

## Indian Programs Manual

### Volume 1

#### Capital Facilities and Maintenance

## Approval and Management of Ministerial Loan Guarantees for Housing

### 1.0 Purpose

- 1.1 This directive implements the Terms and Conditions respecting the guarantees made by the Minister of Indian Affairs and Northern Development for housing loans to applicants as defined in section 5.1 of this directive, approved by Order in Council P.C. 1999-2000 on November 4, 1999.
- 1.2 This directive describes the policy and procedures for approving and administering ministerial guarantees for housing loans to applicants and defines the roles and responsibilities within the Department of Indian Affairs and Northern Development (DIAND) for implementing the guaranteed loan process.

### 2.0 Issuing Authority

- 2.1 This directive is issued under the authority of the Assistant Deputy Minister, Socio-Economic Policy and Programs.

### 3.0 References

- 3.1 Order in Council P.C. 1999-2000, signed November 4, 1999, revokes the previous terms and conditions approved by Orders in Council P.C. 1980-2753 and P.C. 1985-1/1621 and approves in substitution the new Terms and Conditions respecting the guarantees made by the Minister of Indian Affairs and Northern Development for housing loans;
- 3.2 Ministerial Loan Guarantees - Terms and Conditions (see Appendix A);

- 3.3 Financial Management Manual;
- 3.4 Lands Directorate (DIAND) policies related to reserve lands management and Band mortgage defaults; and
- 3.5 Credit and Indebtedness Policy.

## 4.0 Scope

- 4.1 This directive is applicable to all DIAND staff and is specific to the approval and administration of Ministerial Loan Guarantees for housing loans to applicants as defined in section 5.1 of this directive. The policies and procedures herein are meant to complement, and not replace, the requirements of other Directorates within the Department or other external agencies that may relate to the provision of housing loans or subsidies for housing loans.

## 5.0 Definitions

- 5.1 "**applicant**" means an individual Indian or a group of Indians (such as a Council of a Band, a Tribal Council, an authorized Band Housing Authority, a Band Housing Corporation including a Band Corporation under the *Cree/Naskapi (of Quebec) Act*, a corporation without share capital and a cooperative association, where all members of said corporations and cooperative associations are Indians) who has applied for a loan for the construction, acquisition or renovation of housing located on lands as hereinafter defined.
- 5.2 "**application**" means:
  - (a) an application for a housing loan for which Canada Mortgage and Housing Corporation (CMHC) will provide loan insurance pursuant to the *National Housing Act* (NHA), and which will be secured by the Minister through a Ministerial Loan Guarantee; or
  - (b) an application, other than an application as described in (a) above, for a housing loan, which will be secured by the Minister through a Ministerial Loan Guarantee.

- 5.3 “**assigning**” a guaranteed loan, refers to the situation where an existing lender wishes to assign an existing guaranteed loan or a number of guaranteed loans (i.e. bulk assignment/portfolio purchase) to a new lender under the existing terms and conditions of the Loan Agreement and Guarantee Agreement. Any increase to either the outstanding principal balance or the remaining amortization period at the time of assignment would require application for a new BCR or authorizing document from the Council of the Band, a new Loan Agreement, a new Guarantee Agreement and a new Guarantee Certificate and for the existing loan to be closed out at the time of approval of the new loan.
- 5.4 “**Band**” means:
- (a) a Band as defined in the *Indian Act* or the *Cree/Naskapi (of Quebec) Act*; or
  - (b) a former Band or group of Bands who is/are signatory to an implemented self-government agreement with Canada, or Canada and the appropriate province/territory.
- 5.5 “**Band Council Resolution (BCR)**” refers to the resolution or other authorizing document approved by the Council of a Band to provide the assurances or certifications required to request the loan guarantee from the Minister.
- 5.6 “**Band revenues**” refers to a band’s capital or revenues moneys used by the Band to secure the Ministerial Loan Guarantee and includes those monies to which the Minister may have recourse in the event a borrower defaults and the Minister has to recoup the money from the Band.
- 5.7 “**borrower**” means an applicant to whom a loan has been made by a lender, which loan is guaranteed by the Minister in accordance with the requirements contained in this directive.
- 5.8 “**Council of a Band**” means:
- (a) a Council of the Band as defined in the *Indian Act*; or
  - (b) a Council of a Band Corporation as defined in the *Cree/Naskapi (of Quebec) Act*; or

- (c) the governing body of a former band or group of bands who is/are signatory to an implemented self-government agreement with Canada, or Canada and the appropriate province/territory; or
  - (d) groups of individuals that the Minister has authorized to be considered as an Indian Band by Order of the Governor in Council.
- 5.9 “**default**” means the borrower has failed to fulfill the terms and conditions of the Loan Agreement (e.g. make the required loan payments);
- 5.10 “**Direct Lending Rate**” refers to Canada Mortgage and Housing Corporation’s Direct Social Housing Lending Rate applied to loans where CMHC provides subsidies (renewal terms are set at 5 years and the interest rate for renewals is set during the last 15 days of the month preceding the renewal);
- 5.11 “**environmental site assessment**” refers to a Phase 1 Environmental Site Assessment as prescribed by the Canadian Standards Association (CSA) Standard Z768-94 entitled: *Environmental Site Assessment* (or as may be revised from time to time) describing a systematic process by which an assessor determines whether a particular property is or may be subject to actual or potential contamination (This document does not refer to an environmental assessment as may be required pursuant to the *Canadian Environmental Assessment Act (CEAA)*).
- Bands under implemented self-government agreements that have exercised approved environmental assessment and environmental protection law-making powers or Bands under the *First Nations Lands Management Act* who control their own land management regime may apply their own regulations and procedures which meet or exceed the requirements of CSA Standard Z768-94. However, in both cases their BCR must still confirm that no evidence of contamination exists on the subject property.
- 5.12 “**Guarantee Agreement**” means the agreement between the Minister and the lender containing the terms and conditions for the Ministerial Loan Guarantee.
- 5.13 “**Guarantee Certificate**” refers to the document prepared by DIAND to certify the housing loan amount being guaranteed by the Minister and that the parliamentary authority to guarantee housing loans is not exceeded.

## 5.14 "Indian" means:

- (a) a person who, pursuant to the *Indian Act*, is registered as an Indian or is entitled to be registered as an Indian; or
- (b) beneficiaries as defined under the *Cree/Naskapi (of Quebec) Act*.

5.15 "Interest Adjustment Date (IAD)" means the date on which the term of the loan commences and the loan comes under regular repayment (monthly principal and interest payments begin). Prior to IAD, interest only payments are made on partially advanced loans. IAD shall be within 2 months of the final advance under the loan or substantial completion of all construction or improvement (final costs shall be determined within 6 months of IAD).

## 5.16 "lands" means:

- (a) lands which constitute "lands reserved for the Indians" under class 24 of section 91 of the *Constitution Act, 1867*, including lands, the legal title to which is vested in Her Majesty, that have been set apart as reserve for the use and benefit of a Band under subsection 2(1) of the *Indian Act*, and may also include lands so defined or similarly defined under the terms specified in implemented self-government agreements or implemented land claims agreements; or
- (b) a designated Indian settlement where groups of Indians normally reside and the federal Crown holds title to this land or has acquired the right to use and occupy this land by agreement with the appropriate provincial or territorial government; or
- (c) Category 1A or Category 1A-N lands as defined in the *Cree /Naskapi (of Quebec) Act*, or
- (d) any other lands that are within the legislative authority of Parliament as contemplated by class 24 of section 91 of the *Constitution Act, 1867*;

but does not include:

- (e) lands that are held in fee simple.

