funds heretofore or hereafter advanced to the Tribe for credit purposes under authority of 25 CFR 91.20; and to all other tribal funds used for credit purposes.

### 5. REGULATIONS AND INSTRUCTIONS

All credit activities of the Tribe will be governed by the regulations in 25 CFR 91 and applicable amendments thereto, and, except as otherwise provided herein, in accordance with applicable instructions of the Commissioner contained in Part 47 of the Bureau of Indian Affairs Manual, and applicable amendments and revisions thereof, as they may be issued from time to time. The Tribe will also comply with Regulation Z of the Federal Reserve Board and Fair Credit Reporting Act whenever applicable to loans made by the Tribe.

The Tribe will also comply with applicable provisions of the Federal Disaster Protection Act of 1973, the National Environmental Policy Act of 1969, Executive Order 11514, and the Act of June 27, 1960, for preservation of historical and archaeological data, as amended by the Act of May 24, 1974.

6. CREDIT COMMITTEE

All credit activities of the Tribe will be administered by a committee of three members selected by the Tribal Council from outside its membership.

- (a) Selection. The first three members will be appointed for terms of one, two, and three years. At the end of the first year, and each year thereafter, as each term of office expires, the term of office of the succeeding members will be for three years. Members will continue to serve until their successors are appointed.
- (b) Members of First Committee. The names, addresses, and terms of office of the first three members are:

<u>Name</u>	<u>Address</u>	<u>Term Expires</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (c) Record of Appointments. A record of all appointments to the Committee will be furnished the Superintendent and Area Director.
- (d) Officers. After the appointment of the committeemen, and each year following the appointment of a member, the members will select a chairman from among themselves, and a secretary from within or without the Committee membership. The chairman will preside at meetings of the Committee. The chairman and secretary will perform duties customary to their offices. In the absence of the chairman or secretary, the members present will select a temporary chairman from among themselves, and a temporary secretary from within or without the Committee membership.
- (e) Record of Meetings. The secretary will keep, or cause to be kept, a full and complete record of all meetings, copies of which will be furnished the Superintendent, Area Director and Tribal Council.

- (f) Quorum. Two members will constitute a quorum at any meeting. A uniform vote of at least two members will be required in order for any action to be effective.
- (g) Suspension and Removal. The Tribal Council may suspend a Committee member for cause. Notice of such suspension, including a clear and concise statement of the charges resulting in the suspension, will be forwarded to the suspended member by registered mail. Such member will have 30 days from the date of the notice to request a hearing before the Tribal Council. The hearing will be held at the next regular or special meeting of the Tribal Council, after receipt of the request for hearing. The Tribal Council may remove such member from the committee. The decision of the Tribal Council will be final.
- (h) Vacancies. Vacancies in the membership will be filled by appointment by the Tribal Council for the unexpired term.
- (i) Qualifications of Members. The members must have a reputation for industry, dependability, honesty, and integrity; have had at least five years of successful experience in the operations of a farm, ranch, or business; be an enrolled member of the Tribe; and at least \_\_\_\_\_ years of age.
- (j) Restrictions on Membership. No person will be eligible for membership who has a loan from the tribe that is delinquent or in default. Members will not be eligible to receive loans from the Tribe during the time they are Committee members, unless their applications are approved by a majority vote of the Tribal Council and by the Area Director.
- (k) Compensation. Compensation of members and the rate of per diem and mileage to be paid to them will be determined by the Tribal Council, and be paid from "local" tribal funds.
- (l) Meetings. The Committee will meet when business demands and requires its attention. Meetings may be called by the chairman, and shall be called by the chairman upon the request in writing of two members of the committee, or upon request of the Superintendent. In the event the chairman fails to call a meeting within five days after receipt of a written request, the other two members or the Superintendent may call a meeting. At least three days written notice will be given of all meetings, unless the members unanimously agree to waiver of such notice. The number of meetings held will be kept to the minimum necessary to conduct the Tribe's credit business.



All meetings will be in executive session and, with the exception of employees of the Bureau of Indian Affairs, the secretary and a clerk to keep records in accordance with subsection (e) of this section, attendance at meetings will be by invitation only. All voting shall be at meetings, and the applicants or borrowers will not be permitted to be present at the time of voting.

- (m) Signatures on Actions. The chairman, secretary, or such other of the members as may be authorized at meetings, will sign such papers as the Committee may designate for and on its behalf. All such authorizations will be reflected in the records of the Committee.

#### 7. AUTHORITY AND DUTIES OF CREDIT COMMITTEE

The Committee will have full authority to act for and on behalf of the Tribe in all phases of its credit operations, including the financing of enterprises, except as provided in section 6(j). Initial action for the Tribe on all credit matters will be taken by the Committee, which will either recommend for approval, in whole or in part, conditionally or unconditionally, or return the applications or requests to the applicants or borrowers, with advice as to why the same cannot be recommended for approval.

It will be the responsibility of the Committee to see that loans are repaid when due and to do the necessary follow-up with each borrower to see that they make proper use of funds loaned to them.

The Committee will make a written report at least annually regarding adherence or nonadherence to the plan, which will be filed in the borrower's loan folder (see section 29 regarding annual inspections). If it becomes apparent that a borrower will become delinquent, the Committee will take steps necessary to prevent the delinquency, either by obtaining payment, by extending the repayment terms, or by declaring the loan in default and placing it in liquidation. Advice of the tribal attorney will be requested when any legal action is contemplated.

The authority as set forth in this section shall not be interpreted as placing any restrictions on the Committee's authority to act for and on behalf of the Tribe in any phase of its credit operations.

#### 8. TECHNICAL ASSISTANCE

Except loans which are fully secured, those for less than \$5,000, and those made under authority of section 36, applicants will be required

to submit plans of enterprises for which financing is requested, in a form satisfactory to the Committee and the approving official. Plans will be worked out with representatives of Federal or State agencies, or such personnel of the Bureau of Indian Affairs as may be designated by the Superintendent, and bear the signature of the applicant or applicants.

9. CREDIT OFFICER

The Credit Officer assigned to the \_\_\_\_\_ Agency will work in close cooperation with the Committee and assist applicants and borrowers in the preparation of loan applications and other papers. He will advise the Committee and applicants and borrowers of conformance or nonconformance to terms and agreements in applications and other papers, to the regulations of the Secretary, manual instructions and supplements thereto of the Commissioner, and the provisions of this Declaration. He will attend all meetings of the Committee insofar as practicable, and will advise it of action necessary. He will be responsible to see that the bookkeeping, clerical work, records, reports, securing of required forms, filing, recording, and administrative details necessary for proper operation of the Tribe's credit program are handled properly. The Tribe shall furnish assistance necessary to enable him to discharge this function. He will check on the property purchased with or given as security for the loan from the Tribe in conjunction with the Committee. He will arrange with representatives of technical branches for necessary inspections of property purchased with loans. He will not make technical inspections or perform functions which properly fall within the province of other branches of the Bureau. He will be responsible to see that minutes are kept of meetings of the Committee by the secretary or a clerk in accordance with section 6(e) and that all actions and authorizations are adequately reflected in the minutes. He will not make recommendations to the Committee or the Tribal Council on loan approval or disapproval action. Such recommendations shall be to the Superintendent. The Credit Officer will be responsible for prompt filing or recording of all documents given as security for loans. He will see that borrowers are notified by the Committee when payments are in arrears and that these notifications are properly made a matter of record.

10. LEGAL ASSISTANCE

The Tribe's attorney will handle such legal work as may be necessary in the enforcement of any credit obligations to the Tribe.

11. COMPENSATION OF CREDIT EMPLOYEES

Effective as of \_\_\_\_\_, and continuing thereafter while the Tribe is conducting a credit program, the Tribe will pay for the services of a Credit Officer (salary and expenses) from appropriated tribal funds. The Credit Officer position will be under Civil Service and the grade of the position will be determined in accordance with Civil Service rules and regulations. Necessary expenses of supplies for the Tribe's credit activities will be defrayed from "local" tribal funds. The Tribe will also pay, from "local" tribal funds, for the services of a tribal clerk-stenographer, and for such other services as are deemed necessary by the Superintendent and the Committee. All employees paid from "local" tribal funds to assist in the Tribe's credit operations will be employed under written contracts executed for and on behalf of the Tribe by an authorized representative of the Tribal Council. Copies of such contracts will be furnished the parties thereto, the Committee, the Superintendent, and the Area Director. Such contracts will require approval of the Superintendent before they will be effective.

12. VETERANS

Wherever possible, the benefits of the loan guaranty or insurance provisions of the Servicemen's Readjustment Act of 1944, as amended, will be obtained on loans which the Tribe may make to veterans.

13. DEPOSITORY

The depository for credit funds of the Tribe will be a National or State bank or banks. A record of the bank or banks shall be maintained at the Agency. The bank or banks selected will be members of the Federal Deposit Insurance Corporation, and the requirements of section \_\_\_\_ of the Tribe's charter will be met. Before any credit funds are deposited in a bank or banks, arrangements satisfactory to the Area Director will be made with the bank or banks, that at any time upon written request of the Superintendent, the bank will pay over the balance on hand in the Tribe's account or accounts, or any part thereof, to the Superintendent. The Superintendent will deposit any such funds in an Indian Money Account to the credit of the Tribe.

14. ADVANCES OF FUNDS TO TRIBE

All advances of revolving funds in accordance with the terms of loan agreements with the United States, and all advances of tribal funds to the Tribe from the United States Treasury for credit purposes, will be made to the treasurer, who will be bonded in an amount and

and in a manner satisfactory to the Area Director. Any credit funds of the Tribe now or hereafter on deposit in an Indian Money Account to the credit of the Tribe for credit purposes may be transferred to the Tribe's bank account upon request of the treasurer. All funds advanced to the treasurer will be deposited promptly in the Tribe's bank depository for credit funds in accordance with section 13 of this Declaration.

15. DISBURSEMENTS

All disbursements from the Tribe's bank account depository (section 13) will be by check of the bonded tribal treasurer. Except as authorized in subsection (a) of this section, the treasurer may make disbursements only upon receipt of written requests signed by the chairman, secretary, or such other committee member as may be authorized by the committee at meetings in accordance with section 6(m) of this Declaration to sign such requests. The treasurer will satisfy himself that all such requests were authorized by the Committee at meetings. Disbursements on loans will not be made until the loans have been properly approved in accordance with the provisions of this Declaration, nor until the loan agreements are complete and the securing instruments, except on property purchased with the loan, have been properly filed or recorded in accordance with section 30.

- (a) Prepayment of Expenses. The Committee may give the chairman or secretary, general authorization to request the treasurer to disburse credit funds on deposit in the Tribe's bank account for the purpose of paying filing or recording fees on securing documents, for payment of insurance premiums, and for lien searches and other expenses necessary for protection of the Tribe's interests, and for the prudent operation of its credit program up to \$\_\_\_\_\_. Any such disbursements will be charged against the borrower, and the Tribe will be reimbursed either from his loan or other funds.

16. REPAYMENTS

Repayments and other receipts on loans made prior to adoption of this Declaration will be made in accordance with the terms of the loan agreements. Those made subsequent to adoption of this Declaration will be made in accordance herewith. The treasurer will receipt for repayments on Form 5-4716, which will be prenumbered, and may authorize any member or officer of the Credit Committee to accept repayments and issue receipts, provided such member or officer is bonded to the Tribe in an amount and in a manner satisfactory to the Area Director. All repayments and other receipts on loans will be deposited promptly in the Tribe's bank depository. Copies of all receipts will be furnished the Credit Officer.

17. RECORDS, REPORTS, AND AUDITS

Records and accounts will be maintained in a manner and in accordance with an accounting system prescribed in writing by the Area Director. Reports will be submitted in accordance with 47 BIAM 1. An annual audit of the Tribe's credit operations will be made as of June 30 each year and contain such information as the Area Director may consider essential. Copies of audit reports will be furnished the Tribal Council, Credit Committee, Superintendent, Area Director, and Commissioner.

18. APPROVAL OF LOANS

Applications for loans from individuals and partnerships which are recommended for approval by the Committee, may be approved by the Superintendent pursuant to section \_\_\_\_\_ of \_\_\_\_\_ Area Office Redlegation Order \_\_\_\_\_, except loans in accordance with section 6(j). All other applications for loans will be approved by either the Area Director pursuant to redelegations in 10 BIAM 3.3F or the Commissioner in accordance with 230 DM1 (10 BIAM 2.1).

19. RESTRICTIONS ON APPROVAL OF LOANS

Loans will not be approved during the period June 5 through July 1, each year, except in cases of emergency, nor if they fall in any one of the following classes:

- (a) Undue Risk. Where the loan involves undue risk.
- (b) Residence of Applicant. Where the applicant resides outside the boundaries of the \_\_\_\_\_ Reservation, unless the loan is fully secured.
- (c) Purchase of Livestock. Where the loan is for the purchase of livestock, unless the applicant has made adequate provisions for year-round care of the livestock.
- (d) Factual Applications. If the applicant falsifies his application or conceals his liabilities.
- (e) Purchase of Unrestricted Real Property. Where the loan is for the purchase of unrestricted real property, unless the applicant accompanies the application with an up-to-date abstract of title showing clear and marketable title, or furnishes a policy of title insurance satisfactory to the Area Director.
- (f) Delinquent Borrowers. If the applicant is delinquent in repayment of any tribal loan; however, a borrower may request re-financing of a delinquent loan.

- (g) Amount of Loan. Where the amount of the loan is less than \$100.

20. APPROVAL OF MODIFICATION

Requests for modifications of loan agreements which are recommended by the Committee, may be approved by the Superintendent pursuant to section \_\_\_\_\_ of \_\_\_\_\_ Area Office Redefinition Order \_\_\_\_\_, except loans in accordance with section 6(j). All other requests for modifications will be approved by either the Area Director pursuant to redelegations in 10 BIAM 3.3F or the Commissioner in accordance with 230 DM 1 (10 BIAM 2.1).

21. ELIGIBILITY FOR LOANS

Only individual Indians who are members of the Tribe who cannot receive financing from the same credit institutions serving other citizens on reasonable terms and conditions, are eligible for loans from the Tribe. Cooperative associations must be organized pursuant to the laws of the State of \_\_\_\_\_, and the articles and bylaws must have been approved by the Commissioner. Any tribal enterprise will be handled in accordance with 47 BIAM 6.

22. OBJECTIVE OF LOANS

The objectives of loans by the Tribe except those made under section 36 are:

- (a) Rehabilitation of Borrowers. To rehabilitate and promote the economic development of the borrowers to the end that they become self-sustaining and independent of assistance from the Tribe.
- (b) Utilization of Resources. To utilize the reservation resources by tribal members.
- (c) Improvement of Housing.
- (d) Education. To assist in obtaining educational and training opportunities for tribal members.

23. PRIORITY OF APPLICATIONS

Educational loans, rehabilitation loans, housing loans, and loans for the purchase or improvement of land will receive preference in the order named. Those applicants having the greatest need for

these types of loans, due consideration being given to soundness, will receive first consideration. Veterans of all wars will receive preference over other applicants.

24. LOAN PROCEDURE

- (a) Applications. Applications will be on the forms provided by the Tribe.
- (b) Appraisal. An actual physical appraisal showing the value of assets of the applicant will be made when such assets are taken as security. This appraisal may be made by an authorized Committee representative, and bear the signature of the appraiser.
- (c) Farm Plans. A complete farm and conservation practice plan prepared in a manner satisfactory to the officer approving the application and farm and home plans will be required on loans for \$5,000 or more, unless the application is fully secured.
- (d) Unrestricted Real Property. Applications for the purchase of real property will be accompanied by an up-to-date abstract of title or a report of application for title insurance showing a clear and marketable title and a down payment of at least five percent of the cost of the property will be required.
- (e) Housing Loans. Applications for housing loans will be accompanied by:
  - (1) A plan showing the type, dimensions, floor area of the house to be constructed, and an estimate of the cost of construction. If the house is to be built by a private contractor, the plan will be accompanied by specifications showing the types, qualities, and amounts of materials to be used, signed by the contractor and the applicant. The contractor will be required to agree to permit a committee representative to inspect the construction from time to time; that payment therefor will be made on a percentage of completion basis; and final payment only after the house has been approved by the borrower and an authorized committee representative.
  - (2) In the case of a house to be built on trust or restricted land, a title status report will be obtained from the Title and Record Section of the Bureau of Indian Affairs showing that the

applicant has title to the land or if the applicant holds an assignment or lease of the land upon which the house is to be constructed, a copy of the instrument will be required. The same requirement will apply in the case of houses to be purchased which are located on trust or restricted land.

- (3) A statement, signed by the applicant, stating what other buildings he owns, and whether those buildings are located on the land upon which the proposed house is to be constructed, or on other land.
  - (4) In the case of houses to be built on unrestricted land, evidence of ownership of the land in the form of a current abstract of title showing a clear and marketable title, or a policy of title insurance, and a down payment of at least five percent of the cost of the house will be required.
  - (5) Home loans for existing construction on unrestricted land will be adequately secured and, where practicable, fully secured. Unless waived by the final approving officer, loans for the purchase of homes already constructed will be closed through escrow and a policy of title insurance will be required. Applications for purchase of existing homes will be accompanied by an appraisal report.
- (f) House Repair and Improvement Loans. In the case of loans for house repairs and improvements, the Committee or the approving officer may require information similar to that required by section 24(e)(1) through (5), before taking action on the application. If the improvement is to be made on a house located on land to which the applicant does not have a clear title, the loan must be fully secured, or the applicant should be required to obtain clear title to the land on which the house is situated before the loan may be approved. If the improvements are made on an applicant's unrestricted real property upon which there is a lien, the applicant must own at least a twenty percent equity in the value of the property. The Tribe may, in the discretion of the Committee and the approving officer, lend the applicant a sufficient amount to discharge the lien plus the amount of the cost of the proposed improvements. A first mortgage will be required as security on all such loans.



- (g) FFA and 4-H Club Loans. Loans may be made to members of FFA and 4-H Club organizations upon recommendations of the leader of the chapter or club or a representative of the State Extension Service.
- (h) Credit Ratings. Loans may not be made unless the applicants and/or their co-signers have maintained good credit ratings, or if ratings have not been maintained, they must have good reputations for industry and dependability.

Note: There must be compliance with the Fair Credit Reporting Act where consumers credit reports are used or when investigative reports are to be made.

25. INSURANCE

Fire insurance with a loss payable clause in favor of the Tribe will be required on all loans for the construction or purchase of homes or other buildings, and on all loans in excess of \$1,000 for the repair or improvement of homes and other buildings, and homes or other buildings given as security for loans. The amount of insurance, when required, will equal or exceed the unpaid balance of the loan. Borrowers will be required to agree to obtain and maintain adequate insurance, and failure to do so will subject them to the default penalties of their loan agreements. In the event a borrower does not maintain adequate insurance, he will agree that the Tribe may do so and charge him therefor.

26. INTEREST

The tribe shall use the same procedures when calculating interest on educational loans as is followed by the United States pursuant to 47 BIAM, SUPPLEMENT 2, 4.3F(5) and (7). The Tribe will use procedures outlined in 47 BIAM, SUPPLEMENT 4, 1.5, in calculating interest on loans made for all other purposes.

Semi-annually, on January 1 and July 1 of each year, the Committee will obtain rates currently charged by both governmental and commercial lending agencies in at least three towns within a \_\_\_\_\_ mile radius of the \_\_\_\_\_ Reservation and, with the approval of the Area Director, will make corresponding adjustments in the interest rate to be charged on loans made by the Tribe. However, in setting interest rates the Committee may not, without regard to the purpose of the loan, set a rate less than the Tribe is paying on its loan from the United States.

Interest rates on loans made prior to approval of this Declaration, the unpaid balances of which are refinanced or extended, shall be at the rates set forth herein.

27. FEES

Fees will be charged on all new loans for physical inspection of property and security offered for loans, for the preparation of applications, maintenance of the Tribe's accounting records, and to assist in meeting other expenses, in accordance with the following schedule:

\$25.00	to	250.00	--	\$ _____	Loan Fee
251.00	to	500.00	--	_____	Loan Fee
501.00	to	1,000.00	--	_____	Loan Fee
1,001.00	to	1,500.00	--	_____	Loan Fee
1,501.00	to	2,000.00	--	_____	Loan Fee
2,001.00	to	3,000.00	--	_____	Loan Fee
3,001.00 and over, one (1) percent of the total dollars loaned to the nearest dollar not including the loan fee.					

On refinanced loans, fees will be charged on-the refinanced portion only in accordance with the above indicated schedule.

Note: Fees are sometimes considered as interest. Check State regulations for limits. There must be compliance with Consumer Credit Cost Disclosure - Federal Reserve Regulation Z.

28. DISPOSITION OF PROPERTY

When authorized by the Committee, the chairman, secretary, or such member of the Committee as may be authorized by the Committee at meetings, may, with the approval of the Superintendent, release property purchased with or given as security for loans under the following conditions:

- (a) Plan. When the borrower's plan calls for disposition, and the proceeds are to be applied as set forth therein.
- (b) Repayment or Security. Where the property is sold and the proceeds are either applied on the loan or are used to purchase other capital goods which are given as security for the loan.

- (c) Exchange. Where the property is exchanged for other suitable property to be given as security for the loan.
- (d) Other. Where the disposition is justified, and the loan is adequately secured without the property to be released.

29. ANNUAL INSPECTIONS

An authorized representative of the Committee will make an annual inspection of each borrower's assets, except that in the case of fully secured loans which are not delinquent, the Committee may waive this requirement. All such waivers shall be reflected in the record of meetings of the Committee in accordance with section 6(e). Each borrower will be notified in writing by the Committee of the date of inspection 10 days in advance, unless otherwise agreed upon by the parties involved.

30. FILING AND RECORDING

All recording or filing costs, including costs of lien searches, will be at the expense of the borrower. The Tribe may advance funds necessary for this purpose and charge the borrower therefor if the borrower does not have funds of his own available. Securing documents, except assignments of income from trust land, will be filed or recorded in accordance with State laws. Assignments of income from trust land may be filed in the Agency Office. Where security interests in crops are taken as collateral for loans, new security agreements and financing statements will be taken as necessary and filing requirements adhered to in accordance with State laws.

31. TITLE TO PROPERTY

Title to property purchased with loans shall be taken in the name of the borrower, except land, title to which was in a trust or restricted status prior to purchase, which may, with the approval of the Area Director, be taken in the name of the United States in trust for the borrower.

32. SECURITY

Borrowers with security to offer will be required to give it up to an amount adequate to protect the loan. Unless other adequate security is available, the property purchased with the loan will be mortgaged to the Tribe as security. Lack of security will not prevent approval of a loan provided the borrower's plan shows reasonable assurance that it can be repaid, and the applicant's managerial ability, reputation for industry, and financial

responsibility are satisfactory.

33. MATURITY

The maturity of loans to cooperatives will be determined by the purposes for which the loans are requested. The maturity of loans to individuals for the purchase of land, for the purchase or construction of homes or other buildings, for land improvements and for other items customarily requiring long term financing, will be scheduled for repayment at the earliest possible date consistent with each borrower's ability to repay. The maturity of loans guaranteed or insured under the Servicemen's Readjustment Act will be in accordance with regulations of the Veterans Administration. In no event may a loan by the Tribe extend beyond the maturity of its loan from the United States, until the Tribe has other funds to permit it to make the loan without jeopardizing its ability to make prompt repayment of its obligations to the United States.

34. LAND PURCHASE LOANS

The Tribe may make loans to individual members for the purchase of land. Loans for the purchase of land will be approved only to members who will operate the land themselves. Applications for loans to purchase heirship lands will receive preference over applications for loans to purchase other lands.

35. DELINQUENCIES

The Tribe will follow the policy as loans or installments on loans become due, of collect, extend, or liquidate. Loans will not be permitted to remain delinquent for more than 90 days at any particular time, except loans which have been assigned to the United States for collection, loans which are in process of liquidation, and loans on which there are unpaid balances but which have been charged off on the Tribe's active active accounting records. The Tribe also agrees that upon written request of the Area Director, the chairman, or secretary of the Credit Committee is authorized and instructed to execute for and on behalf of the Tribe, a specific assignment of any agreement, note, right, or security heretofore or hereafter acquired in the Tribe's credit operations, in favor of the United States. In the event of failure to comply with the provisions of this section at any time, it is agreed that no further loans will be made until there is compliance except that the Area Director may authorize the approval of specific loans in order that borrowers who have demonstrated industry and good faith may not be penalized because of lack of industry and good faith on the part of other borrowers.

