



April 14, 2023

Office of the Superintendent of Financial Institutions

B-20@osfi-bsif.gc.ca

Re: Public consultation on guideline B-20: Residential Mortgage Underwriting

Thank you for the opportunity to provide feedback on the B-20 Guideline. We have outlined below considerations which concern us. While we do not take issue in principle with any of the general objectives of these measures, we do have concerns as to how some may adversely affect First Nation Canadians. We stress the importance of not further discriminating against First Nations individuals, particularly, who may be receiving income but are not subject to income tax. Insofar as this distinction is not fully considered in the new B-20 guidelines, we strongly recommend that the guidelines be adapted to reflect this reality, as outlined below.

We further outline to OSFI the requirements under the *UN Declaration Act*¹ (UNDA) to consult with Indigenous peoples on all issues that affect them. In particular, these guidelines go to the core of Indigenous peoples' housing and ability to afford shelter and as such, the requirements to consult with those affected is significant. We strongly suggest that an open option on the OSFI website for participation, consultation and feedback, may not be sufficient to meet the UN Declaration on the Rights of Indigenous People's (UNDRIP) article 23 consultation threshold.

Question 1: How should an LTI threshold be determined?

- A clear and consistent definition of "income," for the purpose of calculating LTI.

As described in the loan-to-income (LTI) and debt-to-income (DTI) restrictions section of OSFI's public consultation, OSFI is considering prescribing LTI thresholds. Though not stated in OSFI's document, other research indicates that LTI and DTI ratios are calculated using gross income (pre-tax) figures. Calculating based on gross figures risks impacting a specific set of people: those who are not required to pay income tax, a significant portion of whom, in Canada, are First Nations people with "Indian" status.²

First Nations people are exempt from paying income taxes when they hold status under the *Indian Act*, and they work on a reserve or for a company located on a reserve.³ In many cases, salaries may be

¹ United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021 c. 14 found at [United Nations Declaration on the Rights of Indigenous Peoples Act \(justice.gc.ca\)](https://www.justice.gc.ca/eng/1525/1525.html); see also articles 21 and 23 United Nations Declaration on the Rights of Indigenous people found at [UNDRIP_E_web.pdf](https://www.un.org/development/dpd/indigenouspeople/undrip-2007/).

² As defined in section 6, Indian Act (R.S.C., 1985, c 1-5).

³ Indian Act (R.S.C., 1985, c. 1-5). Section 87.

impacted by whether the employee is required to pay income tax. The result may be a lower gross income, but equivalent affordability in the home buying market. This is an important distinction that LTI and DTI standards and the B-20 guidelines must consider. Some financial institutions already factor this into their calculations by “grossing up” the income for tax exempt individuals. We would support this approach being regulated in a standard that considers income levels and tax brackets.

Adjusting LTI and DTI ratios for Indigenous peoples exempt from income tax will help make access to the mortgage markets in Canada more equitable. This is a good thing, and moves reconciliation forward, but it will become more important over the next couple of decades.

As it stands now, about 60% of Status First Nations people in Canada live off reserve.⁴ The Indigenous population is much younger demographically than the rest of Canada and is growing at a much faster pace⁵ in comparison to the rapidly aging non-Indigenous Canadian population.⁶ Many First Nations endure inadequate resources (access to build-worthy lands, financial means, capacity, etc.) on reserve for housing their rapidly growing populations, and lack the land required for significant growth over the next decades. As the older, shrinking Canadian population needs less homes, and less space due to diminishing family sizes, the Indigenous population will need more housing, and possibly bigger ones. Indigenous people have a right, without discrimination, to the improvement of their housing, as outlined in Articles 21 of the UNDRIP.⁷

What’s more, with the off-reserve Indigenous population growing, and with the increase in Indigenous government capacity, growth and creation of national Indigenous organizations, it is anticipated that more jobs will be available where individuals will keep their tax-exempt status. Indigenous employment numbers are increasing as well,⁸ and in many cases the jobs are created by First Nations governments and organizations, housing their businesses on reserves.

Our concern is limiting access to mortgages for First Nations people. Banks are already less willing to lend to people with asset on reserve. However, many First Nations people hold assets on a reserve. With the growth of urban reserves, more Indigenous people with status will have access to good jobs with incomes exempt from income taxes.

Consequently, we strongly recommend that LTI and DTI calculations take into consideration the special circumstances for Indigenous people who hold status, and whose income is exempt from income tax.

⁴ Statistics Canada. “Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed.” Released 21 September 21, 2022:

<https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>.

⁵ Statistics Canada. “Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed.” Published 21 September, 2022.

<https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>

⁶ Zimonjic, Peter. “Canada’s working-age population is older than ever, StatsCan says.” CBC News. Published 28 April 2023. <https://www.cbc.ca/news/politics/canada-working-age-pouplation-census-1.6432398>

⁷ UNDRIP Ibid. note 1.

⁸ Statistics Canada. [Table 14-10-0365-01 Labour force characteristics by region and detailed Indigenous group](#)



Failure to do so may discriminate against Canada's First Nation population and could amount to a violation of section 15 of the *Canadian Charter of Rights and freedom*.

Question 4: Considering each of the proposals in this paper collectively:

- Are there alternative options that OSFI should consider that would better achieve its policy objective?

We reiterate that OSFI must consider the impact that using the gross income in LTI and DTI calculations has on prospective First Nation mortgage holders. This extends to any of the proposed B-20 Guidelines that might consider gross income rather than net income in the affordability strengths tests, insofar as it is not considering tax exempt status in these calculations.

We thank you for considering our feedback and invite you to engage with us should you have any further questions or queries.

Sincerely,

A handwritten signature in blue ink that reads "Geordie Hungerford".

Geordie Hungerford, C.F.A., C.A.I.A., M.B.A, LL.B.
Chief Executive Officer