- 5.17 "**lender**" means Canada Mortgage and Housing Corporation or other lender approved by Canada Mortgage and Housing Corporation pursuant to the *National Housing Act* for the purpose of making loans.
- 5.18 "**loan**" means:
- (a) a loan made pursuant to the *National Housing Act* by a lender and which the Minister has guaranteed for the construction, acquisition or renovation of housing on lands as defined; or
  - (b) a loan not made pursuant to the *National Housing Act* by a lender and not insured by Canada Mortgage and Housing Corporation, which the Minister has guaranteed for the construction, acquisition or renovation of housing on lands as defined.
- 5.19 "**Loan Agreement**" means an agreement between a borrower and a lender containing the terms and conditions of the housing loan.
- 5.20 "**loan guarantee**" means a Ministerial Loan Guarantee whereby the Minister guarantees repayment of the loan to the lender in the event of default by the borrower pursuant to the terms and repayment conditions contained in the Loan Agreement.
- 5.21 "**Minister**" means the Minister of Indian Affairs and Northern Development or his/her designated representative.
- 5.22 "**project**" means a single house to be acquired, constructed or renovated by an individual or the Band; or a number of housing units to be acquired, constructed or renovated by the Band and grouped under one loan application.
- 5.23 "**refinancing**" a guaranteed loan, refers to the situation where the borrower wishes to increase or decrease the outstanding principal balance and/or the remaining amortization period of an existing guaranteed loan with an existing lender, either during or at the end of the term of the loan. Any increase to either the outstanding principal balance or the remaining amortization period at the time of refinancing would require application for a new BCR or authorizing document from the Council of the Band, a new Loan Agreement, a new Guarantee Agreement and a new Guarantee Certificate and for the existing loan to be closed out at the time of approval of the new loan.

- 5.24 “**renewal**” of a guaranteed loan, refers to the situation where the existing lender offers to continue financing the loan for another term without change to either the outstanding principal balance or the remaining amortization period. Any increase to either the outstanding principal balance or the remaining amortization period at the time of loan renewal would require application for a new BCR or authorizing document from the Council of the Band, a new Loan Agreement, a new Guarantee Agreement and a new Guarantee Certificate and for the existing loan to be closed out at the time of approval of the new loan.
- 5.25 “**right of possession**” refers to the written consent a Band member has received from the Council of a Band to use and/or occupy a particular property, such as a Certificate of Possession, a Certificate of Occupation, a location ticket, a Band Council Resolution or other authorizing document from a Band Council.
- 5.26 “**transferring**” a guaranteed loan, refers to the situation where a borrower wishes to move his/her loan from an existing lender to a new lender, either during or at the end of the term, without changing either the outstanding principal balance or the remaining amortization period. Any increase to either the outstanding principal balance or the remaining amortization period at the time of the loan transfer would require application for a new BCR or authorizing document from the Council of the Band, a new Loan Agreement, a new Guarantee Agreement and a new Guarantee Certificate and for the existing loan to be closed out at the time of approval of the new loan.
- 5.27 “**Written Consent**” refers to a written agreement between an individual borrower (Band member) and the Council of the Band, whereby the individual borrower pledges his/her right of possession of land as security for the Band Council’s guarantee of his/her housing loan from a lender. The Written Consent must state the terms and conditions to be met by the individual borrower and the Band Council during the amortization period of the guaranteed housing loan. This “Written Consent” is to be considered equivalent to a mortgage as defined in the policies of the Lands Directorate (DIAND) dealing with Band mortgages.

## 6.0 Policy

- 6.1 The delegation of authority to guarantee loans for housing applicants, on lands as defined, is currently transferred by the Minister to designated regional representatives in accordance with the financial signing authorities in the departmental Financial Management Manual. All Regions are responsible for establishing and maintaining mechanisms for managing and administering their housing loan guarantee portfolio. Such mechanisms are to be documented and disseminated to the appropriate responsibility centre managers in the form of guidelines and instructions which, at a minimum, comply with the requirements contained in this directive.
- 6.2 The Minister will not guarantee a housing loan for an amortization period of more than twenty-five (25) years.
- 6.3 The Minister will not provide loan guarantees on designated lands eligible for lease-hold mortgages except in cases where Band members can provide written verification that they have been denied a mortgage and/or loan insurance based on Section 89(1) of the *Indian Act*.
- 6.4 To ensure that the risk of a loan default is minimized and to prevent undue pressures on Indian Bands as well as fiscal pressures on the federal government, each request for a housing loan guarantee will be assessed and approved against the following criteria:
- (a) Viability of the Project:
- applicants applying for a housing project loan have been informed, by DIAND or the Band, of the implications and responsibilities of long-term borrowing;
  - sufficient revenue will be generated to meet the total expenditures for maintaining the ongoing viability of the project for the life of the loan;
  - a complementary capital plan for housing and infrastructure will be in place, with funding commitments, to ensure the availability of adequate services (i.e. road; water and sewer; hydro) upon completion of the project;



- the land on which new housing is to be constructed is unencumbered or, in the case of an acquisition or renovation project, does not have an encumbrance other than the housing loan to acquire or construct the house; and,
- the land is under the control of the Band Council for Band projects; or, in the case of an individual loan, under the control of either the Band or the individual member applying for a housing loan.

(b) Band Capacity to Manage the Project:

- the Band understands the Ministerial Loan Guarantee process and is willing to meet its requirements;
- where the loan guarantee is being requested for an individual loan, the Band has satisfied itself with the individual's reputation and financial ability to repay the loan;
- DIAND has received the Band's audited financial statements and confirmed that it has met the year-end reporting requirements;
- the Band's operations are considered by DIAND to be well managed and the Band is operating without a significant deficit as defined under the Credit and Indebtedness Policy;
- the Band has a satisfactory record of completing previous housing projects it has initiated, whether new construction or renovation; and
- the Band has a satisfactory record of meeting financial obligations in accordance with the following:
  - (i) if the Band has a significant operating deficit, it may be considered eligible for a Ministerial Loan Guarantee on a housing loan only if a Financial/Remedial Management Plan is in place and has been operating effectively for at least the last six (6) consecutive months;
  - (ii) if the Band that has defaulted on a guaranteed housing or economic development loan, and the loan has been paid out by the Minister, the Band may be eligible to apply for a Ministerial Loan Guarantee on a housing loan only after an acceptable debt recovery plan has been operating effectively for at least the last six (6) consecutive months.

(c) CMHC Acceptance:

- In cases where the loan guarantee is being provided on a housing project which involves Canada Mortgage and Housing Corporation (CMHC) as lender, insurer or provider of housing subsidies (i.e. Section 95 On-Reserve Housing Program), CMHC has confirmed the eligibility of the loan/project.

6.5 Where the Minister is assured that the applicant will obtain the loan through a lender, the Minister may agree to provide a loan guarantee where the Council of a Band has submitted to the Minister a Band Council Resolution or other authorizing document which provides:

- (a) certification that the loan, if granted, will provide housing or housing improvements for Indians, on lands as defined;
- (b) certification that a Phase 1 Environmental Site Assessment has been carried out on the subject property either individually or as part of a subdivision or community assessment, in accordance with the Canadian Standards Association's (CSA) Standard Z768-94 for Environmental Site Assessment (or as may be revised from time to time), and that such an assessment confirms that there is no evidence of contamination that may, upon exposure, constitute an identifiable risk to human health or the natural environment;

Bands under implemented self-government agreements that have exercised approved environmental assessment and environmental protection law-making powers or Bands under the *First Nations Lands Management Act* who control their own land management regime may apply their own regulations and procedures in place of CSA Standard Z768-94. However, in both cases their BCR must still confirm that no evidence of contamination exists on the subject property;

Band Councils are responsible for having Phase 1 Environmental Site Assessments performed by an Assessor meeting the qualifications outlined in CSA Z768-94 and DIAND Regional Offices are responsible for ensuring that the necessary certification is contained in the BCR requesting the loan guarantee. The cost of Phase 1 Environmental Site Assessments is an eligible project cost.

- (c) consent to the expenditure of Band revenues or the transfer of such other security deemed acceptable by the Minister for the purposes of

reimbursing the Consolidated Revenue Fund for payments made by the Minister on defaulted loans; or, to enter into a repayment agreement with the Minister. Where Section 89 of the *Indian Act* is applicable, the Council of the Band shall provide Her Majesty in Right of Canada with a waiver to the application of s.89 with respect to the Band's assets other than land.