36. SHORT-TERM LOAN PROGRAM

The amount of \$ \_\_\_\_\_ will be deposited in a bank meeting the requirements for a depository in accordance with section 13 hereof, in a special account captioned " \_\_\_\_\_ Tribal Short-Term Loan Program." A separate bank account will be used for short-term loans. This \$ \_\_\_\_\_ will be shown on the credit accounts and balance sheet of the Tribe as an advance to the Short-Term Loan Program which will be reported as a tribal enterprise pursuant to 47 BIAM 6. Separate accounting records will be maintained on the Short-Term Loan Program, on which the \$ \_\_\_\_\_ will be shown as a liability item owing to the Tribe. Loans may be made from this fund under the conditions set forth below. Where the provisions of this section conflict with the provisions of other sections of this Declaration, the provisions of this section shall govern. Short-term loans usually are subject to Consumer Credit Cost Disclosure Federal Reserve Regulation Z.

- (a) Form. Applications will be submitted on the form attached hereto.
- (b) Procedure. Applications will be presented to the Committee or to its chairman or secretary for action.
- (c) Maximum Amount. The maximum amount which may be loaned to any one borrower or combination of borrowers under this program is \$ \_\_\_\_\_.
- (d) Security. All loans made under this program will be fully secured, and assignments of per capita payments or other distributions of tribal assets, or lease income which is not due and payable within 12 months of the date of approval of the application, will not be considered in determining whether or not a loan is fully secured. Assignments of income from direct payment leases will not be accepted as security for short-term loans.
- (e) Approval. Applications recommended for approval by the Committee or by its chairman or secretary may be finally approved by the Superintendent, provided the borrower's total cash indebtedness to the Tribe will not then exceed \$ \_\_\_\_\_.
- (f) Approval Review. The Committee will review all applications approved by its chairman or secretary and may issue instructions for their guidance. The Committee may at any time withdraw the authority of its chairman

or secretary in accordance with subsection (b) and (e) of this section and require that all applications be acted upon by the Committee.

- (g) Unconditional Approval. Applications will not be acted upon conditionally by either the Committee or its officers. Those which cannot be recommended for approval or disapproval as submitted, will be returned to the applicants, where applicable, with instructions for rewriting.
- (h) Maturity. The maturity of loans will not exceed one year.
- (i) Purposes. Loans may be made for support, emergency, or any other purposes.
- (j) Extensions. Extensions of the repayment terms of short-term loans will not be approved. Failure of any borrower to repay his short-term loan in accordance with the terms thereof, will automatically make such borrower ineligible for further loans under the Short-Term Loan Program, unless the Area Director specifically authorizes an exception in the case of a particular borrower where circumstances beyond his control make it impossible for him to meet his repayment.
- (k) Register of Ineligible Members. A register of members of the Tribe who are ineligible to receive loans under the Short-Term Loan Program without specific authorization from the Area Director, will be maintained by the Tribe.
- (l) Refinancing. Short-term loans may be refinanced by another short-term loan; provided that the repayment terms of the refinanced portion of the loan are not extended.
- (m) Interest. The interest rate on short-term loans will be \_\_\_\_\_ percent per annum (see Federal Reserve Regulation Z).
- (n) Fees. Borrowers shall be required to pay fees on short-term loans in accordance with the provisions of section 27 hereof.
- (o) Filing. Securing documents on short-term loans will be filed or recorded in accordance with section 30.
- (p) Audits. Audits of the Tribe's credit operations in accordance with section 17 will include a special section on the status and collectibility of loans made under the Short-Term Loan Program.

- (q) Annual Reports. For the purpose of annual reports, the Short-Term Loan Program will be considered a tribal enterprise and the amount invested in the program will be reported on Form 5-4732 in accordance with 47 BIAM 1. A Form 5-4734 is not required. A balance sheet and operating statement of the Short-Term Loan Program will be included as part of the annual report.
- (r) Repayments. Repayments on loans will be made in accordance with section 16. Interest and other earnings on short-term loans will be credited to the Short-Term Loan Program bank account, and may be used only for the purpose of making further short-term loans, unless the financial condition of the Short-Term Loan Program is such that earnings can be used for other purposes without endangering the soundness of the program, in which event, upon request of the Committee, the Area Director may authorize the withdrawal of earnings to be used for other purposes in specific amounts.

SHORT-TERM FULLY SECURED      Copies required:  
LOAN APPLICATION FORM      Original for Tribe  
   Copies for Borrower  
   Agency and Others as may  
   be Required

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
\_\_\_\_\_ Tribe

The undersigned, hereafter called I, applies for a loan in the amount of \$\_\_\_\_\_ for the purposes indicated on the reverse side hereof, the amount of which shall be advanced to me by check. I agree to pay a fee of \$\_\_\_\_\_, the amount of which may be deducted from the amount of the check. I will repay the loan on or before the dates shown on the reverse side, with interest at the rate of \_\_\_\_\_ percent per annum, and will execute a promissory note as evidence of the indebtedness. I will give security for the loan as shown on the reverse side, which shall be filed or recorded at my expense in accordance with the laws of the State of \_\_\_\_\_. If requested by the Tribe or by the Superintendent, I will give security agreements on crops during the time any portion of this loan is unpaid, and the securing documents shall be filed at my expense in accordance with the laws of the State of \_\_\_\_\_. As further security for the loan, I hereby assign to \_\_\_\_\_ all income from trust land in which I now have or may in the future acquire an interest, and any income from any source and funds from any source accruing to my Indian Money Account at the \_\_\_\_\_ Agency. I hereby grant to the Superintendent of the \_\_\_\_\_ Agency, full right, power, and authority to demand, collect, sue or receipt for any of my income from trust land, and to apply such income, or any of the funds in my Indian Money Account at the \_\_\_\_\_ Agency, on my indebtedness to the \_\_\_\_\_ Tribe. I hereby appoint the Superintendent as my attorney to execute such leases on any trust land in which I now have or may in the future acquire an interest, as the attorney may find necessary to facilitate repayment of this loan. I hereby give the attorney power to do everything necessary in the making of such leases as fully as I could do, and hereby ratify all that the attorney shall lawfully do or cause to be done under this authority. I understand and agree that in the case of my death, the assignment of income and power to lease given herewith shall constitute a claim against trust funds and income superior to that of my heirs.

Signature(s) and address(es)  
of witness(es):

Signature(s) and address(es)  
of applicant(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_



APPROVAL OF CREDIT COMMITTEE AND COMMITMENT ORDER

The foregoing application is approved, and disbursement of the amount thereof from the depository for "Short-Term Loans" of the \_\_\_\_\_ Tribe by check to the borrower is authorized.

CREDIT COMMITTEE, \_\_\_\_\_ TRIBE By \_\_\_\_\_  
(Signature of Authorized Officer)

Date \_\_\_\_\_  
(Title)

APPROVAL OF SUPERINTENDENT

I hereby certify that the applicant is eligible for a loan from the \_\_\_\_\_ Tribe, that the loan conforms to the regulations of the Secretary, instructions of the Commissioner, and the approved "Declaration of Policies and Plan of Operation, Tribal Credit Program, \_\_\_\_\_ Tribe."

Date \_\_\_\_\_  
Superintendent

\_\_\_\_\_ Agency

Amount of loan and purposes:

Dates of Repayment of loan:

Security offered for loan and value thereof:

Age of applicants, and number of children under age 18:

Other information to enable sound appraisal of application, including assets and liabilities, and nature thereof. Any indebtedness to \_\_\_\_\_ Tribe will be shown together with purposes for which such indebtedness was incurred.

Note: A form "Consumer Credit Cost Disclosure - Truth in Lending" should be attached to all loan agreements to which Regulation Z of the Federal Reserve Board applies.

Sample Resolution Authorizing the Filing of an Application

NOTE: Action on applications and modifications is taken under authority delegated to the Commissioner in 230 DM 1 (see 10 BIAM 2.1). The Commissioner's authority has been redelegated to Area Directors where the indebtedness of the enterprise to the organization does not exceed \$250,000 (see 10 BIAM 3.3F(2)), and to Superintendents by Area Directors pursuant to Area Redelegation Orders.

Applications and requests should consist of two main documents: (1) the application or request and (2) the authorizing resolution. It is inadvisable to incorporate the provisions of the application or request into the resolution.

Most tribal constitutions and corporate charters do not require approval of a resolution authorizing the filing of an application for a loan, or a request for modification of a loan. The application or request requires approval in order to be effective, but not the authorizing resolution. Most such resolutions would, of course, be without effect unless action were taken on the application or request.

Approval or recommendation for approval or disapproval by any Bureau official should not appear on a resolution unless it is required by the organization papers of the corporation or tribe. Approval or recommendation for approval or disapproval is required on applications and requests for modifications.

The following sample resolution will require adjustment to meet the needs of particular organizations and enterprises.

## RESOLUTION OF THE TRIBAL COUNCIL OF THE

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A Federal Chartered Corporation

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COMMENTS:

In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited. In the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. If an IRA section 16 organization is involved, appropriate changes in wording should be made.

The "Whereas" clause is written on the assumption that sufficient information appears in the minutes of the meeting of the Council to justify the resolving paragraphs.

This resolve is worded flexibly in the event certain of the officers should be absent or unavailable.

WHEREAS:

- (1) This corporation is a Federal chartered corporation as defined by the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 477), as amended, and has authority to conduct business enterprises; therefore

## BE IT RESOLVED THAT THE TRIBAL COUNCIL OF THIS CORPORATION:

- (1) Authorizes the filing of an Enterprise Application and Agreement to finance the
- \_\_\_\_\_ Enterprise of the corporation in the total amount of \$\_\_\_\_\_. Certified copy of this resolution shall be attached to the Application as Exhibit A. The Council is familiar with the provisions of said application, including Exhibit B, and agrees to the provisions thereof. Of the total amount authorized, \$\_\_\_\_\_ will be reimbursable to the corporation by the enterprise, and \$\_\_\_\_\_ will be an investment in the enterprise.
- (2) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute a contract for management of the enterprise at a salary not exceeding

In the case of most enterprises, it may be desirable to add:  
"Provided, that the management contract or any modification or amendment thereof shall not be effective until approved by the Commissioner or his authorized representative.

\$ \_\_\_\_\_ per annum.  
The terms of any such contract may be modified or amended by the designated officers acting on behalf of this corporation.

- (3) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute the Enterprise Application and Agreement pursuant to Resolved (1), and to bind the corporation to the provisions thereof. In the event the Commissioner or his authorized representative approves the same conditionally, these officers are authorized to accept such conditions on behalf of the corporation as in their judgment are warranted, or to refer acceptance to the entire Council.

CERTIFICATION

I, the undersigned, as secretary of the \_\_\_\_\_, a Federal Corporation, hereby certify that its Tribal Council is composed of \_\_\_\_\_ members, of whom \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that the foregoing resolution was duly adopted at such meeting by the affirmative vote of \_\_\_\_\_ members.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Secretary of the \_\_\_\_\_

\_\_\_\_\_  
(A Federal Corporation)

Resolution No. \_\_\_\_\_ of the Governing Body  
of the

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an Indian Chartered Corporation.

WHEREAS, this organization is an Indian chartered corporation as defined by the Indian Reorganization Act of June 18, 1934, and under its charter, constitution, and bylaws has full power and authority to borrow money under the provisions of section 10 of said Act: Therefore

BE IT RESOLVED, That the tribal council of the corporation hereby authorizes the filing of an application for a loan from the revolving fund up to the amount of \$\_\_\_\_\_ for the purpose of enabling the corporation to make loans to its members and associations of its members, and authorizes and instructs its chairman and secretary to: (1) prepare and execute such application and to offer the following as security:

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and (2) to obligate the corporation up to this amount under such conditions as said officers may deem proper; and (3) to execute and deliver to the Secretary of the Interior or his authorized representative such written instruments as may be required as evidence of any loan made pursuant to the terms of this resolution.

Certification

I, the undersigned, as Secretary of the \_\_\_\_\_ corporation, hereby certify that the tribal council of the corporation is composed of \_\_\_\_\_ members, of whom \_\_\_\_\_, constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of \_\_\_\_\_ members.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(SGD.) \_\_\_\_\_  
Secretary

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an Indian Chartered Corporation

ASSIGNMENTS

The type of assignment an organization gives to the United States as security for a loan will vary with the purpose for which the loan is made, authority of the organization to borrow money, and other security which the organization may give (see 1.3K(9) and 1.9 above). Any assignment must be properly authorized by the governing body of the borrower and be in accordance with the provisions of its organization papers.

Relending. If the purpose of the loan is to enable the organization to relend money to its members, ordinarily an "Assignment of Interests in Relending Program" should be required. This may be on the following form which is a sample only, and should be adjusted to meet conditions surrounding particular loans.

ASSIGNMENT OF INTERESTS IN RELENDING PROGRAM

"As security for the performance of any loan agreement resulting from its application dated \_\_\_\_\_, 19\_\_\_\_, and the following indebtedness to the United States: \_\_\_\_\_

the undersigned hereby assigns to the United States all agreements, notes, rights and securities, other than mortgages of trust or restricted land, which it has received or shall acquire in connection with loans to its members or associations of its members, including loans made from tribal funds. The undersigned grants to the United States full right, power, and authority in its own name or in the name of the undersigned, to demand, collect, sue or receipt for the same. Upon written request of the Area Director, the undersigned agrees to execute specific assignments of each and every note, right, and security, in terms similar to this assignment. Failure of the undersigned to execute such specific assignments upon written request of the Area Director within 90 days of the date of his request shall automatically prevent further loans being made by the undersigned, and shall subject the undersigned to the default penalties prescribed by 25 CFR 91.15 and 91.20 unless otherwise authorized by the Area Director."

Enterprises. If the purpose of the loan is to finance an enterprise, ordinarily an "Assignment of Interests in Enterprise" should be required. This may be either a separate document or may be combined with the "Assignment of Interests in Relending Program" form if the organization is also conducting relending operations. The wording shown below is suggestive only, and will require adaptation to the needs of a particular enterprise.

ASSIGNMENT OF INTERESTS IN ENTERPRISE

"As security for the performance of any loan agreement resulting from its application dated \_\_\_\_\_, 19\_\_\_\_, and the following indebtedness to the United States: \_\_\_\_\_

the undersigned hereby assigns to the United States all net assets of its \_\_\_\_\_ Enterprise, and all income which is now or may in the future become due to the undersigned from the operation of said Enterprise. The undersigned hereby grants to the United States full right, power, and authority in its own name or in the name of the undersigned to demand, collect, sue, or receipt for said income, and agrees to execute such specific assignments of income of the Enterprise as may be requested from time to time by the Area Director."

Assignment of Income. If a loan is not otherwise adequately secured, and if the organization has income accruing to it from some source, an "Assignment of Income" ordinarily should be required. Such assignments ordinarily should cover income from specific sources only, and should be effective only in the event of default. General assignments of an organization's income usually should be avoided because it may result in an organization experiencing difficulty in obtaining financing from a private source at a later date. For example, if an organization gave the United States a general assignment of income, any assignment to secure a loan from a private lender would have to show that the rights of the private lender were subordinate to those of the United States. An assignment of specific income may be either a separate document, or may be combined with an "Assignment of Interests in Relending Program" if the organization is also conducting relending operations. The wording below is suggestive only, and will require adaptation to the needs of a particular enterprise.

ASSIGNMENT OF SPECIFIC INCOME

"As security for the performance of any loan agreement resulting from its application dated \_\_\_\_\_, 19\_\_\_\_, and the following indebtedness to the United States: \_\_\_\_\_

The undersigned hereby assigns to the United States income from the following source which is now or may in the future become due to the undersigned: \_\_\_\_\_

The undersigned hereby grants to the United States full right, power, and authority in its own name or in the name of the undersigned to demand, collect, sue or receipt for said income, and agrees to execute such



specific assignments of income as may be requested from time to time by the Area Director; provided that this assignment of income shall be effective only upon default in said loan agreement or agreements."

Sample Contract for Management and Operation of an Enterprise by a Federal Corporation

NOTE: The following sample contract is furnished for the purposes of illustration only, and will require adjustment to meet the needs of particular organizations and enterprises. All management contracts will be checked by the offices of the respective Field Solicitors prior to approval or prior to submittal to the Commissioner, Area Director, or Superintendent for action. It is not possible to foresee the requirements of all enterprises. The comments herein consequently are incomplete.

COMMENTS:

In the case of some enterprises it may be desirable to change the preamble to: "THIS AGREEMENT, made the dates shown opposite the signatures below, which shall not be effective until \_\_\_\_\_, 19\_\_\_\_, nor until this contract is approved by the Commissioner of Indian Affairs or his authorized representative, by and between \* \* \*." In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited, and in the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. In the case of Section 16 IRA organizations appropriate changes should be made.

THIS AGREEMENT, made the dates shown opposite the signatures below, by and between the \_\_\_\_\_, a corporation chartered under section 17 of the Act of June 18, 1934 (25 U.S.C. 477), as amended, acting through its Tribal Council as evidenced by Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 19\_\_\_\_, certified copy of which is attached hereto, and \_\_\_\_\_ of \_\_\_\_\_.

WITNESSETH:

THAT, for and in consideration of the payments to be made, services to be performed, and rights and privileges granted by the respective parties hereto, it is mutually understood and agreed as follows:

1. DEFINITIONS. Wherever used herein, the following terms shall have the meanings indicated.

(a) "COMMISSIONER" means the Commissioner of Indian Affairs, except where used in section 22.

(b) "AREA DIRECTOR" means the Area Director or officer in charge of the Area Office at \_\_\_\_\_ of the Bureau of Indian Affairs, or his successor in office.

(c) "SUPERINTENDENT" means the officer in charge of the reservation on which the enterprise is operated.

If the enterprise is operated off the reservation, it may be desirable to add: "or under which the enterprise is placed for administrative purposes." In those Areas where the services of a Superintendent are not available, the Area Director will perform the functions of the Superintendent, and reference to the Superintendent should be omitted.

(d) "CORPORATION" means the corporation shown in the preamble.

(e) "COUNCIL" means the governing body of the corporation.

(f) "MANAGER" means \_\_\_\_\_ mentioned in the preamble.

(g) "ENTERPRISE" means the \_\_\_\_\_ of the corporation.

This section is unnecessary if the operation of a new enterprise is being undertaken.

The wording of this section must not conflict with the plan of operation or with the provisions of the constitution, bylaws, or charter of the organization. The authority of the manager to obligate the enterprise or the organization needs particularly careful consideration. Some organization papers place limitations upon the amounts of contracts which may be entered into without approval of the Commissioner.

The wording of this section will be determined by the nature of the enterprise. In some instances, it would not be advisable to give the manager exclusive custody of the property. In some cases, it may be desirable to give the Council or Superintendent authority to require the manager to furnish an inventory upon request. In other

2. PRIOR CONTRACTS. This contract, when it becomes effective, will supersede and replace any prior agreement between the parties hereto, expressed or implied.
3. MANAGEMENT AND OPERATION. The manager will manage and operate the enterprise in an economic and efficient manner, in accordance with law and the provisions of Enterprise Application and Agreement CF No. \_\_\_\_\_ TE No. \_\_\_\_\_ and any modifications thereof. The manager acknowledges receipt of a copy of said agreement by his signature attached hereto. A copy of future modifications will be furnished the manager by the Superintendent. The manager agrees that he may not enter into any contract nor obligate the enterprise or the corporation for indebtedness except as specifically authorized in Exhibit B of said agreement. The manager agrees that he will not claim unfamiliarity with such agreement or modifications thereof as reason for non-adherence thereto.
4. INVENTORY. By signature affixed hereto the manager acknowledges receipt of the property of the enterprise in the inventory, copy of which is attached, consisting of \_\_\_\_\_ typewritten pages. Said inventory will be the basis from which to start accounting for the property of the enterprise. The manager shall have, during the period of this contract, exclusive

instances, Exhibit "B" of the Enterprise Application and Agreement may provide: "Upon request of the Superintendent the Council will require the manager to take an inventory in accordance with section 4 of his contract, and furnish the Superintendent with three copies." This section would then be worded accordingly. Any authority given the Superintendent or other official of the Bureau of Indian Affairs should be used sparingly. Ordinarily, action should be taken by the Council, and action of Bureau officials should be through the Council.

In the case of some organizations, it might be desirable to add "and the Superintendent."

custody of such property and acquisitions thereto purchased in accordance with section 5. Such property may be used only in the operation of the enterprise. Annual budgets approved in accordance with section 5 will provide funds to enable the manager to maintain the property in practically the same condition and state of repair as when it was turned over to him.

Upon termination of this contract pursuant to section 20, or upon request of the Council, the manager will have a similar inventory compiled and furnish the Council with four copies. The inventory will show:

- (a) All property turned over to the manager.
- (b) All dispositions made of such property.
- (c) All acquisitions.
- (d) All property in inventory as of the date of compilation of the inventory.

After the first inventory, subsequent inventories may start with the property shown in (d) of the previous inventory.

The manager will be responsible for any shortages in inventory unless such shortages are accounted for in a manner satisfactory to the Council.

It may be advisable to provide that the manager will furnish an operating statement for the accounting period, in order that the Council may have some basis upon which to analyze the proposed budget. It may also be desirable to provide for approval of the budget by the Superintendent or Area Director in addition to the Council, before it will be effective. This ordinarily is desirable where loans from the United States are involved. This may not be necessary in other cases. In still other cases, the requirement of approval of the budget by a Bureau official may be desirable only in the event the enterprise did not produce a net income during the accounting period.

If any provisions are necessary regarding automobile liability coverage, employee liability coverage as required by State laws, etc., they should be covered in this section.

In some cases it may be necessary to give the Superintendent or Area Director authority to prescribe the amount and type of insurance the manager should obtain. In most instances, however, instruction of a Bureau official should be to the Council which, in turn, would instruct the enterprise manager.

5. BUDGETS. Each year not later than \_\_\_\_\_, the manager will prepare a budget for presentation to the Council showing:
- (a) Estimated expenditures from last previous budget.
  - (b) Actual expenditures under last previous budget.
  - (c) Estimated expenditures for the ensuing year.
  - (d) Capital investment items.

Upon approval by the Council, the budget will constitute the manager's authority to make disbursements thereunder.

6. INSURANCE. The manager will keep all property of the enterprise, including properties leased from other parties, protected by adequate insurance against loss by fire or from other hazards, including business interruptions. The amount and type of insurance and the company or companies writing the insurance shall be satisfactory to the Council (and Area Director or Superintendent). In the event the Council does not believe that the manager has adequate insurance coverage, it may instruct the manager to obtain additional insurance, and the manager will comply with such instructions.

In some instances it may be desirable to include a provision that the accounting system be satisfactory to the Area Director.

7. ACCOUNTING. The manager will be responsible for maintaining, or causing to be maintained, full and complete accounting and other records of the operations of the enterprise. A balance-sheet type audit will be made at the close of the fiscal year by a certified public accountant or licensed accountant, which will include operating (profit and loss) and financial statements. Any accounting for capital investment expenditures will be made separately from expense of operation.

Copies of all audits will be furnished the Council, Superintendent, Area Director, and Commissioner. One copy will be retained by the manager.

The records and accounts of the enterprise will be available at all reasonable times for inspection and examination by authorized officers of the corporation, the Superintendent, Area Director, or Commissioner, and such other parties as the Council may designate. The Council may require special examinations to be made at any time.

Trial balances will be furnished the Council, Superintendent, and Area Director within 10 days of the close of each calendar month.

8. REPORTS. Reports will be made as requested in writing by the Council, Superintendent, or Area Director.

9. EMPLOYMENT. The manager will be responsible for selection of all employees of the enterprise, including bookkeeping and clerical assistants. He will employ members of the corporation wherever possible in the operation of the enterprise, consistent with his responsibilities under section 3 hereof. The manager will have the right to discharge unsatisfactory employees regardless of whether or not they are members of the corporation. The manager will discharge from employment any person or persons not members of the corporation, whose presence on the reservation is declared undesirable by resolution of the Council.

