

Loan Guarantees and Indemnities Policy

Policy

Nipissing First Nation will ensure that any loans receivable, loan guarantees and indemnities given will be made in accordance with written agreements which include standard clauses, are appropriately approved, are monitored for compliance with agreement terms regularly, and are reported to the Finance and Audit Committee on a regular basis. Any loans receivable entered into between Nipissing First Nation and a Nipissing First Nation member or an entity in which a member of Nipissing First Nation has an interest must be part of a loans receivable program approved by Council which is universally available to all members in a fair and transparent manner and in accordance with published terms and conditions which are accessible to all members.

Purpose

The purpose of this policy is to provide Nipissing First Nation with an effective and transparent process for the approval, collection and documentation of loans, loan guarantees and indemnities given by Nipissing First Nation as authorized in Nipissing First Nation's Financial Administration Law.

Scope

This policy and procedure applies to loan receivables, loan guarantees and/or indemnities entered into between Nipissing First Nation and:

- A Councillor;
- A Finance and Audit Committee member;
- An employee of Nipissing First Nation;
- A Nipissing First Nation member or entity in which a member of Nipissing First Nation has an interest; and
- Any other third party whether an individual or business entity including government business enterprises.

Definitions

“*Arrears*” refers to an unpaid, overdue debt, or an unfulfilled obligation.

“*Loan guarantee*” is a promise to pay all or a part of the principal and/or interest on a debt obligation in the event of default by the borrower.

“*Indemnity*” refers to the right of a person to recover the amount of a financial loss or a liability to a third party.

“*Loan receivable*” is a financial asset of Nipissing First Nation (the lender) represented by a promise by a borrower to repay a specific amount, at a specified time or times, or on demand, usually with interest.

Responsibilities

Subject to Nipissing First Nation's Financial Administration Law, Council is responsible for:

- Approving and signing Loan Receivable agreements for amounts exceeding \$300,000;
- Approving and signing Loan Guarantee agreements for amounts exceeding \$300,000;
- Approving and signing Indemnity agreements for amounts exceeding \$25,000;
- Approving debt forgiveness for amounts exceeding \$25,000;
- Approving the standard template, clauses, and interest rates (if applicable) to be applied to all First Nation members, any entity in which a member of Nipissing First Nation has an interest or any other party with respect to loans receivable, loan guarantees and indemnities;
- Reviewing the report of the Chief Financial Officer and the Finance and Audit Committee for a lending program to members where such program is authorized in Nipissing First Nation's Financial Administration Law and, where appropriate, approving such program.

The Finance and Audit Committee is responsible for:

- Reviewing reports made by the Chief Financial Officer regarding lending program to members and making any recommendations to Council;
- Monitoring the status of Nipissing First Nation's loans receivable, loan guarantees and indemnities and reporting to the Council;
- Monitoring the administration of any Council approved program of lending to members and any amendments thereof.

The Chief Executive Officer is responsible for:

- Approving employee expense advances. Under no circumstances are payroll advances allowed;
- Ensuring the lending, loan guarantee and indemnity process is transparent by providing Nipissing First Nation members access to the requirements, standard terms and conditions;
- Ensuring the publication of the terms and conditions of any Council approved program of lending to members, providing access to the published program for all members and administering the program;
- Approving the loan forgiveness report.

The Chief Financial Officer is responsible for:

- Reporting to the Council any risks associated with entering into a new program of loans to be made to members or entities in which members have an interest and the costs of administering such a program;
- Preparing loan, loan guarantee and indemnity agreements using the standard clauses approved by Council;
- On a monthly basis, monitoring the status of loan repayments, overseeing the loan receivable collection procedures, evaluating the likelihood of collectability and risk of loss, approving any necessary loan valuation allowances to reflect loans receivable at the lower of cost and net recoverable value, and reporting the results of this monitoring to the Finance and Audit Committee;
- On a monthly basis, preparing the loan valuation allowance, write-off and forgiveness report;
- Ensuring that loan receivable allowances and loan receivable write-offs and loan forgiveness are reported to the Finance and Audit Committee and accurately recorded and disclosed in the financial records and statements;
- Ensuring adequate supporting documentation is retained for all loans receivable, loan guarantees and indemnities;
- On an annual basis, preparing a report for the Finance and Audit Committee setting out all payments made to honour Nipissing First Nation loan guarantees and indemnities;
- On an annual basis, preparing a report for the Finance and Audit Committee setting out all loans or obligations forgiven by Nipissing First Nation.