- 6.6. In the case of a loan to an individual Indian, the Minister may agree to provide a loan guarantee provided that the conditions set out in 6.5 above are met and where the Council of a Band has confirmed to the Minister, in writing,
- (a) that it is satisfied with the reputation and financial responsibility of the individual for whom it takes on the risk and that, should a default occur, it will assume the borrower's responsibilities under the Loan Agreement, as undertaken by Band Council Resolution at the time of requesting the loan guarantee; and
  - (b) that it has signed a Written Consent with the individual borrower.
- 6.7 Where a borrower and an existing lender agree to renew an existing loan for another term, the existing Guarantee Agreement will continue in effect provided the lender forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office within 60 days of the loan being renewed, in accordance with the reporting requirements stated in the Terms and Conditions, indicating:
- a) the length of the new term;
  - b) the interest rate for the new term;
  - c) the outstanding principal balance;
  - d) that the outstanding principal balance under the loan is not being increased; and
  - e) that the remaining amortization period of the loan is not being increased.
- 6.8 (a) Where a borrower and an existing lender agree to refinance an existing loan, the existing Guarantee Agreement will continue in effect only when the refinancing involves a reduction in the outstanding principal balance or the remaining amortization period, and the lender forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office within 60 days of the loan being refinanced, in accordance with the reporting requirements stated in the Terms and Conditions, indicating:

- (i) the length of the new term;
  - (ii) the interest rate for the new term;
  - (iii) the outstanding principal balance;
  - (iv) that the outstanding principal balance under the loan is not being increased; and
  - (v) that the remaining amortization period of the loan is not being increased.
- (B) Where the refinancing of a guaranteed loan involves an increase in either the outstanding principal balance or the remaining amortization period, the borrower will have to obtain a new BCR, a new Loan Agreement and a new Guarantee Agreement. Upon approval of the new loan and loan guarantee, a new Guarantee Certificate will be issued and the previous loan on the same property will be paid out and closed.
- (C) Any costs related to refinancing the loan (i.e. penalty or administration fees) will be the responsibility of the borrower.
- 6.9 (a) In the event that the borrower requests a transfer of the loan to a new lender, either during or at the end of a term, the existing Guarantee Agreement will continue in effect with the new lender provided that the new lender informs the DIAND Regional Office, in writing, that it assumes the obligations under the Loan Agreement and the Guarantee Agreement, and forwards, within 60 days of receiving the loan, a Guaranteed Loans Terms and Conditions Report indicating:
- (i) the name and address of the previous lender and new lender;
  - (ii) the DIAND Guarantee Number (to be obtained from the previous lender);
  - (iii) the length of the new term;
  - (iv) the interest rate for the new term;
  - (v) the outstanding principal balance;
  - (vi) that the outstanding principal balance under the loan is not being increased; and
  - (vii) that the remaining amortization period of the loan is not being increased.
- (b) Any costs related to transferring the loan (i.e. penalty or administration fees) will be the responsibility of the borrower.

- 6.10 In the event that a lender wishes to assign the loan to another lender, the existing Loan Agreement and Guarantee Agreement will continue in effect with the new lender, provided that the new lender informs the DIAND Regional Office, in writing, that it assumes the obligations under the Loan Agreement and the Guarantee Agreement, and forwards, within 60 days of receiving the loan, a Guaranteed Loans Terms and Conditions Report indicating:
- (i) the name and address of the previous lender and new lender;
  - (ii) the DIAND Guarantee Number (to be obtained from the previous lender);
  - (iii) the length of the new term;
  - (iv) the interest rate for the new term;
  - (v) the outstanding principal balance;
  - (vi) that the outstanding principal balance under the loan is not being increased; and
  - (vii) that the remaining amortization period of the loan is not been increased.
- 6.11 In the case where a borrower defaults on payments, the Minister may, if he or she considers it desirable, make loan payments, including the arrears, to the lender, and take any other steps which may be deemed appropriate in the circumstances. Any loan payments made on behalf of the borrower will be recovered from the Band, pursuant to the Band Council's undertaking in the BCR requesting the loan guarantee.
- 6.12 Claims for payment submitted by the lender to the Minister for the outstanding principal balance, accrued interest and any reasonable charges incurred, shall be in a form prescribed by the Minister (Claim to DIAND for Payment - Form 20-537), and be provided with supporting documentation as described in Section 8 of the Terms and Conditions.
- 6.13 Upon receipt of a claim for payment, the Minister may, at his/her discretion, review the file to determine whether the lender is in compliance with the terms of the Guarantee Agreement and has followed prudent lending practices including those set out in Annex A of the Terms and Conditions. If the lender has not followed prudent lending practices, the Minister may reduce the payment of the accrued interest or other costs included in the amount set out in the claim.

- 6.14 Where the Minister has paid a claim in full to the lender, the lender shall give the Minister an absolute assignment of its rights under the loan and under any judgment obtained by the lender in respect to the loan, and its interest in any insurance policies issued under the terms of the loan.
- 6.15 Subsequent to a lender's claim being paid by the Minister, the Minister will recover amounts paid on defaulted loans by:
- (i) entering into a repayment agreement with the Council of a Band, for the repayment by the Council of a Band of the amount paid by the Minister plus interest from the date of payment by the Minister which interest may include an adjustment of the original contract interest rates; or
  - (ii) taking necessary measures to reimburse the Consolidated Revenue Fund from the security in instances where another form of security, such as trust money or land claim monies, has been used as collateral for the loan guarantee.
- 6.16 In the case of a loan made to an individual borrower and pursuant to the Written Consent, the Minister may, where applicable, apply Section 24 of the *Indian Act* whereby the Minister approves the transfer of the borrower's right of possession of the property to the Council of the Band or another Band member selected by the Council, in a manner consistent with the policies of the Lands Directorate dealing with Band mortgages.
- 6.17 Subsequent to the transfer of the right of possession of the property from the individual borrower to the Band Council or another Band member, the Council of the Band will commence such proceedings as may be necessary against the borrower to obtain vacant possession of the property.

## 7.0 Responsibilities

### 7.1 DIAND Headquarters:

- (a) Programs:
- establishes and updates policies and procedures for the effective and efficient processing and administration of Ministerial Loan Guarantees for housing loans to Indian Bands or individuals; and

- provides policy and procedural advice to lenders, borrowers and DIAND regional staff in regards to changes or improvements to the Ministerial Loan Guarantee process.
- (b) Trust, Loans and Corporate Accounting Services:
- monitors and controls the Ministerial Loan Guarantee commitment authority allotted by Parliament;
  - reports on the overall level of contingent liability;
  - provides financial policy advice and/or functional guidance to lenders, borrowers and DIAND regional staff, as required;
  - provides documentation to lenders, borrowers and DIAND regional staff, as required;
  - records the automatic quarter interest calculation by the 15<sup>th</sup> of the month following each quarter except at year-end;
  - distributes to regions the automatic quarter update report of problems, and monitors actions taken by regions to resolve the problems;
  - controls and transfers funds in GLMS for defaulted loans and arrears;
  - records debt write-offs to the register of claims receivable;
  - maintains the GLMS tables;
  - provides reports on housing loan guarantees and makes recommendations to Senior Management as required;
  - analyses statistical reports; and
  - develops management systems required to administer and monitor the regional housing loan guarantee portfolio.
- (c) Lands Directorate:
- develops and revises from time to time the Indian Lands Registry/Lands Management policies on Band mortgage/loan defaults;

- registers with the Indian Lands Registry, in the appropriate land registers, Written Consents and other documents that encumber lands; and
- registers with the Indian Lands Registry, in the appropriate land registers, instruments that transfer the right of possession of the property related to a defaulted loan to the Council of the Band or another Band member.

