



# GUIDELINES



**April 2009**

# GUIDELINES

## Introduction

The main purpose of the Canada Small Business Financing Act (the Act) is to increase the availability of financing for the purpose of the establishment, expansion, modernization and improvement of Canadian small businesses. These Guidelines provide the Canada Small Business Financing Program Directorate's (CSBFP Directorate) interpretation of the Act's provisions and those of the Canada *Small Business Financing Regulations* (the Regulations).

Lenders should always refer to the [Act](#) and [Regulations](#), as they constitute the legal authority for the program. They contain the procedures and conditions for making and administering CSBF loans and for submitting and substantiating claims for loan losses.

These Guidelines are divided into four sections:

- A: Eligibility criteria used in making a CSBF loan
- B: Registration, administration and reporting of CSBF loans
- C: Realization on CSBF loans and submission of claims
- D: Annexes and Forms

A lending officer who encounters a situation not clearly covered by the Act, Regulations or these Guidelines should seek clarification and direction from the lender's head office, regional office or central office. The CSBFP Directorate may issue rulings in response to written requests originating from the regional office, central office or head office of a financial institution.

The most recent version of the Guidelines is also available on our internet site at [www.ic.gc.ca/csbfp](http://www.ic.gc.ca/csbfp).

All correspondence concerning CSBF loans should be forwarded to:

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## SECTION A: Making a CSBF Loan

This section outlines the procedures lenders are to follow in making CSBF loans under the Act and Regulations. Lenders are expected to make CSBF loans with the same care as in the conduct of their ordinary business.

Lenders may find the decision table below useful.

- |    |  |             |  |
|----|--|-------------|--|
| 1. | Is the business eligible? ( <a href="#">Section A, Item 1</a> )  | <b>NO ►</b> | Finance conventionally   |
|    | <b>YES ▼</b>   |             |  |
| 2. | Is the potential borrower eligible? ( <a href="#">Section A, Item 3.1</a> ).   | <b>NO ►</b> | Finance conventionally   |
|    | <b>YES ▼</b>   |             |  |
| 3. | Is the potential borrower related to other CSBF loan borrowers? ( <a href="#">Section A, Item 3.2</a> )                          | <b>NO ►</b> | Maximum available loan is \$500,000 ( <a href="#">Section A, Item 2</a> )    |
|    | <b>YES ▼</b>   |             |  |
| 4. | Does the potential borrower pass the independent small business test? ( <a href="#">Section A, Item 3.2.1</a> )                  | <b>NO ►</b> | Maximum loan is reduced by aggregate outstanding loans to related borrowers. |
|    | <b>YES ▼</b>   |             |  |
| 5. | Will the loan finance eligible purpose(s)? ( <a href="#">Section A, Item 4</a> )   | <b>NO ►</b> | Finance conventionally   |
|    | <b>YES ▼</b>   |             |  |
| 6. | Is the maximum loan \$500,000 or less, including amounts outstanding to related borrowers? ( <a href="#">Section A, Item 2</a> ) | <b>NO ►</b> | Reduce loan amount   |
|    | <b>YES ▼</b>   |             |  |
| 7. | Is the maximum loan amount 90 percent or less of eligible assets? ( <a href="#">Section A, Item 5</a> )                          | <b>NO ►</b> | Amend loan amount  |
|    | <b>YES ▼</b>   |             |  |
| 8. | Do the repayment terms, interest rate, charges and fees comply? ( <a href="#">Section A, Item 6</a> )                            | <b>NO ►</b> | Amend terms and conditions   |
|    | <b>YES ▼</b>   |             |  |
| 9. | Do the security and documentation meet program requirements? ( <a href="#">Section A, Item 7</a> )                               | <b>NO ►</b> | Correct security and/or documentation defects                                |
|    | <b>YES ▼</b>   |             |  |

**REGISTER THE LOAN WITH THE  
DIRECTORATE**

# 1 BUSINESS ELIGIBILITY

## 1.1 Definition of [Small Business](#)

- business is carried on in Canada, with a place of business in Canada, and assets held in Canada for the purpose of operating the business;
- its purpose is for profit, and;
- **for an existing business:** during the fiscal year in which the CSBF loan is approved, its estimated gross revenues will not exceed \$5,000,000, or;
- **for a new business:** at the time the CSBF loan is approved, its estimated gross [annual](#) revenues during the first 52 weeks of operation will not exceed \$5,000,000.  
[\[Act s.2\]](#)

## 1.2 Ineligible Small Business

- businesses engaged in "[farming](#)" as defined in the Standard Industrial Classification (SIC), 1980 of Statistics Canada, Major Group 01 - Agricultural Industries. If more than 50% of a business's gross annual revenues come from farming operations, that business is not eligible to obtain a CSBF loan;
- charitable or religious organization;
- any business not operating for profit (e.g. a private club).

## 1.3 Eligible Small Business

A borrower can be operating different businesses. As an example, a borrower whose main activity is farming could have a snow removal business. The snow removal small business would be eligible to obtain a CSBF loan for the purchase or [improvement](#) of assets necessary for its operation. [\[Bulletin - April 2001\]](#)

A borrower operating in a service industry incidental to agriculture can be eligible to obtain financing. These are described in Group 02 of the SIC. For instance, the small business' activity is to provide services to other farmers, such as harvesting services. The [equipment](#) required to operate the harvesting small business would be eligible for financing under a CSBF loan. A full description of these services is described in the [Bulletin of January 2007](#).

Salt water or fresh water fish farming businesses are eligible to obtain a CSBF loan.

Small businesses, operated by foreign citizens are eligible to obtain a CSBF loan as long as the place of business is in Canada and the assets being purchased are to be used in Canada.

## 2 MAXIMUM LOAN AMOUNT

For loans made before April 1, 2009, a borrower and [related borrowers](#) (see [Item 3.2](#) of this Section) can borrow up to \$250,000 calculated as at the date of the first disbursement of the loan funds. It includes the total of outstanding principal balances of all CSBFA and *Small Business Loans Act* (SBLA) loans. [[Act par.4\(2\)\(b\)](#); [Regs ss.1\(3\)](#)]

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For loans made on or after April 1, 2009, a borrower and related borrowers can borrow up to \$500,000\* of which the maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements. The maximum amount that a borrower can have at any time includes the total of outstanding principal balances of all CSBFA and SBLA loans. Note that if the registration fee is financed, the maximum loan amounts would include the amount of the registration fee. The following are various scenarios that illustrate these new maximum amounts:

- A borrower can finance up to \$500,000 for purchase of real property.
- A borrower can finance \$400,000 to purchase real property plus \$100,000 to purchase equipment for a total of \$500,000.
- A borrower has an existing CSBFA loan used to finance real property with an outstanding balance of \$100,000. The borrower can finance \$200,000 for improvements to the real property and \$200,000 to purchase equipment.
- A borrower can finance the purchase of equipment and leaseholds up to a maximum of \$350,000.

\*Wherever the amount of \$500,000 is used throughout Guidelines, it shall mean to include the restriction on the maximum loan amount of \$350,000 as set out above.

If two or more borrowers amalgamate and at the time of an amalgamation the aggregate balance outstanding of all CSBFA and/or SBLA loans previously made to any of the small businesses that amalgamate exceeds \$500,000, the loans held by the new legal entity resulting from the amalgamation continue to be eligible and in compliance with the CSBF and SBL Acts and Regulations.

[\[Bulletin October – 2006\]](#)

If a borrower requires financing in excess of \$500,000 to purchase assets that will be secured on an equal-ranking-basis with a CSBF loan and a [conventional loan](#), the lender must make separate loan documents (e.g. loan agreement, promissory note, etc) for the CSBF and conventional loans. In the case of a conditional sales contract, one loan document can cover the conditional sale financing.

### **3 BORROWER, INDEPENDENT SMALL BUSINESS AND RELATED BORROWER**

#### **3.1 Borrower**

A borrower is a legal entity that carries on or is about to carry on a small business and to whom a CSBF loan has been made. It can be a sole proprietorship, partnership, or a corporation. [[Regs ss.1\(1\)](#)]

Co-operatives are eligible businesses provided they fulfill the conditions in the definition of “small business” and in particular the following:

- they carry on business in Canada;
- their purpose is for profit; and
- they are not engaged in “farming” as outlined in Item 1.2 of this Section.