In some instances it may be desirable to give the Superintendent or Area Director authority to require the manager to furnish information on the wage or salary paid any employee and to instruct the manager regarding equitable adjustments. Ordinarily, however, Bureau employees should work through the Council.

The manager will pay not less than "going" wages and salaries for all labor and other employees of the enterprise. The Council may require the manager to furnish full information regarding the wage or salary paid to any employee, in order that the Council may determine whether the wage or salary is excessive or insufficient. The Council may instruct the manager to make adjustments it considers equitable. In the event the manager does not agree with the Council, appeals may be taken pursuant to section 10.

10. APPEALS. The Council may require the manager to submit all matters of dispute with members of the Corporation to it for decision. In the event the Council upholds the decision of the manager, its action shall be final. In the



event of disagreement between the manager and the Council, the matter may be referred by either the manager or the Council to the Superintendent for decision. The Superintendent's decision will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision of the Superintendent to the Area Director. The Area Director's decision will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision of the Area Director to the Commissioner. The decision of the Commissioner will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision to the Secretary of the Interior. The decision of the Secretary of the Interior will be final and binding upon both parties.

Decisions of the Superintendent may be transmitted to the manager and Council by registered or certified mail, return receipt requested, or handed to the parties and a receipt taken therefor. All decisions of the Area Director, Commissioner, or Secretary will be transmitted to the party making the appeal, with copy to the other party, by registered or certified mail, return receipt required.

Appeals to the Area Director will be transmitted through the Superintendent. Appeals to the Commissioner will be transmitted

through the Superintendent and Area Director. Appeals to the Secretary will be transmitted through the Superintendent, Area Director, and Commissioner.

11. FINANCING. The corporation will furnish funds for operating the enterprise, and for capital investment, in accordance with Agreement CF No. \_\_\_\_\_ TE No. \_\_\_\_\_, and budgets approved pursuant to section 5.

If depository provisions are included in the Agreement, it may not be necessary to repeat them in the management contract.

The provision to permit the Superintendent to withdraw funds may not be advisable in some instances. Consideration should be given to placing this responsibility upon the bonded treasurer of the corporation.

In some instances it may be desirable to restrict the amount on deposit to that insured by the Federal Deposit Insurance Corporation.

In some instances it may be desirable to include a provision to permit the Superintendent or Area Director to require the manager to furnish a statement, although ordinarily Bureau officials should work through the Council. The Agreement may contain a provision that: "Upon request of the Superintendent, the Council will require the manager to furnish

(a) Depository. The manager may open an account or accounts with any National or State bank that is a member of the Federal Deposit Insurance Corporation in the name of the enterprise. Arrangements will be made for the Superintendent to withdraw the funds at any time and place them in an Indian Money Account to the credit of the enterprise.

(b) Disbursements. The manager may make disbursements from the bank account or accounts in accordance with Agreement CF No. \_\_\_\_\_, TE No. \_\_\_\_\_, and budgets approved pursuant to section 5, over his signature as manager. All disbursements for the account of the enterprise will be by check, except where local custom or practice requires the disbursement to be made in cash,

full information regarding all checks issued to himself for the purpose of making cash disbursements; accounting for such funds; and the amount on deposit in the bank account or accounts of the enterprise; and will require the manager to transfer funds from the bank account of the enterprise to an IM account of the enterprise."

and where the amount involved is not more than \$ \_\_\_\_\_, in which case the manager may issue a check in favor of himself and make cash disbursements therefrom. The manager will furnish a statement to the Council at such times as the Council may require, showing the date, number, and amount of all checks issued to himself in order to obtain cash, and account for all disbursements in a manner satisfactory to the Council.

(c) Responsibility. The manager will be responsible under his bond for proper accounting for all funds received by him.

(d) Receipts. All money receipts of the enterprise will be deposited in the bank depository intact.

(e) Council's Authority. The Council may require the manager at any time to furnish full information on the amount on deposit in a bank account or accounts to the credit of the enterprise, and may require the manager at any time to transfer the funds from the bank account or accounts of the enterprise to an Indian Money Account of the enterprise.

12. COMPENSATION. The manager will receive a salary of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per annum, which may be paid in monthly installments, plus a bonus of \_\_\_\_\_ percent of net earnings of the enterprise. The net earnings will be determined by audit in accordance with section 7.

For the purposes of this section only, "net earnings" shall mean the net earnings before payment of the manager's bonus.

13. EXPENSES OF MANAGER. The manager will be entitled to reimbursement for travel and incidental expenses incurred by him in the operation and management of the enterprise. The total may not exceed the amount set forth annually in approved budgets pursuant to section 5.

All expenses, with the exception of transportation costs, i.e., airplane, railroad, pullman, boat, or bus fare, will be paid from personal funds of the manager, and written claims for reimbursement will be made after such expenses have been incurred. Transportation costs may be paid by the manager from his personal funds and written claim for reimbursement made, or may be paid by check on the bank account or accounts of the enterprise.

In some instances it may be desirable to require that any authorization above the specified amount also be approved by the Superintendent or Area Director in addition to the Council.

Expenses, exclusive of transportation costs, may not exceed \$ \_\_\_\_\_ per day, without further specific authorization from the Council.

The manager may use his personally-owned automobile in connection with the management and operation of the enterprise, and submit claims for reimbursement on the basis of \_\_\_\_\_ cents ( \_\_\_\_\_¢ per mile). All claims for reimbursement will indicate the necessity for incurring the expense.

14. BONDS. The manager will be bonded in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to protect the corporation against loss by reason of any act or acts of fraud, dishonesty, forgery, embezzlement, wrongful abstraction, or willful misapplication of funds on the part of the manager. The manager may, in writing, authorize any employee of the enterprise to handle funds, but only while there is maintained a bond in an amount to be determined by the manager to be sufficient to indemnify the corporation against financial loss by reason of any act or acts of fraud, dishonesty, forgery, embezzlement, wrongful abstraction, or willful misapplication of funds on the part of such employee. The manager will not authorize anyone to handle funds unless he is bonded. If the manager should do so, such person is the manager's agent and the manager will be liable under his bond.

In some instances it may be desirable to include a provision to permit the Superintendent or Area Director to instruct the manager to increase or decrease the amount of any bond, or require the manager to bond any employee in addition to the Council requirement. Ordinarily Bureau officials should work through the Council. The Agreement could contain a provision that: "Upon request of the Superintendent, the Council will issue instructions to the manager regarding procurement of bonds, which the Superintendent considers necessary to protect the corporation."

The Council may, in writing, instruct the manager to increase or decrease the amount for which any employee is bonded, and may also require the manager to bond any employee in such amount and in such manner as it may instruct in writing.

The manager and all employees who are required to be bonded will be bonded to the corporation. All such bonds will be with a surety company on the approved list of the United States Treasury. The cost of all such bonds will be considered an operating expense of the enterprise. All bonds will be deposited in a place of safekeeping.

In some instances it may be advisable to include a provision before the last sentence that "if the Council does not make arrangements for temporary management within \_\_\_ days, the Superintendent or Area Director may appoint a temporary manager to operate the enterprise until such time as the Council takes necessary action to cope with the emergency."

15. LIQUIDATED DAMAGES AND TEMPORARY MANAGEMENT. In order to provide protection for the corporation, the manager covenants and agrees to pay to the corporation within thirty (30) days after due demand, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) a day lawful money of the United States, as liquidated damages for each day the enterprise shall be wholly or partially inoperative because of the misfeasance, malfeasance, or nonfeasance or other neglect on the part of the manager, provided that the manager shall not be liable hereunder in the event of his death, nor after the date of his death. In the event the manager is unable to act for a period of longer than five days, due to his death, disability, or for any other reason except leave taken pursuant to section 16, the Council, Superintendent, or Area Director may declare that an emergency exists, in which event the Council shall make arrangements for temporary management, subject to approval of the Area Director. The manager will not be responsible for losses incurred during a period of temporary management.

16. LEAVE. The manager will be allowed twenty (20) days of vacation time with pay annually based on the fiscal year of the enterprise provided such vacation time may be taken only when the business of the enterprise warrants. Vacation in excess of ten (10) days at one time must be approved in advance by the Council. The manager will also be allowed sick leave up to fifteen (15) days annually with pay based on the fiscal year of the enterprise, provided any sick leave taken in excess of five (5) days at one time will be accompanied by a physician's statement that the manager was unable to work during the leave period. Vacation time and sick leave not taken in one fiscal year may be carried over to the next fiscal year, provided that the total accumulated vacation time or sick leave which may be carried over from one fiscal year to another may not exceed sixty (60) days of each. The manager may be paid for any accumulated vacation time at the time of termination of this contract, but not to exceed sixty (60) days, at the rate provided by section 12, exclusive of any bonus provisions. Any sick leave at the time of termination of this contract will be forfeited.

The fact that the manager may be on vacation or sick leave at any time shall not relieve him of his responsibility for management and operation of the enterprise under the terms of this contract.

If, in the preamble, approval of the contract is required, there should be an additional provision in this section that: "\* \* \* provided that before any modification or amendment will be effective, the approval of the Commissioner or his authorized representative is required."

The organization papers of the corporation should be checked to determine whether a "continuing" type of contract is permissible. In some cases, it will be necessary to cover a specified period of time.

If, in the preamble, approval of the Commissioner was required, there should be an additional provision in this section that: "subject to approval of the Commissioner or his authorized representative."

If, in the preamble, approval of the Commissioner, Area Director, or Superintendent was required, the authority of the Council to terminate the contract should be subject to approval of the

17. FULL TIME. The manager will devote his full time to the management and operation of the enterprise and will not engage in other activities which would interfere with the proper conduct of the business of the enterprise.
18. MODIFICATION. The terms of this contract may be modified or amended by mutual consent of the parties hereto, in writing.
19. PERIOD. The period of this contract shall be from the effective date as set forth in the preamble, until such time as it is terminated pursuant to section 20.
20. TERMINATION. This contract may be terminated in any one of the following ways:
- (a) Mutual Agreement. By mutual agreement, in writing, of the parties hereto.
- (b) By Tribal Council. The Council may terminate this contract at any time by giving the manager \_\_\_\_\_ days (\_\_\_\_ days) notice in writing. The manager will render an accounting for all funds and for all



Commissioner. In the case of some enterprises it may also be desirable for the Commissioner to be given authority to terminate the contract although ordinarily this would only be done with the consent of the Council. In this event, the first part of the first sentence could read: "The Council, with the approval of the Commissioner, or the Commissioner, may terminate this contract at any time by giving \* \* \*." In some cases, the Bureau official may be the Area Director or Superintendent.

In the case of some enterprises, it may be advisable to change the first part to read: "The Commissioner may terminate this contract at any time without prior notice to the manager, for misfeasance, malfeasance, or nonfeasance on the part of the manager, or for other cause which, in the opinion of the Commissioner is serious enough to make immediate termination necessary. In the event such action is taken by the Commissioner, the Council will make \* \* \*."

enterprise property in accordance with section 4. Such accounts shall be at the expense of the corporation. The manager will be entitled to reimbursement for expenses incurred pursuant to section 4, salary and bonus pursuant to section 12, and payment for accumulated vacation time pursuant to section 16.

(c) Misfeasance, Malfeasance and Nonfeasance. The Council may terminate this contract at any time, without prior notice to the manager, for misfeasance, malfeasance, or nonfeasance on the part of the manager, or for other cause which, in the opinion of the Council, is serious enough to make immediate termination necessary. In the event such action is taken by the Council, it will make arrangements for an immediate audit of the records of the enterprise, and the manager will make a full accounting for all funds and property of the enterprise. The audit and accounting will be at the expense of the enterprise. The manager will be entitled to reimbursement for expenses incurred pursuant to section 13, salary to the date of termination pursuant to section 12, and payment for accumulated vacation time pursuant to section 16. The manager will forfeit any claim for bonus under section 12 for the particular fiscal year in which the

In the last sentence, it may be desirable, in some instances, to change this provision to read: "The Council will make arrangements for an immediate audit of the records of the enterprise, and a full accounting for the funds and property of the enterprise will be made in accordance with the instructions of the Commissioner. Copies will be furnished the manager's executor, administrator, or assigns." In some instances "Commissioner" should be Area Director or Superintendent.

If, in the preamble, approval of the contract is required, the manager should also be required to give notice to the Commissioner (or Superintendent or Area Director) as well as to the Council.

termination occurs hereunder. Payment of any sort to the manager may be withheld until the audit is completed, and full accounting is made for all funds and property of the enterprise.

(d) Death. The death of the manager will terminate both his duty to render further managerial services and the duty of the corporation to make further payments therefor, except in settlement of obligations theretofore accrued under this contract. All such payments by the corporation will be made to the manager's executor, administrator, or assigns. A full and complete audit and accounting for the funds and property of the enterprise will be made in accordance with instructions of the Council, copies of which will be furnished the manager's executor, administrator, or assigns.

(e) By Manager. The manager may terminate this contract at any time by giving the Council \_\_\_\_\_ days ( \_\_\_\_\_ days) notice in writing. If the manager requests termination at any time other than the close of a fiscal year, an audit and complete accounting for all funds and property of the enterprise will be made, and the manager will bear the expense of the audit. If the manager requests termination at any time other than the close of the fiscal year, he will also forfeit any claim for bonus under section 12 for the particular fiscal year in which termination occurs hereunder,

and payment for any accumulated vacation time pursuant to section 16.

In some cases, it may be desirable to provide that funds of the enterprise will be returned to the Superintendent for deposit in an Indian Money Account.

21. RETURN OF PROPERTY. In the event of termination of this contract in any manner, or in the event it is necessary to arrange for temporary management pursuant to section 15, the manager will surrender all funds and property of the enterprise to the Council. The funds of the enterprise will then be handled by the bonded treasurer of the corporation until other arrangements for management of the enterprise are made. The property surrendered shall be in as good condition and repair as when it was received by the manager, due allowances being made for damage by the elements and reasonable wear and tear. Allowance also will be made in the event funds have not been furnished the manager to maintain and repair the property of the enterprise.

22. MISCELLANEOUS.

(a) No member of or delegate to Congress or resident Commissioner, after his election or appointment, either before or after he is qualified, and during his continuance in office, and no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part of this contract or derive any benefits therefrom. The foregoing prohibition shall not apply, however, to contracts entered into by the manager on behalf of the enterprise with any corporation for

the general benefit of such corporation, in which such member of or delegate to Congress, resident Commissioner, officer, agent or employee of the Department of the Interior is a shareholder.

(b) The manager shall not, without specific approval of the Council, transact business on behalf of the enterprise with any corporation, joint-stock, company, or association, or other firm or partnership, or other business entity of which he is an officer, agent, or member, or in the contracts or pecuniary benefits of which he is directly or indirectly interested.

(c) The manager shall not contract with any person or corporation for the hiring out of the labor of any prisoners confined for a violation of any of the laws of the United States.

23. CONFLICT. Should any provisions of this contract be found in conflict with the provisions of any approved enterprise application and agreement for financing the enterprise, including modifications thereof, the provisions of the application and agreement will apply, and such conflicting provisions will not invalidate the remaining provisions of this contract.

IN WITNESS WHEREOF, the parties  
hereto subscribe their names  
and affix their seals the day  
and year indicated opposite  
their signatures:

\_\_\_\_\_  
(Corporation)

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Manager)

\_\_\_\_\_  
(Date)

APPROVED:

\_\_\_\_\_  
(Commissioner of Indian Affairs)  
or  
(Area Director)  
or  
(Superintendent)

\_\_\_\_\_  
(Date)



*JWS*

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Washington, D.C. 20245

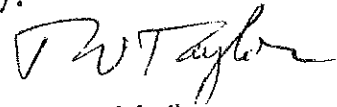
47 BIAM Supp. 2, Release 2

February 23, 1973

Memorandum

To: Holders of 47 BIAM Supplement No. 2  
From: Secretary of the Interior  
Subject: 47 BIAM Supplement No. 2, Loans to Individual Indians,  
Cooperative Associations and Corporations, and Financing  
of Enterprises

This release transmits a pen-and-ink change required to delete a  
duplication in Section 1.5I(3)(a).



For the Assistant to the  
Secretary of the Interior

Filing Instructions:

- (a) Remove superseded material:  
None
- (b) Insert new material transmitted:  
None
- (c) Pen-and-ink changes:

In Section 1.5I(3)(a), rule out the two duplicate sentences beginning  
with "In such" in line 13 and continue through "Application" in line 19.



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

47 BIAM Supp. 2, Release 1

September 5, 1972

MEMORANDUM

To: Holders of 47 BIAM Supplement No. 2

From: Commissioner of Indian Affairs

Subject: 47 BIAM Supplement No. 2, Loans to Individual Indians,  
Cooperative Associations and Corporations, and Financing  
of Enterprises

The material transmitted herewith replaces in its entirety material presently in 47 IAM 8, Loans to Individual Indians, and to Cooperative Associations and Corporations by Tribes; 47 IAM 9, Financing of Enterprises; and 47 IAM 10, Educational Loans.

  
Commissioner

Filing Instructions:

(a) Remove superseded material:

47 IAM 8	(27 sheets)
47 IAM 9	(22 sheets)
47 IAM 10	(5 sheets)

(b) Insert new material transmitted:

47 BIAM Supplement No. 2	(54 sheets)
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(c) Pen-and-ink changes:

None

*complete*

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CREDIT AND FINANCING

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## CREDIT AND FINANCING

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## CREDIT AND FINANCING

Loans to Individual Indians, Cooperative Associations and Corporations, and Financing of Enterprises

- 1.1 Purpose. The purpose of this supplement is to prescribe terms and conditions of loans by the United States and by organizations to individuals, and partnerships, including loans for education; loans by tribes to cooperative associations and corporations; and financing of enterprises 1/ operated by organizations 2/ as authorized by 25 CFR 91.4. (See 3.1 below.) All financing of enterprises must be in accordance with authority contained in the constitution, bylaws, charter, or other organization papers of the organization.

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1/ "Enterprise" as used herein means a business operated by an organization to promote its economic development, i.e., a self-sustaining activity that will produce a net income for the organization. Special activities also may be organized as enterprises for reporting purposes, i.e., an organization may make short-term emergency loans in accordance with an agreement approved by the Bureau, and report the activity as an enterprise. (See Section 36 of Illustration 6 to 47 BIAM Supplement No. 1.) The "Enterprise Application and Agreement" form should not be used for such special activities. "Enterprise" does not mean the regular relending operations of an organization, nor subsidized activities of an organization that involve welfare or social aspects. For example, community facilities such as community halls, housing projects for elderly members, or transportation facilities subsidized in some way by organizations, are not considered as enterprises hereunder.

2/ See 47 BIAM 1.4 F for definition of "organization." As used in this chapter, however, "organization" does not include credit associations or cooperative associations.

## CREDIT AND FINANCING

Loans to Individual Indians, Cooperative Associations and Corporations, and Financing of Enterprises1.2 Eligibility. 3/

- A. Cooperative Associations. A cooperative association must be organized pursuant to 47 BIAM 1.4 G.
- B. Corporations. A corporation organized by a group of tribal members, the stock of which is wholly owned by tribal members, is an association of members, and thus is eligible for a loan from the tribe.
- C. Individuals.
- (1) Loans by Tribes. An individual must be a member of the tribe making the loan. 3/

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3/ Indians who have severed their ties with their tribal groups are not eligible for loans from the United States. Also, upon the removal of Federal restrictions on the property of Indians as a result of the enactment of terminal legislation, and upon publication of a proclamation in the Federal Register by the Secretary of the Interior declaring that the trust relationship of such Indians is terminated, they are no longer entitled to any of the services performed for Indians because of their status as Indians, and are not eligible for loans from the revolving fund.

Sec. 7 of the Act of August 25, 1959 (73 Stat. 431), (see Historical Note 25 U.S.C. 355) provides: "The Act of June 18, 1934 (48 Stat. 984), as amended (25 U.S.C. 461), and the Act of June 26, 1936 (49 Stat. 1967), as amended (25 U.S.C. 501-509), shall not apply to the Choctaw Tribe and its members after the date of enactment of this Act \* \* \*." This restriction was subsequently repealed by Sec. 2 of the Act of August 24, 1970 (84 Stat. 828).

## CREDIT AND FINANCING

Loans to Individual Indians, Cooperative Associations and Corporations, and Financing of Enterprises

- (2) Loans by Credit Associations. An individual must be eligible for membership in the association pursuant to the provisions of its articles of association and bylaws, and must own, before or at the time the funds are advanced, shares in the association in an amount equal to at least \$3 par value for each \$100 or fraction thereof of the amount of the loan. <sup>4/</sup>
- (3) Loans by United States. An individual must be a member of a tribe that is not conducting credit operations, ineligible for a loan from a credit association, and unable to receive financing elsewhere, unless otherwise specifically authorized by the Commissioner. If the sole credit activity of a tribe is the operation of an enterprise pursuant to 3.1 below, or if for some justifiable reason a loan program by a tribe to its individual members is not advisable, loans direct by the United States may be made. Any direct loan program to individuals requires authorization by the Commissioner prior to exercise of delegated authority either by Area Directors or Superintendents.

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<sup>4/</sup> The articles of association and bylaws of credit associations govern membership, and the purchase, ownership, and transfer of stock and dividends thereon. As an example, if the par value were \$1, a borrower would be required to own three shares for a loan of \$100, and six shares for a loan between \$100.01 and \$200 inclusive. If the par value were \$3, a borrower would be required to own one share for a loan of \$100, two shares for a loan between \$100.01 and \$200 inclusive, etc. Each applicant must comply with the membership (stock-ownership) provisions of the articles and bylaws. On loans made to a husband and wife where the par value of the stock is \$3 and the loan is for \$100, each party would have to own one share for a loan of \$100, or three shares of stock with the par value of \$3. Wherever possible, borrowers should be required to purchase stock from their own funds. Funds for the purchase of stock may be included in applications for loans only if the applicants have no other funds available. Stock of deceased members may be retired only in accordance with the provisions of the bylaws of the association.

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CREDIT AND FINANCING

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Loans to Individual Indians, Cooperative Associations and Corporations, and Financing of Enterprises

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- (4) Degree of Blood. <sup>5/</sup> An individual must be of at least one-quarter or more degree of Indian blood to be eligible for a loan from the United States. The same restriction applies to loans by organizations to individuals from funds borrowed from the United States pursuant to 25 CFR 91.13. If a tribe is making loans to individuals from tribal funds, loans may be made to individuals of less than one-quarter degree of Indian blood providing the individuals are members of the tribe to which the funds belong.
- (5) Indian Women. Applications of Indian women married to non-Indians and ineligible Indians may be approved only in exceptional cases. Ordinarily the non-Indian husband should look to the same channels as other non-Indians for financing, and not to a credit fund provided to finance Indians. A married woman ordinarily is not the economic head of her family. If an application shows that the Indian woman is the main economic provider for her family, or if the application shows other justification, a loan may be approved.
- (6) Indian Men. Indian men married to non-Indians or to Indian women who are ineligible for loans from the lender, are eligible for loans. A married man ordinarily is the economic head of his family, and regardless of the eligibility of his wife, is eligible for a loan.
- D. Contractual Provisions. 25 CFR 91.13 (see 47 BIAM Supplement No. 1, 2.1 M) governs relending operations of Indian organizations. The eligibility of cooperative associations and individual Indians for loans from their organizations is determined, in addition to the regulation, by the provisions of the organization's loan agreement with the United States, or agreements entered into at the time tribal funds are advanced to tribes to enable them to make loans to members under authority of 25 CFR 91.12 (see 47 BIAM Supplement No. 1, 2.1 L).

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<sup>5/</sup> The Acts of May 10, 1939, and May 7, 1948 (25 U.S.C. 480, 482), prohibit loans from the revolving fund to Indians of less than one-quarter degree of Indian blood. If a tribe is making loans to individuals from revolving funds borrowed from the United States supplemented by tribal funds, individuals of less than one-quarter degree of Indian blood may not receive more than their proportionate share of tribal funds.

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1.3 Applications.