## 7.2 DIAND Regional Office:

- obtains the necessary documents required to support a Band's request for a Ministerial Loan Guarantee (BCR, certifications, etc.)
- reviews and analyses all submissions for Ministerial Loan Guarantees to verify the viability of the project, the Band's capacity to manage the project, the completeness of the documentation and compliance with this directive;
- approves all Ministerial Loan Guarantees for housing loans;
- prepared and controls the Guarantee Certificates;
- enters data in the GLMS to reflect guaranteed loan amounts at the time of commitment, at IAD (within 2 months of substantial completion of the project) and when final costs are determined (within 6 months of IAD).
- provides functional guidance to lenders and Bands participating in the Ministerial loan guarantee process;
- coordinates activities with CMHC where loan guarantees are provided on NHA approved loans and with other lenders for non-NHA loans;
- ensures that lenders provide the necessary reports as required under the Terms and Conditions for Ministerial Loan Guarantees;
- once all the Loan Agreement and Guarantee Agreement documentation is complete and executed, ensures the necessary documentation is provided for registration of the encumbrance in the appropriate land registry.
- works with lenders and borrowers in cases of payment default to implement remedial actions to assist the borrower in meeting their obligations under the loan agreement;



- implements the management systems required to administer and monitor the regional housing loan guarantee portfolio;
- records and approves accepted claims for payment in the Departmental Accounting System;
- where applicable, informs the Band of loan default remedy actions described in the policies of Lands Directorate dealing with Band mortgages to transfer right of possession of the property to the Band Council or another Band member selected by the Council;
- where applicable, and after the Band has implemented loan default remedies, applies Section 24 of the *Indian Act* and provides delegated Ministerial approval of the transfer of the borrower's right of possession of the property to the Band Council or another Band member selected by the Council;
- where applicable, ensures the necessary documentation is provided for the registration of transfers of the right of possession in the appropriate land registry;
- maintains the accounting records of the Ministerial Loan Guarantee portfolio; and
- provides reports and information on Ministerial Loan Guarantees to the appropriate manager at DIAND Headquarters, as required.

## 8.0 Procedures

### 8.1 Ministerial Loan Guarantee Approval Process:

#### 8.1.1 The Individual Applicant:

- by way of a housing application, seeks the support of the Band Council for a Ministerial Loan Guarantee for a housing loan for the construction, acquisition or renovation of a house;

- following approval of their housing application and allocation of a building lot, provides the Band with copies of housing plans, specifications, a detailed estimate of construction (or renovation) costs, as applicable, along with other information required for credit purposes (employment history; verification of income, etc.);
- requests that the Band Council ensures that code compliance inspections are carried out during construction/renovation of the house;
- receives counselling from the Band Council on the terms and conditions for their support of the request of a Ministerial Loan Guarantee and signs a Written Consent, pledging their right of possession of the property (building lot) as security for the guarantee of the loan by the Band Council;
- obtains a BCR from the Band Council in support of their application for a housing loan;
- approaches the lender to apply for a housing loan and loan insurance where applicable, and provides to the lender copies of: the agreement through which the property is being acquired (in the case of an acquisition), a site plan, housing plans, specifications and detailed estimate of construction (or renovation) costs, and a copy of the BCR along with other information required for credit purposes (employment history; verification of income, etc.); and
- obtains from the lender, conditional approval of the loan and loan insurance where applicable, signs the Loan Agreement and provides copies of these to the Band Council so they can request the loan guarantee from the DIAND Regional Office.

#### 8.1.2 The Band Council (or its delegated authority):

##### a) Where the loan request is initiated by an individual applicant:

- in review of the member's application for housing assistance, considers the applicant's employment/income information to satisfy itself with the reputation and financial responsibility of the individual for which it takes on the risk by requesting a Ministerial Loan Guarantee;

- upon approval of the applicant's housing application, confirms the applicant's building lot;
- for new construction, causes a Phase 1 Environmental Site Assessment (CSA Z768-94) to be carried out by an independent and competent Assessor on the subject property, either by itself or as part of a sub-division assessment (the cost of Phase 1 Environmental Site Assessments is an eligible project cost);
  - where a Phase 1 Environmental Site Assessment results in findings that indicate some concern, selects a different property or proceeds with a more detailed investigation as described in Appendices A and B of the CSA Standard Z768-94. Where further investigation beyond a Phase 1 Environmental Site Assessment is required and is carried out and where the Band decides to proceed with that particular property, provides DIAND Regional Office with a written report detailing the Assessor's findings, the results of a Phase 2 and, if required, the remedial investigation and confirmation that there is no evidence of contamination in connection with the property;

**Note:** Bands under implemented self-government agreements that have exercised approved environmental assessment and environmental protection law-making powers or Bands under the *First Nations Lands Management Act* who control their own land management regime may apply their own regulations and procedures which meet or exceed the requirements of CSA Standard Z768-94. However, in both cases their BCR must still confirm that no evidence of contamination exists on the subject property;

- reviews the applicant's housing plans, specifications and cost estimates to ensure the project plans addresses applicable construction standards and that the individual applicant is prepared and can be expected to successfully complete the project with the funds being requested;
- verifies that the applicant's equity, where applicable, is available and will be in place as and when required;

- counsels the applicant on the conditions for the Band Council's support of the loan guarantee and the consequences of defaulting on the loan payments and has the applicant sign the Written Consent, pledging their right of possession of the property as security for the guarantee of the loan by the Band Council;
  - passes a Band Council Resolution (BCR) confirming the identification of the property related to the loan and providing the necessary certification concerning the use of the funds for housing, the completion of an environmental site assessment, and an undertaking to assume the borrower's responsibilities under the loan agreement in the event of default by the borrower, and confirmation that it has a Written Consent whereby the applicant pledges their right of possession of the property as security for the Band's support of the loan guarantee;
  - provides a copy of the BCR to the applicant to take to the lender;
  - upon receiving confirmation of approval of the loan (conditional on obtaining a Ministerial Loan Guarantee) forwards to the DIAND Regional Office, all necessary documents supporting the request for a Ministerial Loan Guarantee, including copies of the BCR (original) requesting the loan guarantee; the signed Loan Agreement and Certificate of Insurance where applicable, the Written Consent (original) between the individual borrower and the Council of the Band, and, where investigation beyond a Phase 1 Environmental Site Assessment was required, a copy of the assessment report; and
  - as construction takes place, ensures that code compliance inspections are conducted to verify the quality of construction.
- b) Where the loan request is initiated by the Band itself
- identifies an unencumbered building lot under its control, develops housing plans and specifications, an estimate of capital and O&M costs, and identifies funding sources - for new construction; or, identifies an existing dwelling for acquisition and, where applicable, develops plans, specifications and estimates for any renovation work required;

- for new construction, causes a Phase 1 Environmental Site Assessment (CSA Z768-94) to be carried out by an independent and competent Assessor on the subject property, either by itself or as part of a sub-division assessment (the cost of Phase 1 Environmental Site Assessments is an eligible project cost);
  - where a Phase 1 Environmental Site Assessment results in findings that indicate some concern, selects a different property or proceeds with a more detailed investigation as described in Appendices A and B of the CSA Standard Z768-94. Where further investigation beyond a Phase 1 Environmental Site Assessment is required and is carried out and where the Band decides to proceed with that particular property, provides DIAND Regional Office with a written report detailing the Assessor's findings, the results of a Phase 2 and, if required, the remedial investigation and confirmation that there is no evidence of contamination in connection with the property;

**Note:** Bands under implemented self-government agreements that have exercised approved environmental assessment and environmental protection law-making powers or Bands under the *First Nations Lands Management Act* who control their own land management regime may apply their own regulations and procedures which meet or exceed the requirements of CSA Standard Z768-94. However, in both cases their BCR must still confirm that no evidence of contamination exists on the subject property;

- approaches the lender to apply for a housing loan, and loan insurance where applicable, and provides to the lender copies of their BCR, the site plan, housing plans, specifications and detailed estimate of construction or renovation costs, along with other information required for credit purposes (availability of equity; verification of appropriation of housing monies or funds from other sources, etc.)
- as applicable, confirms availability of housing appropriation monies and shelter allowance or provincial Income Maintenance Funds for those tenants who qualify for Social Assistance, to ensure sufficient revenues to support the housing project;
- upon approval of the housing loan by the lender, signs the Loan Agreement, conditional on obtaining a Ministerial Loan Guarantee;

- upon receiving confirmation of approval of the loan (conditional on obtaining a Ministerial Loan Guarantee) forwards to the DIAND Regional Office, all necessary documents supporting the request for a Ministerial Loan Guarantee, including copies of the BCR (original) requesting the loan guarantee; the signed Loan Agreement and Certificate of Insurance where applicable, and, where investigation beyond a Phase 1 Environmental Site Assessment was required, a copy of the assessment report; and
- ensures that code compliance inspections are conducted during construction to verify the quality of construction; and
- informs the community of its decisions to secure guaranteed loans on behalf of the Band and/or individual members (number of housing units and total dollars guaranteed) while protecting confidential information related to individuals.