[[Bulletin – January 2007](#)]

A trust, whether a personal, private, or social trust, is not a legal entity and, therefore, does not qualify for a CSBF loan.

A holding corporation is not an eligible business under CSBFA. The asset that the holding corporation acquires is not used in the operation of a business but is used by another legal entity who is not the borrower.

#### **3.2 Independent Small Business and Related Borrower**

The concepts of related borrower and independent small business were introduced in order to continue to foster small business entrepreneurship and to limit the maximum outstanding loans to related borrowers to \$500,000.

##### **3.2.1 Independent Small Business**

Related borrowers (see below) are considered to be operating independent small businesses if the following conditions are met (the independent small business test):

- they are operating separate small businesses at different premises; and
- neither business derives more than 25% of its actual or projected gross revenues from the other

If related borrowers pass the independent small business test, each is, then, eligible for a maximum loan of \$500,000. [[Regs ss.3\(5\); 3\(6\)](#); [Bulletin – September 2000](#)]

##### **3.2.2 Related Borrower**

If an existing borrower and/or potential borrowers are related and cannot pass the independent small business test, they are considered to be one small business and therefore

one borrower. In this case, related borrowers are limited to a maximum outstanding loan of \$500,000 amongst them, inclusive of any loans already outstanding under the SBLA.

[[Regs ss.3\(3\); Bulletin – September 2000](#)]

Related borrower refers to any situation in which one borrower:

NEW

- controls\*, directly or indirectly, the other borrower;
- is controlled, directly or indirectly, by the same person\*\* or group of persons as the other borrower;
- carries on a small business in partnership with the other borrower;
- shares, for example, administration/management services, equipment, facilities, employees or overhead expenses with the other borrower but not in partnership with the other borrower.

For these situations, the related borrowers are, collectively, eligible to have maximum outstanding loans of up to \$500,000. [[Regs ss.3\(2\); Bulletin – September 2000](#)]

\* Control means the holding of more than 50% of the voting shares in a corporation.

\*\* “Person” is used to designate an individual(s), a partnership(s), or a corporation(s).

[[Regs ss.3\(4\)](#)]

**Example:** An individual controls three corporations that operate the following businesses within the same premises: a trucking business, a [mini-storage](#) business and a fast food restaurant. Because the same individual controls all three corporations, the corporations would be considered related and together eligible for a maximum outstanding loan of \$500,000. However, if any of the corporations operates from a different premise and does not derive more than 25% of its revenues from the other corporations, it would be considered an independent small business and eligible for a maximum outstanding loan amount of \$500,000. If all three pass the independent small business test, each is eligible for a maximum outstanding loan of \$500,000.

It is a question of fact whether borrowers or potential borrowers are related to each other. Where the lender has any doubt, it should contact its head office, regional office or central office for advice.

**Apply the independent small business test to determine whether related borrowers are limited to a maximum aggregate outstanding loan of \$500,000.**

## 4 LOAN CLASSES

There are four classes of CSBF loan:

- Real property or immovables
- Leasehold improvements
- Equipment
- Registration fees

[\[Regs ss.5\(1\)\]](#)

Where a lender finances two or more classes of assets (e.g., equipment and leasehold improvements) involving the same project and the same loan, it is only necessary to submit one loan registration form rather than a loan registration form for each class of asset. As well, where there is cost overrun, the loan amount can be increased without completing a new registration form. In this way, the lender's reporting, administration fee calculation and claim submission would be on one loan rather than on multiple loans.

[\[Bulletin – October 2008\]](#)

The assets financed must be used for the operation of the small business.

### 4.1 Real Property or Immovables\*

This type of loan is made when:

- the borrower is or will become the owner of real property or immovables, and;
- the loan will finance the purchase and/or improvement\*\* of the real property or immovables [\[Regs par.5\(1\)\(a\)\]](#)

\* Throughout these Guidelines, the term "real property" is used in the context of the Common Law while the term "immovables" is used in the context of the Civil Code of Quebec.

\*\* Improvement includes construction, renovation and modernization of the asset.

[\[Regs ss.1\(1\)\]](#)

Loans to finance real property or immovables are subject to certain limitations:

- **The 50% rule:** Lenders can finance up to 90% of the eligible cost of real property or immovables, provided the borrower is using, or will be using, at least 50% of the area for the operation of the business within 90 days after the final disbursement under the loan agreement. The 50% threshold is determined using either the proportion of the land or building required by a borrower's eligible operations. The area in excess of the operational area is not subject to the 3-year rule (see below) and can be leased.

[\[Regs par.5\(2\)\(a\); Bulletin – September 1999\]](#)

**Example:** A borrower wants to purchase a business that is located on a parcel of land that includes a building. The borrower will be using at least 50% of the land area, but only 10% of the square footage of the building for its business. In this case the 50%

rule would be applied to the land. Alternatively, if the borrower intended to use 50% or more of the building and only 10% of the land, the 50% rule would be applied to the building.

Any subsequent improvements, whether for the benefit of the entire building (i.e. the roof, foundation, or a central heating system) or within the walls of the operational area being used by the business, are eligible to be financed by a CSBF loan and the 50% rule will not apply. However, any improvements made to the portion of the premises not used for the operation of the business are ineligible.

**Note that the 50% rule does not apply to the construction of real property or immovables. In such situations, only the portion necessary for the operation of the business is eligible for a CSBF loan. [[Bulletin – September 1999](#)]**

- **The 3-year rule:** The rule requires that, at the time the CSBF loan is made, it is not the intention of the borrower to sell, lease or sub-lease the operational area for which the loan is made, for the next three years. That is, unless, in the case of lease or sub-lease, the business is defined by Statistics Canada's Standard Industrial Classification, 1980 as one of:
  - mini-storage, "479 - Other Storage and Warehousing Industries";
  - health care, "86 - Health and Social Services Industries"; or
  - hospitality "91 and 92 - Accommodation, Food, and Beverage Services Industries".

[[Regs par.5\(2\) \(b\)](#); [Regs ss.5\(4\)](#)]

Where a borrower is operating more than one small business, only the business or businesses operating in one of the three (above) specified industries is eligible to finance premises for leasing purposes.

**Example:** A doctor who has a medical practice may wish to purchase a building for the purpose of leasing space to physiotherapists. The building purchase would not be eligible because the doctor merely wishes to purchase the building to lease to other businesses, thereby, resulting in the doctor being, for the purpose of the building transaction, in the business of leasing commercial property rather than the [health care industry](#). The doctor's small business that is purchasing the building would, however, be eligible to apply for a loan to purchase equipment the business requires to carry on its operations.

If the doctor above wished to purchase a building for the operation of a nursing home that met the definition of a small business, the doctor could be eligible for a CSBF loan because the business of operating a nursing home falls within Statistics Canada's

Standard Industrial Classification, 1980, category 86 – Health and Social Services Industries. [[Bulletin – April 2001](#)]

Where the relationship between the borrower and the end user of the premises is that of a licensor and licensee, and the usage of the premises is under a contractual licensing agreement, as opposed to a lease or rental agreement, the financing of the purchase and improvement of premises, is eligible.

**Example:** A business that provides office services such as conference rooms, secretarial work, photocopying, etc. and that makes office space available on a short term basis (by the hour, by the day, by the week), would be eligible to obtain a loan to purchase premises or do improvements to premises if the end user of the premises (the licensee), has the right to occupy the premises under a contractual licensing agreement.

## 4.2 Leasehold Improvement

This type of loan is made when:

- the borrower is or will become the tenant of real property or immovables; and
- the leasehold improvements are being made for the borrower; or
- leasehold improvements made for a tenant by the owner of real property or immovables or by a franchisor, pursuant to a contract between the tenant and the owner or the franchisor; or
- existing leasehold improvements are being purchased from a tenant (the vendor). The CSBFP Directorate defines "existing leasehold improvements" as leasehold improvements belonging to a business carrying on operations at the leased premises prior to the purchase by the borrower.