- A. Cooperative Associations. <sup>6/</sup> Applications will be submitted on Form 5-4738 supported by Form 5-4740, or in the form of a modification increasing the amount of an existing loan. If an association applies for an additional loan, the new loan will either provide sufficient funds to refinance existing indebtedness to the tribe, or a request for modification may be submitted to increase the amount of the existing loan. The total indebtedness of the cooperative to a tribe should be contained in one agreement, unless this procedure would endanger the security given for an existing loan (see 1.3 F below). Copies of approved applications of cooperatives are not required for the Central Office, unless in special instances the Commissioner directs that copies be furnished, or unless the application is submitted to the Commissioner for action, in which case copy will be retained for the files of the Central Office.
- B. Corporations. Form 5-4738 supported by Form 5-4740 will be submitted for applications by corporations or increases to existing loans in the form of a modification. Copies of approved applications of corporations (except cooperatives) are required for the Central Office.
- C. Individuals. Form 5-4738 will be used for all applications, unless otherwise specifically authorized by the Commissioner. This form will be supported by Form 5-4739, 5-4740, or 5-4741 depending on the purpose for which the loan is requested (see Section 4 of Form 5-4738). In the discretion of the lender, information on these forms may be supplemented by additional data in a format prescribed by the lender. Copies of approved loan agreements are not required for the Central Office, unless in special instances the Commissioner directs that copies be furnished, or unless applications are submitted to the Commissioner for action, in which cases copies will be retained by the Central Office.

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<sup>6/</sup> The instructions regarding cooperatives in this Supplement are confined to loans by Indian organizations to cooperatives. Instructions for loans to cooperatives by the United States are included in 47 BIAM 7.

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- (1) Additional Loans. Where an individual is already indebted to an organization or to the United States and has need for additional funds, a new application may be submitted including funds to refinance existing indebtedness, or a request for modification increasing the amount of the existing loan. The latter procedure is advisable where existing plans are reasonably current, and where arrangements can be made for security given for existing indebtedness to be security for the additional indebtedness. If plans of operation are not reasonably current, however, revised plans should be included as a part of a modification.

In exceptional cases, where either of these procedures would endanger or subordinate the security given for an existing loan, a supplemental application may be submitted for the additional amount needed, subject to the restriction in 1.3 F below.

- D. Signers. Only eligible Indians (see 1.2 C above) may sign applications. Ineligible spouses, however, shall be required to sign the promissory notes and securing documents. Applications of partnerships require the signatures of all partners. In the event wives or husbands of partners are eligible for loans, they shall be required to sign applications also. Applications of Indians married to other Indians eligible for loans from the lender require the signatures of both husband and wife. Such applications shall show clearly whether the wife is signing as a surety or as an owner of an interest, legal or equitable, in the property to be purchased.
- E. Partnerships. Applications of partnerships shall be prepared in the same manner as applications of individuals. Copies of the partnership agreements will be included as a part of the application.
- F. Number of Loans. Not more than one loan agreement may be in effect with a particular individual (including spouse) at any time, unless an exception in each specific case is authorized by the Area Director, in writing, copy of which shall be attached to or be made a part of the loan agreement. The Area Director may not, however, authorize more than two loan agreements to be in effect with a particular individual at

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any time. Exceptions may be authorized by the Commissioner. All indebtedness of a cooperative or corporation shall be contained in one loan agreement, unless otherwise specifically authorized by the Commissioner. 7/

- (1) Alaska. On loans made in Alaska, if the limitation of not more than two loans being in effect with a particular individual at any time would endanger the security of existing loans involving marine liens, in order to conform to the policy in the first paragraph of 1.3 C (1) above, the Area Director may authorize an exception in specific cases. If an individual is indebted for a loan from a Native cannery owned by the same organization, the security given for the loan also shall be security for the advance made by the cannery which is unpaid at the close of a particular fishing season.

- G. Explanation to Applicants. Applicants, co-signers and sureties shall not be permitted to sign any paper which they do not understand fully. The provisions of regulations, instructions, application forms, promissory notes, securing documents, and any other matters affecting particular loan documents will be explained carefully, and the responsibilities being assumed will be emphasized, i.e., (1) for proper use and care of the property to be purchased with or given as security for the loan; (2) for observance of plans and agreements; (3) for voluntary adherence to the repayment plans in the application, and (4) the extent of the liabilities of co-signers and sureties. Borrowers are expected to make repayments of principal and payments of interest voluntarily to the lender on due dates. If for some reason payments cannot be met, borrowers will be expected to make their own arrangements with the lender for requesting extensions of repayment terms. This will be explained to them by the credit committee on tribal loans, and the Agency credit officer on loans by the United States. It may be necessary in some instances to convey information to individuals through interpreters. The fact that the services of an interpreter are necessary to comply with the requirements of this section will not be accepted as reason for failure to comply.

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7/ In considering the number of loan agreements in effect with a particular borrower, educational loans and short-term loans need not be considered.



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- (1) Truth in Lending - Consumer Cost Disclosure. Loans to which Regulation Z of the Federal Reserve Board applies must be conducted in accordance therewith (see 47 BIAM Supplement No. 1, 1.3 I (1)).
  - (2) Fair Credit Reporting Act. Disclosure or notice regarding credit information must be given to borrowers pursuant therewith (see 47 BIAM Supplement No. 1, 1.3 I (2)).
- H. Insurance. Borrowers may be required to insure property purchased with loans, or given as security thereof, against loss by fire or other cause. Whether or not borrowers are required to carry insurance is a matter to be determined by the nature of the enterprise and circumstances in each particular case. Unless an exception is specifically authorized by the Area Director, borrowers shall be required to insure buildings purchased or constructed with loans, or given as security for loans, against loss by fire.
- (1) Alaska. Boats purchased with loans shall be insured, and the amount and type of insurance carried must be satisfactory to the Area Director. Insurance on boats generally designates a certain area within which the insurance is effective. Borrowers may not move boats from the designated area without securing proper coverage, and the consent of the lender and the Area Director.
- I. Plans for Repayment of Indebtedness. Plans for repayment of indebtedness will be included in applications. Care will be used to make certain that all assets and liabilities of applicants are shown and that necessary checking is done prior to approving or recommending approval of an application, to make certain that the assets and liabilities listed are complete.
- J. Refinancing. Applications for loans to refinance previous loans by organizations or by the United States may receive consideration. Loans to refinance indebtedness to other lenders should be approved only in exceptional cases such as where it is desirable to refinance small amounts owing

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to other creditors in order to obtain first liens on the security; where the applicants stand to lose their equities in certain properties; where the interest rates are exorbitant; or where the terms of the loans are inequitable or unsatisfactory. With adequate justification, debts owing to creditors other than Indian organizations or to the United States may be refinanced with the concurrence of the Area Director. Care must be used to avoid loans to "pull the chestnuts out of the fire" for other lenders.

- K. Fees. Applicants will not be charged fees on applications for loans from the United States. An organization may charge borrowers fees when authorized to do so in the organization's loan agreement with the United States (see sec. 27 of Illustration 6, 47 BIAM Supplement No. 1). The schedule of fees must be uniform for all borrowers for the particular type and amount of loan involved and be considered in the Consumer Credit Cost Disclosure Statement. Amounts required for payment of fees may be included in applications for loans only if the applicants have no other funds to pay them. Fees may not be charged on unpaid amounts extended. Fees may be charged on amounts refinanced if provision therefor exists in the organization's loan agreement or Declaration of Policy and Plan of Operation for its credit program. When fees are collected in cash, applicants must be issued receipts therefor (see 1.14 below).
- L. Preparation of Cooperative's Application. <sup>8/</sup> Forms 5-4738 and 5-4740 (see 1.3 A above) are largely self-explanatory and must be supplemented with additional information. This shall include: (1) A certified copy of the resolution of the board of directors of the applicant authorizing the filing of the application as Attachment No. 3; (2) A justification for the loan, including economic data as Attachment No. 4; and (3) A statement outlining the procedures for handling the loan as Attachment No. 5.

The justification is the most important part of the application. Through preparation of this Attachment, the justification for a loan can be adjusted to the particular case involved, the amount requested, purposes of the loan, and other pertinent factors. A more detailed justification is required to support a larger loan for somewhat complicated operations, than for a small loan involving a relatively simple activity.

<sup>8/</sup> See 47 BIAM Supplement No. 1, 1.2, on loans to cooperatives by the United States.

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The procedure for handling the loan should provide that any plan of operation may be approved by the Area Director. The plan of operation shall not be made a part of the Attachment, but will be incorporated therein by reference with the provision that the "Plan" 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.

All applications should be kept as brief and simple as possible, and be confined only to pertinent material. Bulk ordinarily adds nothing to the presentation of an application.

- (1) Official Name and Organization Papers. Each application shall be submitted in the official name of the cooperative, as set forth in its articles of association or other organization papers. Organization papers, which are to be an attachment to Form 5-4740, must have been approved by the governing body of the lender and by the Commissioner (see 47 BIAM 1.4 G).
- (2) Corporate Seal. If the cooperative has a corporate seal, it should be attached to or stamped on the application and all securing documents (see 47 BIAM Supplement No. 1, 1.3 L for discussion of corporate seals).
- (3) Livestock Cooperatives. The livestock industry on many reservations is conducted mainly through cooperative associations. The purpose of many loans to cooperatives will be to finance livestock operations. Indian livestock growers should be encouraged to join cooperatives. Area and Agency staffs will assist in organizing and financing cooperatives wherever local conditions indicate they can operate successfully.

Most livestock of Indians are individually-owned but are operated cooperatively. The cooperatives are non-profit organizations. State incorporation is urged because business is done with non-members, and the association members should have the protection of limited liability. The taxation problem does not arise in connection with associations organized in this manner because they are non-profit, and hold little property, if any, in the association's name.

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A "one brand" livestock operation has been inaugurated in a certain instance. Ownership of individually-owned trust livestock was transferred to a State corporation in exchange for shares of stock. Such livestock may no longer be held in a trust status.

- M. Preparation of Corporation's Application. Forms 5-4738 and 5-4740 (see 1.3 B above) will be used and supplemented with the attachments as described in 1.3 L above. No set outline is prescribed for Attachment Nos. 4 and 5 because of the different types of businesses various corporations may be engaged in and the complexity of operations. Lenders and approving officers may require more detailed justification and plan of operation to justify the loan.
- N. Preparation of Individual's Application. <sup>9/</sup> Forms 5-4738, 5-4739, 5-4740 and 5-4741 (see 1.3 C above) are largely self-explanatory.
- (1) Planning. Plans are required on loans of \$1,000 or more which are not fully secured unless otherwise authorized by the Commissioner. Forms 5-4739, 5-4740 and 5-4741 were designed to provide minimal information on applicant to justify the loan. Lenders and approving officers (see 1.5 below) may require more detailed plans to justify loans. No set outline for plans is prescribed because they will differ in various areas and for different types of enterprises for which financing is requested. As an example, on loans to finance agricultural enterprises, the approving officers may require monthly budgets of income and expenses, with timetables showing by whom, and when, certain activities will be undertaken (see 1.4 B below). In some instances it may be required that the amount of the loan and all of the borrower's income will be deposited in a bank which is a member of the FDIC, subject to a Deposit Agreement. Disbursements from the bank account would be permitted only in accordance with the provisions of a budget included as part of the loan agreement. Where this procedure is followed, provisions for subsistence, living, and operating expenses should be included in the application.

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<sup>9/</sup> The same instructions also apply to applications of partnerships (see 1.3 D and E above).

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Approving officials will carefully analyze plans upon which applications for loans are based. Too often an applicant will consider a plan as a hurdle to be overcome in order to obtain a loan rather than as a tool for efficient operations. Unless the importance of a plan is recognized, the purpose for which planning is required is defeated. This can be overcome by a process of education, adequate supervision, and follow-up (see 1.5 D below).

- O. Modifications. Modifications of loan agreement contracts may be requested for any legitimate purpose, i.e., increase in the amount of the loan; change in repayment terms; extension of maturity dates; change in an operating plan, etc. An application for modification should originate with the borrower, and the same procedure should be followed as in the case of the original application. The same number of copies is required as of the original agreement. No form is prescribed for requests for modifications, as requests necessarily must be adapted to the particular need involved. It is essential to show:

- (1) Number. CF agreements or contract number.
- (2) Payments. Itemized list of payments scheduled on original agreement, payments made, both principal and interest; date to which interest has been paid; and accrued but unpaid interest.
- (3) Changes. Changes desired in plans and repayment dates and any other pertinent data.

- 1.4 Purpose of Loans. The general purpose of loans is to promote the economic development of borrowers. <sup>10/</sup> All applications must show repayment capacity.

- A. Preference. Preference will be given to loans which will finance projects that will make the most beneficial use of loan funds. Ordinarily the order of priority should be (a) loans for educational purposes; (b) productive loans for rehabilitation purposes, i.e.: (1) nonagricultural; (2) agricultural; (c) housing; and (d) productive loans where complete rehabilitation of the borrowers is not involved.

<sup>10/</sup> The Act of June 18, 1934 (25 U.S.C. 470), establishing the revolving credit fund provides that loans may be made "\* \* \* for the purpose of promoting the economic development of \* \* \* tribes and of their members \* \* \*," (see 47 BIAM Supplement No. 1, 2.1 A and D).

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- (1) Productive Loans. A productive loan means one for a self-liquidating enterprise (see 47 BIAM 1.4 N). A loan for commercial or agricultural purposes, granted industry and managerial ability on the part of the borrower, ordinarily may be classed as a productive loan. There are additional factors to be considered, such as climatic conditions, size of the unit, size of the loan, whether the enterprise under normal conditions will produce enough to cover operating and living expenses and still repay the loan, etc. Agricultural loans often take more money to rehabilitate borrowers than commercial or industrial loans. The latter types would make more beneficial use of loan funds.
- (2) Buildings. A loan for the purchase, repair, or construction of a building ordinarily is not considered productive. The building usually would not produce an income from which to pay operating and living expenses and repay the loan. If the building were required to enable the borrower to live on and operate his land, which he would otherwise not be able to operate, and if the enterprise as shown by his farm plan will produce sufficient income to cover expenses and repay the loan, the building may be considered as part of a productive loan.
- B. Rehabilitation Loans. A rehabilitation loan is one to finance an enterprise of a size large enough to provide income sufficient to cover operating and living expenses and repay the loan over a reasonable period of time. For the purposes herein, rehabilitation loans are classed as productive loans (see 47 BIAM 1.4 O). By concentrating on the larger "rehabilitation" type loans, credit administration of organizations can be simplified. Five loans of \$20,000 each can be followed up with comparatively little difficulty. On the other hand, 1,000 loans of \$100 each require the same amount of money but present a difficult administrative problem. The former, in the long run, probably would result in much more benefit to the borrowers.
- C. Housing Loans. Loans to improve housing, i.e., constructing, purchasing, improving, or repairing homes, may be made and should be encouraged, if the applications indicate there are reasonable expectations that the loans can be repaid within the maturity periods scheduled. Illustration 6, 47 BIAM Supplement No. 1, includes guidelines to be considered in

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connection with housing loans. Generally, loans for the purchase or construction of homes on non-trust land should be closed through escrow and policies of title insurance required. Applications for purchase of existing homes should be accompanied by appraisal reports.

- D. Support and Burial Loans. Tribes using tribal funds in their credit operations may make loans for support and burial purposes, in addition to loans for economic development, provided the applications show there is security from which the loans will be repaid. The total amount of support and burial loans outstanding at any one time may not exceed the amount of tribal funds being used in the tribe's credit operations. Associations, the United States, and tribes using only revolving credit funds in their operations, may not make such loans from revolving credit funds because they are not authorized by the Act of June 18, 1934 (25 U.S.C. 470), (see 47 BIAM Supplement No. 1, 2.1 D and L).
- E. Loans for Commercial Enterprises. Loans may be made for commercial enterprises only if they are to be conducted on a cash basis, unless otherwise specifically authorized by the Commissioner.
- (1) Alaska. Readily saleable Native products, conservatively valued, may be accepted in lieu of cash when authorized by the Area Director.
- F. Land Loans. Loans may be made for the purchase of land to be utilized by the borrowers. Loans for land speculation or where the land to be purchased with the loan is to be utilized by non-Indians, may not be made, unless an exception in specific cases to meet special situations which may arise, and which would clearly be in the Indians' interests, is authorized by the Area Director (see 1.9 B below).

- 1.5 Approval. All approval actions shall be stated definitely and clearly. All approvals will be given subject to the availability of funds. Applications for loans from organizations must be acted upon favorably by the authorized body or officers of the organization before any official of the Bureau may take action thereon. Applications which have been acted upon favorably by an organization may be disapproved by the Bureau official authorized

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to act. However, no Bureau official may approve an application which has not received prior approval by the authorized officials of the organization making the loan.

- A. Justification. The file on each application will contain sufficient information to justify the approval or disapproval action.
- B. Recommendations for Approval. All recommendations for approval will contain sufficient information to justify the recommendations.
- C. Policy. The policy is to approve loans only to applicants who cannot obtain necessary financing from the same credit institutions serving other citizens on reasonable terms and conditions (see 47 BIAM 1.2 A). Where organizations propose to make loans from revolving loan funds borrowed from the United States (see 47 BIAM 1.2 F), exceptions may not be made to this policy. Where loans are to be made by tribes from tribal funds (see 47 BIAM 1.2 F and 47 BIAM Supplement No. 1, 1.13 A), applicants should be encouraged and urged to obtain financing from the same institutions serving other citizens, but exceptions to the general policy may be permitted. In summary, loans to legally eligible individuals who cannot obtain justified financing elsewhere may be approved and greater risk undertaken than that assumed by customary lenders, provided there are reasonable expectations that the loans can be repaid.
- D. Reduction of Risk. Applicants for loans from Indian organizations or direct from the United States generally are in a credit class that customary lenders cannot consider as suitable credit clients. A higher risk element is involved than the usual financial institution can tolerate. Approving officers will take all possible steps to reduce risks as much as possible. Applications may not be approved, however, unless there are reasonable expectations of repayment. The Act of June 18, 1934 (25 U.S.C. 470), established the revolving loan fund "\* \* \*" for the purpose of promoting the economic development of \* \* \* tribes and of their members." If a borrower is rehabilitated economically with the assistance of a loan, he will be able to repay the loan. If the efforts to rehabilitate him economically are not successful, his economic development will not have been promoted, as required by the authorizing legislation, but may actually have been retarded, and a loss to the lender also may have been incurred.



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Some protections are available on loans made pursuant to this chapter which may not be available to some customary lenders. Knowledge of the industry and capabilities of applicants, supervision and follow-up of their credit financed activities, and proper planning of such activities (see 1.3 N above) can help to offset the lack of security in some instances. Approving officers will not approve more loans than the available staff (both Bureau staff and staff of the lending organization) can supervise adequately.

E. Guidelines. Applications which fall within any of the following classes should not receive approval:

- (1) Maturity. Where the maturity will extend beyond the maturity date of the loan from the United States to the organization making the loan. Approval should not be given unless the organization has other funds to permit it to make the loan without jeopardizing its ability to make prompt repayment of its obligations to the United States (see 1.8 below).
- (2) Minimum Amount. Where the amount is less than \$100.
- (3) Number of Agreements. Where the application would result in more than one cash loan agreement being in effect with the borrower, except as authorized in 1.3 F above.
- (4) Commercial Enterprises. Where the application is to finance a commercial enterprise which will not be conducted on a strictly cash basis, except as authorized in 1.4 E above.
- (5) Title. Where title to the property to be purchased with the loan will be taken other than in the name of the borrower, except applications of individual Indians to purchase land and buildings on or to be located on trust land, title to which may be taken in the name of the United States in trust for the borrower as authorized by 1.9 B below.

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F. Special Considerations. Before action is taken on any application, approving officers will give special consideration to the following:

- (1) Location of Credit-Financed Enterprises. <sup>11/</sup> Because of difficulties of follow-up and supervision, loans ordinarily should not be approved to finance enterprises outside the boundaries of reservations, except in special cases where follow-up and supervision can be assured and where the facts in each case clearly show that approval action is justified. The loan docket must contain full information to justify the approval action and such loans must be adequately secured.
- (2) Evaluation of Flood Hazards. Applications involving financing of individual enterprises located on potential flood plains, including the construction of new facilities thereon, shall not be approved unless adequate security is provided. All such applications shall be accompanied by a statement setting forth an evaluation of flood damage potential in the area.
- (3) Minors. Applications of minors ordinarily will not be approved unless the parents or guardians, with reputations as being responsible individuals, sign the guaranties of repayment. It must be explained to parents and guardians signing that they are just as responsible for payment of the indebtedness as if they themselves were the borrowers.

Some states have enacted laws providing that a person reaching age eighteen shall be considered to have reached his majority and to be an adult. As these privileges and rights granted under various state laws may differ, advice should be obtained from the Field Solicitor.

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<sup>11/</sup> Not applicable in Oklahoma and Alaska.

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In special instances it may be necessary to make loans to minors without guaranties, where it is impossible or inadvisable to secure the signatures of the parents or guardians. Each loan docket shall show why signatures were not obtained and contain full justification for approval action. Agency credit officers will explain to Indian lending organizations that unless a minor affirms his indebtedness upon reaching his majority, he ordinarily cannot be held liable for payment thereof, except for necessities.

- G. Applications of Cooperatives. Area Directors may approve applications of cooperative associations for loans from tribes where the total indebtedness of each association to the lender will not exceed \$100,000. Before approval is given, however, the organization papers require approval of the Commissioner. Applications for loans in excess of this amount require approval of the Commissioner.
- H. Applications of Corporations. Applications of corporations the stock of which is wholly owned by tribal members, and which qualify for loans, require approval of the Commissioner.
- I. Applications of Individual Indians.
- (1) Superintendent. The authority of Superintendents to approve applications of individual Indians will be pursuant to Area Redelegation Orders. Any program of direct loans to individuals by the United States must be authorized by the Commissioner before any approval action is taken. Superintendents may not approve any applications if the provisions thereof conflict with contractual provisions of loan agreements between the United States and lending organizations; provisions contained in authorizing resolutions of tribes; agreements with tribes for the use of tribal funds for credit purposes pursuant to 47 BIAM Supplement No. 1, 1.13, and approved Declarations of Policy and Plans of Operation (see 47 BIAM Supplement No. 1, 1.3 K (8) and Illustration 6). Applications involving "split" security or "split" loans shall require approval of the Area Director or Commissioner (see 1.9 N and O below).

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- (a) Withdrawal of Authority. The Area Director may withdraw the approval authority of the Superintendent in whole or in part at any time, and shall withdraw such authority if at any time the delinquencies on a particular reservation or by a particular lender, become excessive, or if in his opinion, unsound credit practices are being followed.
- (b) Procedure. On each loan by an organization, the Superintendent will state his approval or disapproval definitely on the appropriate part of the application form with citation of the authority for his action. Approvals will include such conditions as may be deemed necessary to protect the interests of the lender.

On loans made by the United States, the Superintendent will execute the commitment order part of the application he approves, with citation of the authority for his action. Approvals will include such conditions as may be deemed necessary to protect the interests of the United States.

If the space on the application form is insufficient, supplemental sheets may be attached, and be clearly identified in the application form.

If the Superintendent does not have authority to approve the application, he will make definite recommendations either for approval or disapproval on the application form, and forward all copies to the Area Director.

The record on each application shall contain full justification for whatever action is taken or recommended by the Superintendent (see 1.5 A above).

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- (c) Superintendent's Responsibility. The Superintendent's signature on an application (either of approval or recommendation for approval) shall be evidence that he has checked and made certain that the applicant is eligible for a loan from the lender, that funds therefor are available, that the loan conforms to the regulations and instructions, that the loan does not violate any provisions of any agreement with the United States including the use of tribal funds for credit purposes, and that the statements therein are full and correct to the best of his knowledge and belief.
- (2) Area Director. The Area Director may approve any application of an individual Indian that could be approved by the Superintendent, and applications where the indebtedness to the lender will not exceed \$50,000.
- (a) Adherence to Contractual and Other Provisions. Applications for loans from organizations may not be approved if the provisions thereof are in conflict with contractual provisions of loan agreements between the United States and the organizations making the loans, authorizations in resolutions of tribes, and agreements with tribes for the use of tribal funds for credit purposes pursuant to 47 BIAM Supplement No. 1, 1.12, or approved Declarations of Policy and Plans of Operation (see Illustration 6 of 47 BIAM Supplement No. 1).
- (b) Withdrawal of Authority. The Commissioner may withdraw the approval authority of the Area Director in whole or in part at any time and for any cause.
- (c) Procedure. On each loan by an organization, the Area Director will state his approval or disapproval definitely

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on the appropriate part of the application form with citation of his authority for the action. His approval will include such conditions as are deemed necessary to protect the interests of the lender. All copies of the application will then be returned to the Superintendent.