#### 8.1.3 The Lender:

- completes the housing loan application with the applicant and obtains the required supporting documentation including the Band Council's BCR, copies of the site plan, house plans, specifications and cost estimates, and income verification for credit purposes;
- prior to approving the loan, verifies the applicant's employment history, actual income level, financial stability, and assesses the applicant's ability to repay the loan based on:
  - a) industry standard or lender's normal credit policies for non NHA-insured loans; or
  - b) policies and procedures as provided and updated from time to time by Canada Mortgage and Housing Corporation for NHA-insured loans.
- confirms that the applicant's equity is available and will be in place at the time of lending the funds;
- does not lend more than the actual construction, acquisition or renovation cost of the project as agreed upon by the borrower and the lender and as verified by the lender through an examination of cost estimates and an appraisal or comparison with similar projects in the community/area;

- where applicable, applies for loan insurance on behalf of the applicant and obtains the Certificate of Insurance conditional on obtaining the loan guarantee;
- following receipt of the loan insurance, enters into a Loan Agreement with the applicant, conditional on obtaining a loan guarantee, and provides copies of the Loan Agreement and Certificate of Insurance to the applicant;
- upon receipt of the Guarantee Agreement, executes both original copies of the Guarantee Agreement and returns one to the DIAND Regional Office;
- within 60 days of the Interest Adjustment Date of the new loan, provides a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office detailing the applicable information; and
- arranges for progress advance inspections to be carried out on the housing project as work progresses to facilitate loan advances.

#### 8.1.4 The Loan Insurer:

- reviews the application for loan insurance and provides the lender with a Certificate of Insurance stating any conditions to be met by the borrower.

#### 8.1.5 DIAND Regional Office:

- reviews the request for Ministerial Loan Guarantee and supporting documentation and ensures that the package is complete and includes the Loan Agreement and Certificate of Insurance, where applicable, the necessary BCR with certifications respecting the use of funds, the completion of an environmental site assessment and the pledge respecting loan security from the Band Council and, where an individual loan, the Written Consent between the individual applicant and the Council of the Band;

- confirms that the project meets the required criteria for viability of the project, the Band's capacity to manage the project, that CMHC has reviewed and approved projects where they act as lender, insurer and/or provider of subsidies, and that the necessary approvals are in place so that the project can proceed once the loan guarantee is approved;
- verifies the Band's financial and management status. If the Band had a serious operating deficit or defaulted on a guaranteed loan in the past, a Financial/Remedial Management Plan or debt recovery plan must have been operating effectively for at least the last six consecutive months for the Band to be considered eligible;
- in the case of a rejection of a loan guarantee for an individual loan, writes to the individual applicant stating the reasons for the rejection and informs the Band Council and lender, while maintaining confidentiality of information on the borrower;
- in the case of a rejection of a loan guarantee for a Band loan, writes to the Band Council stating the reasons for the rejection and informs the lender, while maintaining confidentiality of information specific to the Band;
- confirms that DIAND capital appropriation for Ministerial Loan Guarantees is available;
- recommends approval of the Ministerial Loan Guarantee;
- approves and records a Guarantee Certificate to approve the commitment of funds from the parliamentary authority to guarantee housing loans;
- has two original copies of the Guarantee Agreement prepared and executed by DIAND and forwards both originals, together with a copy of the Guarantee Certificate, to the lender for signature;
- upon receipt of the Guarantee Agreement signed by the lender, files the executed Guarantee Agreement, the Guarantee Certificate and loan related documents and provides the appropriate copies to the Band Council;
- forwards original copies of the BCR and the Written Consent between the individual borrower and the Band Council, for registration in the appropriate land register;



- upon receipt of the Guaranteed Loans Terms and Conditions Report from the lender, enters the data to the GLMS;
- monitors the receipt of a Guaranteed Loans Terms and Conditions Report for each new loan issued by a lender. The Guaranteed Loan Terms and Conditions Report will generally be forwarded by the lender after the Interest Adjustment date. That report is used to update the departmental computerized database and provide information such as loan amount, the interest rate, the payment amount and the first installment date (to generate an automatic update calculation of the loan balance on a quarterly basis); and
- provides ongoing policy advice and/or functional guidance to the Borrower and lender as required.

#### 8.1.6 DIAND Headquarters:

- registers with the Indian Lands Registry, in the appropriate land register, the BCR and other documents that encumber lands such as the Written Consent between the individual borrower and the Band Council;
- registers with the Indian Lands Registry, in the appropriate land register, documents that transfer the right of possession of the property to the Council of the Band or another Band member; and
- provides policy advice and/or functional guidance to DIAND regional staff as required.

## 8.2 **Renewing a Guaranteed Loan:**

### 8.2.1 The Lender:

- offers to renew all loans guaranteed by the Minister, and which are in good standing (loan is current; property taxes are current; insurance is in force, etc.), for such additional terms not exceeding the aggregate 25 years from the interest adjustment date;

- gives the borrower at least 30 days notice of its offer to renew the loan and presents the available terms, interest rates and applicable monthly payments from which the borrower can choose in the Renewal Agreement;
- obtains the borrower's signed acceptance of the Renewal Agreement. If the borrower's signed acceptance of the Renewal Agreement is not received by the maturity date, automatically renews the loan for a term specified in the original Loan Agreement or previous Renewal Agreement; otherwise immediately informs the borrower and the insurer that the loan is in default until the signed Renewal Agreement is received; and
- forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office, within 60 days after the loan has been renewed, providing the length of the new term; the interest rate for the new term of the loan; the outstanding principal balance; and confirmation that the outstanding principal balance of the loan and the remaining amortization period of the loan are not being increased.

#### 8.2.2 The Borrower:

- considers the terms, interest rates and applicable monthly payments offered by the lender in the notice for loan renewal, provides a copy of the Renewal Agreement to the Band Council and considers the options available.

If decision is to renew with the same lender, selects the preferred terms, signs the Renewal Agreement and returns it to the lender.

If the terms offered are not in line with conventional mortgage interest rates as posted weekly in major banks or on the internet ([www.cannex.com](http://www.cannex.com)), or such other sources as may be identified by DIAND, notifies the Band (if an individual loan) or DIAND (if a Band loan) and contacts the lender to negotiate a lower interest rate. If unsuccessful, considers transferring the loan to another approved lender (see 8.4); and

- informs the DIAND Regional Office, and the Band Council in the case of an individual loan, of his/her intentions and the outcome.

### 8.2.3 The Band Council (or its delegated authority):

- upon receiving a copy of the offer for loan renewal from the individual borrower, confirms that the conditions of loan renewal are acceptable to the borrower, or discusses any actions that may be considered to obtain the best renewal terms and conditions.

### 8.2.4 DIAND Regional Office:

- monitors that lenders are offering to renew all loans in good standing;
- confirms that the renewal rates offered by lenders are in line with conventional mortgage interest rates, as posted weekly in major banks or on the internet (www.cannex.com) or such other sources as deemed acceptable by DIAND. If and where such rates exceed competitive interest rates, contacts the borrower to discuss options for obtaining a better rate with the existing lender or transferring the loan to another approved lender.

## 8.3 **Refinancing a Guaranteed Loan:**

### 8.3.1 The Borrower:

#### a) In the case of an individual loan:

- approaches the lender to enquire on the terms and conditions of refinancing his/her existing housing loan;
- considers the interest rate and new payment amount offered by the lender to refinance the loan;
- informs the Band Council of his/her desire to refinance the loan and seeks the concurrence of the Council if the refinancing involves an increase in the outstanding principal balance or remaining amortization period;

if the refinancing involves a decrease in either the outstanding principal balance or the remaining amortization period, may need to sign a Amending Agreement with the lender and a new or amended Written Consent with the Council reflecting the terms and conditions of the refinanced loan; or

if the refinancing involves an increase in either the outstanding principal balance or the remaining amortization period, will need to apply for a new loan by following the steps detailed in subsection 8.1.1.

b) In the case of a Band loan:

- approaches the lender to enquire on the terms and conditions of refinancing its existing housing loan;

**Note:** A Section 95 (CMHC On-Reserve Housing Program) housing loan cannot be refinanced.

- considers the interest rate and new payment amount offered by the lender to refinance the loan;

if the refinancing involves a decrease in either the outstanding principal balance or the remaining amortization period, may need to sign an Amending Agreement with the lender; or

if the refinancing involves an increase in either the outstanding principal balance or the remaining amortization period, follows the steps detailed in subsection 8.1.2 (b) to request a new loan and loan guarantee (information already on file may be reused for the new loan request, provided it is current and accurate).