[[Regs par.5\(1\)\(b\)](#)]

**The purchase of existing improvements to real property or immovables, where the vendor is a tenant, is eligible, whereas the purchase of existing improvements to real property or immovables, where the vendor is the owner of that real property or immovable, is not eligible.**

## 4.3 Equipment

An asset falls into this class if the loan is made for the purchase, capitalized installation costs, or [improvement](#) of equipment (includes construction, renovation, modernization and installation). This class includes the purchase or development of computer software, the purchase of navigational vessels, major repairs (if capitalized), and any equipment used for rental purposes (e.g. videos), as long as they are or will be classified as capital assets and the borrower is in the equipment rental business. [[Regs ss.5 \(1\)\(c\)](#)]

### 4.3.1 Computer software and website development:

Computer software includes:

- off-the-shelf software;
- custom-made software;
- a custom-made computer software system; and
- on-site computer software development

For website development, the following outlines the eligible and ineligible costs:

<p><b>Eligible</b> web site development costs:</p> <ul style="list-style-type: none"><li>• hardware and software to run the web site;</li><li>• developing the infrastructure and programming the web site;</li><li>• adding new functions, improvements of the capacity or performance to a web site (programming); and</li><li>• the initial graphic design</li></ul>	<p><b>Ineligible</b> web site development and maintenance costs usually expensed under generally accepted accounting principles:</p> <ul style="list-style-type: none"><li>• planning costs;</li><li>• costs incurred to develop content;</li><li>• operating costs of the borrower, such as fees paid to the host of the web site, ongoing maintenance, repair, and upgrades, and;</li><li>• on-site supplier services, (other than installation and debugging costs that are specifically part of a contract for eligible development costs).</li></ul>
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The computer software and web development costs are eligible provided that the computer software, improvements to the software, or the web site:

- are designed and developed by a specialized contractor/vendor, and;
- the work is pursuant to a contract that specifies the cost, defines specific and measurable characteristics with performances to be delivered, and;
- is scheduled to be operational within one year from executing the contract, and;
- will result in the borrower acquiring ownership or a licence for the use of the computer software or system.

## 4.4 Registration Fee

All or part of the 2% registration fee may be financed as part of a CSBF loan. It is calculated on the total loan made to finance real property or immovables, leasehold improvements, and/or equipment and must be clearly indicated as a separate class of loan on the line "CSBF Loan Fee Financed" in the Loan Registration form. The \$500,000 and \$350,000 loan maximums each include the registration fee, if financed. [[Regs ss.4\(1\); Regs par.5\(1\)\(d\)](#)]

Where a loan is made to finance equipment and real property, the registration fee is calculated on the amount of each asset and is taken into consideration in determining not only the \$500,000 maximum loan amount but also the maximum of \$350,000 for equipment. Therefore, a lender cannot finance the maximum of \$350,000 plus the registration fee. The following example illustrates how the financing of the registration fee is factored in the determination of the maximum loan amount:

Real Property financed	Equipment financed	Leasehold improvements financed	Registration fee financed	Total loan
\$400,000			\$8,000	\$408,000
	\$200,000	\$140,000	\$6,800	\$346,800
\$150,000	\$340,000		\$6,800 (\$340,000 x 2%) \$3,000 (\$150,000 x 2%)	\$499,800
\$150,000	\$350,000 * \$340,000 is eligible		\$6,800 (\$340,000* x 2%) \$3,000 (\$150,000 x 2%)	\$499,800

\* If the registration fee is financed, this amount is reduced to \$340,000 so that the total amount of the loan, including the financing of the registration fee is within the \$350,000 maximum loan amount.

#### 4.5 Examples of Eligible and Ineligible Items for a CSBF loan

The following lists are not exhaustive. When in doubt, lenders should contact their head office, regional office or their central office for advice.

##### Eligible

- Water supplies and drainage systems
- Display cases
- Moulds used for production
- Dies and jigs
- Landscaping
- Paving of parking areas
- Access sidewalks
- Fences
- Wood lot (timber must be capitalized)
- Architectural, engineering and design fees related to the project being financed with the loan
- An undivided share\* of an eligible asset that is required for the operation of a commercial business (e.g., a 60% share in a building or equipment) where the owners of the asset are or will be operating businesses independent of each other. The financing

must be made to the entity carrying on the small business, not to another entity created specifically to own and manage the asset.

\* An undivided share is a full share in an asset, a share that is not separated into parts. In the case of real property or immovables, a person owning property as a tenant in common would have an undivided share of the property.

### **Ineligible**

- Working capital
- Improvements to a family dwelling for non-commercial purposes
- Purchase of shares in a corporation
- Permits & licenses used in the operation of eligible assets
- Franchise fees
- Feasibility studies
- Professional fees (e.g., legal, accounting and appraisal)
- Survey costs
- Building permits
- Vehicles for personal use
- Supplies (e.g., paper, staplers, pens, uniforms, erasers, menus, photocopies)
- Intangibles (e.g., research/ development costs, prepaid expenses, goodwill)
- Improvements to real property or immovables, where the vendor as the owner of that real property or immovable is selling those improvements
- Labour costs of the borrower, its employees, shareholders and directors of a corporate borrower. [[Regs ss.5\(5\)](#)]

## **5 ELIGIBLE AMOUNT OF THE LOAN**

**All of the following must be considered in determining the amount of the CSBF loan.**

### **5.1 Eligible Expenditures**

- **90% Limit:** The lender can finance up to 90% of the purchase cost of eligible assets. [[Regs ss.5\(5\)](#)]
- **Trade-in:** Lenders may use the gross cost of the asset (as if there had been no trade-in) to calculate the [eligible cost](#).
- **Transportation and installation:** Freight and installation, related to the asset being financed, may be included.
- **Non-refundable taxes:** Non-refundable taxes or customs duties may be included as part of the eligible cost of an asset. Eligible cost must not include any refundable items (GST, HST, PST or other). The lender is responsible for ensuring only non-refundable taxes, etc. are included in the amount financed. [[Regs ss.5\(6\)](#)].

- **180-day rule:** When determining the total cost of a project, a lender may include expenditures or commitments made within 180 days prior to the date on which the loan is approved. A non-refundable deposit constitutes both a commitment and expenditure. If an asset is leased under a lease contract that provides an option to purchase the asset, the commitment date is the date the option is exercised.  
[\[Regs ss.6\(a\); Bulletin – April 2006\]](#)

**Example 1:** A borrower makes a \$1,000 non-refundable deposit on a piece of eligible equipment on January 6, the date of the invoice.

- a) The total purchase price is eligible only for a loan approved within 180 days from January 6, that is, July 5.
- b) However, if the \$1,000 deposit was made outside the 180 days preceding the loan approval date, only those expenditures made within the 180 days are eligible for financing.

**Example 2:** A borrower makes a \$1,000 refundable deposit on a piece of eligible equipment. The offer to purchase is conditional upon some condition being met. The key date is the date the contract (offer to purchase, conditional sale contract) becomes irrevocable (i.e., when the condition is met).

- a) The total amount of the purchase is eligible as long as the date that the condition is met (i.e., the offer to purchase becomes irrevocable) is within the 180 days preceding the loan approval date.
- b) If the date the condition is met is outside the 180 days but there are expenditures made within the 180 days preceding the loan approval date, only those expenditures made within the 180 days are eligible

**Example 3:** A borrower completely pays for a piece of eligible equipment and the date the expenditure is made is outside the 180 days preceding the loan approval date. The contract had no conditions attached. Because the date the payment is made is both a commitment and expenditure and these fall outside the 180 days, the total purchase price is ineligible

- **Decontamination costs:** Decontamination costs of real property or immovables are eligible provided:
  - they are made in conjunction with the purchase of real property or immovables that are necessary for the operation of the business
  - they are required under a federal or provincial law;
  - the decontamination plan is disclosed to the lender on or before the day on which the first disbursement of the loan funds is made for the CSBF loan; and
  - the CSBF loan is secured by a first mortgage on the real property or immovables. [\[Regs ss.5\(3\)\]](#)

**NOTE: Costs related to the asset financed by the CSBF loan must be reduced by the amount of grants, discount, refunds and reimbursement or any type of applicable credits directly related to the asset.**

## 5.2 Ineligible Expenditures

- **Borrower's labour:** The cost attributed to the borrower's labour (including employees and shareholders and directors of a corporate borrower) is not an eligible expenditure. [\[Regs ss.5\(5\)\]](#)
- **Pre-existing term loan:** Expenditures or commitments currently or previously financed by the borrower on a term loan are ineligible. The Directorate defines a term loan as any loan with regularly scheduled payments. Bridge financing and a line of credit are not considered term loans. [\[Regs ss.6\(a\)\]](#)
- **Shares:** In the acquisition of shares, the loan is being advanced to a shareholder for the sole purpose of acquiring shares in the corporate entity. Funds are not being advanced to the corporate entity to purchase assets. The CSBF loan is, therefore, being used not to finance an acquisition of assets, but to acquire shares. The acquisition of shares is not eligible for financing.
- **Exchange or barter:** Since the asset was already acquired and paid for by an exchange of goods or services, the CSBF loan cannot be used to generate funds for either of the parties involved. The only exception to this rule pertains to trade-ins which serve as partial payment during the acquisition of an asset financed by a CSBF loan.