On each loan made by the United States, the Area Director will either execute the commitment order part of the application, if he approves, or authorize its execution, and cite his authority. His approval will include such conditions as are deemed necessary to protect the interests of the United States. All copies of the application will then be returned to the Superintendent.

If the space on the application form is insufficient, supplemental sheets may be attached and clearly identified in the application form.

If the Area Director is not the final approving officer, he will make definite recommendations for approval or disapproval on the appropriate part of the application form, or in a letter, and forward the original and one copy to the Commissioner citing the reasons why the application requires action by the Commissioner.

The docket on each application will contain full justification for whatever action is taken or recommended by the Area Director.

If the Area Director does not require any changes to be made or attach any conditions to his approval, the loan will become effective upon his approval. If any changes are required or conditions are attached to the approval, the

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application will be returned to the organization with instructions regarding the specific changes or revisions to be made therein by the applicant, and re-execution of the commitment order by the authorized officer of the lender.

On loans made by the United States, if the Area Director does not require any changes to be made or attach any conditions to the approval, the loan will become effective upon his approval. If any changes are required or conditions attached to his approval, the application will be returned to the applicant with instructions regarding the specific changes or revisions to be made therein by the applicant, and acceptance of the commitment order.

(3) Commissioner. The Commissioner may approve any application of an individual Indian which could be approved by the Superintendent or Area Director. Any application in excess of the Area Director's approval authority requires approval of the Commissioner.

(a) Procedure. On each loan, whether by an organization or by the United States, the Commissioner will take action by letter or memorandum addressed to the Area Director. Such action may authorize the Area Director to approve the application. In such instances, the Area Director will cite the letter or memorandum as his authority for the action taken. In other instances, the Commissioner's letter or memorandum may approve or disapprove the application. In such instances, the Area Director will cite the letter or memorandum as his authority for the action taken. In other instances, the Commissioner's letter or memorandum may approve or

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disapprove the application. In such instances, three additional copies will be supplied on loans by organizations, and four additional copies on loans by the United States. On the latter, such letters or memorandums will include authority for the Area Directors to execute or authorize the execution of the commitment order if the loan is approved. The original application will be returned, and one copy will be retained by the Commissioner.

- (4) Organization. Authority of an organization to give final approval to loans will be by specific authorization from the Area Director. The organization will adopt a resolution stating the amount and type of loans on which final approval authority is desired and forward it to the Commissioner through the Superintendent and Area Director, who will each attach their recommendations. The Commissioner will consider the soundness of the organization's credit operations and the results achieved in deciding upon issuance of the authorization.

J. Commitment Order. The commitment order part of the application form will be prepared upon final approval of an application. Any conditions of approval will be inserted therein, which must then be accepted by the applicant. If the space in the commitment order is insufficient, the conditions may be listed on a separate sheet, which shall be made a part of the loan agreement. If there are no conditions of approval, acceptance of the commitment order is unnecessary. On each loan by an organization, the commitment order will be executed by the authorized officer of the organization. On each loan by the United States, it will be executed by the Superintendent or Area Director with citation of their respective authorities.

- (1) Conditions of Approval. Any application which requires a large number of conditions of approval or changes should be returned to the applicant for rewriting. Applications should receive



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approval in such a manner as to require the smallest number of changes possible therein. Unless specifically instructed in the approving officer's instructions, changes must not be made in the application as originally submitted. Changes may be handled by including a statement in the commitment order: "Approved subject to the following conditions:" or by a statement "Approved subject to conditions stated in the Area Director's approval dated \_\_\_\_\_, copy of which is attached hereto as page \_\_\_\_\_," or some similar wording. Care must be used to avoid multiple conditions in the commitment order which might be confusing to the borrower, or which might cause doubt to arise as to the provisions by which the borrower is governed.

- (2) Effective Date. On each loan approved unconditionally, the effective date of the loan is the date of approval of the commitment order. On each loan which is conditionally approved, the effective date is that of acceptance of the commitment order by the borrower.
- (3) Signatures. Only eligible borrowers may sign acceptances of commitment orders. Only the originals will be signed. Copies of commitment orders may show signatures as follows:  
 "S/ \_\_\_\_\_."
- (4) Evidence of Authority, Officers of Organizations. The Superintendent will make certain and have evidence in his files that any party signing a commitment order for a loan by an organization has authority to do so.

K. Advance of Funds. The manner in which funds are advanced to a borrower will be governed by the provisions of the approved loan agreement. On each loan to a cooperative, the funds ordinarily will be advanced to the cooperative by check for deposit in its approved depository, in accordance with the provisions of its loan agreement. On each loan to an individual, the funds likewise ordinarily will be advanced to the borrower by check, either for

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deposit in a bank account from which the borrower may make disbursements without restrictions, or in accordance with the terms of a deposit agreement on Form 5-4712 (formerly Form 5-817) or Form 5-4713 (formerly Form 5-817a).

- (1) Unrestricted Advances. If the loan is adequately secured, the borrower's loan agreement may provide that advances may be made to him by check on the organization's depository. The check may then be turned over to the borrower and he may handle his purchases under the loan without supervision.
- (2) Restricted Advances. The borrower's loan agreement may provide for issuance of a check in his favor for deposit in a bank account under the terms of a deposit agreement, Form 5-4712 (Loans by United States) or Form 5-4713 (Loans by Indian Organizations). Unless the use of an IM account as depository for the borrower is authorized, this procedure will be used in all instances where the property to be purchased with the loan is given as security for the loan, unless it is otherwise adequately secured.
- (3) Note and Voucher. When funds are advanced, a promissory note will be executed as evidence of the loan. Form 5-4742 will be used on loans by the United States to individuals, and Form 5-4743 on loans by organizations.

Original notes shall be retained in a place of safekeeping by the Area Director or Superintendent in the case of loans by the United States, and by the organization in the case of loans by organizations. Area Directors and Superintendents may permit original notes in favor of organizations to be placed in Government safes or other facilities where the organizations do not have places for safekeeping. Upon repayment, the notes will be returned to the borrowers. On loans by the United States, the borrowers also will execute voucher Form 1034.

- (4) IM Accounts. IM accounts may be used as depositories for borrowers when approved by the Area Director.

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- L. Refinancing. If a loan agreement contains amounts to refinance previous indebtedness to an organization, a check for only the net amount of the loan may be issued. For example, a commitment of \$1,000 is approved, which includes \$500 for repayment of a previous loan and \$10 for the payment of fees. The check to the borrower may be for \$490. On the accounting records, however, the borrower would be charged for the entire \$1,000 for which his note would be executed. The end result would show the borrower debited for \$1,000, and the following credits: Cash, \$490; fees, \$10; the borrower, \$500 (for payment of the previous loan).
- M. Disbursements from Borrower's Account. When a borrower's loan is deposited in a bank under a deposit agreement Form 5-4712 or Form 5-4713, requiring that checks on the account be countersigned by a representative of the organization (or of the Government on loans by the United States), care must be used to see that funds are disbursed only in accordance with the provisions of the borrower's loan agreement, and that the lender's security interest in the property purchased has been properly perfected in accordance with State laws.
- N. Contract and CF (Credit Fund) Numbers. Contract numbers will be assigned only to loans by the United States. CF numbers will be assigned both to loans by the United States and loans by organizations. Contract and CF numbers will be assigned when commitment orders become effective. CF numbers will run consecutively. Where more than one organization is making loans under the same Agency, each shall have a separate series of CF numbers. The same numbers will not be used twice, except that canceled CF numbers assigned to particular loans may be used for subsequent loans. An organization should be able to tell from its last CF number how many loans it has made. Likewise, the Superintendent should be able to tell from the last CF number used on loans by the United States, how many direct loans have been made. The same series of CF numbers shall be used for educational loans (see 2.1 below), and loans to enterprises (see 3.1 below), as on loans for other purposes.

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0. Modifications. A modification may be approved where the action is fully justified and the same standards will be adhered to as in the case of the original application.

- (1) Superintendent. Authority of Superintendents to approve modifications of loan agreements of individual Indians will be covered in Area Redelelegation Orders (see 1.3 0 and 1.3 I (1) above).
- (2) Area Director. Area Directors may approve modifications of loan agreements where the unpaid indebtedness to the lender will not exceed \$50,000 in the case of loans by organizations and the United States to individual Indians, and \$100,000 in the case of loans by corporations, tribes, and bands to cooperatives which do not extend the repayment terms (see 1.3 N and 1.5 I (2) above).
- (3) Copies. Copies of modifications shall be supplied all holders of the original agreements.
- (4) Endorsement on Note. When requests for modification extending the repayment terms of loans are approved, Area Directors will check with Field Solicitors as to appropriate action which should be taken regarding promissory notes. Ordinarily, endorsements will be made on the back of the original and borrower's copies executed in connection with each loan agreement as follows: "The time of repayment of the balance due on the within note is hereby extended to the following dates:

\$ \_\_\_\_\_ on or before \_\_\_\_\_ 19 \_\_\_\_.

\$ \_\_\_\_\_ on or before \_\_\_\_\_ 19 \_\_\_\_.

\$ \_\_\_\_\_ on or before \_\_\_\_\_ 19 \_\_\_\_."

The foregoing should be followed by signatures of the borrowers, including any endorser, maker, guarantor, surety or other party to the note,

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and authorized representatives of the lender and dates. Where insufficient space is provided on the back of the note forms for one or more successive extensions, riders may be pasted or otherwise firmly attached to the notes and made a part thereof. In lieu of the foregoing, a new note or notes for the unpaid balance of each loan may be taken. The date of the new note will be that to which interest has been paid.

- (5) Consideration on Individual Basis. If an organization fails to follow sound credit procedures resulting in curtailment of its activities, but has outstanding loans to individuals who have been industrious and have put forth honest effort to succeed in their credit-financed enterprises, the industrious borrowers must not be penalized because of curtailment action or because of lack of industry and good faith on the part of other borrowers. Due to drouth, price levels, and other conditions beyond the control of borrowers, some may occasionally find themselves unable to meet the repayment terms of their loans. Where a borrower had demonstrated industry and good faith, and his inability to meet the repayment terms of his loan is largely due to factors beyond his control, extensions of repayment terms may be approved if the interests of the lender in the loan are reasonably well protected.

- 1.6 Interest. On loans by organizations, interest will be charged in accordance with each particular organization's loan agreement with the United States, or its plan of operation for the use of tribal funds for credit purposes (see 47 BIAM Supplement No. 1, 1.3 K (9), 1.6, 2.1 F and Section 26 of Illustration 6). The organization should charge its borrowers not less than the rate the organization pays the United States--taking into account administrative expenses and losses on loans. (See 47 BIAM Supplement No. 1, 1.6). The rate on loans by the United States to individual Indians is 5-1/2 percent per annum, except on loans for educational purposes on which the rate is 3 percent (see 47 BIAM Supplement No. 1, 2.3 G and 2.4 G).

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- A. Starting Date. On loans by the United States, or by organizations, interest will start on the date the funds are advanced to the borrowers. The promissory notes shall bear the same dates (see 47 BIAM Supplement No. 1, 1.6 and 1.10).
- B. Ending Date. On loans by the United States, interest will end on the dates payments are made, or as indicated and explained in the body of the official receipts. On loans by organizations, interest will end on the date payments actually are made (see 1.6 G below).
- C. Time Calculation. One terminal day only should be included in calculating the interest period. The first day will be ignored, but the last day will be counted. The method of expressing elapsed time, or a fraction of a year between two given dates, on a 360-day year basis, is to reduce the time to months and days, arbitrarily counting each calendar month as 30 days, and a year as 360 days. Thus, from February 20 to June 27 is four calendar months and seven days. A year from any date is the corresponding day of the following year. A year from February 28 or February 29 of a leap year is February 28 of the following year. A calendar month from any date is the corresponding day of the following month. A month from December 6 is January 6 of the following year. A month from January 28, January 29, January 30, or January 31 is, on a 360-day year basis, February 28. Two months from December 30 is the last day of the following February. 12/

12/ Example. Find the amount of interest on \$790.85 from December 26, 1967, to June 18, 1969, at 5 percent per annum.

From December 26, 1967, to June 18, 1969, is a period of 1 year, 5 months, and 22 days. This period is determined by taking the period from December 26, 1967, to December 26, 1968, as 1 year. From December 26, 1968, to May 26, 1969, is 5 months. From May 26, 1969, to June 18, 1969, is 22 days. By referring to the interest table, it will be found that the interest on one dollar is:

For 1 year	.05
5 months, 22 days	.02389
Total	<u>.07389</u>

To determine the interest on \$790.85, simply multiply the amount \$791 by the interest on one dollar for the same period, \$0.7389 which results in an interest total of \$58.45.

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- D. Calculation of Amount. In figuring interest, when the principal includes a fraction of a dollar, the cents may be dropped if 50 or less. When the cents are 51 or more, the principal may be increased a dollar. Thus, \$790.85 may be figured as \$791. If the amount is \$790.47, it may be figured as \$790 (see footnote 12 above).
- E. Interest on Refinanced Loans. Amounts for payment of interest on old loans may be included in new loans. However, a borrower ordinarily should be required to pay interest on all amounts included in a new loan from his own funds. Unless borrowers can at least pay interest on their old loans, refinancing may not be feasible.
- F. Interest on Bad Debts. Interest on uncollectible loans made by organizations will be figured to the date such accounts are charged off on the books of the lenders. Both principal and interest on the active accounting records of each lender require an appropriate resolution authorizing the charge-off. Accrual of further interest is optional with the organization. Ordinarily, no purpose would be served by further accruals. If conditions existing at the time the loan is charged off should subsequently change, enabling the borrower to repay, an organization may go back and recalculate interest. The procedure the organization wishes to follow should be set forth in its authorizing resolution. Debts charged off by an organization do not release a borrower from his debts. Efforts to collect should be continued. The action of charging off a debt merely drops the account from the active records of the organization in order that its accounting records may accurately reflect its actual financial condition. A notation should be made on the individual account of the borrower, "Charged off as uncollectible," together with the date. The individual ledger sheet will show the balance still due on the principal and interest, and will then be moved to back of the loan ledger binder. If any collections are made subsequently, the payment will first be applied to the balance of the interest that was due at the time the account was charged off, and any additional amount will be credited to principal, unless the organization has authorized a different procedure satisfactory to the Area Director.

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On each loan made by the United States which becomes uncollectible, interest shall be calculated to the June 30 preceding the report on which the loan is recommended for cancellation. The date to which interest is figured shall be shown in the recommendation for cancellation.

- G. Errors in Calculating Interest. Agency Credit Officers shall check to make certain that interest calculations are correct. Area Credit Officers will check sufficient transactions to assure themselves that interest is being properly calculated.

Errors in interest calculations of 24¢ or less may be disregarded in making adjustments. The cost of making corrections and adjustments probably would be greater than the amount of money involved. Where errors of 25¢ or more are discovered, it will not be necessary to correct receipts, but the attention of the Superintendent or lender shall be called to the errors in writing, in order that corrections may be made at the time of the next payment. If the loan has been paid in full, corrections may be ignored in amounts not exceeding \$1.00. Errors over \$1.00 shall be corrected.

1.7 Records and Reports.

- A. Cooperatives and Corporations. Accounts and records must be maintained in accordance with the articles of association or incorporation and bylaws or other organization papers. Each accounting system shall be in writing, be satisfactory to, be approved by the Area Director, and be maintained in a manner satisfactory to him. Ordinarily, the accounting system should be installed by the same party that will audit the organization's accounts and records.

- (1) Audits. Accounts of each cooperative or corporation shall be audited annually at its expense, unless an exception is authorized by the Area Director. 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



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standards. Advance approval of the Area Director is required before a noncertified or unlicensed accountant is employed. Audits should be made at the close of the organization's fiscal year. Cooperatives and corporations will submit four copies of each audit to the authorized body of the tribe. Three copies will be furnished by that body to the Superintendent, who will retain one copy, and submit the other two to the Area Director, with his comments. The Area Director will take such action thereon as he deems appropriate, and forward one copy, together with copy of his action and the Superintendent's comments, to the Commissioner.

(2) Reports. Reports will be submitted in accordance with 47 BIAM Supplement 4.

- B. Individuals. The type of records to be maintained by individual borrowers will vary with the type of enterprises financed. Officers approving loans may include provisions for record keeping as part of their loan approvals.

Individuals shall be encouraged to maintain records to show which items of their property are in trust and which are in non-trust status, in order that they may verify that the property they claim to be trust actually is held in such status.

1.8 Maturity.

- A. Cooperatives and Corporations. The maturity will be determined by the purpose for which the loan is requested, but may not extend longer than the lending organization's loan from the United States, unless the lender has credit funds other than those borrowed from the United States.
- B. Individuals. Each loan for the purchase of land, for the purchase, construction, or major improvement of homes or other buildings, for land improvements, and for other items customarily requiring long-term financing, shall be scheduled for repayment at the earliest practicable date

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consistent with the borrower's ability to repay. Ordinarily, the loans should be scheduled for repayment in fixed amounts at periodic intervals. The maturity of loans guaranteed or insured under the provisions of the Servicemen's Readjustment Act will be scheduled for repayment in accordance with the regulations of the Veterans Administration (see 47 BIAM 6 and 47 BIAM Supplement No. 3). In no event may a loan by an organization extend beyond the maturity of its loan from the United States, unless the organization has other funds available to permit it to make the loan without jeopardizing its ability to make prompt repayment of its obligation to the United States.

Direct amortization schedules may be used on loans with monthly maturity terms.

It sometimes is advisable to schedule the maturity of loans for not to exceed one year. The one-year maturity procedure is a common credit practice and has some advantages. Under this system, it is not expected that the loan necessarily will be repaid in full within one year. Ordinarily, loans for non-recoverable items should be repaid within the one-year period, except those from which no income the first year can be obtained. The one-year maturity procedure on other items provides a means of permitting borrowers to make payments in accordance with income. If a borrower has a good year and substantial income, large payments should be required. If a poor year with low income is experienced, smaller payments may be in order. If a borrower demonstrates industry, managerial ability, and good faith, and makes reasonable repayments in accordance with income, the unpaid balance may be extended or refinanced for an additional year. Successive extensions or refinancing for not to exceed one year may be approved under the same conditions in continually decreasing amounts. Where organizations are charging fees on loans, borrowers should not be charged on the unpaid balances extended or refinanced. (See 47 BIAM Supplement No. 1, 1.3 I (1) regarding Truth in Lending - Consumer Cost Disclosure and Fair Credit Reporting Act.)

The one-year maturity procedure also has the advantage of requiring checkups at least annually on operations of borrowers, including revisions of operating plans, where necessary, and inspections of assets.

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- 1.9 Security. An applicant with security to offer for a loan should be required to offer it up to an amount adequate to protect the interests of the lender. Lack of security, however, does not prevent a loan from being made if the applicant's plan shows reasonable assurance that it will be repaid, and if the applicant's managerial ability, reputation for industry, and financial responsibility are satisfactory (see 1.5 C above).

The Bureau's credit system is based upon planning, rather than security (see 1.3 N (1) above and 1.9 G below). Care should be exercised not to confuse a well-planned loan, secured only by the property purchased with the loan, with a relief case. Ordinarily, it is not possible to take a strictly relief case, and by the extension of credit, rehabilitate the borrower and assure repayment of the loan. There is no authority to extend credit when it may not be expected, under reasonable circumstances, that the money will be repaid. To divert credit funds into "loans," which it is known from the start probably will not be repaid, would not be keeping faith with the Acts making funds available for loans to Indians.

- A. Chattels. Each loan will provide that the title to all chattels purchased with the loan will be taken in the name of the borrower. Unless other adequate security is available and pledged for the loan, a security interest in the chattels purchased with the loan should be obtained. Security interests will be perfected in accordance with the Uniform Commercial Code, as adopted in each State. If an applicant owns trust or restricted livestock or other chattels of the same class as the property to be purchased with the loan and which are capable of being intermingled, the interests of the United States therein will be released prior to approval of the loan in order that all of the applicant's property of the same class that can be intermingled may be in the same title status. Unless other adequate security is available for the loan, such property should be included in a security agreement given to secure the loan.
- B. Land. Indians may own some lands in trust or restricted status and other lands in fee status. Title to lands purchased with funds loaned to individual Indians may be taken in a trust status in accordance with the policies expressed in 54 BIAM provided there is statutory authority

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for taking of such title. A general discussion of the authorities for the taking of title in the United States in trust for individual Indians and Indian tribes is contained in 54 BIAM (see 1.4 F above).

Unless other security is available and pledged for the loan, a mortgage on any land purchased with the loan (see 1.9 R below) will be taken and recorded in accordance with State laws. Ordinarily, if title is taken in fee simple the loan should be handled through escrow, and a policy of title insurance required.

- C. Mortgages of Trust Land. Mortgages of trust land may be given as security for loans from organizations in accordance with the provisions of 25 CFR 121.61 and 91.13(b) (see 1.9 R below).
- D. Non-trust and Unrestricted Property. Non-trust and unrestricted property may be required as security for loans. File or record appropriate securing documents on such property in accordance with the laws of the State.
- E. Crops Grown on Trust or Restricted Land. Security interests in crops grown on trust or restricted land may be obtained for loans. File or record securing documents in accordance with the laws of the State.
- F. Assignment of Income. An "Assignment of Income from Trust Property" on Form 5-4719, (formerly Form 5-845), or an "Assignment of Trust Property and Power to Lease" on Form 5-4720, (formerly Form 5-846), may be taken as security for any loans.
- G. Judging Security. Loans to individuals by organizations and the United States, and loans to cooperatives and corporations by tribes, and security given therefor, cannot be judged entirely by banking standards. The aim is to rehabilitate Indians and enable them to become self-supporting through credit-financed productive enterprises. Borrowers who attain the goal of self-support ordinarily can repay their loans. The objective will not be reached if the loans are not repaid. In general, whether or not an applicant has security to offer is not so important as whether he is the type of individual who will succeed with his enterprise and repay the loan.

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- H. Adequate Security. Adequate security means sufficient security to protect the loan in the event of failure of the borrower's enterprise. If for any reason the borrower's credit-financed enterprise should fail, adequate security would enable the lender to realize sufficient proceeds from liquidation of the security to repay the loan in full.
- I. Full Security. Full security means more than adequate security. Even though market or economic conditions should develop unfavorably, or if there should be lack of supervision, industry, or other shortcomings, a fully secured loan would have assets behind it in an amount more than sufficient to protect the lender fully.
- J. Inspection Report. Any security offered for a loan must be inspected and a report made thereon. Ordinarily, on each loan by organizations, the report will be signed by an authorized representative of the organization. On each loan by the United States, the Area Director or Superintendent will designate the inspector. Approving officers may require inspection reports before acting on request for modification. Credit employees may not be designated as inspectors when inspections involve technical knowledge of the type of property being inspected.
- K. Reputation for Industry. Applicants with good reputations for industry and dependability shall receive preference. Even though the security which industrious applicants may have to offer is limited, they shall be given preference over other applicants who do not have good reputations for industry, even though the latter may have full security to offer. The purpose of loans is not served by levying upon the security, but by improving the economic status of borrowers.
- L. Reputation for Financial Responsibility. Some applicants, although they have reputations for financial responsibility, and industry, may not have adequate amounts of security to offer. Loans may be approved in such instances even though the security offered is inadequate, provided the applicants' plans indicate reasonable possibilities of repayment.