Procedures

Requirements

A. Loans

Subject to Nipissing First Nation's Financial Administration Law, any authorized loans made by the First Nation are subject to the following conditions:

- Loans available to members must be set out in a program approved by the Council which has published terms and conditions and that is universally available to all members;
- Loans and all payments received from those loans must be set out in an annual report that includes:
 - details about the amounts loaned,

- the purposes of the loans,
- subject to applicable privacy laws, the names of those receiving a loan and
- re-payments of principal and interest on the loans.

Loans up to \$5,000 will be prepared and approved by a Program Manager. Loans up to and equal to \$50,000 will be prepared by a Program Manager and approved by the Chief Executive Officer. With exception to Nipissing First Nation Housing Mortgages, loans over \$50,000 will be prepared by the Program Manager and will be review by the Chief Financial Officer, and approved by the Chief Executive Officer.

Regarding Nipissing First Nation mortgages loan program, any two of the following: the Chief Executive Officer, the Chief Financial Officer, the Director of Administration and/or the Housing Manager, have been delegated authority to sign off housing mortgage loans not exceeding \$300,000. Approval will be enacted by signing the agreement with the individual requesting the loan and will only be granted if the risk of non-payment is at an acceptable level for Nipissing First Nation.

Instances where there is a high risk or likelihood that the individual will be unable to pay (i.e. previous instances of debt non-payment, poor credit history, unemployment or bankruptcy, etc.) require Council approval.

Interest, if charged, will be applied consistently to all loans at a risk adjusted rate of at least one percent (1%) less the posted bank rate.

A binding legal agreement will be made in writing between Nipissing First Nation and the individual requesting the loan. The agreement will contain standard clauses that are consistently applied to every individual who applies for and secures a loan from the First Nation. The following items, at a minimum, will be present in the agreement:

- Name of the individual;
- Amount of the loan;
- Nature and amount of any security over the loan pledged in favour of Nipissing First Nation or provided as loan collateral;
- Interest (if applicable);
- Repayment schedule.

Approval will be enacted by signing the agreement with the individual requesting the loan.

B. Loan Guarantees

Loan guarantees will only be granted in the following circumstances:

- a) The amount of the loan guarantee must not exceed \$300,000. With exception to Royal Bank of Canada mortgage program, loan guarantees will be approved by Council upon consideration of the report of the Chief Executive Officer and the Chief Financial Officer.

- b) Regarding Royal Bank of Canada mortgage program, in accordance with BCR #1437 dated June 17, 2014, any two of the following: the Chief Executive Officer, the Chief Financial Officer, the Director of Administration and/or the Housing Manager, have authority to sign off loan guarantees for Royal Bank of Canada program. Approval will be enacted by signing the agreement with the individual requesting the loan guarantee and will only be granted if the risk of non-payment or non-fulfillment of an obligation is at an acceptable level for Nipissing First Nation.
- c) The report from the Chief Financial Officer must identify any risks associated with giving the loan guarantee, evaluate the likelihood of having to honour and make payments under the guarantee, describe information collected and any judgments or estimates used to make this evaluation and assess the financial ability of Nipissing First Nation to honour the loan guarantee should it be required to do so.
- d) A binding legal agreement will be made between Nipissing First Nation and the individual requesting the loan guarantee. The agreement will contain standard clauses that are consistently applied to every individual who applies for and secures a loan guarantee from Nipissing First Nation. The following items, at a minimum, will be present in the agreement:
 - i. Name of the individual;
 - ii. Amount of the loan guarantee;
 - iii. Duration of the loan guarantee agreement;
 - iv. Amount, maturity and repayment terms of the underlying loan or obligation; and
 - v. Purpose and use of the underlying loan (e.g. details of the asset being acquired or leased or investment being made).
- e) Approval will be enacted by signing the agreement with the individual requesting the loan guarantee.
- f) Nipissing First Nation will obtain a copy of the legal agreement [ie: asset purchase / lease / investment] requiring the issuance of a loan guarantee and retain it on file with the loan guarantee agreement.

C. Indemnities

In exceptional circumstances only, indemnities will be granted in the circumstances:

- a) Nipissing First Nation must not give an indemnity unless it is:
 - i. Authorized to do so under section [106] of the Nipissing First Nation Financial Administration Law (“FAL”);

- ii. Necessary and incidental to, and included in another agreement to which Nipissing First Nation is a party; or
 - iii. In relation to a security granted by Nipissing First Nation that is authorized under the Nipissing First Nation Financial Administration Law.
- b) Nipissing First Nation will obtain a copy of the [asset agreement] under loan guarantee and retain it on file with the loan guarantee agreement.