## 5.3 [Proof of Purchase](#) and [Proof of Payment](#)

Eligible expenditures must be supported by proof of purchase (invoices, purchase agreements, etc.). In the event a claim for loss is submitted, proof of purchase and proof of payment documentation must be included as follows:

[\[Regs par.38\(4\)\(a\); Bulletin – August 1999\]](#)

- **[Cancelled cheque:](#)** A cleared cheque, payable to the supplier and accompanied by the invoice, is the preferred proof of payment.
- **Debit/Credit Card, Line of Credit:** (except from the supplier of the asset): Payment by debit or credit card or through a line of credit is also acceptable. No proof is required to demonstrate that the borrower subsequently paid off the credit card or the line of credit.
- **Cash payment:** A supplier's invoice stamped "PAID", indicating "IN CASH", or a printed invoice indicating the payment has been made in cash, can be accepted for an amount less than \$500.00. The lender must ensure that the stamp was affixed by the supplier, not the borrower.
- **Sales contract:** Formal executed sales contracts in respect of acquisitions of real property or [going concerns](#), for example, generally make reference to the purchase price

paid and contain a section referring to the payment and indicating “receipt whereof is hereby acknowledged.” Such an attestation by a lawyer or notary is sufficient proof of payment.

- **Attestation:** A receipt or an attestation by the supplier to the effect that the invoice has been paid is acceptable. Where the loan disbursement is effected by a lawyer or notary, the CSBFP Directorate accepts a photocopy of the Deed of Sale or Trust Statement confirming that the vendor has been paid.

## 5.4 Appraisal

### 5.4.1 Situations Requiring Appraisals

A lender must obtain an appraisal of the market value of the asset, where the borrower:

- Purchases an asset from a person not at arm’s length.

The concept of a party not at arm’s length from the borrower is described in section 251 of the *Income Tax Act* (see [Section D](#) of these Guidelines) as persons related by blood, marriage, or adoption (includes father, mother, brother, sister, common law couples) and any situation involving different degrees of control by these persons in businesses where control is a question of fact, not only as a defined percentage.

If a person, not at arm’s length from the borrower, sells the borrower an asset, which it previously purchased from a vendor at arm’s length to the borrower, no appraisal is required. Such a transaction must be supported by proof of cost of the assets showing that the price the borrower paid does not exceed the amount that the not at arm’s length vendor paid to the original vendor and; the purchase from the original vendor has taken place within 180 days of the date the loan is approved.

- Purchases all or [substantially all](#) of the assets of a going concern.

The term “going concern” is defined as a business that has carried on operations at any time within 60 days prior to purchase or, in the case of a small business that operates on a seasonal basis, during the season prior to purchase. [[Regs ss.1\(1\)](#)]

In assessing whether a sale involves “substantially all” of the assets of a going concern, lenders should consider the percentage of total assets being sold, whether the transaction would fundamentally change the nature of the business, and whether the vendor can continue its normal business activities without the assets that are being sold. If the purchaser will carry on the business being sold with the same assets that is the subject of the purchase agreement (e.g., equipment, leasehold improvements, inventory, client lists, telephone etc.), then the sale of such business will be considered that of a going

concern. This may apply even if the subject of the sale is only one branch or one location of the vendor.

The following are also deemed to be purchases of a going concern: a franchisor selling a franchise under its control, and a franchisee selling its franchise business to a new franchisee at arm's length. [[Bulletin – July 1999](#)]

The Purchase and Sale Agreement of a going concern is for the purchase of specified assets of the vendor (e.g., real property, equipment, leasehold improvements, inventory, goodwill, interest in a franchise, telephone, etc.). The Agreement should set out the allocation of the purchase price for each of the assets. In the absence of such allocation, the lender must provide substantiating documentation setting out such allocation (e.g., the purchaser's opening financial statement, election filed with Canada Revenue Agency etc.). A value set out in an appraisal of the asset(s) will not be accepted as the allocation for the asset(s).

- Purchases, from the lender or its representative, an asset that is or was used to secure a conventional loan.
- Purchases, from a person who is not at arm's length, services to improve an asset and where the estimated cost of the services will represent all or substantially all of the estimated value of the improved assets. This includes services for labour supplied by a person who is not at arm's length from the borrower. [[Regs s.9](#); [Bulletin – July 1999](#)]

#### **5.4.2 Determining [Eligible Cost](#)**

Where an appraisal is required, the eligible cost will be the lesser of:

- the cost of purchasing or improving the asset, and;
- the appraised value of the asset or improved asset.

[[Regs ss.9\(4\)](#)]

If the appraisal indicates the value of the assets is within a range of values:

- the purchase cost of the asset will be considered the eligible cost, if the purchase cost is within or below the range value in the appraisal, and;
- the maximum value of the range will be considered the eligible cost, if the purchase cost exceeds the maximum value in the appraisal.

#### **5.4.3 Other Appraisal Requirements**

The appraisal must be:

- received by the lender before the loan is approved. If a loan is approved conditional on obtaining an appraisal, the approval date will be the date upon which a valid appraisal is provided. [[Regs ss.9\(1\) and \(2\)](#)]

- made not more than 180 days before the CSBF loan approval date. In the event the appraisal is made more than the 180 days, the CSBFP Directorate may accept an update to the appraisal from the same appraiser provided the update is made within 180 days from the date of loan approval, and [[Regs ss.9\(1\) and \(3\)](#)]
  - made by an appraiser who is a member of a professional association (there are no exceptions where the loan relates to real property or immovables) or [[Regs ss.9\(1\) and \(2\) and \(3\)](#)]
  - in the case of an equipment loan or a leasehold improvement loan, where there is no professional association with members qualified to make such an appraisal:
    - for an equipment loan, an appraisal can be made by a supplier of similar equipment, auctioneer, or expert in the field, who is at arm's length from the borrower, is acceptable;
    - for a leasehold improvements loan, an appraisal can be made by a general construction contractor, a construction estimator, an engineer, an architect, a contractor of that specific leasehold improvement (e.g., a plumber, bricklayer etc.), construction consultant and interior designer is acceptable.
- [[Regs ss.9\(2\); Bulletin – July 1999](#)]

NEW

The CSBFP Directorate does not consider the following to be appraisals:

- the book value of the assets, or
- the value assessed by a municipality or other level of government for tax purposes.

**NOTE:**

- **In all cases, the appraiser must be impartial and at arm's length from the borrower. Where the assets are being sold to the borrower by the lender, the appraiser must also be at arm's length from the lender. [[Regs ss.9\(3\)](#)]**
- **Appraisal costs are the responsibility of the borrower. They cannot be included in the CSBF loan or debited to the loan account.**

## 6 TERMS OF THE LOAN, RATE OF INTEREST AND OTHER FEES AND CHARGES

On or before the day of the first disbursement of the CSBF loan funds, the borrower and the lender must sign a document setting out the principal amount of the loan, the rate of interest, the repayment terms, the frequency of the payments and the day on which the first payment of principal and interest is due. [\[Regs ss. 10\(1\)\]](#)

Such a document can be in the form of a promissory note, a loan agreement, a bank contract or any other document that the lender registers to secure the repayment of the loan. Lenders may use their own loan-related documentation (e.g. application form, loan document, etc.).