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- M. Managerial Ability. A loan is not warranted, regardless of other factors, unless there is evidence that an applicant has managerial ability to conduct the enterprise successfully. Even though the loan may be adequately or fully secured, approval is inadvisable unless the applicant has managerial ability.
- N. Split Security. "Split" security for the purposes herein is security consisting of liens which do not cover all of a borrower's property of a particular class which can be intermingled, and should be avoided insofar as is feasible. For example, a lien on a part of an applicant's cattle or on only a portion of a crop of a particular kind, is considered "split" security. A lien on a borrower's cattle without including his hogs and sheep, or on his wheat without including his oats and barley, is not considered "split" security.
- O. Split Loans. A "split" loan for the purposes herein is one where the financing of an enterprise of a particular class is undertaken by more than one lender. Loans of this type should be avoided. Usually it is considered good practice either to take care of all of an applicant's crop or livestock financing or none of it. If indebtedness has been incurred previous to submittal of an application for a loan and if the interests of the lender are reasonably protected, a "split" loan may be justified in special instances. As an example, if an applicant had incurred indebtedness to a bank for crop financing which indications are he will be able to repay, and he required additional financing which the bank is unwilling to furnish, an organization may make a loan to supply the additional financing if its interests in the loan can be protected. In some cases, however, it might be desirable to refinance the indebtedness owing to the bank (see 1.3 J above) in order to obtain a first lien.
- P. Repayment Source. Although each loan is to be protected by security up to an adequate amount, repayments are expected from the income produced by the loan financed enterprise. The necessity of levying on the security will be avoided insofar as possible, and still protect the interests of the lender. The purpose of the loan is not served by levying upon the security.

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- Q. Security Executed. The security offered and accepted, or required by the commitment order, must be given and the papers completely executed before any advance of funds is made, except property purchased with proceeds of the loan and in which the lender expects to obtain a security interest after purchase. Following purchase of the property a securing interest therein will be perfected in accordance with the laws of the State.
- R. Filing and Recording. All securing documents, except assignments of income from trust land, and securing documents in Alaska to which the Ship Mortgage Act of 1920, as amended, applies, shall be filed or recorded in the appropriate County or other public office in accordance with State law. Security interests in personal property will be perfected in accordance with provisions of the Uniform Commercial Code as adopted in each State. Assignments of income from trust land may be filed in the Agency Offices. Officials of organizations and Agency and Area Office staffs will familiarize themselves with the laws of the States in which they are operating, and make certain that the securing documents filed or recorded in the appropriate County offices are kept effective. Area Office staffs will check with Field Solicitors to make certain they are interpreting State laws correctly. Area credit employees will make inspections on their visits to Agencies to see that effective securing documents are filed or recorded.
- S. Releases and Satisfactions. When part of the livestock covered by a security agreement is to be disposed of prior to repayment in full of the loan secured by the livestock, the debtor shall obtain the written consent of the secured party to sell, trade, exchange or otherwise dispose of the livestock. Such consent shall describe specifically the livestock and manner of payment, and copies shall be filed in the loan docket.

A partial release need not be executed and filed, unless required by State law, the lender, or the purchaser. Each loan agreement will provide that none of the encumbered property may be sold or otherwise disposed of without the written consent of the lender. Where feasible, lenders in range States will endeavor to furnish periodically to local and terminal markets and appropriate brand inspectors a list of all borrowers whose livestock is encumbered.

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On loans by an organization, releases and satisfactions will be executed by the authorized official of the organization. On loans by the United States, the documents will be executed by the Superintendent. Such documents will be filed or recorded in the County or other public office as required by State law.

T. Form of Securing Documents. The financing statement, security agreement, and real estate mortgage forms in general use in the various States may be used, provided each form is first checked and approved by the Field Solicitor.

1.10 Penalties on Default. As repayments on loans become due, the policy is to collect, extend, or liquidate pursuant to applicable regulations in 25 CFR 91.

Borrowers will be required by organizations, on loans by organizations, or by Superintendents on loans by the United States, to conform to the terms and provisions of their loan agreements, including repayment schedules therein. If an organization permits violation of agreements with its members, and fails to take appropriate liquidation action, it subjects itself to the default penalties prescribed by 25 CFR 91.10. On loans by organizations, loans will be declared in default by the bodies authorized to act for the organizations. On loans by the United States, such action will be taken by the Superintendent or Area Director.

A. Voluntary Surrender of Property. The preferred procedure in repossessing property given as security for a loan is for the borrower to surrender sufficient property voluntarily to liquidate the balance owing on the loan. Every effort should be made to convince the borrower that this procedure will best serve his interests and those of the lender. Where property is surrendered voluntarily, the following procedures will apply:

- (1) Agreement for Voluntary Liquidation. The borrower and the authorized officer of the lender will execute Form 5-4717, (formerly Form 5-840).
- (2) Mutual Agreement on Valuation of Property. On loans by the United States, if the Superintendent and the borrower mutually



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agree upon a valuation of the property to be repossessed, and if a suitable buyer can be located who will purchase the property at the agreed upon valuation, such property may be sold.

On loans by organizations, agreement on the valuation of the property by an authorized representative of the lender and by the borrower is required before the property may be sold. Appraised valuations mutually agreed upon should be entered on Form 5-4717. Proper releases will be filed promptly in the appropriate County or other public office after the sale is completed.

- (3) Appraisal Committee's Valuation of Property. If a mutual agreement cannot be reached, a committee will be selected to appraise the property. On loans by the United States, one member will be selected by the Superintendent, one by the borrower, and one by these two members. On loans by organizations, one member will be selected by the authorized officer of the lender, one by the borrower, and one by these two members. If the Appraisal Committee's valuation is satisfactory to the borrower and to the Superintendent (on loans by the United States) or the authorized officials of the lender (on loans by organizations), and if a buyer can be located who will purchase the property at the appraised value, it may be sold.
- (4) Nonagreement with Appraisal. If the borrower will not agree to the appraised value, the property may be sold only in accordance with the laws of the State in which it is situated unless other sale is mutually agreed upon.
- B. Involuntary Surrender of Property. If the borrower will not execute Form 5-4717 and voluntarily surrender the property given as security, it will be repossessed and sold in accordance with the laws of the State in which

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it is situated, except where other sale is mutually agreed upon, and except in the case of loans by some tribes which have promulgated ordinances to handle foreclosures through tribal courts. In the latter case, foreclosures may be handled through tribal courts. The Superintendent will act for and on behalf of the United States on loans by the United States. On loans by organizations, an authorized representative of the organization will act for and on behalf of the lender.

- C. Care of Repossessed Property. Repossessed property, regardless of whether it was repossessed voluntarily or involuntarily, will be stored in a place of safekeeping prior to sale or placed under adequate care, where depreciation in value will not be excessive, and where there is adequate protection to prevent the property from being stolen or used.
- D. Disposition of Repossessed Property. All property repossessed will be sold at the earliest practicable date and shall not be retained longer than necessary to obtain a fair price therefor.
- (1) Responsibility of Superintendent. If any repossessed property on loans either by the United States or by organizations remains on hand for more than six months after the date of repossession, the Superintendent will make a report to the Area Director explaining the delay and any difficulties encountered. The Area Director will render all practicable assistance in disposing of the property.
- E. Application of Proceeds of Sales. Proceeds of sales will be applied in the order below, unless such application is contrary to State law, in which case the State law will be followed.

First, for payment of expenses of the appraisal and sale, including expenses incidental to transporting, caring for, and maintaining the custody of the property sold pending sale and fees for release of county-filed securing documents.

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Second, for interest in full on the borrower's loan.

Third, for payment of principal of the borrower's loan.

Fourth, any balance remaining will be paid to the borrower.

F. Report of Sales. Borrowers will be furnished reports of sales. On loans by the United States, the reports will be furnished by the Superintendent. On loans by organizations, they will be furnished by authorized representatives of the organizations. Copies of all reports will be furnished the Area Director. Each report will show:

- (1) CF number of loan involved.
- (2) Date of original loan.
- (3) Amount of original loan.
- (4) Property purchased with the loan and amount paid therefor.
- (5) Security given for the loan.
- (6) Payments made on the loan, both principal and interest.
- (7) Balance owing at time of liquidation.
- (8) Property repossessed and the appraised or agreed upon value.
- (9) Sale. Nature of sale, listing property sold, expenses incurred, and net amount remaining, itemized.
- (10) Application. Show application of proceeds on the loan, itemized.
- (11) Balance. Amount of remaining indebtedness, or amount to borrower's credit.

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- G. Accounting for Property. On loans by the United States, property repossessed will be taken up on the property records of the Agency. Its appraised value will be shown on the property cards. When it is disposed of, it will be dropped from the Agency property records, and the sale price shown on the records. If the sale price is more or less than the appraised value, these instructions will serve as authority to drop the difference or to credit the excess to the borrower.
- H. Protection of Lender's Interests in Property of Deceased Borrowers. Organizations and Superintendents will take all steps necessary to safeguard and protect the property of a deceased borrower in which either the organization or the United States has an interest, until the obligation is liquidated or assumed by heirs of the deceased borrower, or by other parties. The lender may collect from the ultimate owners of such property, or deduct from the proceeds of the sale thereof, reasonable expenses for its care. Organizations will protect their interests by promptly notifying the Superintendent, or Hearing Examiner Probate, and the tribal court, if any, in writing, of interests in the estate of the decedent. The Superintendent similarly will protect the interests of the United States in loans made by the United States. After reserving estimated probate fees, and after payment of funeral expenses, last illness, etc., any funds accruing to the estate from income or property pledged as security for the loan, will be applied on the indebtedness to stop accrual of interest. Proceeds of sales of property purchased with credit funds will be applied on the indebtedness.
- (1) Action. The action which the organization or Superintendent will take in case of deceased borrowers will be governed by the circumstances of the particular loan. In some instances, it may be necessary to declare the loan in default.
  - (2) Assumption of Indebtedness. If the apparent heirs of a deceased borrower (or one or more of the apparent heirs with written agreement from the other apparent heirs) desire to assume the indebtedness of the borrower, and will sign notes and such other guarantees of

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repayment as the lender may require, the property may be turned over to them. If the lender has assumed expenses in caring for such property prior to its being taken over by the apparent heirs, the lender may collect such amounts from the heirs before turning the property over to them. If the property is sold, such expenses may be deducted from the proceeds of the sale, before credit is entered on the borrower's account.

- (3) Joint Loans. The action to be taken will depend upon the right of the survivor in the property purchased with or created by the loan. Action contemplated should be checked and approved by the Field Solicitor. Generally, when one party to a joint loan dies, and the property purchased with and given as security for the loan is sufficient to cover the outstanding indebtedness, and where the remaining party desires to continue with the enterprise, it is usually advisable for the remaining party to request liquidation of the loan. A new loan may then be made to the survivor to purchase the assets. All such new loans must be judged on their own merits the same as any other applications. In case the property purchased with or given as security for the loan is insufficient to cover the outstanding indebtedness, or in case the surviving borrower does not desire to continue with the enterprise, the Field Solicitor will be consulted as to the action most advisable.
- (4) Report of Indebtedness of Deceased Borrowers. Promptly following the death of an Indian indebted to an organization or the United States, steps will be taken to bring about any adjustment which may be necessary. A statement shall be drawn up on Forms 5-4726 and 5-4727, (formerly Forms 5-883 and 5-883a). The title of the form shall be changed on

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indebtedness owing organizations. The form shall set forth CF or contract numbers, dates, original amounts of agreements, repayments, repayment dates, balances due, and a list of the property purchased under the agreements. On the reverse side of this form will be set forth all adjustments between the date of death of the decedent and the date the hearing is held in connection with the determination of heirs. It also will explain what disposition has been made of all capital goods purchased under the agreements, or given as security therefor. This report should be furnished to the Hearing Examiner Probate, in triplicate, before the time of the hearing. Care must be taken that the information present in the form is accurate (see 25 CFR 15).

- I. Uncollectible Loans Made by Organizations. When it becomes obvious that the balance due on a loan is uncollectible, the governing body of a lending organization should pass a resolution dropping the loan from the active accounting credit records of the organization. Such action will not release the borrower from his obligation for payment, but serves merely to charge off the account on the organization's active accounting records. The procedure the organization wishes to follow regarding interest accruals will be set forth in the authorizing resolution (see 1.6 F above).
- J. Loans Assigned to the United States. When a loan made by an organization is assigned to the United States under the agreements included in the organization's loan contract with the United States, in order that the Department of Justice may take action against the borrower, or for any other reason, such loans will be reported by the Superintendent, transmitted through the Area Director, to the General Accounting Office so that a record of the debt may be made by that Office for offset against any claim of the debtor which may in the future come before that Office for settlement.

Where organizations are in default in loan agreements with the United States, under the terms of the general assignments (where included as part of the loan agreements with the United States) the obligations of the

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borrowers to the organization become obligations due the United States. Any delinquencies of borrowers from such organizations will be reported to the General Accounting Office until the indebtedness of the organization to the United States either is paid in full or the organization is declared to be no longer in default. When organizations repay their indebtedness to the United States in full, and loans made by such organizations have been reported to the General Accounting Office, that Office shall be apprized of the fact by the Superintendent reporting through the Area Director, so that it will no longer consider the original debts to the organization as debts to the United States.

- 1.11 Assignment. Borrowers from organizations may not assign their loan agreements, or any interest therein, to third parties without the consent of the governing bodies of the organizations and the Area Director. Borrowers from the United States likewise may not make such assignments without the consent of the Area Director.
- 1.12 Tribal Funds. Tribal funds used for credit purposes which have been advanced pursuant to 47 BIAM Supplement No. 1, 1.13 are subject to the same provisions as loans of revolving credit funds in the organization's relending operations, except that loans may be made for support and burial purposes (see 1.4 D above) and to individuals of less than one-quarter degree of Indian blood (see 1.2 C (4) above). The United States may not make direct loans to individual Indians from tribal funds.
- 1.13 Relending. Individual Indians may not receive loans from the United States or from organizations to enable them to relend money to others. Cooperative associations may not receive loans from tribes to relend money to their members, or to other parties.
- 1.14 Repayments. Payments for fees, repayments of principal, and payments of interest on all loans shall be accepted at all reasonable times. Amounts paid on each loan will be applied first on interest and the balance on principal.
- A. Loans by the United States. On loans by the United States, an official receipt will be issued for each payment and the amount taken up as a collection in accordance with existing fiscal regulations. The

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official receipt will show the amount of principal on which interest has been computed, the rate of interest, the inclusive dates for which the interest is paid, stating the interest, and the application of the payment on principal and on interest, and the balance of the principal unpaid. The receipt will also show the number of the contract on which payment is being made.

- (1) 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), (see 47 BIAM Supplement No. 1, 1.15 B for instructions).

B. Loans by Organizations. If an officer of the organization is bonded, and if such officer is authorized in the loan agreement contract between the United States and the organization to accept repayments, such officer will accept repayments and issue a receipt to the borrower on Form 5-4716 (formerly Form 5-825), unless use of a different receipt form is authorized by the Area Director. Each receipt shall be prenumbered. The collection shall be deposited immediately in the organization's approved depository. In those cases where the organization's credit funds are deposited in an IM account, the officer shall receive an official receipt from the Bureau of Indian Affairs' Collection Officer for the amount of the deposit.

- (1) Payments to Collection Officer. Unless the loan agreement contract between the organization and the United States specifically provides that collections may be made by the organization's bonded officer, all repayments will be made direct to the Bureau of Indian Affairs designated Collection Officer. Such officer will issue an official receipt to the remitter for the account of the organization. The remitter will receive the original receipt, and copy will be furnished the organization. Care will be used to see that repayments are deposited in the IM account of the organization



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and NOT IN THE TREASURY. Form 5-4716 need not be issued in such instances. The Collection Officer will furnish the organization with a copy of the official receipt, in order that proper entries may be made on its records.

- 1.15 Amendments of Articles of Association and Bylaws. Amendments to and revocation of articles of association and bylaws of cooperative associations require approval of the Commissioner.

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- 2.1 Policy. Loans to Indians for educational purposes may be made only if no other means of financing is available.
- 2.2 General. The following provisions apply to all educational loans.
- A. Application. Form 5-4729 (formerly Form 5-453C) will be submitted in triplicate, filled out by the applicant personally, in ink or on a typewriter. It shall be signed by the Superintendent and contain a recommendation for approval of a specific amount, or of disapproval. The Superintendent's recommendations will be based upon the review and recommendations of qualified personnel of the Office of Education Programs. Incomplete applications will not be considered.
- B. Transcript of Credits. An official transcript of high school credits (and college credits, if any) will be procured by the Agency official handling educational loans and be attached to the application.
- C. Curriculum Approval. The courses to be pursued, and the institution to be attended, will be subject to approval of the officer finally approving the loan, based upon review and recommendations of qualified personnel of the Office of Education Programs. Any change in school or courses after the loan is approved likewise require approval. Loans may be made only for courses requiring a minimum of nine months for completion.
- D. Amount. The amount of the loan will be restricted to the amount required in addition to personal and family resources.

Applications may be submitted to finance the entire course contemplated by the applicant. The amount to be advanced each year will be shown. After the first advance is made, subsequent advances will be made if the student is making a satisfactory record. After the first year, the student will be required to submit a personal letter to the Superintendent containing an itemized budget of the amount provided by his loan agreement for advance in a particular year. A transcript of credits also will be furnished. If the

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budget and transcript are satisfactory, subsequent advances as provided by the loan agreement may be made. If the record during the first year, or during any subsequent year, is not satisfactory, the unadvanced portion of the loan may be cancelled by the Superintendent. The total amount advanced will then become due and payable on the first day of the month following such cancellations.

(1) Annual Basis. In lieu of submitting applications for the entire course, loans may be requested on an annual basis. When an applicant prefers to handle his loan on an annual basis, loans after the first year shall include refinancing of indebtedness to the same lender from previous years in order that all indebtedness may be covered by one loan agreement.

- E. Responsibility for Securing Repayment. The Superintendent will assist lenders in securing repayment of loans in accordance with repayment schedules in loan agreements.
- F. Security. Loan agreements must be signed by the borrower and one or more co-signers. The security provisions of Form 5-4730 will be carefully explained to the borrower and co-signers. Security in addition to that included in Form 5-4730 may be required.
- G. Filing. Securing documents, other than that contained in Form 5-4730, shall be filed or recorded in accordance with State law at the expense of the borrower. Care will be used to see that liens are kept effective until the obligation they are given to secure is discharged.
- H. Budgets. Annual budgets shall be carefully prepared, in order that advances may conform to the applicant's needs throughout the school year.
- I. Files. Applications and attachments become part of the files of the lender, and cannot be returned to the student. Borrowers will, however, be furnished an approved copy of loan agreements executed under authority of approved applications.

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- J. Reports. The Superintendent or lender may require borrowers to furnish progress reports or other information from time to time.
- K. Student's Responsibility. It is the responsibility of the student to know the contents of all papers signed in connection with his loan, and the repayment and interest provisions.
- L. Failure of Student. If a student fails to receive a passing grade in two or more courses, the cause shall be determined, and funds for continuing the course shall not be released until favorable recommendation has been made by the final approving officer.
- M. Cautions. Submittal of an application does not insure that a loan will be made. Applicants should be instructed not to incur obligations on the assumption that a loan will be approved. It is inadvisable for any student dependent upon a loan to enter school until he has received notice from his Superintendent specifically stating that the loan has been approved.
- N. Approval. The Area Director may approve loans subject to the availability of funds under authority of 10 BIAM 3.1. Superintendents may approve such loans pursuant to Area redelegation orders.
- O. Modifications. Modifications of loan agreements will require approval recommendations of the Superintendent, and approval by the officer who approved the loan originally.
- P. Relationships. Employees of the Division of Credit and Financing will work closely with employees of the Office of Education Programs on applications, modifications, etc., of loans for educational purposes. Credit officers will not recommend educational loans or modifications either for approval or disapproval. Such recommendations will be by an authorized representative of the Office of Education Programs. Credit and Financing employees are responsible to see that all educational loans conform to the regulations of the Secretary and instructions of the Commissioner; that appropriate accounting records are maintained; and to keep Superintendents and employees of the Office of Education Programs fully informed regarding the status of educational loans. Staff work for the

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Superintendent in connection with the follow-up, supervision, and collection of educational loans will be the responsibility of employees of the Office of Education Programs located at the Area and Agency levels.

2.3 Loans by the United States.

- A. Eligibility. Loans may be made for higher education or special training to applicants of one-quarter or more degree of Indian blood who are not members of a corporation, tribe, or band that is making loans, and who are ineligible for loans from a credit association.
- B. Application. The Superintendent will forward applications prepared pursuant to 2.2 A above to the Area Director for action. Representatives of the Office of Education Programs and of the Division of Credit and Financing will pass upon applications before approval action by the Area Director pursuant to 2.2 N above.
- C. Loan Agreement. If an application is approved, a loan agreement shall be executed on Form 5-4730 in quintuplicate. The application and attachments will not be made a part of the loan agreement and, with the exception of securing documents, will be filed pursuant to 2.2 I above. Each agreement will be assigned a CF and contract number (see 1.5 N above). The original will be retained in the Bureau's accounting office. The other copies will be distributed as shown on the form. Copies of any securing documents shall be attached to each copy of the agreement. The original of securing documents will be handled pursuant to 2.2 G above. Upon repayment of the loan, the original securing documents will be returned to the borrower.
- D. Advance of Funds. Allotments of funds for educational loans will be submitted in accordance with standard procedures (see 1.3 K). Advances of funds to borrowers will be made in accordance with provisions of approved loan agreements.
- E. Reports. Reports of educational loans will be included with any other loans direct from the United States pursuant to 47 BIAM 11.

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- F. Refinancing. Funds to refinance loans made from revolving credit funds may be included in applications pursuant to 2.2 D (1) above. Funds may not be included to refinance loans made by other lenders.
- G. Interest. Interest shall be charged at the rate of 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 is made. In the event of non-completion of the course, interest shall start on the first day of the month following the date the borrower drops out of school. Interest charges 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.
- H. Repayment. Repayment of loans shall be scheduled at the rate of \$10 per month per \$1,000 of indebtedness calculated to the nearest even dollar. (Example: \$1,500 would require monthly payments of \$15; \$1,550 also would require \$15; and \$1,551 would require \$16.) Repayments shall start on the first day of the month following one year from the date of completion of the course for which the loan is made. In the event of non-completion, the entire loan will be due and payable on the first day of the month following the date the borrower drops out of school. If, upon completion of the course for which the loan is made, the borrower enrolls in a school of higher learning, or enters the armed forces of the United States, the requirement of monthly payments will be suspended as long as the borrower is so enrolled or is serving in the armed forces. Monthly payments shall again be due on the first of the month after the borrower completes the course, or otherwise leaves the school of higher learning, or upon discharge from the armed forces. All repayments shall be applied first on interest and the balance on principal.

2.4 Loans by Corporations, Tribes, and Bands.

- A. Eligibility. Applicants must be members of the corporation, tribe, or band making the loan. If the loan is to be made from the revolving funds borrowed from the United States by the organization, the applicant must be of at least one-quarter degree of Indian blood. If the loan is to be made from tribal funds, applicants are eligible regardless of degree of Indian blood.

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- B. Application. Applications must be acted upon favorably by the body of the corporation, tribe, or band authorized to act upon applications. It will then be forwarded to the Superintendent, and handled pursuant to 2.3 B above.
- C. Loan Agreement. Loan agreements will be executed upon approval of applications pursuant to 2.3 C above. Contract numbers will not be assigned to such loan agreements, however, and the original agreement will be retained for the files of the lending organization.
- D. Advance of Funds. Advances of funds to borrowers will be made in accordance with the provisions of loan agreements.
- E. Reports. Reports of educational loans will be included with any other loans made by the corporation, tribe, or band pursuant to 47 BIAM 11.
- F. Refinancing. Funds to refinance loans made by the corporation, tribe, or band may be included in applications pursuant to 2.2 D (1) above. Funds may not be included to refinance loans made by other lenders.
- G. Interest. The corporation, tribe, or band shall decide the interest rate it wishes to charge on educational loans, but the rate must be not less than two percent per annum nor more than the rate charged borrowers on loans for other purposes. If a corporation, tribe, or band adopts a three percent rate, and the procedures in 2.3 G and H above, and is indebted for a loan from the United States, interest will not be charged by the United States on the amount the organization has outstanding in educational loans during the period the organization is not charging its borrowers interest.
- H. Repayments. Corporations, tribes, and bands shall decide the procedure to be followed, but will be encouraged to adopt the procedures in 2.3 H above. If the organization is indebted to the United States, repayment schedules may not extend beyond the final repayment date of the loan from the United States, unless the organization has other funds to make the loan, nor unless such scheduling will not interfere with the organization's ability to make prompt repayment of its indebtedness to the United States.