8.3.2 The Lender:

- where the borrower enquires about refinancing the guaranteed loan with the existing lender, informs the borrower that if the refinancing of a guaranteed loan involves an increase in either the outstanding principal balance or the remaining amortization period, the borrower must apply for a new loan and new loan guarantee; that refinancing cannot be done where Section 95 is involved; and, that any costs related to discharging the existing loan and applying for a new loan (i.e. penalty or administration fees) will be the borrower's responsibility;

- where the outstanding principal balance and/or remaining amortization period are being decreased, obtains updated income/revenue information to verify the borrower can meet higher monthly payments, if applicable, proceeds with the refinancing of the loan and forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office, within 60 days after the loan has been refinanced, providing the details of the terms and conditions of the refinancing of the loan; or
- where the outstanding principal balance or remaining amortization period is being increased, follows the steps detailed in subsection 8.1.3 to approve the request for a new loan (some information already on file may be reused for the new loan request where it is current and accurate, however, a new BCR and Guarantee Agreement will be required);
- upon approval of the new Guarantee Agreement, pays out the existing loan and forwards a Guaranteed Loans Terms and Conditions Reports to the DIAND Regional Office, within 60 days after the existing loan was paid out and closed.

### 8.3.3 The Band Council (or its delegated authority):

- in the case of a loan to an individual, discusses with the individual borrower his/her reasons for wanting to refinance the loan; and
  - (i) if not in agreement with the borrower's request to increase the loan, informs the borrower and the lender of its decision;
  - (ii) if in agreement with the borrower's request to increase the outstanding principal balance or the remaining amortization period, follows the steps detailed in subsection 8.1.2 (a) to support a new loan and loan guarantee for the individual borrower;
  - (iii) in the case of a decrease to the outstanding principal balance or the remaining amortization period, ensures itself that the borrower can meet any requirement for higher monthly payments and, where applicable, amends the Written Consent between the individual borrower and the Band Council to reflect the decreased principal balance or remaining amortization period and sends an original copy to the DIAND Regional Office.

### 8.3.4 DIAND Regional Office:

- when a Guaranteed Loans Terms and Conditions Report is received from the lender indicating the loan has been refinanced with a decrease in the outstanding principal balance or the remaining amortization period, enters the data to the GLMS to reflect the new outstanding principal balance or amortization period;
- where an amended Written Consent is received from a Band Council reflecting a decrease in the outstanding principal balance or the remaining amortization period, places the amending document on file;
- where a new loan guarantee is requested to replace an existing loan guarantee, follows the steps detailed in subsection 8.1.5 to review and approve the new guarantee (information already on file may be reused for the new guarantee request, provided it is current and accurate);
- when issuing a new Guarantee Certificate for a previously existing loan being refinanced, inserts the previous Guarantee Number in the comment field of the new Guarantee Certificate in GLMS;
- sends a copy of the new Guarantee Certificate to the lender and Band Council; and
- when the Guaranteed Loans Terms and Conditions Report is received closing out the previous loan, closes the previous Guarantee Certificate on GLMS by first bringing the Outstanding Loan Balance to zero and then closing out the Certificate.

## 8.4 **Transferring a Guaranteed Loan:**

### 8.4.1 The Borrower:

- if considering the transfer of the guaranteed loan to another lender, either during the term or at the end of a term, requests a loan pay-out statement from the existing lender and the DIAND Guarantee Number assigned to the loan and provides these to the new lender to obtain pre-approval for the loan transfer and the interest rate offered by the new lender;

- (if an individual borrower) informs the Band Council prior to transferring the loan to another lender, confirming that the interest rate offered by the new lender is comparable or better than conventional rates currently available; and,
- must be prepared to cover any additional costs (penalty for early pay-out; administration fees; etc) arising from a decision to transfer the loan during the term.

#### 8.4.2 The Band Council (or its delegated authority):

- upon being informed by an individual borrower of the intention to transfer a guaranteed loan to another lender, confirms that the new lender is an approved lender and that the interest rate being offered is comparable or better than conventional rates currently available, and ensures that the individual borrower realizes that he/she will have to pay any early pay-out penalties or administration fees applicable to the loan transfer.

#### 8.4.3. The Existing Lender:

- upon request, provides the borrower with the DIAND Guarantee Number assigned to the loan and a loan pay-out statement as of the anticipated date of transfer;
- upon transfer of the Loan Agreement and the Guarantee Agreement to the new lender, provides the new lender with the outstanding principal balance (loan pay-out statement), the DIAND Guarantee Number, a profile of the existing loan including the original loan amount and amortization period, the outstanding principal balance and remaining amortization period, a copy of the Terms and Conditions for Ministerial Loan Guarantees and highlights the need to report the transfer to DIAND within 60 days of the transfer of the loan.

**NOTE:** The existing lender should not forward a Guaranteed Loan Terms and Condition Report indicating loan close-out. Rather, the new lender will report that the loan has been transferred.

#### 8.4.4 The New Lender:

- upon receiving the transferred loan, informs the DIAND Regional Office, in writing, that it assumes the obligations under the Loan Agreement and the Guarantee Agreement, and forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office, within 60 days of receiving the transferred loan, providing the institution's name and address; the DIAND Guarantee Number; the length of the new term; the interest rate for the new term of the loan; and a statement that the outstanding principal balance and remaining amortization period of the loan are not being increased;

#### 8.4.5 DIAND Regional Office:

- upon receiving the Guaranteed Loans Terms and Conditions Report from the new lender, confirms that:
  - the new lender is an approved lender;
  - the remaining amortization period and the outstanding principal have not been increased (if either the outstanding principal balance or the remaining amortization period is increased, the existing Guarantee Agreement will not be transferable and the borrower will have to apply for a new guaranteed loan); and
  - the interest rate offered by the new lender is in line with conventional mortgage interest rates, as posted weekly in major banks or on the internet ([www.cannex.com](http://www.cannex.com)).
- where conditions for the transfer of the loan guarantee have been met, acknowledges the transfer of the loan guarantee, in writing, to the Band, the existing lender and the new lender, confirming the outstanding principal balance and the remaining amortization period, and ensures the new lender has a copy of the Terms and Conditions for Ministerial Loan Guarantees and is aware of the reporting requirements; and
- upon receipt of the Guaranteed Loans Terms and Conditions Report from the lender, enters the data to the GLMS.



## 8.5 Assigning a Guaranteed Loan:

### 8.5.1. The Existing Lender:

- if wishing to assign a guaranteed loan to another lender, confirms that the new lender is an approved lender and informs the borrower of the intention to assign the loan, the effective date and where to send future loan payments; and
- upon assignment of the Loan Agreement and the Guarantee Agreement to the new lender, provides the new lender with the DIAND Guarantee Number, a profile of the existing loan including the original loan amount and amortization period, the outstanding principal balance and remaining amortization period, a copy of the Terms and Conditions for Ministerial Loan Guarantees and highlights the need to report the assignment to DIAND within 60 days of the assignment of the loan.

### 8.5.2 The New Lender:

- upon accepting the assigned loan, informs the borrower of the change and provides instructions as to where and how payments are to be made and the effective date; and
- informs the DIAND Regional Office, in writing, that it assumes the obligations under the Loan Agreement and the Guarantee Agreement, and forwards a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office, within 60 days of receiving the assigned loan, providing the institution's name and address; the DIAND Guarantee Number; the outstanding principal balance of the assigned loan and confirmation that the remaining amortization period and the outstanding principal balance have not been increased.

### 8.5.3 DIAND Regional Office:

- acknowledges the assignment of the Guarantee Agreement, in writing, to the Band, the existing lender and the new lender, confirming the outstanding principal balance and the remaining amortization period and ensures the new lender has a copy of the Terms and Conditions for Ministerial Loan Guarantees and is aware of the reporting requirements; and

- upon receipt of the Guaranteed Terms and Conditions Report from the lender, enters the data to the GLMS.