### 6.1 Repayment Terms

- NEW • **Maximum term:** The maximum term of a CSBF loan is 10 years, with the expiry of the term being no more than 10 years from the date of the first scheduled payment of principal and interest, as specified in the initial loan document (i.e., the promissory note or equivalent document). The repayment of the loan can be amortized over a period longer than 10 years (for example, a mortgage on a real property with a term of 5 years and an amortization of 25 years). However, in such a case, the balance of the loan at the end of the 10 year from the date of the first scheduled payment must be converted to a conventional loan. [\[Regs ss.6\(b\)\]](#)
- NEW • **Instalments:** The repayment terms for a CSBF loan must be such that, at the minimum, there is one payment of principal and interest scheduled to be made each year, with the first [instalment](#) of principal and interest scheduled no later than one year from the date of the first disbursement of the loan funds. [\[Regs ss.10\(2\)\]](#)
- **Payments:** Payments may be adapted to a borrower's needs (i.e. blended, seasonal or escalating).

### 6.2 Rate of Interest

The rate of interest can be either floating or fixed. The Regulations provide for a maximum rate of interest; lenders may charge interest rates lower than the maximums below.

- NEW • The maximum **floating rate** is the lender's prime rate in effect on each day of the CSBF [loan term](#) plus 3% (including the 1.25% annual administration fee). [\[Regs ss.12\(a\)\]](#)
- NEW • The maximum **fixed rate** is the lender's posted single family residential mortgage rate plus 3% (including the 1.25% annual administration fee). Use the rate for a mortgage term equivalent to the CSBF loan term. If the CSBF term is longer than 5 years, and

there is no rate for that loan term, use the 5-year posted single family residential mortgage rate. If the CSBF loan is made for an irregular term (e.g., 30 months), lenders should follow their usual procedures to establish the residential interest rate for loans with irregular terms.

The fixed rate is set at either the day:

- on which the first disbursement of the funds is made for the CSBF loan;
- on which the CSBF loan document is signed;
- on which the loan is renewed or the loan term is amended.

NEW

[\[Regs ss.12\(b\)\]](#)

**NOTE: At any time during the repayment period of a CSBF loan, the lender and borrower may agree to convert the interest rate, from floating to fixed or vice versa, or to prepay the loan. Any charges related to such conversions must be similar to that in a conventional loan of the same amount. See [Section B, Items 4 and 5](#) of these Guidelines.**

### 6.3 Other Fees and Charges

The lender cannot, at any time, request from the borrower a fee, service charge, or charge of any kind other than:

- Interest
- The registration fee
- A charge for preparing and registering the security document: Such amount must be equal to or less than the amount typically charged for a similar conventional loan. The borrower should have the option of contracting directly for preparation and registration of the required security document. If this charge is expressed as a percentage of the CSBF loan, it cannot be combined in the loan's interest rate unless the calculation for such charge is shown clearly and separately in the loan document.
- Premiums for life and/or disability insurance: If life and/or disability insurance are required as a loan condition, the lender must offer the borrower the option of purchasing the lender's insurance policy or another provider's policy. If the borrower chooses the lender's policy and opts to finance the insurance, the premium can be expressed as fixed payments or as a percentage of the CSBF loan. If the insurance premium is expressed as a percentage of the CSBF loan, it cannot be combined in the loan's interest rate unless the calculation for such premium is shown clearly and separately in the loan document.
- A charge that is similar to that in a conventional loan of the same amount for the following:
  - the conversion of a fixed interest rate loan to a floating interest rate loan;
  - the conversion of a floating rate interest loan to fixed rate interest loan; and

NEW

- prepayment of all or part of a loan.

[[Act s.10](#); [Regs s.13](#); [Bulletin–June 1999](#); [Bulletin–June 2000](#)]

**NOTE: The cost of the prepaid insurance and charges for the taking of security cannot be financed by a CSBF loan or, in any way, added to the principal amount of the loan to increase the loan amount.**

## 7 SECURITY

Security for CSBF loans is divided into 3 groups:

- primary security,
- additional security, and
- [guarantees](#) and [suretyships](#)\* (personal and corporate)

Lenders must ensure that the security is made valid and enforceable as of the date of the first disbursement on the CSBF loan. [[Regs ss.14 \(1\)](#)]

\*The term “guarantee” is used in the context of the Common Law, while the term “suretyship” is used in the context of the *Civil Code of Quebec*.

### 7.1 Primary Security

This security is mandatory. It includes first ranking security and alternate security where applicable.

**First ranking:** When a CSBF loan is made to finance the purchase of real property or immovables or equipment, the security must consist of a valid and enforceable first charge on the assets financed. The security is to be registered under the appropriate registry system so that ranking is not compromised and realization procedures, if required, can be enforced against the secured assets. [[Regs ss.14\(1\)](#)]

A loan that finances real property or immovables must be secured with a first mortgage on the property. If such a loan is secured by any other document, the lender should ensure that all necessary steps are taken to create a registered security interest in the real property or immovables, such that the property can be realized upon in the same manner as if it had been secured by a mortgage.

In determining whether “valid and enforceable security” has been obtained the facts of each loan must be assessed against: (i) in the case of provinces other than the Province of Québec, the applicable provincial personal property security and real property security legislation, (ii) in the case of Québec, the *Civil Code of Québec* as it relates to hypothecation of personal and real property as security.

When making a loan, the lender must ensure that the requirements for a valid and enforceability have been met by considering the following factors, among others:

- the advancement of funds by the lender to the borrower;
- the registration of the security interest or charge over real or personal property in the appropriate provincial registry system;
- the signed security agreement by the borrower containing a description capable of identifying the collateral;
- the borrower having rights in the collateral, the determination of which will be based firstly, on accepted commercial practice, and secondly, on the unique facts in each claim.

Lenders are reminded that additional legislation (provincial, municipal or otherwise) may impose further obligations on a lender to ensure that valid and enforceable security has been obtained. [[Bulletin – January 2009](#)]

**Alternate security:** If a CSBF loan finances leasehold improvements or computer software, the lender can take either:

- a first ranking security on the assets financed, or;
- security on other business assets, even if these other assets are already subject to prior charges. These other business assets, therefore, become the primary security for the loan. In this case, the lender must treat such security in the same manner as any other primary security. [[Regs ss.14\(3\)](#)]

**NOTE: Alternate security must not be treated as additional security.**

**Equal ranking security:** If the purchase or improvement of an asset is financed by a CSBF loan and other sources of financing (other than the borrower's funds), all security taken on the assets financed must be equal in rank. [[Regs ss.14\(2\)](#)]

**30 days equal ranking:** The objective of the 30 days equal ranking provision is to consider as a whole any project submitted by the borrower. [[Regs ss.14\(4\)](#)]

The provision states that if, within 30 days (before or after) of the first disbursement of a CSBF loan, the lender makes an initial disbursement under a conventional term loan to finance assets that would have been CSBF-eligible, all security taken on CSBF-eligible assets for the term loan and the CSBF loan will become equal in ranking and in proportion to the total financing.

The 30-day equal ranking applies only to all assets that would be eligible for a CSBFA loan and that are held as security for one or more conventional term loans.

**Example:** A lender makes the first disbursement on a CSBF loan of \$100,000 for leasehold improvements on June 5. On July 3 of the same year the lender makes the initial disbursement to the same borrower on a term loan of \$300,000 for equipment, secured by the equipment, \$200,000 in securities held by the borrower. In realization, the proceeds from the security on the leasehold improvements and the equipment only taken for the two loans would be shared based on the outstanding loan balances. In this example, the sharing would be 25% for the CSBF loan and 75% for the term loan, assuming both loans were amortized over the same period.

Where a conventional loan is secured by a security in the borrower's personal property (commercial in nature and that would be eligible for a CSBF loan) without taking a personal guarantee, the lender shall take and retain an equal-ranking security in the same personal property to secure the loan granted under the CSBFA.