Employees may request an advance for valid out-of-pocket expenses that will be incurred within the current fiscal year and that will ultimately be reimbursed by Nipissing First Nation in accordance with the Travel policy.

Standard agreement clauses for loans, loan guarantees, and indemnities (including interest provisions) will be reviewed and reported on by the Finance and Audit Committee and approved by Council as necessary, and at least annually. Any deviations from the standard agreement clauses require Council approval and consultation with legal counsel.

Land lease arrangements given or made by Nipissing First Nation are subject to approval at a meeting of Council with quorum.

D. Leases

- (a) Nipissing First Nation must comply with the terms and conditions of any lease agreements it enters into.
- (b) The Council [or the person with delegated authority] should ensure that Nipissing First Nation enters into a lease agreement, provided that the amounts payable under the lease are within the budget for the related program or department.
- (c) Lease agreements respecting Nipissing First Nation must be made in accordance with the land code or applicable land management laws and policies.

Accessibility

Subject to Nipissing First Nation's Financial Administration Law, all members must be able obtain a loan from Nipissing First Nation subject to any conditions outlined in this policy.

The Chief Executive Officer will ensure that the requirements to obtain a loan, loan guarantee or indemnity, as well as the standard terms and conditions of these agreements are accessible to all Nipissing First Nation members. This information will be available to all members who request a copy from the local office either in person, by phone or by email.

Monitoring and Reporting

All loans, loan guarantees, and indemnities will be reported annually to the Finance and Audit Committee. The annual report will contain the following information for each loan, loan guarantee, and indemnity:

- 1) Name of the individual;
- 2) Purpose of the loan, loan guarantee or indemnity;
- 3) Amount of the original loan, loan guarantee or indemnity;
- 4) Repayments of principal on loans;
- 5) Interest earned and collected on loans;
- 6) Actual payments made, if any, against loan guarantees;
- 7) Actual payments made to compensate for damages, if any, against indemnities;
- 8) List of payments in arrears by individual;
- 9) Any expected payments required as a result of Nipissing First Nation having to fulfill or honour a guarantee or indemnity agreement based on the Chief Financial Officer's knowledge of the contracts in place and changes in their underlying financial condition.

Record Keeping

All agreements and payment records associated with loans, loan guarantees and indemnities will be stored in Nipissing First Nation's financial records.

Records of debt forgiveness will be retained in the event that in the future, through changed circumstances, some or all of the debt may be repaid.

Collection

On a monthly basis, the Chief Financial Officer (or delegate) will review the list of outstanding loans receivable and corresponding loan payments. The following actions will be taken to resolve overdue payments and delinquent accounts:

- For loan payments that are between 30 and 60 days overdue, the individual holding the loan will be contacted in writing requesting that all overdue payments be made as soon as possible and no later than a specified date;
- For loan payments that are more than 60 days overdue, late payment interest will be charged on the outstanding loan balance in accordance with the loan agreement between the individual with payments in arrears and Nipissing First Nation. The individual will be contacted in writing and by phone and informed that interest will accumulate until all overdue payment have been received. Contact by writing and by phone will be made on a monthly basis thereafter if payment has still not been received;
- For loan payments that are more than 120 days overdue, the Chief Financial Officer will determine whether the loan should be considered impaired and written of, or sent to an external collections agency. The Chief Financial Officer (or delegate) will inform the

individual in writing and by phone that the payments in arrears have been transferred to an external agency for collection;

- Any additional financing arrangements or amendments to existing loan agreements to improve the likelihood of repayment between Nipissing First Nation and an individual with payments in arrears will be determined by the Chief Financial Officer and approved by the Chief Executive Officer.

Debt Forgiveness

All reasonable steps should be taken to attempt to collect the outstanding balance. However, when it becomes evident that Nipissing First Nation will be unable to collect the outstanding balance, a report should be compiled by the Chief Financial Officer and approved by the Chief Executive Officer detailing the following:

- Individual and amount in arrears;
- Principal and interest outstanding on the loan;
- Length of time in arrears and measures taken to collect on payments in arrears;
- Rationale for debt forgiveness.

All debt forgiveness amounts based on the Chief Financial Officer's report require review and recommendation by the Finance and Audit Committee and approval by Council.

Write-offs

When all reasonable steps to collect have been taken and debt has not been collected or forgiven, the Chief Financial Officer will ensure that the loan and its outstanding principal and interest payments are reclassified in the financial statements as bad debt.