## 8.6 Notification of Loan Default:

### 8.6.1 The Borrower:

- notifies the lender as soon as financial difficulty is encountered and informs the Band in the case of an individual loan or the DIAND Regional Office in the case of a Band loan, and seeks an agreement on deferring payments or having the Band Council or DIAND, as applicable, temporarily make payments on their behalf; and
- where necessary, enters into a repayment agreement with the Band Council for payments made by the Band Council on an individual loan, or with DIAND for payments made by DIAND on a Band loan, and fulfills any obligation made with the lender and the Band or DIAND in regards to repayment of such arrears.

### 8.6.2 The Lender:

- provides a notification of loan default to the borrower as soon as possible (at least within 30 days) after the first payment is missed and considers what action may be required to ensure the borrower does not fall further into arrears (deferring a payment; ensuring Band Council is aware of borrower's situation; special repayment plan; etc.);
- where the borrower is an individual rather than the Band, provides copies of the notifications of default to the Council of the Band, and requests their assistance in resolving the arrears situation or in making the payments on behalf of the individual borrower;
- forwards a Notification of Loan Default to the DIAND Regional Office within 90 days of the borrower defaulting on loan payments and every 30 days thereafter that the loan remains in arrears; and forwards copies of the Notifications of Loan Default to the Band;
- continues to monitor the arrears situation in accordance with 1(iv) and (v) of Annex A of the Terms and Conditions which may include implementing a special repayment plan where possible to avoid requesting payment through the loan guarantee; and

### 8.6.3 The Band Council (or its delegated authority):

- when notified by the lender that an individual borrower is in default of his/her loan, provides to the individual borrower a notice of loan default in regards to his/her Written Consent with the Band Council, every 30 days until the situation is resolved;
- contacts the individual to determine the change in circumstances which may be contributing to the arrears situation (e.g. sickness; loss of employment) and actively seeks a solution with the individual to avoid having the lender submit a claim to the Minister for payment of the loan;
- where appropriate, acts as a liaison between the lender and the individual borrower (considers the option of temporarily making payments on behalf of the individual borrower and entering into a repayment agreement to recoup the monies paid) and informs the DIAND Regional Office of the situation and actions being taken; and
- where appropriate and necessary, reminds the individual borrower of the loan default actions that the Band may take, in accordance with the Written Consent obtained from the borrower, so as to prompt the borrower to put the loan in good standing before the lender submits a claim for payment to the Minister.

### 8.6.4 DIAND Regional Office:

- upon receiving a Notification of Loan Default, contacts the Band and enquires about the situation as to what has been done and what action could be undertaken to avoid a claim for payment under the loan guarantee;
- where the borrower is an individual and the financial difficulty seems temporary, suggests to the Band that they take some action such as making loan payments on behalf of the individual borrower until the situation is resolved and entering into a repayment agreement with the individual borrower; or

- where the borrower is the Band and the financial difficulty seems temporary, may, where advisable, make loan payments, including arrears, to the lender, on behalf of the borrower and enter into a repayment agreement with the Band Council. Where the Council of a Band refuses to enter into a repayment agreement, takes steps as necessary to collect the debt in accordance with the Collection of Debts by Set-Off as detailed in the Financial Management Manual.

## 8.7 Claim to Minister for Payment:

### 8.7.1 The Lender:

- if the loan remains in default for 120 days from the date of the first Notification of Loan Default, or for such other period of time as may be agreed upon by DIAND and the lender, submits a claim (Claim to DIAND for Payment - Form 20-537) for the full outstanding principal balance plus accrued interest and any reasonable charges incurred, along with the necessary supporting documentation, to the DIAND Regional Office. Supporting documentation may include justification for any reasonable charges incurred by the lender and a summary of actions taken by the lender to resolve the default prior to submitting the claim; and
- upon receipt of payment of the claim by the Minister, provides to the DIAND Regional Office an absolute assignment of its rights under the loan including any judgements and/or interests in insurance policies issued under the terms of the loan; or
- upon receipt of payment of the claim by the Band Council, provides to the Band Council an absolute assignment of its rights under the loan including any judgements and/or interests in insurance policies issued under the terms of the loan, and informs the DIAND Regional Office of the Band's payment of the claim; and
- within 60 days of the loan being paid by the Band Council, forwards to the DIAND Regional Office a Guaranteed Loans Terms and Conditions Report indicating that the loan has been paid in full.

### 8.7.2 DIAND Regional Office:

- notifies the applicable Band Council immediately upon receipt of a claim for payment from a lender and offers the Council the option of bringing the loan into good standing or paying off the loan immediately on behalf of the individual borrower to avoid having the claim paid by the Minister; or, if the Band Council is unable or unwilling to do so;
- reviews all claims for payment received from lenders on defaulted guaranteed loans or on guaranteed loans in arrears, and obtains all relevant information;
- verifies that the amount requested in the claim submitted by the lender, includes the unpaid balance of the principal, accrued interest at the contract rate up to the date that the claim is paid and any reasonable charges incurred to safeguard the interest of the lender;
- ensures that the maximum period of accrued interest being claimed/paid does not exceed 270 days from the date of original notice of default unless agreed to, in advance and in writing, between the Minister and the lender (notification within 90 days of default; claim within 120 days of first notice; and 60 days from receipt of claim for the Minister to pay) ;
- reviews the file to ensure that the lender made every reasonable effort, as outlined in Annex A of the Terms and Conditions, to administer the loan with the same degree of diligence as would be expected for a non-guaranteed loan, except for matters particular to on-reserve loan administration such as recovery and disposal of the property;
- where it is determined that the lender has not followed prudent practices in administration of the loan, determines a penalty to reduce the payment of accrued interest or other charges included by the lender in the claim amount;
- informs the lender (and the Band in the case of an individual loan) of the approval or adjustment of the claim and pays to the lender the verified amount of the claim within 60 days of receiving the claim;
- obtains from the lender an absolute assignment of its rights under the loan and under any judgement obtained by the lender in respect to the loan, as well as any interests in insurance policies issued under the terms of the loan;

- records and approves the accepted claim amount in the Guaranteed Loans Management System (GLMS) with interest calculated up to and including the date that the claim cheque will reach the bank; and
- records and approves the accepted claim in the Departmental Accounting System (DAS).

#### 8.7.3 DIAND Headquarters:

- controls and transfers funds in GLMS for defaulted loans and arrears;
- initiates the automatic interest calculation on accounts receivable after informing the regions to enter all outstanding transactions; and
- issues management and financial reports on accounts receivable.

### 8.8 Recovery of Defaulted Loans:

#### 8.8.1 The Band Council (or its delegated authority):

- where it has paid off an individual borrower's defaulted loan, obtains from the lender an absolute assignment of its rights under the loan and under any judgement obtained by the lender in respect to the loan, as well as any interests in insurance policies issued under the terms of the loan, recognizing that the Guarantee Agreement is non-transferable to the Band Council since it is not an approved lender;
- where the Minister has paid the claim for payment on the defaulted loan, and pursuant to its undertaking in the Band Council Resolution, enters into a repayment agreement with DIAND to reimburse the Minister for any payments made as a result of a claim against the Ministerial Loan Guarantee plus interest from the date of payment by the Minister which may include an adjustment of the original contract interest rates;
- having repaid the Minister for the payment of a defaulted loan, obtains from DIAND an absolute assignment of its rights under the loan and under any judgement obtained by the previous lender or DIAND in respect to the loan, as well as any interests in insurance policies issued under the terms of the loan;

- in accordance with the Written Consent it has signed with the individual borrower, initiates transfer of the borrower's right of possession of the property to the Council of the Band or another member of the Band selected by Council after implementing one or more of the default remedy actions contained in the Written Consent, reflecting the DIAND Lands Directorate policies related to Band mortgage/loan defaults;
- where applicable, and after having successfully implemented loan default remedy actions, requests the DIAND Regional Office to process the transfer of the right of possession of the property by means of a BCR and/or other documentation meeting the requirements of the policies of the Lands Directorate;
- subsequent to the transfer of the borrower's lawful possession of the property to the Council of the Band or another Band member selected by the Council, takes actions as may be necessary to obtain vacant possession of the property; and
- discharges the Written Consent between the individual borrower and the Band Council related to the defaulted loan; and signs a new Written Consent with the individual taking possession of the property, if applicable;
- provides copies of the BCR discharging the original Written Consent and a copy of the new Written Consent, if applicable, to the DIAND Regional Office.