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- A. Eligibility. Applicants must be eligible for membership in the association making the loan, and must be of at least one-quarter degree of Indian blood. Borrowers are required to own shares in the association in an amount equal to \$3 for each \$100 or fraction thereof of the amount of the loan.
- B. Application. Applications must be acted upon favorably by the body of the association authorized to act upon applications. It will then be forwarded to the Superintendent and handled pursuant to 2.3 B above.
- C. Loan Agreement. Loan agreements will be executed and handled pursuant to 2.3 C and 2.4 C above.
- D. Advance of Funds. Advances of funds to borrowers will be made in accordance with the provisions of loan agreements.
- E. Reports. Reports of educational loans will be included with any other loans made by the association pursuant to 47 BIAM 11.
- F. Refinancing. Funds to refinance loans made by the association may be included in applications pursuant to 2.2 D (1) above. Funds may not be included to refinance loans made by other lenders.
- G. Interest. The association shall decide the interest rate it wishes to charge on educational loans, but the rate must be not less than two percent per annum nor more than the rate charged borrowers on loans for other purposes. If an association adopts a three percent rate, and the procedures in 2.3 G and H above, and is indebted for a loan from the United States, interest will not be charged by the United States on the amount the organization has outstanding in educational loans during the period the organization is not charging its borrowers interest.
- H. Repayments. The association shall decide the procedure to be followed, but will be encouraged to adopt the procedure in 2.3 H above. If the association is indebted to the United States, repayment schedules may not extend beyond the final repayment date of the association's loan from the United States, unless the association has other funds to make the loan, nor unless such scheduling will not interfere with the association's ability to make prompt repayment of its indebtedness to the United States.



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- 3.1 Eligibility. An enterprise is an activity operated for the benefit of all members of the operating organization. Any tribe, band, or Indian corporation is eligible to operate as an enterprise unless prohibited by the provisions of its organization papers. An activity operated for the benefit of only a portion of the members of an organization ordinarily should be organized as a cooperative association under State law (see 1.2 A above) or as a State corporation (see 1.2 B above) and not as an enterprise hereunder.
- 3.2 Application. Application will be submitted on Form 5-4728 (formerly Form 5-1492), unless otherwise authorized by the Commissioner. Exhibits will be adapted to the requirements of the particular enterprise for which financing is requested. Applications should be worded flexibly to avoid the need for continual modifications, particularly on minor matters.
- A. Loans. Any funds used to finance enterprises on a repayment basis are considered as "loans" for the purposes of this chapter. If an enterprise is financed in whole or in part with a loan from the revolving fund pursuant to 47 BIAM 7, or by a loan from a bank or other lender, in whole or in part, the funds may be used only on a "loan" basis. Financing with tribal funds may be either on a "loan" or an "investment" basis (see subsection B below).

The money used by an organization to finance an enterprise is not "loaned" by the organization to the enterprise. The operation of the enterprise is an activity of the organization. The organization thus is using funds, either of its own or borrowed, to conduct a business, i.e., to operate the enterprise. However, for the purposes of this chapter, any funds furnished an enterprise on a repayment basis will be treated and reported as a "loan." The procedure is adopted to facilitate accounting; to permit ready determination of the economic soundness of each enterprise; and to enable a ready distinction to be made between funds used to establish and operate enterprises where repayment to the organization by the enterprise is not required. This procedure also permits ready determination of whether the tribe is receiving a fair return on funds "loaned" to and invested in enterprises.

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- B. Investment. Any financing of an enterprise which an organization does not require be repaid to it, will be classified as an "investment" for the purposes of this chapter.
- C. Number of Agreements. Total financing of an enterprise will be included in one agreement, unless otherwise authorized by the Commissioner.
- D. Modification. When the provisions of an Enterprise Agreement need revision, i.e., when improvements in operating plans are needed, when repayment terms require adjustment, or when additional funds are necessary, a request for modification may be submitted. The same procedure will be followed as in the case of the original application, except a modification handled in accordance with 47 BIAM Supplement No. 1, 1.3 E (see Illustration 1 to supplement for sample resolution). An excessive number of modifications should be avoided. Otherwise considerable research is required to determine the effective provisions. In some instances when a agreement has been in effect for several years, the agreement should be replaced with a modification containing only pertinent contractual material. This modification will contain a provision that it replaces all previous provisions of the agreement.
- E. Procedure. <sup>13/</sup> The original and four copies of the application or request for modification will be 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 in the Agency files of the minutes at which the authorizing resolution was adopted. He will either take action on the application under delegated authority or attach his recommendations in duplicate to the application or request and forward all copies to the Area Director.

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<sup>13/</sup> Where the only credit activity of an organization is the operation of one enterprise, the procedure in 47 BIAM Supplement No. 1, 1.3 J will be followed instead of the procedure herein.

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The Area Director will take action in accordance with 3.4 B below, or will attach his recommendations and forward the original and one copy, and the original of the Superintendent's recommendations, to the Commissioner. The remaining three copies will be retained temporarily in the Area Office.

- (1) Incomplete and Improperly Prepared Applications. Applications submitted to the Superintendent which are incomplete, or which have not been prepared properly, or which do not comply with 3.2 F (13) below, will not be acted upon or forwarded to the Area Director. They will be returned to the organization with full instructions for completion or proper preparation. The Superintendent or Area Director will not take approval action on any application which is incomplete or improperly prepared, nor will such application be forwarded to the Commissioner with recommendations for approval or disapproval. It should be returned to the organization with appropriate instructions.

- F. Preparation of Application. The application will be prepared in the official name of the organization as set forth in its organization papers. If the organization does not have written approved organization papers, i.e., constitution, bylaws, or charter, the name by which the organization is recognized by the Commissioner will be used. A certified copy of a resolution indicating approval of the application by the authorized governing body of the organization should be included as Exhibit A. If a resolution contains several different authorizations (including approval of the application) and if a certified copy is already on file in another contract or document between the organization and the United States, Exhibit A may be a reference thereto instead of a certified copy (see Illustration 1 to this supplement for sample resolution).

Exhibit B is the most important part of the application. It will be prepared in a manner which will best meet the requirements of the particular enterprise. A more detailed justification is required to support a request for financing of a large or complicated enterprise than of a small enterprise involving a relatively simple activity. The following should be included in the order shown.

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- (1) Name. Show the name of the enterprise and the nature of the business. The name of an enterprise may differ from that of the organization by which it is operated.
- (2) Location. Show the principal place of business. In some instances, a description of the land area where the enterprise is to operate may be essential. Applications involving financing of enterprises located on potential flood plains including the construction of new facilities thereon, shall be accompanied by a statement setting forth an evaluation of flood damage potential in the area.
- (3) Amount and Source of Funds. Show the amount and source of funds which will be used to finance the enterprise. If it is to be financed partly on a "loan" and partly on an "investment" basis, show the amounts separately (see 3.2 A and B above). Show the dates on or after which funds are to be advanced to the enterprise. It is also advisable to include a terminal date for the advance.
- (4) Repayments. The repayment schedule shall show the dates on or before which amounts advanced on a "loan" basis will be repaid to the organization.
- (5) Interest. Show the rate of interest the enterprise will pay to the organization on all funds used on a "loan" basis (see 3.5 below).
- (6) Depository. Show where the funds of the enterprise will be deposited. The depository requires approval of either the Superintendent or the Area Director.
- (7) Receipts and Disbursements. Show how receipts and disbursements of the enterprise will be handled (see section 11 (b) and (d) of sample management contract, Illustration 3 to this supplement.
- (8) Bonds. Show provisions for the bonding of officers and employees (see section 14 of sample management contract, Illustration 3 to this supplement).
- (9) Management. (See sample management contract, Illustration 3 to this supplement.) Show how the enterprise will be managed, and requirements for approval of a management contract. Do not include the contract as part of application.

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If the enterprise is to be financed with a loan of revolving credit or an advance of tribal funds from the Treasury, provision ordinarily should be included that a management contract will not become effective until approved by the Commissioner, Area Director, or Superintendent.

Bureau employees will not use the control features included in a contract for protection of the funds loaned to and invested in the enterprise, as a reason for interference in the management and operation of an enterprise. Action by Bureau officials ordinarily should be taken through the Council or other governing body.

- (10) Miscellaneous. The fiscal year should be stated and information included on records, accounts, audits, reports (see 3.6 below), insurance, title to property, payment of Social Security and other taxes, and any other pertinent data affecting the operation of the enterprise.
- (11) Plans and Budgets. Development plans (those necessary to get the enterprise started and anticipated expansions or additions), operating provisions, annual budgets, anticipated operating results, how net earnings will be used, and any other information which will assist in analysis of the enterprise should be included. Show whether the enterprise will be operated on a cash basis. Keep plans as simple as possible.
- (12) Balance Sheet and Operating Statement. If an enterprise were operating prior to submittal of the application, include a balance sheet and operating statement at the close of its last fiscal year, or of more recent date. Audited statements should be included, if available. If either the balance sheet or the operating statement is of a date more than three months prior to the date of the application or request, a trial balance at the close of the month preceding the date of the application should be included.
- (13) Numbering and Binding. The pages of each application or request must be numbered consecutively, and if over five pages in length, a table of contents at the beginning must be inserted.

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At least 1-1/2 inches should be left blank at the top of each page. The application or request will be bound at the top and each copy will be complete.

Failure to comply with the requirements herein will result in return of the application without action.

- 3.3 Purpose of Financing. The general purpose of financing of enterprises is to promote the economic development of the Indian organization operating the enterprises and its members.
- 3.4 Approval. All approvals of applications and requests for modification for additional funds must be made subject to the availability of funds. Approval action will be by a signed statement, memorandum, or letter, the original and four copies of which will be issued. Approvals will be attached to and become a part of the agreement. Approvals may be either conditional or unconditional.
- A. Commissioner. The Commissioner has authority to take action on any application which could be approved by the Area Director under delegated authority.
- B. Area Director. The Area Director may approve applications and requests for modifications where the indebtedness of the enterprise to the organization does not exceed \$100,000, except modifications extending repayment terms.
- C. Superintendent. Superintendents may approve applications and requests for modifications, pursuant to authority delegated by Area Directors.
- D. Conditional Approval. Applications and requests approved conditionally require acceptance by the authorized body or officials of the organization (see Illustration 1, Resolve 3; and Illustration 2, Resolves 2 and 3 to this supplement).
- E. Unconditional Approval. Applications and requests approved unconditionally do not require acceptance by the organization.
- F. Procedure.
- (1) Action of Commissioner. The original and three copies of the Commissioner's action will be returned to the Area Director with the original

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application or request. The Commissioner will retain one copy and attach a copy of his action thereto (see 1.2 E above for number of copies submitted to the Commissioner).

(2) Action of Area Director.

- (a) Final Approval. Regardless of whether approval by the Area Director is conditional or unconditional, he will attach one copy of his action to the application or request and forward it to the Commissioner.
- (b) General Action. The Area Director will attach either the Action of the Commissioner or of the Area Director to the original and three copies of the application or request.
- (c) Unconditional Approval. The Area Director will retain the original application or request and action thereon and forward three copies to the Superintendent.
- (d) Conditional Approval. The Area Director will attach his action or that of the Commissioner to all copies and forward original and three copies to the Superintendent.

(3) Action of Superintendent.

- (a) Unconditional Approval. The Superintendent will retain one copy of the application or request, give one copy to the manager of the enterprise, and one copy to the authorized officer of the organization.
- (b) Conditional Approval. The Superintendent will return the original and three copies to the organization.

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He will explain the conditions to the officers or body of the organization, and to the enterprise manager.

Conditional approval actions will not be effective until after acceptance by the organization.

- (c) Superintendent's Approval. The Superintendent will attach one copy of his action to each copy of the application or request. The original and one copy will be forwarded to the Area Director if the Superintendent's action is unconditional. The other copies will be handled in accordance with 3.4 F (3) (a) above.
- (4) Action of Organization. The organization may either accept or reject conditions of approval.
- (a) Acceptance. In the case of acceptance, copy of the organization's action will be attached to the original and three copies of the application or request. One copy will be retained and the original and two copies returned to the Superintendent.
- (b) Rejection. In the case of rejection, copy of the organization's action will be attached to the original and three copies of the application or request. Two copies will be retained, and the original and one copy returned to the Superintendent.
- (5) Distribution of Copies. Copies of all completed agreements and modifications shall be furnished the Commissioner.
- (a) Accepted Conditions. The Superintendent will retain one copy of accepted applications or requests, give one copy to the manager of the



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enterprise, and return the original and one copy to the Area Director. If a manager for the enterprise has not been employed at the time of acceptance, the Superintendent will retain one copy for the manager to be handed to and explained to him later.

The Area Director will retain the original application or request and the original of the organization's acceptance, for the Area Credit Office. He will have copies made of all acceptances of conditions of approval and forward one copy to the Commissioner for attachment to the Commissioner's copy of the agreement.

- (b) Rejected Conditions. The Superintendent will retain one copy of the rejected application or request, and forward the original to the Area Director. The Area Office will advise the Commissioner of the rejection.
- (c) Advice to Commissioner. At the time acceptances of conditions of approval are forwarded to the Commissioner, the Area Office will advise the Commissioner of numbers assigned to the agreement pursuant to subsection G. below.

G, Numbering. Each application will be assigned both a CF (credit fund) and a TE (tribal enterprise) number after approval and acceptance. Each modification will bear the same numbers as the application and also will be numbered consecutively (Modification No. 1, Modification No. 2, etc.).

The Area Credit Office is responsible for seeing that all applications and modifications have been numbered properly and that information regarding the numbers

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is furnished all holders of the application. Where provision for the operation of an enterprise is included in a loan agreement contract between an organization and the United States, see 47 BIAM Supplement No. 1, 1.3 K (8).

- 3.5 Interest. The rate of interest an enterprise will pay to an organization will be set forth in its application or request. Whether or not interest payments will be required on funds permanently invested in an enterprise will be stated in the Enterprise Agreement. If the enterprise is financed by the organization with revolving credit funds borrowed from the United States, interest must be charged at a rate not less than that charged the organization by the United States.
- 3.6 Records and Reports. Separate accounting records will be maintained for each enterprise unless one enterprise is the only activity conducted by an organization under 47 BIAM, in which event the accounts of the organization may be accepted as the credit accounting records of the enterprise. The accounting system used will be satisfactory to the Area Director.
- A. Audits. The accounts of each enterprise will be audited annually at the expense of the enterprise at the close of its fiscal year, unless an exception is specifically authorized by the Council and the Area Director in writing. Copies of all such exceptions shall be furnished the Commissioner. The instructions in 47 BIAM Supplement No. 1, 1.7 regarding employment of auditors are applicable to employment of auditors of enterprises.
- (1) General. Five copies of audits are required, one of which will be retained by the organization and one by the enterprise manager. The remaining three copies will be submitted to the Superintendent, who will retain one copy and forward two copies with his comments in duplicate to the Area Director. The Area Director will take such action thereon as he deems appropriate, and forward one copy with his action and the Superintendent's comments to the Commissioner. If the Commissioner has any additional comments, they will be made to

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the Area Director. All correspondence with an organization regarding an audit will be conducted by the Area Office.

B. Reports. Annual reports will be submitted by enterprises in accordance with 47 BIAM 11.

3.7 Maturity. Tribal funds invested in an enterprise on a permanent investment basis (see 3.2 B above) will not bear a maturity date. Funds invested on a loan basis (see 3.2 A above) will bear a maturity date. Unless an organization has sufficient other funds to make the loan without endangering its ability to repay its obligation to the United States on schedule, the maturity of loans will not extend beyond the maturity dates of loans to the organization by the United States (see 47 BIAM Supplement No. 1, 1.8).

3.8 Security. No security need be required from an enterprise by an organization. The enterprise is an activity of the organization.

Because the soundness of operations of an enterprise may determine whether or not an organization will be able to repay a loan received from the United States (see 47 BIAM Supplement No. 1, 1.9), the Commissioner or Area Director may, when authorized in the organization's loan agreement with the United States, require that the organization give the United States a lien on the assets of the enterprise and an assignment of income from its operations, as security for the organization's loan from the United States.

3.9 Penalties on Default. If plans and agreements of enterprises are violated, including failure to make payments as scheduled, or if an enterprise is not being operated in a sound manner, the Superintendent will call the same to the attention of the organization and endeavor to have the necessary adjustments and corrections made. If his efforts are unsuccessful, he will report the unsatisfactory operations or violations promptly to the Area Director, with full information and recommendations as to action which should be taken.

The Area Director will then take such action as he deems advisable, and will work with the organization to correct any violation or other shortcoming.

Unless a loan agreement between the United States and an organization provides otherwise, 25 CFR 91.10 (i) gives the Commissioner authority:

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"In the case of \* \* \* enterprises \* \* \* to liquidate or operate, or arrange for the operation of the enterprise \* \* \* until its indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and of compliance with the loan agreement."

25 CFR 91.12 (d) (6) also gives the Commissioner authority:

"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."

Section 1 (e) of Form 5-4728 contains an agreement similar to the foregoing.

The Commissioner's authority as outlined above has been delegated to the Area Directors by 10 BIAM 3.1. The Area Director is responsible for taking such action as may be necessary to assure compliance with agreements, and to assure operation of enterprises on a sound basis.

If an enterprise is operating soundly but is unable to make payments to an organization for reasons beyond its control, a request for modification extending the dates for repayment may be submitted (see 3.2 D and E above).

3.10 Assignment. 25 CFR 91.11 prohibits assignment of a loan agreement or any interest therein to a third party without the consent of the Secretary or his authorized representative. The Secretary delegated authority under this regulation to the Commissioner by promulgation of section 11 (o), Order 2508, (see 10 BIAM 2.1), which in turn has been redelegated to Area Directors by 10 BIAM 3.1.

3.11 Tribal Funds. Tribal funds advanced to tribes from the Treasury under authority of 25 CFR 91.12 are available for financing of enterprises, when the justification for the advance includes provision for the financing of enterprises. If "local" tribal funds are involved, the procedure in 47 BIAM Supplement No. 1, 1.13 should be followed.

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- 3.12 Relending. Enterprises may not make loans to members of organizations, unless specifically authorized in the approved plan by the Commissioner or his authorized representative.
- 3.13 Repayments. Enterprises will be required to conform to the repayment schedules in their applications and agreements. Unless otherwise provided in approved agreements, repayments by enterprises to an organization will be made to the bonded officer of the organization. Such officer will accept repayments from the enterprise and issue a receipt on Form 5-4716, (formerly Form 5-825), unless use of a different receipt form is authorized in the approved plan. All receipts will be prenumbered.

Collections will be deposited immediately in the organization's approved depository. In those cases where the organization's credit funds are deposited in an IM account, an official receipt from the Bureau of Indian Affairs designated Collection Officer will be issued (see 47 BIAM Supp. No. 1, 1.15, and 47 BIAM Supp. No. 2, 1.14).

Sample Resolution Authorizing the Filing of an Application

NOTE: Action on applications and modifications is taken under authority delegated to the Commissioner in section 11(k), Order 2508, (see 10 BIAM 2.1). The Commissioner's authority has been delegated to Area Directors where the indebtedness of the enterprise to the organization does not exceed \$100,000 (see 10 BIAM 3.1), and to Superintendents by Area Directors pursuant to Area Redelegation Orders.

Applications and requests should consist of two main documents: (1) the application or request and (2) the authorizing resolution. It is inadvisable to incorporate the provisions of the application or request into the resolution.

Most tribal constitutions and corporate charters do not require approval of a resolution authorizing the filing of an application for a loan, or a request for modification of a loan. The application or request requires approval in order to be effective, but not the authorizing resolution. Most such resolutions would, of course, be without effect unless action were taken on the application or request.

Approval or recommendation for approval or disapproval by any Bureau official should not appear on a resolution unless it is required by the organization papers of the corporation or tribe. Approval or recommendation for approval or disapproval is required on applications and requests for modifications.

The following sample resolution will require adjustment to meet the needs of particular organizations and enterprises.

## RESOLUTION OF THE TRIBAL COUNCIL OF THE

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A Federal Chartered Corporation

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COMMENTS:

In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited. In the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. If an IRA section 16 organization is involved, appropriate changes in wording should be made.

The "Whereas" clause is written on the assumption that sufficient information appears in the minutes of the meeting of the Council to justify the resolving paragraphs.

This resolve is worded flexibly in the event certain of the officers should be absent or unavailable.

WHEREAS:

- (1) This corporation is a Federal chartered corporation as defined by the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 477), as amended, and has authority to conduct business enterprises; therefore

## BE IT RESOLVED THAT THE TRIBAL COUNCIL OF THIS CORPORATION:

- (1) Authorizes the filing of an Enterprise Application and Agreement to finance the

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Enterprise of the corporation in the total amount of \$ \_\_\_\_\_. Certified copy of this resolution shall be attached to the Application as Exhibit A. The Council is familiar with the provisions of said application, including Exhibit B, and agrees to the provisions thereof. Of the total amount authorized, \$ \_\_\_\_\_ will be reimbursable to the corporation by the enterprise, and \$ \_\_\_\_\_ will be an investment in the enterprise.

- (2) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute a contract for management of the enterprise at a

In the case of most enterprises, it may be desirable to add:  
"Provided, that the management contract or any modification or amendment thereof shall not be effective until approved by the Commissioner or his authorized representative.

salary not exceeding \$ \_\_\_\_\_ per annum. The terms of any such contract may be modified or amended by the designated officers acting on behalf of this corporation.

- (3) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute the Enterprise Application and Agreement pursuant to Resolve (1), and to bind the corporation to the provisions thereof. In the event the Commissioner or his authorized representative approves the same conditionally, these officers are authorized to accept such conditions on behalf of the corporation as in their judgment are warranted, or to refer acceptance to the entire Council.

CERTIFICATION

I, the undersigned, as secretary of the \_\_\_\_\_, a Federal Corporation, hereby certify that its Tribal Council is composed of \_\_\_\_\_ members, of whom \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that the foregoing resolution was duly adopted at such meeting by the affirmative vote of \_\_\_\_\_ members.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Secretary of the \_\_\_\_\_

\_\_\_\_\_  
(A Federal Corporation)



Sample Resolution Authorizing Filing of Request for Modification

NOTE: The following sample resolution will require adjustment to meet the needs of particular enterprises. It is written with the same assumptions that were made in the case of the resolution in Illustration 1.

## RESOLUTION OF THE TRIBAL COUNCIL OF THE

A Federal Chartered CorporationCOMMENTS:

In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited. In the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. Section 16 IRA organizations also will require changes.

"Whereas (2)" should be changed if the Area Director or Superintendent approved the original application.

WHEREAS:

- (1) This corporation is a Federal chartered corporation as defined by the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 477), as amended, and
- (2) On \_\_\_\_\_ 19\_\_\_\_, the Commissioner of Indian Affairs approved an Application and Agreement for the operation of the \_\_\_\_\_ Enterprise as authorized by Resolution \_\_\_\_\_ of the Council, and
- (3) The operations of the enterprise to date indicate the need for certain changes in the agreement; therefore

BE IT RESOLVED THAT THE TRIBAL COUNCIL OF THIS CORPORATION:

- (1) Authorizes the filing of a Request for Modification of the Enterprise Application to provide additional financing up to \$ \_\_\_\_\_. The Council is familiar with provisions of said request, and agrees to the provisions thereof. Of the total amount authorized,

\$ \_\_\_\_\_ will be reimbursable to the corporation by the enterprise, and \$ \_\_\_\_\_ will be an investment in the enterprise.

In some instances "Commissioner" should be changed to "Area Director" or "Superintendent."

This resolve may not be advisable in the case of some enterprises where the Council can meet readily.

- (2) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute the Request for Modification and bind the corporation to the provisions thereof. In the event the Commissioner or his authorized representative approves the same conditionally, these officers are authorized to accept such conditions on behalf of the corporation as in their judgment are warranted, or to refer acceptance to the entire council.
- (3) Authorizes and instructs its chairman or vice-chairman and secretary or treasurer, to execute additional Requests for Modification and bind the corporation to the provisions thereof, provided that the total additional amount may not exceed \$ \_\_\_\_\_ without further authorization from the Council; and provided further, that not to exceed \$ \_\_\_\_\_ of this amount will be reimbursable to the corporation by the enterprise, and \$ \_\_\_\_\_ will be invested in the enterprise.