**Highest available rank:** If, at the time of the first disbursement of CSBF loan funds, prior security exists on the assets financed, the lender's security shall be a charge of the highest available rank. As a general rule, this situation will arise when the loan is made for improvements to an asset on which there is already a prior charge. [[Regs ss.14\(5\)](#)]

**After-acquired clause:** Where the prior charge flows from an “after-acquired clause” in the security (e.g. a [general security agreement](#) or universal movable hypothec\*) held by the lender or another creditor, the lender is required to obtain a postponement of the security for the assets being financed by the loan. This will result in the CSBF loan being secured by a first charge on the new asset. [[Regs ss.14\(5\)](#); [Bulletin – April 2000](#)]

\* The term "General Security Agreement" or “GSA” is used in the context of the Common Law, while the term "universal movable hypothec" is used in the context of the Civil Code of Quebec.

**Borrower and landlord not at arm’s length:** The lender shall take security on the real property or immovable where:

- leasehold improvements are being financed; and
- the borrower and the landlord are not at arm’s length (as defined in the *Income Tax Act*, see [Section D](#)). [[Regs ss.14\(6\)](#)]

**NOTE: This requirement is independent of, and not affected by, the provisions relating to unsecured [personal guarantees](#) or [suretyships](#).**

In some jurisdictions the only way the lender can secure a mortgage from the landlord is to take a guarantee or suretyship for 100% of the leasehold improvement loan and secure the guarantee or suretyship with a collateral mortgage on the property for the same amount. Where the landlord is an individual and this is the only guarantee or suretyship held for the

loan, if the guarantee or suretyship does not clearly indicate that it is taken only for the benefit of the collateral mortgage, a lender can:

- realize on the property held under the collateral mortgage, and;
- if the proceeds from the property liquidation were insufficient to repay the indebtedness, realize on the personal assets of the guarantor or [surety](#) (the landlord) for an amount not exceeding 25% of the original loan amount.

Where a borrower conducts its business on personal premises and requests a loan to finance improvements to the real property or immovables, the lender must take the real property or immovables as security. Where the premises occupied by the small business can be separated from the borrower's personal residence, the lender should be receptive to a request by the borrower to subdivide the property

## 7.2 Additional Security

The lender may further secure the CSBF loan with additional security on any other assets of the business. [[Regs s.17](#)]

## 7.3 Guarantees or Suretyships

A lender may wish to further secure a CSBF loan by way of a guarantee or suretyship, personal or corporate. The guarantee or suretyship may provide for interest that would ordinarily be included in any judgment that the lender may obtain. See [Section C, Item 2.2](#) of these Guidelines for realization on guarantees or suretyships.

**[Personal guarantee or suretyship:](#)** A lender can take **unsecured** personal guarantees or suretyships up to 25% of the original amount of CSBF loan disbursed.

In addition to the 25% principal amount, the guarantee document may provide for payment of interest on any judgment, taxed costs, legal fees, disbursements, and other costs relating to legal proceedings against the guarantor or surety. A CSBF loan is ineligible if the lender has taken a personal guarantee or suretyship that is secured by collateral assets.

[[Regs ss.19\(1\)](#)]

**Example:** A leasehold improvement loan is authorized for \$200,000, but only \$175,000 is disbursed. The loan defaults with an outstanding principal balance of \$95,000. The personal guarantee, if taken, may be enforced for \$43,750 (\$175,000 x 25%), plus any interest, taxed costs, etc., even if the guarantee or suretyship was originally taken for \$50,000 (\$200,000 x 25%).

When personal guarantees or suretyships are taken from more than one person, the liability can be joint and several or individual, but the aggregate guarantee cannot exceed 25% of the amount of the loan disbursed. If separate guarantees are taken from several guarantors, and

the lender intends that the guarantees be joint and several, either the guarantee documents or some other loan documentation should indicate this intention. [\[Regs s.19\]](#)

As a rule, a borrower operating as a sole proprietorship or partnership is liable for 100% of the repayment of the CSBF loan disbursed. The lender is not required to prepare any documents limiting the sole proprietor or partner's liability to 25%.

If, at the time the first disbursement of the loan funds is made for the CSBF loan, a general unsecured guarantee or suretyship already exists or is signed and the loan is to be included under this guarantee or suretyship, the lender and the guarantor or surety must sign a document that limits the guarantee or suretyship, applicable to the CSBF loan, to 25% of the amount of the loan disbursed.

The restriction limiting personal guarantees or suretyships to 25% of the amount of the loan disbursed does not preclude a lender from also obtaining an assignment or postponement of shareholder's loans, because such an assignment or postponement would not constitute a demand for payment upon the guarantor or surety and has no realizable value in the event the borrower becomes insolvent.

**Corporate Guarantee or Suretyships:** The lender may take **secured or unsecured** corporate guarantees or suretyships. There is no limit on the amount of the corporate guarantee or suretyship. [\[Regs s.20\]](#)

## 8 DUE DILIGENCE

Lenders are expected to apply the same care and procedures in making a CSBF loan as they would for their conventional loans of similar amounts. Such procedures must include, but are not limited to:

- conducting a credit check or obtaining credit references on the borrower and/or anyone legally or financially responsible for the borrower (e.g., shareholder(s), guarantor(s) etc.), and;
- completing an assessment of the repayment ability of the borrower.

[\[Regs s.8\]](#)

Lenders must also ensure that the security is made valid and enforceable when the loan is made, that is, on the date of the first loan disbursement. [\[Regs ss. 14\(1\)\]](#)

In addition, due diligence must continue throughout the administration and collection of the CSBF loan. Special care should be used when releasing or substituting assets taken as security, guarantees or suretyships. It is the responsibility of lenders to minimise any potential losses.

NEW

**Example:** Where a lender learns that an asset has been disposed of and the disposal proceeds have not been applied in reduction of the CSBF loan, the lender should take such action as is necessary to protect the interest of the lender and the government including a demand to apply against the loan an amount equal to the sale proceeds or require additional security to be pledged in support of the loan.

## 9 CHECKLIST

Lenders may find the following checklist useful in assessing CSBF loan eligibility:

- Business is eligible (see [Item 1](#));
- Borrower is eligible (see [Item 3](#));
- Gross annual revenue of business is not or will not be greater than \$5 million (see [Item 1](#));
- Aggregate of the outstanding loan balances to the borrower and related borrowers is not greater than \$500,000 of which the maximum amount of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements (including outstanding loan balances guaranteed under the *Small Business Loans Act*) (see [Item 3](#));
- Assets financed fall within the prescribed classes (see [Item 4](#));
- Percentage of assets financed does not exceed 90% of the eligible cost of the assets (see [Item 5.1](#));
- Date of purchase or commitment to purchase the assets is within 180 days before the day the loan is approved (see [Item 5.1](#));
- Expenditures or commitments were not previously financed by the borrower on a term loan (see [Item 5.2](#));
- Appraisals and update to appraisal, if applicable, have been made and received, where applicable (see [Item 5.3](#));
- Evidence is on file to support the cost of assets financed (i.e. Invoices, contracts, purchase and sale agreements, etc.) (see [Item 5.1.1](#));
- Evidence is on file to support that the assets financed by the loan were paid by the borrower (i.e. Cancelled cheques, credit card receipts, vendor's receipted invoice, or vendor's declaration) (see [Item 5.1.1](#));
- The 50% rule has been observed, where applicable (see [Item 5.4](#));
- The three year rule has been observed, where applicable (see [Item 5.4](#));
- Term of loan is not greater than 10 years (see [Item 6.1](#));

- First scheduled payment of principal and interest is within one year of the date the first disbursement of the loan funds is made (see [Item 6.1](#));
- Rate of interest does not exceed 3% above the prime rate or the posted single family residential mortgage rate (see [Item 6.2](#));
- No fees, service charge, or charge of any kind is payable to the lender by the borrower, other than the registration fee or other prescribed fees or charges (see [Item 6.3](#));
- Insurance is held over the assets given as security;
- Required security has been/will be taken (see [Item 7.2](#));
- Unsecured personal guarantees or suretyships, in aggregate, do not exceed 25% of the amount of the loan disbursed. This limit does not apply to [corporate guarantees](#) or suretyships (see [Item 7.4](#)).