#### 8.8.2 DIAND Regional Office:

- subsequent to a lender's claim being paid, initiates all reasonable collection efforts for the recovery of the claim paid by the Minister on the defaulted guaranteed loan;
- recovers the amount paid on the defaulted loan from the Band, pursuant to the Band Council Resolution by entering into a repayment agreement with the Council of the Band for repayment of the paid claim, plus interest from the date of payment;
- where the Council of a Band refuses to enter into a repayment agreement, takes steps as necessary to collect the debt in accordance with the Collection of Debts by Set-Off as detailed in the Financial Management Manual;

- in instances where other forms of security have been provided as collateral for the loan guarantee, takes the necessary steps to reimburse the Consolidated Revenue Fund from the security provided pursuant to the Band Council Resolution; and
- in the case where an individual borrower has defaulted on his/her loan, and pursuant to the Written Consent between the individual borrower and the Council of the Band, advises the Band of applicable default remedy actions, as described in the policies of Lands Directorate dealing with Band mortgages, to transfer the right of possession of the property to the Band Council or a Band member selected by the Council and requests the Band Council to commence such proceedings as may be necessary against the borrower and other members of his/her household to take possession of the property in respect of which the loan was made;
- where applicable, and after the Band has implemented loan default remedies, applies Section 24 of the *Indian Act* and provides delegated Ministerial approval of the transfer of the borrower's lawful possession of the property to the Band Council or another Band member selected by the Council;
- where applicable, forwards relevant documentation to DIAND Headquarters for registration or transfer of the right of possession of the property with the Indian Lands Registry, in the applicable land register;
- deposits the repayments received on accounts receivable;
- records each repayment received in Guaranteed Loan Management System (GLMS) and the Departmental Accounting System (DAS); and
- recommends the write-off of an active claim paid.

### 8.8.3 DIAND Headquarters:

- develops and revises from time to time the Indian Lands Registry/Lands Management policy on mortgage/loan defaults;
- registers with the Indian Lands Registry, in the appropriate land registers, Band Council Resolutions, Written Consents and other documents that encumber lands; and



- registers with the Indian Lands Registry, in the appropriate land registers, instruments that transfer the right of possession of the property to the Council of the Band or another Band member selected by the Council.

## 8.9 Reporting Requirements:

### 8.9.1 The Lender:

- within 60 days of the Interest Adjustment Date of a new loan guaranteed by the Minister, provides a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office detailing the applicable information;
- within 60 days following the renewal, refinancing, transfer or assignment of a loan guaranteed by the Minister, provides a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office detailing the applicable information requested in sections 4, 5 and 6 of the Terms and Conditions for Ministerial Loan Guarantees;
- within 60 days of a guaranteed loan being paid in full, provides a Guaranteed Loans Terms and Conditions Report to the DIAND Regional Office detailing the applicable information;
- within 90 days of a loan default, provides a Notification of Loan Default to the DIAND Regional Office, giving the status of the default situation, the outstanding arrears and principal; continues to provide this notification every 30 days thereafter while the loan remains in default;
- within 120 days of the initial Notification of Loan Default, submits a Claim to DIAND for Payment (Form 20-537) for payment of the unpaid balance of principal, accrued interest, and any reasonable charges due under the loan pursuant to the terms of the loan guarantee;
- after March 31<sup>st</sup> and prior to April 30<sup>th</sup> of any given year, submits a Yearly Status Report of Guaranteed Loans identifying the outstanding balance, principal and interest of each of the guaranteed loans as at March 31<sup>st</sup>.

### 8.9.2 DIAND Regional Office:

- obtains from each lender, after March 31<sup>st</sup> and prior to April 30<sup>th</sup> of any given year, a loan status report for each active loan; and
- actions all forms and reports received from lenders.

### 8.9.3 DIAND Headquarters:

- records the automatic quarter interest calculation by the 15<sup>th</sup> day of the month following each quarter, except at year-end, and distributes to the DIAND Regional Offices the automatic quarter update report of problems;
- prepares analytical reports by fiscal year of the claims paid versus the guaranteed issued;
- prepares analytical reports by fiscal year of the claims repaid/deleted versus the claims paid;
- issues management and financial reports on accounts receivable;
- revises, on behalf of the Minister, the security forms and reporting requirements as may be required, in consultation with the lenders;
- prepares the contingent liabilities report for Public Accounts; and
- prepares statistical reports by fiscal year.

## **8.10 Monitoring:**

### 8.10.1 The Band Council (or its delegated authority):

- monitors the circumstances of individuals for which it has provided security for loan guarantees to ensure they are meeting their responsibilities and remaining current with their loan payments. Such monitoring is accomplished through direct contact with individual borrowers and with lenders to confirm that borrowers are continuing to meet the terms and conditions of the guaranteed housing loan; and

- when a guaranteed loan is paid in full and closed out by the lender, discharges the Written Consent between the individual borrower and the Band Council and notifies the DIAND Regional Office of the discharge.

#### 8.10.2 The Lender:

- monitors guaranteed housing loans and initiates action as soon as accounts fall into arrears so as to avoid having borrowers fall so deep into arrears that recovery becomes unlikely; and
- provides any missing information requested by DIAND Regional Office for reporting purposes.

#### 8.10.3 DIAND Regional Office:

- follows up with each lender who did not provide a loan status report for each active account after March 31<sup>st</sup> and prior to April 30<sup>th</sup> of any given year;
- records, in GLMS, the information received annually from the lender report;
- monitors missing Guaranteed Loans Terms and Condition Reports;
- analyses the accounts receivable status (collectible, doubtful, uncollectible);
- pursues collections actions on the accounts receivable;
- assists in preparing the consolidated Public Accounts plates; and
- when notified by the Band Council that the guaranteed loan has been paid in full and the Written Consent between the individual borrower and the Band Council has been discharged, forwards the notice of discharge to the applicable land registry.

#### 8.10.4 DIAND Headquarters:

- monitors the appropriateness of the Terms and Conditions, processes and procedures for the administration of the Ministerial Loan Guarantees;

- develops and maintains up to date financial and program procedures;
- maintains the GLMS tables; and
- performs functional reviews of the loan guarantee process in the Regions.

## **9.0 Enquiries**

- 9.1 Matters related to the interpretation of this directive are to be referred to the Director, Infrastructure and Housing, at DIAND Headquarters.
- 9.2 Requests for additional copies of this directive should be addressed to the Director, Corporate Information Management, at DIAND Headquarters.
- 9.3 Concerns related to the administration of the regional housing loan guarantee portfolio, as well as with the reporting requirements or forms used in conjunction with Ministerial Loan Guarantees, are to be referred to the Director, Trust, Loans and Corporate Accounting Services, at DIAND Headquarters.
- 9.4 Concerns related to lands management issues or the registration of documents in the Indian Lands Registry are to be referred to the Director, Lands Directorate, at DIAND Headquarters.

## **10.0 Appendices**

Appendix A - Ministerial Loan Guarantees Terms and Conditions

Appendix B - DIAND Forms

Appendix C - Instructions for the purchase of the  
Phase 1 Environmental Site Assessment - CSA Z768-94

**APPENDIX B****DIAND FORMS**

<b>TITLE</b>	<b>FORM NUMBER</b>
Band Council Resolution (BCR templates covering guaranteed loans with Individuals and Bands)	80-005 (12/89)
Claim to DIAND for Payment	20-537 (08/93)
Guarantee Agreement	90/91-10
Guarantee Certificate (replaces Commitment Certificate)	20-447 (05/96)
Guaranteed Loans Terms and Conditions Report	80-059 (10/95)
Loan Agreement	
Notification of Loan Default	(formerly Arrears Report)
Yearly Status Report of Guaranteed Loans	20-491 (08/93)

**APPENDIX C**

**Instructions for the purchase of the  
Phase 1 Environmental Site Assessment - CSA Z768-94**

Copies of the CSA document may be obtained from:

Canadian Standards Association  
178 Rexdale Blvd.  
Rexdale, Ontario  
M9W 1R3

Phone: (416) 747-4044

Fax: (416) 747-4149

Cost: \$59.55