

STATE OF MINNESOTA  
INDIAN AFFAIRS COUNCIL

In the Matter of the Proposed Rule  
Amendments Regarding the Indian Business  
Loan Program

STATEMENT OF NEED  
AND REASONABLENESS

**Introduction**

The Indian Affairs Council ("IAC") was given the responsibility of administering the Indian Business Loan Program ("Program") in 1983 pursuant to a Department of Administration Reorganization Order, which transferred jurisdiction of the Program from the Department of Energy and Economic Development ("DEED") to the IAC. The Program was enacted by the legislature in 1973 to provide Indians seeking to expand or start business enterprises with low-interest loans. The rules under which the Program is administered were adopted by the Department of Energy, Planning and Development ("DEPD", predecessor of DEED) in 1979 and have never been amended. The amendments to the rule, which this Statement of Need and Reasonableness ("SONAR") supports, are written to update references from DEPD to the IAC and to implement changes that will help make the Program easier to administer and more effective for loan recipients.

**Statutory Authority**

The statutory authority for these rule amendments is Minnesota Statutes' Section 116J.64, subd. 7, and Section 14.06.

**Section by Section Justification**

**General**

Since the need and reasonableness of every section of this Rule was justified when the Rule was originally adopted, the SONAR will address only the need and reasonableness of proposed amendments.

### **5100.0200 Definitions**

In subpart 2 the reference to the "Tribal Council" in the definition of "administrative costs" is changed to "Indian Affairs Council." This change is needed because the IAC was given the responsibility to administer the Program after the rule was promulgated and adopted. It is reasonable to update this definition to inform the public about how the Program is now administered.

In addition, at the suggestion of the Office of the Revisor of Statutes ("Revisor's Office"), "Indian Business Loan" is inserted in front of "Program" to add clarity to the term "Program." This was done because Program is defined in subpart 5 after this definition.

In subpart 3 the definition of "Assistant Commissioner" is repealed and replaced in subpart 4a with a definition of "Council." This change is needed to reflect the change in administration of the Program from DEPD to the IAC. This change is reasonable because the reference to Assistant Commissioner is no longer relevant and causes confusion among potential Program borrowers.

In subpart 4 the term "Department" is deleted from the definition of borrower and replaced with word "Council." This change is needed to reflect the change in administration of the Program from DEPD to the IAC. This change is reasonable because the reference to department is no longer relevant and causes confusion among potential Program borrowers.

In subpart 5 the definition of "Division" is deleted and replaced with a definition of "Program." Deleting the definition of division is necessary and reasonable because DEPD no longer administers the Program. Adding a definition of "Program" is necessary and reasonable because the term is referred to throughout the rule and this definition will add clarity to those references.

### **5100.0300 Scope of Program**

Minor grammatical changes were made at the suggestion of the Revisor's Office.

No substantive amendments are proposed.

#### **5100.0400 Purpose**

References to an obsolete statutory section and 1979 session laws are deleted and replaced with a reference to the current statutory law authorizing the Program. This change is necessary to prevent confusion among potential borrowers and other interested parties about the current statutory authority for the Program. The change is reasonable because the Program rules should not cause confusion among those who are administered by them.

#### **5100.0500 Criteria For Business Loans**

In the first paragraph, a reference to "department" is deleted and replaced with "council." This change is necessary to reflect the change in administration of the Program from DEPD to IAC. The change is reasonable because the reference to Department is no longer relevant and causes confusion among potential Program borrowers.

Part 5100.0500, A, is changed to make it clear that loans will only be given to profit oriented businesses geographically located in Minnesota. This change is needed to make potential borrowers aware that the Council will not fund loans for business enterprises located outside of the state. The change is reasonable because by defining "Indian" in Minn. Stat. § 116J.64, subd. 2 as a person enrolled in a Minnesota-based band or tribe, and by establishing a loan account for the Program funded by Minnesota mineral tax revenues (Minn. Stat. § 116J.64, subd. 6), the legislature intended that Program loans would benefit businesses located in Minnesota. Awarding loans to borrowers who could use the money to finance businesses located in other states would circumvent the legislature's intent.

The first sentence of part 5100.0500, B, changes a reference from "assistant commissioner" to "council" for the same reasons cited for the change in part 5100.0200, subpart 3.

Part 5100.0500, B(4), which required the council to review credit verifications of borrowers, is deleted as a criteria for acceptance or rejection of a loan application. Since taking over the administration of the Program in 1983, the Council has not had enough

resources to subscribe to a credit bureau. Consequently, deleting this requirement is reasonable because the Council has never relied upon it as an application criteria. Further, it is necessary to amend the rules to bring the application review process into conformance with actual practice.

Part 5100.0500, C, is amended to change a reference from "division" to "council" (see part 5100.0200, subp. 5, for need and reasonableness justification). It is further amended by deleting reference to the Program as a participant in the "total loan package." This change is needed because with the proposed amendment of part 5100.0900 (see *infra*), it is conceivable that the Program could be the sole source of loan funding for a borrower. Further, the change is reasonable because the deleted language is superfluous and irrelevant to the criteria used to evaluate applications.

#### **5100.0600 Procedures For Making Business Loan Applications**

Amendments are made to change references from "division" and "assistant commissioner" to "Council" (see part 5100.0200, subps. 3 and 5, for need and reasonableness justification).

#### **5100.0700 Repayment**

A change in reference from "division" to "council" is made (see part 5100.0200, subp. 5, for need and reasonableness justification).

#### **5100.0800 Review**

A change in reference from "assistant commissioner" to "council" is made (see part 5100.0200, subp. 3, for need and reasonableness justification).

#### **5100.0900 Maximum Participation**

This section is amended to increase maximum participation by the Council in any one loan from 25 percent to 75 percent of the total cost of a project. This amendment is needed because the restrictive 25 percent limit on the total amount of funds provided by Program loans has caused the Council to turn away many borrowers with good projects over the years

who did not have enough available capital to qualify for a Program loan. This amendment is reasonable since the purpose of the Program is to enable Minnesota Indians to utilize program loans to expand or establish Indian-owned businesses in the state. By increasing the amount of funding available for qualifying projects, the Program will be much more accessible to borrowers than it currently is, thereby effectuating the intent of the legislature when it created the Program by helping Indians with good business ideas to start their own businesses.

#### **Expenditure of Public Money by Local Public Bodies**

The adoption of these amendments will not require the expenditure of public monies by local government bodies. Therefore, Minnesota Statutes Section 14.11, subdivision 1 is not applicable.

#### **Small Business Considerations**

The adoption of these amendments will not have any impact on small businesses as contemplated in Minnesota Statutes § 14.115, subd. 2.

#### **Authorized Signature**

I hereby certify that I am the person authorized to adopt the foregoing amendments justified in this Statement of Need and Reasonableness pursuant to an authorizing resolution passed by the IAC on March 22, 1994.

Dated: May 22, 1994

  
JOANNE STATELY  
Acting Executive Director  
Indian Affairs Council

STATE OF MINNESOTA  
**Indian Affairs Council**

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TO : MARYANNE HRUBY  
Executive Director  
LCRAR

DATE : May 24, 1994

FROM : CHARLOTTE WHITE  
Executive Assistant

*CW* /

PHONE : 296-3611

SUBJECT: **SONAR for Rules Relating to Indian Loan Program**

As required by Minnesota Statutes, sections 14.131 and 14.23, enclosed is the SONAR for the amendments to the rules governing the Indian Loan Program.