## SECTION B: Registration, Administration and Reporting

This section provides lenders with procedures for CSBF loan registration, administration and reporting.

### 1 CSBF LOAN REGISTRATION

In order for a loan to be registered under the [CSBFA](#):

- the first disbursement on the loan must have been made;
- the registration request must be postmarked no later than 3 months after the date of the first disbursement of loan funds [[Regs ss.2\(1\); Bulletin – February 2000](#)];
- the Loan Registration form (see [Section E](#)) must be signed by an authorized representative of the lender and by the borrower [[Regs ss.3\(1\)](#)];
- a cheque for the registration fee must accompany the form.

NEW

**NOTE: The names of the guarantor(s) and/or the names of the shareholder(s) for a corporate borrower must now be shown on the loan registration form.**

[\[Regs par. 3\(1\)\(a.1\)\]](#)

**NOTE: A registration fee is only guaranteed under the CSBFA if it is registered as part of the loan.**

#### 1.1 Late Registration

If the failure to register a loan within 3 months from the date of first loan disbursement is inadvertent, the lender needs to explain the error and request a deadline extension. In such a situation, the 3-month registration period will be extended to 6 months.

[\[Regs ss.2\(2\); Bulletin – February 2000\]](#)

**NOTE: Lenders should register CSBF loans as soon as the first disbursement is made. Lenders who delay registration until after the final disbursement will not receive an extension for this reason, since the late registration will not be considered inadvertent.**

[\[Bulletin – February 2000\]](#)

#### 1.2 Modification of Loan Classes and Amounts

Lenders should notify the CSBFP Directorate of any changes in the loan classes and/or amounts from the amounts originally submitted on the Loan Registration form.

In the event of a cost overrun (e.g. equipment proves more costly than anticipated or an essential component of the project has been overlooked), the loan amount may be increased without completing a new registration form by submitting a written request within one year after the date of the first disbursement of funds for the initial loan and by attesting that the following conditions are met:

- the lender details the new loan amount(s) by class of loan;
- the 2% registration fee related to the increase accompanies the request;
- the increase relates to the same project;
- the legal status of the borrower remains the same as on the initial loan registration;
- the loan is in good standing and all other terms and conditions of the Act and Regulations are met (e.g., maximum loan amount, security requirements; requirement to repay the first instalment of the loan principal and interest within one year; repayment period is not more than 10 years);
- the lender amends registered security to reflect the increased amount; and
- there are no modifications to the “Borrower’s Acknowledgment and Consent” section of the original registration form.

**NOTE: For loans made before April 1, 2009, the increase of a loan amount due to cost overrun, if requested by the lender, will be limited to the maximum loan amount of \$250,000. A lender may wish to increase such loans, due to cost overruns, to the new maximum loan amount of \$500,000 of which the maximum amount of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements. In such a situation, the lender will have to make a new loan and submit a new registration form for the increased amount.**

## **2 REGISTRATION AND ADMINISTRATION FEE: PAYMENT AND REFUND**

### **2.1 Registration Fee**

- the registration fee is 2% of the total amount of the CSBF loan for real property or immovables, leasehold improvements and equipment;
- the lender’s cheque for the registration fee, payable to the Receiver General for Canada, must accompany the Loan Registration form. Cheques from borrowers are not accepted;
- a lender can finance the registration fee (See [Section A, Item 4.4](#)). [[Regs ss.4\(1\)](#)]

### **2.2 Administration Fee**

- the annual administration fee of 1.25% is calculated on the end-of-month loan balances;
- administration fees must be paid on all loans including those in default, in realization process, and those for which an [interim claim](#) has been paid;
- this fee can be charged to the borrower only through the interest rate (See [Section A, Item 6.2](#));
- this fee is payable within 2 months after the end of each quarter of the government fiscal year (i.e., April 1 to March 31 of the following year). [[Act s.12](#); [Regs ss.4\(2\)](#); [Regs ss.4\(6\)](#); [Regs ss.4\(9\)](#)]

See [Item 12.1](#) of this Section for reporting on and payment of the administration fee. See [Section C, Item 4](#) for remedies for inadvertent non-compliance of the requirement to pay administration fees.

### **2.3 Refund of Registration fee and/or Administration Fee**

A written request for refund of registration and administration fees must be submitted by the lender (not the borrower) within one year of the date of the first disbursement of loan funds, as follows:

- If the total funds disbursed are less than the registered amount of the loan:
  - the lender will provide details of the revised amount of the loan, by loan class;
  - refund of the 2% fee will apply to the undisbursed portion of the registered loan, and;
  - upon refund, the undisbursed portion of the CSBF loan will be deducted from the program's loan records;

[\[Regs ss.4\(10\)\(a\); Bulletin – December 1999\]](#)
  
- If the lender determines the loan is ineligible:
  - a full refund of registration and administration fees may be requested;
  - a full explanation why the loan is ineligible and proof that the administration fee was paid, are required, and;
  - upon refund, the entire amount of the loan will be deducted from the program's loan records.

[\[Regs ss.4\(10\)\(b\); Bulletin – December 1999\]](#)

## **3 RENEWAL AND AMENDMENT OF TERMS:**

NEW

The lender and the borrower may agree as follows without the approval of the CSBFP Directorate:

- at the end of a loan term, they can renew the term of the loan for an additional term or terms
- at any time, they may agree to amend the repayment terms of the CSBF loan.

Any such renewal or amendment must comply with the following:

- the new repayment term is not longer than 10 years from the date of the original first scheduled payment of principal and interest;
- the interest rate, at renewal or amendment, must be calculated in accordance with [Section A, Item 6.2](#) of these Guidelines;
- the terms of the loan must provide a minimum of one principal and interest payment each year, with the first payment scheduled to be made within one year of the date the amendment or renewal revision is made;
- the terms of the renewal or amendment are set out in a document signed by the lender and the borrower.

Unless otherwise stated in the loan document, a fixed rate CSBF loan with a term less than the principal amortization period will be considered automatically renewed at the interest rate for the previous term until a renewal is properly completed.

[\[Bulletin – November 1999\]](#):

The loan amortization period may be increased beyond 10 years if it becomes necessary to reduce the loan payments. A balloon payment must then be scheduled to ensure full repayment of the loan before the end of the tenth year.

## 4 CONVERSION OF FIXED AND FLOATING INTEREST RATES

Lenders may require the borrower to pay, in the following situations, a charge that is similar to that in a conventional loan of the same amount:

NEW

- the conversion of a fixed interest rate loan to a floating interest rate loan;
- the conversion of a floating rate interest loan to fixed rate interest loan.

## 5 PREPAYMENT

Lenders may require the borrower to pay a charge that is similar to that in a conventional loan of the same amount where a borrower wishes to prepay all or part of a loan.

NEW

## 6 SUBSTITUTION AND RELEASE OF SECURITY

### 6.1 Substitution

**Primary security:** Assets taken as primary security can be substituted by other business assets provided that:

- the security is of the same nature (e.g. a mortgage for a mortgage);
- the other assets are of equal or greater value at the time of replacement. Where a secured asset is substituted, lenders should follow their normal due diligence in determining the value of the replaced asset. For example, in a situation where an asset that was destroyed by fire is substituted, the value set out in the purchase invoice would constitute confirmation of the value of the asset at time of replacement. However, if the purchase is not an arm's length, the general principle outline in section 9 of the Regulations would apply and an appraisal would then be required, and;
- the ranking for the security on the other assets remains the same or higher.

NEW

[\[Regs s.15\]](#)

**Additional security and Guarantees or Suretyships:** The lender can substitute additional assets or guarantees or suretyships for any other assets or guarantees or suretyships, provided the value of the replacement security, guarantees or suretyships is equal to or

greater than the value of the original one. If there is a substitution of guarantees, the CSBFP Directorate should be informed of the names of the new guarantors. [[Regs s.22](#)]

For the purposes of guarantees or suretyships, the CSBFP Directorate considers that the value of a guarantee or suretyship is the amount for which the guarantor or surety is liable under the terms of the guarantee or suretyship. The replacement guarantee or suretyship can be made irrespective of:

- the number of guarantors or sureties that remain liable subsequent to the substitution;
- the aggregate net worth of the replacing guarantor(s) or surety(s) compared to the aggregate net worth of the original guarantor(s) or surety(s), and;
- the loan principal amount outstanding.