#### CERTIFICATION

I, the undersigned, as secretary of the \_\_\_\_\_, a Federal Corporation, hereby certify that its Tribal Council is

composed of \_\_\_\_\_ members, of whom \_\_\_\_\_, constituting a quorum, were present at a meeting thereof duly and regularly called, noticed, convened, and held this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that the foregoing resolution was duly adopted at such meeting by the affirmative vote of \_\_\_\_\_ members.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Secretary of the \_\_\_\_\_

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(A Federal Corporation)

Sample Contract for Management and Operation of an Enterprise by a Federal Corporation

NOTE: The following sample contract is furnished for the purposes of illustration only, and will require adjustment to meet the needs of particular organizations and enterprises. All management contracts will be checked by the offices of the respective Field Solicitors prior to approval or prior to submittal to the Commissioner, Area Director, or Superintendent for action. It is not possible to foresee the requirements of all enterprises. The comments herein consequently are incomplete.

COMMENTS:

In the case of some enterprises it may be desirable to change the preamble to: "THIS AGREEMENT, made the dates shown opposite the signatures below, which shall not be effective until \_\_\_\_\_, 19\_\_\_\_, nor until this contract is approved by the Commissioner of Indian Affairs or his authorized representative, by and between \* \* \*." In the case of corporations in Alaska, the Act of May 1, 1936 (25 U.S.C. 473a), should be cited, and in the case of corporations in Oklahoma, the Act of June 26, 1936 (25 U.S.C. 503), should be cited. In the case of Section 16 IRA organizations appropriate changes should be made.

THIS AGREEMENT, made the dates shown opposite the signatures below, by and between the \_\_\_\_\_, a corporation chartered under section 17 of the Act of June 18, 1934 (25 U.S.C. 477), as amended, acting through its Tribal Council as evidenced by Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 19\_\_\_\_, certified copy of which is attached hereto, and \_\_\_\_\_ of \_\_\_\_\_.

WITNESSETH:

THAT, for and in consideration of the payments to be made, services to be performed, and rights and privileges granted by the respective parties hereto, it is mutually understood and agreed as follows:

1. DEFINITIONS. Wherever used herein, the following terms shall have the meanings indicated.

(a) "COMMISSIONER" means the Commissioner of Indian Affairs, except where used in section 22.

(b) "AREA DIRECTOR" means the Area Director or officer in charge of the Area Office at \_\_\_\_\_ of the Bureau of Indian Affairs, or his successor in office.

(c) "SUPERINTENDENT" means the officer in charge of the reservation on which the enterprise is operated.

If the enterprise is operated off the reservation, it may be desirable to add: "or under which the enterprise is placed for administrative purposes." In those Areas where the services of a Superintendent are not available, the Area Director will perform the functions of the Superintendent, and reference to the Superintendent should be omitted.

(d) "CORPORATION" means the corporation shown in the preamble.

(e) "COUNCIL" means the governing body of the corporation.

(f) "MANAGER" means \_\_\_\_\_ mentioned in the preamble.

(g) "ENTERPRISE" means the \_\_\_\_\_ of the corporation.

This section is unnecessary if the operation of a new enterprise is being undertaken.

The wording of this section must not conflict with the plan of operation or with the provisions of the constitution, bylaws, or charter of the organization. The authority of the manager to obligate the enterprise or the organization needs particularly careful consideration. Some organization papers place limitations upon the amounts of contracts which may be entered into without approval of the Commissioner.

The wording of this section will be determined by the nature of the enterprise. In some instances, it would not be advisable to give the manager exclusive custody of the property. In some cases, it may be desirable to give the Council or Superintendent authority to require the manager to furnish an inventory upon request. In other

2. PRIOR CONTRACTS. This contract, when it becomes effective, will supersede and replace any prior agreement between the parties hereto, expressed or implied.
3. MANAGEMENT AND OPERATION. The manager will manage and operate the enterprise in an economic and efficient manner, in accordance with law and the provisions of Enterprise Application and Agreement CF No. \_\_\_\_\_ TE No. \_\_\_\_\_ and any modifications thereof. The manager acknowledges receipt of a copy of said agreement by his signature attached hereto. A copy of future modifications will be furnished the manager by the Superintendent. The manager agrees that he may not enter into any contract nor obligate the enterprise or the corporation for indebtedness except as specifically authorized in Exhibit B of said agreement. The manager agrees that he will not claim unfamiliarity with such agreement or modifications thereof as reason for non-adherence thereto.
4. INVENTORY. By signature affixed hereto the manager acknowledges receipt of the property of the enterprise in the inventory, copy of which is attached, consisting of \_\_\_\_\_ typewritten pages. Said inventory will be the basis from which to start accounting for the property of the enterprise. The manager shall have, during the period of this contract, exclusive

instances, Exhibit "B" of the Enterprise Application and Agreement may provide: "Upon request of the Superintendent the Council will require the manager to take an inventory in accordance with section 4 of his contract, and furnish the Superintendent with three copies." This section would then be worded accordingly. Any authority given the Superintendent or other official of the Bureau of Indian Affairs should be used sparingly. Ordinarily, action should be taken by the Council, and action of Bureau officials should be through the Council.

In the case of some organizations, it might be desirable to add "and the Superintendent."

custody of such property and acquisitions thereto purchased in accordance with section 5. Such property may be used only in the operation of the enterprise. Annual budgets approved in accordance with section 5 will provide funds to enable the manager to maintain the property in practically the same condition and state of repair as when it was turned over to him.

Upon termination of this contract pursuant to section 20, or upon request of the Council, the manager will have a similar inventory compiled and furnish the Council with four copies. The inventory will show:

- (a) All property turned over to the manager.
- (b) All dispositions made of such property.
- (c) All acquisitions.
- (d) All property in inventory as of the date of compilation of the inventory.

After the first inventory, subsequent inventories may start with the property shown in (d) of the previous inventory.

The manager will be responsible for any shortages in inventory unless such shortages are accounted for in a manner satisfactory to the Council.

It may be advisable to provide that the manager will furnish an operating statement for the accounting period, in order that the Council may have some basis upon which to analyze the proposed budget. It may also be desirable to provide for approval of the budget by the Superintendent or Area Director in addition to the Council, before it will be effective. This ordinarily is desirable where loans from the United States are involved. This may not be necessary in other cases. In still other cases, the requirement of approval of the budget by a Bureau official may be desirable only in the event the enterprise did not produce a net income during the accounting period.

If any provisions are necessary regarding automobile liability coverage, employee liability coverage as required by State laws, etc., they should be covered in this section.

In some cases it may be necessary to give the Superintendent or Area Director authority to prescribe the amount and type of insurance the manager should obtain. In most instances, however, instruction of a Bureau official should be to the Council which, in turn, would instruct the enterprise manager.

5. BUDGETS. Each year not later than \_\_\_\_\_, the manager will prepare a budget for presentation to the Council showing:
- (a) Estimated expenditures from last previous budget.
  - (b) Actual expenditures under last previous budget.
  - (c) Estimated expenditures for the ensuing year.
  - (d) Capital investment items.

Upon approval by the Council, the budget will constitute the manager's authority to make disbursements thereunder.

6. INSURANCE. The manager will keep all property of the enterprise, including properties leased from other parties, protected by adequate insurance against loss by fire or from other hazards, including business interruptions. The amount and type of insurance and the company or companies writing the insurance shall be satisfactory to the Council (and Area Director or Superintendent). In the event the Council does not believe that the manager has adequate insurance coverage, it may instruct the manager to obtain additional insurance, and the manager will comply with such instructions.



47 BIAM 7.7 requires that the accounting system be satisfactory to the Area Director. In some instances it may be desirable to include this provision in the management contract.

7. ACCOUNTING. The manager will be responsible for maintaining, or causing to be maintained, full and complete accounting and other records of the operations of the enterprise. A balance-sheet type audit will be made at the close of the fiscal year by a certified public accountant or licensed accountant, which will include operating (profit and loss) and financial statements. Any accounting for capital investment expenditures will be made separately from expense of operation.

Copies of all audits will be furnished the Council, Superintendent, Area Director, and Commissioner. One copy will be retained by the manager.

The records and accounts of the enterprise will be available at all reasonable times for inspection and examination by authorized officers of the corporation, the Superintendent, Area Director, or Commissioner, and such other parties as the Council may designate. The Council may require special examinations to be made at any time.

Trial balances will be furnished the Council, Superintendent, and Area Director within 10 days of the close of each calendar month.

8. REPORTS. Reports will be made as requested in writing by the Council, Superintendent, or Area Director.

9. EMPLOYMENT. The manager will be responsible for selection of all employees of the enterprise, including bookkeeping and clerical assistants. He will employ members of the corporation wherever possible in the operation of the enterprise, consistent with his responsibilities under section 3 hereof. The manager will have the right to discharge unsatisfactory employees regardless of whether or not they are members of the corporation. The manager will discharge from employment any person or persons not members of the corporation, whose presence on the reservation is declared undesirable by resolution of the Council.

In some instances it may be desirable to give the Superintendent or Area Director authority to require the manager to furnish information on the wage or salary paid any employee and to instruct the manager regarding equitable adjustments. Ordinarily, however, Bureau employees should work through the Council.

The manager will pay not less than "going" wages and salaries for all labor and other employees of the enterprise. The Council may require the manager to furnish full information regarding the wage or salary paid to any employee, in order that the Council may determine whether the wage or salary is excessive or insufficient. The Council may instruct the manager to make adjustments it considers equitable. In the event the manager does not agree with the Council, appeals may be taken pursuant to section 10.

10. APPEALS. The Council may require the manager to submit all matters of dispute with members of the Corporation to it for decision. In the event the Council upholds the decision of the manager, its action shall be final. In the

event of disagreement between the manager and the Council, the matter may be referred by either the manager or the Council to the Superintendent for decision. The Superintendent's decision will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision of the Superintendent to the Area Director. The Area Director's decision will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision of the Area Director to the Commissioner. The decision of the Commissioner will be final and binding upon both parties unless appeal is taken by either party within ten (10) days of receipt of the decision to the Secretary of the Interior. The decision of the Secretary of the Interior will be final and binding upon both parties.

Decisions of the Superintendent may be transmitted to the manager and Council by registered or certified mail, return receipt requested, or handed to the parties and a receipt taken therefor. All decisions of the Area Director, Commissioner, or Secretary will be transmitted to the party making the appeal, with copy to the other party, by registered or certified mail, return receipt required.

Appeals to the Area Director will be transmitted through the Superintendent. Appeals to the Commissioner will be transmitted

through the Superintendent and Area Director. Appeals to the Secretary will be transmitted through the Superintendent, Area Director, and Commissioner.

11. FINANCING. The corporation will furnish funds for operating the enterprise, and for capital investment, in accordance with Agreement CF No. \_\_\_\_\_ TE No. \_\_\_\_\_, and budgets approved pursuant to section 5.

If depository provisions are included in the Agreement, it may not be necessary to repeat them in the management contract.

The provision to permit the Superintendent to withdraw funds may not be advisable in some instances. Consideration should be given to placing this responsibility upon the bonded treasurer of the corporation.

In some instances it may be desirable to restrict the amount on deposit to that insured by the Federal Deposit Insurance Corporation.

In some instances it may be desirable to include a provision to permit the Superintendent or Area Director to require the manager to furnish a statement, although ordinarily Bureau officials should work through the Council. The Agreement may contain a provision that: "Upon request of the Superintendent, the Council will require the manager to furnish

(a) Depository. The manager may open an account or accounts with any National or State bank that is a member of the Federal Deposit Insurance Corporation in the name of the enterprise. Arrangements will be made for the Superintendent to withdraw the funds at any time and place them in an Indian Money Account to the credit of the enterprise.

(b) Disbursements. The manager may make disbursements from the bank account or accounts in accordance with Agreement CF No. \_\_\_\_\_, TE No. \_\_\_\_\_, and budgets approved pursuant to section 5, over his signature as manager. All disbursements for the account of the enterprise will be by check, except where local custom or practice requires the disbursement to be made in cash,

full information regarding all checks issued to himself for the purpose of making cash disbursements; accounting for such funds; and the amount on deposit in the bank account or accounts of the enterprise; and will require the manager to transfer funds from the bank account of the enterprise to an IM account of the enterprise."

and where the amount involved is not more than \$ \_\_\_\_\_, in which case the manager may issue a check in favor of himself and make cash disbursements therefrom. The manager will furnish a statement to the Council at such times as the Council may require, showing the date, number, and amount of all checks issued to himself in order to obtain cash, and account for all disbursements in a manner satisfactory to the Council.

(c) Responsibility. The manager will be responsible under his bond for proper accounting for all funds received by him.

(d) Receipts. All money receipts of the enterprise will be deposited in the bank depository intact.

(e) Council's Authority. The Council may require the manager at any time to furnish full information on the amount on deposit in a bank account or accounts to the credit of the enterprise, and may require the manager at any time to transfer the funds from the bank account or accounts of the enterprise to an Indian Money Account of the enterprise.

12. COMPENSATION. The manager will receive a salary of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) per annum, which may be paid in monthly installments, plus a bonus of \_\_\_\_\_ percent of net earnings of the enterprise. The net earnings will be determined by audit in accordance with section 7.

For the purposes of this section only, "net earnings" shall mean the net earnings before payment of the manager's bonus.

13. EXPENSES OF MANAGER. The manager will be entitled to reimbursement for travel and incidental expenses incurred by him in the operation and management of the enterprise. The total may not exceed the amount set forth annually in approved budgets pursuant to section 5.

All expenses, with the exception of transportation costs, i.e., airplane, railroad, pullman, boat, or bus fare, will be paid from personal funds of the manager, and written claims for reimbursement will be made after such expenses have been incurred. Transportation costs may be paid by the manager from his personal funds and written claim for reimbursement made, or may be paid by check on the bank account or accounts of the enterprise.

Expenses, exclusive of transportation costs, may not exceed \$ \_\_\_\_\_ per day, without further specific authorization from the Council.

In some instances it may be desirable to require that any authorization above the specified amount also be approved by the Superintendent or Area Director in addition to the Council.

The manager may use his personally-owned automobile in connection with the management and operation of the enterprise, and submit claims for reimbursement on the basis of \_\_\_\_\_ cents ( \_\_\_\_\_¢ per mile). All claims for reimbursement will indicate the necessity for incurring the expense.

14. BONDS. The manager will be bonded in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to protect the corporation against loss by reason of any act or acts of fraud, dishonesty, forgery, embezzlement, wrongful abstraction, or willful misapplication of funds on the part of the manager. The manager may, in writing, authorize any employee of the enterprise to handle funds, but only while there is maintained a bond in an amount to be determined by the manager to be sufficient to indemnify the corporation against financial loss by reason of any act or acts of fraud, dishonesty, forgery, embezzlement, wrongful abstraction, or willful misapplication of funds on the part of such employee. The manager will not authorize anyone to handle funds unless he is bonded. If the manager should do so, such person is the manager's agent and the manager will be liable under his bond.

In some instances it may be desirable to include a provision to permit the Superintendent or Area Director to instruct the manager to increase or decrease the amount of any bond, or require the manager to bond any employee in addition to the Council requirement. Ordinarily Bureau officials should work through the Council. The Agreement could contain a provision that: "Upon request of the Superintendent, the Council will issue instructions to the manager regarding procurement of bonds, which the Superintendent considers necessary to protect the corporation."

The Council may, in writing, instruct the manager to increase or decrease the amount for which any employee is bonded, and may also require the manager to bond any employee in such amount and in such manner as it may instruct in writing.

The manager and all employees who are required to be bonded will be bonded to the corporation. All such bonds will be with a surety company on the approved list of the United States Treasury. The cost of all such bonds will be considered an operating expense of the enterprise. All bonds will be deposited in a place of safekeeping.

In some instances it may be advisable to include a provision before the last sentence that "if the Council does not make arrangements for temporary management within \_\_\_ days, the Superintendent or Area Director may appoint a temporary manager to operate the enterprise until such time as the Council takes necessary action to cope with the emergency."

15. LIQUIDATED DAMAGES AND TEMPORARY MANAGEMENT. In order to provide protection for the corporation, the manager covenants and agrees to pay to the corporation within thirty (30) days after due demand, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) a day lawful money of the United States, as liquidated damages for each day the enterprise shall be wholly or partially inoperative because of the misfeasance, malfeasance, or nonfeasance or other neglect on the part of the manager, provided that the manager shall not be liable hereunder in the event of his death, nor after the date of his death. In the event the manager is unable to act for a period of longer than five days, due to his death, disability, or for any other reason except leave taken pursuant to section 16, the Council, Superintendent, or Area Director may declare that an emergency exists, in which event the Council shall make arrangements for temporary management, subject to approval of the Area Director. The manager will not be responsible for losses incurred during a period of temporary management.



16. LEAVE. The manager will be allowed twenty (20) days of vacation time with pay annually based on the fiscal year of the enterprise provided such vacation time may be taken only when the business of the enterprise warrants. Vacation in excess of ten (10) days at one time must be approved in advance by the Council. The manager will also be allowed sick leave up to fifteen (15) days annually with pay based on the fiscal year of the enterprise, provided any sick leave taken in excess of five (5) days at one time will be accompanied by a physician's statement that the manager was unable to work during the leave period. Vacation time and sick leave not taken in one fiscal year may be carried over to the next fiscal year, provided that the total accumulated vacation time or sick leave which may be carried over from one fiscal year to another may not exceed sixty (60) days of each. The manager may be paid for any accumulated vacation time at the time of termination of this contract, but not to exceed sixty (60) days, at the rate provided by section 12, exclusive of any bonus provisions. Any sick leave at the time of termination of this contract will be forfeited.

The fact that the manager may be on vacation or sick leave at any time shall not relieve him of his responsibility for management and operation of the enterprise under the terms of this contract.

If, in the preamble, approval of the contract is required, there should be an additional provision in this section that: "\* \* \* provided that before any modification or amendment will be effective, the approval of the Commissioner or his authorized representative is required."

The organization papers of the corporation should be checked to determine whether a "continuing" type of contract is permissible. In some cases, it will be necessary to cover a specified period of time.

If, in the preamble, approval of the Commissioner was required, there should be an additional provision in this section that: "subject to approval of the Commissioner or his authorized representative."

If, in the preamble, approval of the Commissioner, Area Director, or Superintendent was required, the authority of the Council to terminate the contract should be subject to approval of the

17. FULL TIME. The manager will devote his full time to the management and operation of the enterprise and will not engage in other activities which would interfere with the proper conduct of the business of the enterprise.
18. MODIFICATION. The terms of this contract may be modified or amended by mutual consent of the parties hereto, in writing.
19. PERIOD. The period of this contract shall be from the effective date as set forth in the preamble, until such time as it is terminated pursuant to section 20.
20. TERMINATION. This contract may be terminated in any one of the following ways:
  - (a) Mutual Agreement. By mutual agreement, in writing, of the parties hereto.
  - (b) By Tribal Council. The Council may terminate this contract at any time by giving the manager \_\_\_\_\_ days (\_\_\_\_ days) notice in writing. The manager will render an accounting for all funds and for all

Commissioner. In the case of some enterprises it may also be desirable for the Commissioner to be given authority to terminate the contract although ordinarily this would only be done with the consent of the Council. In this event, the first part of the first sentence could read:

"The Council, with the approval of the Commissioner, or the Commissioner, may terminate this contract at any time by giving \* \* \*." In some cases, the Bureau official may be the Area Director or Superintendent.

In the case of some enterprises, it may be advisable to change the first part to read: "The Commissioner may terminate this contract at any time without prior notice to the manager, for misfeasance, malfeasance, or nonfeasance on the part of the manager, or for other cause which, in the opinion of the Commissioner is serious enough to make immediate termination necessary. In the event such action is taken by the Commissioner, the Council will make \* \* \*."

enterprise property in accordance with section 4. Such accounts shall be at the expense of the corporation. The manager will be entitled to reimbursement for expenses incurred pursuant to section 4, salary and bonus pursuant to section 12, and payment for accumulated vacation time pursuant to section 16.

(c) Misfeasance, Malfeasance and Nonfeasance. The Council may terminate this contract at any time, without prior notice to the manager, for misfeasance, malfeasance, or nonfeasance on the part of the manager, or for other cause which, in the opinion of the Council, is serious enough to make immediate termination necessary. In the event such action is taken by the Council, it will make arrangements for an immediate audit of the records of the enterprise, and the manager will make a full accounting for all funds and property of the enterprise. The audit and accounting will be at the expense of the enterprise. The manager will be entitled to reimbursement for expenses incurred pursuant to section 13, salary to the date of termination pursuant to section 12, and payment for accumulated vacation time pursuant to section 16. The manager will forfeit any claim for bonus under section 12 for the particular fiscal year in which the

In the last sentence, it may be desirable, in some instances, to change this provision to read: "The Council will make arrangements for an immediate audit of the records of the enterprise, and a full accounting for the funds and property of the enterprise will be made in accordance with the instructions of the Commissioner. Copies will be furnished the manager's executor, administrator, or assigns." In some instances "Commissioner" should be Area Director or Superintendent.

If, in the preamble, approval of the contract is required, the manager should also be required to give notice to the Commissioner (or Superintendent or Area Director) as well as to the Council.

termination occurs hereunder. Payment of any sort to the manager may be withheld until the audit is completed, and full accounting is made for all funds and property of the enterprise.

(d) Death. The death of the manager will terminate both his duty to render further managerial services and the duty of the corporation to make further payments therefor, except in settlement of obligations theretofore accrued under this contract. All such payments by the corporation will be made to the manager's executor, administrator, or assigns. A full and complete audit and accounting for the funds and property of the enterprise will be made in accordance with instructions of the Council, copies of which will be furnished the manager's executor, administrator, or assigns.

(e) By Manager. The manager may terminate this contract at any time by giving the Council \_\_\_\_\_ days ( \_\_\_\_\_ days) notice in writing. If the manager requests termination at any time other than the close of a fiscal year, an audit and complete accounting for all funds and property of the enterprise will be made, and the manager will bear the expense of the audit. If the manager requests termination at any time other than the close of the fiscal year, he will also forfeit any claim for bonus under section 12 for the particular fiscal year in which termination occurs hereunder,

and payment for any accumulated vacation time pursuant to section 16.

In some cases, it may be desirable to provide that funds of the enterprise will be returned to the Superintendent for deposit in an Indian Money Account.

21. RETURN OF PROPERTY. In the event of termination of this contract in any manner, or in the event it is necessary to arrange for temporary management pursuant to section 15, the manager will surrender all funds and property of the enterprise to the Council. The funds of the enterprise will then be handled by the bonded treasurer of the corporation until other arrangements for management of the enterprise are made. The property surrendered shall be in as good condition and repair as when it was received by the manager, due allowances being made for damage by the elements and reasonable wear and tear. Allowance also will be made in the event funds have not been furnished the manager to maintain and repair the property of the enterprise.

22. MISCELLANEOUS.

(a) No member or delegate to Congress or resident Commissioner, after his election or appointment, either before or after he is qualified, and during his continuance in office, and no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part of this contract or derive any benefits therefrom. The foregoing prohibition shall not apply, however, to contracts entered into by the manager on behalf of the enterprise with any corporation for

the general benefit of such corporation, in which such member of or delegate to Congress, resident Commissioner, officer, agent or employee of the Department of the Interior is a shareholder.

(b) The manager shall not, without specific approval of the Council, transact business on behalf of the enterprise with any corporation, joint-stock, company, or association, or other firm or partnership, or other business entity of which he is an officer, agent, or member, or in the contracts or pecuniary benefits of which he is directly or indirectly interested.

(c) The manager shall not contract with any person or corporation for the hiring out of the labor of any prisoners confined for a violation of any of the laws of the United States.

23. CONFLICT. Should any provisions of this contract be found in conflict with the provisions of any approved enterprise application and agreement for financing the enterprise, including modifications thereof, the provisions of the application and agreement will apply, and such conflicting provisions will not invalidate the remaining provisions of this contract.

IN WITNESS WHEREOF, the parties  
hereto subscribe their names  
and affix their seals the day  
and year indicated opposite  
their signatures:

\_\_\_\_\_  
(Corporation)

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Manager)

\_\_\_\_\_  
(Date)

APPROVED:

(Commissioner of Indian Affairs)  
or  
(Area Director)  
or  
(Superintendent)

\_\_\_\_\_  
(Date)