When substituting any guarantee or suretyship, the lender should assess the replacement guarantors' or sureties' ability to pay the guarantee or suretyship amount. The ability to realize on the guarantee or suretyship should not be compromised.

**EXAMPLE:** For a loan of \$250,000, aggregate guarantees or suretyships of \$30,000, are taken from four persons with a total net worth of \$700,000. Two of the original guarantors or sureties wish to be released. The loan balance has been reduced to \$175,000. The net worth of the remaining guarantors or sureties is \$100,000 and the lender has assessed they are able to pay the guarantee or suretyship in the event of default. The two original guarantors or sureties can be released. However, the aggregate dollar amount of the original guarantee or suretyship (\$30,000) cannot be reduced. [[Bulletin – December 2000](#)]

## 6.2 Release Without Substitution or Replacement

The lender may, under the following conditions, release any secured assets without substitution or replacement:

### 6.2.1 Primary Security:

- the loan is in good standing and the outstanding loan amount has been reduced by the amount of the original cost of the assets being released, or; [[Regs ss.16\(1\)](#)]
- when an asset is being disposed of by the borrower to a party in an arm's length transaction and all the sale proceeds are applied to the loan or; [[Regs ss.16\(2\)\(a\)](#)]
- when an asset is being disposed of by the borrower to a party in a non arm's length transaction, the asset is appraised and the amount to be applied to the loan will be the greater of:
  - sale price, or
  - appraised value[\[Regs ss.16\(2\)\(b\)\]](#).

**NOTE: For business assets taken as security under the provisions of equal ranking or the 30 days equal ranking, the lender can release security under the same conditions as**

**above, except that the CSBF loan principal balance must be reduced on a proportionate basis with that of the conventional loan.**

### **6.2.2 Additional Security:**

Assets included in additional security may be released provided the loan is in good standing. [[Regs s.18](#)]

### **6.2.3 Guarantees and Suretyships:**

Guarantors and sureties and guarantees or suretyships may be released if:

- the loan is in good standing;
- the principal amount of the loan has been reduced by at least 50%;

[[Regs s.21](#)]

Lenders should take note of the following:

- if one guarantor or surety is released, in the case of a joint and several guarantee or suretyship, the remaining guarantors or sureties become responsible for the face value of the guarantee or suretyship;
- in the case of individual guarantees or suretyships that are not joint and several, lenders should ensure that if one guarantor or surety is released, there is no reduction in the aggregate value of the guarantee or suretyship. Arrangements should be made for a replacement to be found or for the remaining guarantors or sureties to fulfill the initial obligation.

**NOTE: The CSBFP Directorate does not need to be informed at the time of release, but the lender must exercise due diligence and be ready to provide a full explanation, supported by the appropriate documentation, should a claim for loss be submitted for the loan.**

## **6.3 Postponement**

**Newly Acquired Asset:** Where a CSBF loan is secured by an instrument containing an "after-acquired" clause, and the borrower subsequently requests the financing of an additional asset under a conventional loan, the lender may grant a postponement of the CSBF security position on the asset being financed under the conventional loan.

**Assets not financed by the CSBF loan:** Where a postponement is sought for assets not financed by a CSBF loan (e.g., receivables and inventory) but held as additional security or secured under an "after-acquired" clause, the lender may grant a postponement of the CSBF security position if the borrower requires additional financing (e.g., a line of credit) that requires the lender to take a security interest in these other assets.

**NOTE: No postponement is allowable where these other assets are held as alternate security for loans made to finance leasehold improvements and software or where the assets are held as security under the 30-day equal ranking provision.**

[\[Bulletin – April 2000\]](#)

## **7 CHANGE OF NAME OF THE BORROWER**

When a borrower changes the name under which it operates but retains the same legal status (i.e. sole proprietorship, partnership of individuals or corporation), the lender should:

- obtain from the borrower a formal notice and a copy of the pertinent legal documents such as registration, articles of amendment or incorporation, letters patent, etc.;
- notify the CSBFP Directorate of the borrower's change of name;
- amend the name in the annual report on loans outstanding at year end;
- submit the documents relating to the name change with any claim for loss.

NEW

**NOTE: If there is a change of shareholders of a corporate borrower, lenders should inform the CSBFP Directorate of the names of the new shareholder(s).**

**NOTE: Where the borrower does change the legal status by which the small business is carried on (i.e., a sole proprietor that incorporates in order to carry on the same business), this situation is treated as a transfer of loans from borrower to borrower and the following Item 8 should be followed.**

## **8 TRANSFER OF LOANS BETWEEN BORROWERS**

The provision for transfers between borrowers is intended to facilitate the sale of a small business, enabling the purchaser to assume responsibility for an outstanding CSBF loan and the original borrower to be released of its obligation. [\[Bulletin – March 2000\]](#)

In each of the following situations:

- when all assets secured by the CSBF loan are sold by a borrower;
- when there is a change of partners in a partnership;
- when an outgoing partner is not replaced;

The lender may release the existing borrower or outgoing partner if:

- the lender, exercising due diligence, approves the purchaser, new partner or remaining partners as borrower(s);
- the total of outstanding CSBF and SBLA loans by the new borrower and related borrowers, is not greater than \$500,000 of which the maximum of \$350,000 is used to finance the purchase or improvement of equipment and the purchase of leasehold improvements;

- the new or remaining security is of the same rank in the assets secured by the loan, and;
- any existing guarantee or suretyship is replaced with one of equal or greater value.

[\[Regs. S.33\]](#)

**NOTE: When a loan is transferred:**

- **to a sole proprietorship or to a partnership, the lender must obtain confirmation from the new individuals that they accept personal responsibility for the initial amount of the loan made. The lender may provide the sole proprietor or partner with confirmation that the lender will only realize on their personal assets up to 25% of the original amount of the loan. This should not be in the form of a guarantee and should not be combined with any joint and several guarantees from third parties.**
- **to a corporation from a sole proprietorship or a partnership with the release of the initial borrower, the lender should replace the sole proprietor's or partners' personal liability with a personal guarantee or suretyship from the shareholders of the corporation for not more than 25% of the amount of the loan originally disbursed. It is necessary to inform the CSBFP Directorate of the names of the new shareholder(s) and/or the new guarantors.**

A lender is not obliged to release an original borrower. In exercising due diligence, it may determine that releasing an original borrower would affect its ability to collect the CSBF loan. In such a situation, the purchaser can acquire the assets of the original borrower and assume payment of the loan without the original borrower being released. It may also consider obtaining corporate and/or personal guarantees or suretyships from the purchaser and/or its shareholder(s), bearing in mind the 25% limit on personal guarantees or suretyships. The aim for a lender is to ensure that its security position is not jeopardized.

NEW

Where a loan is being transferred between borrowers, the lender must approve the purchaser of the assets as a borrower. Such a borrower must carry on a small business (ss. CSBF Regulations) and, thus, the business must meet all of the requirements under the definition of small business in s. 2 of the CSBFA: the business must be carried on in Canada for profit, its annual gross revenues must not exceed \$5 million and it cannot be in farming or be a charitable or religious organization. [\[Bulletin - October 2006\]](#)

The lender needs to inform the CSBFP Directorate, by letter or e-mail, of such transactions at the time they occur. In the event of a claim for loss, it must provide explanations and documentation to show that program requirements have been met. [\[Bulletin – March 2000\]](#)

## 9 TRANSFER OF LOANS BETWEEN LENDERS

### 9.1 Transfer of Individual Loans

For the purpose of calculating the Minister's liability (See [Section B, Item 15](#)), when a loan is transferred between lenders, the CSBFP Directorate deducts the amount of the original loan from the total loans made and registered amount of the transferor (original lender), and adds it to the account of the transferee (acquiring lender). It is possible, in cases where the transferor has used all or nearly all of the Minister's liability, that the transfer would cause the Minister's liability of the transferor to become negative. In this case, the CSBFP Directorate will not accept the transfer. [[Regs s.29](#); [Bulletin – October 1999](#)]

At the request of the borrower, a CSBF loan can be transferred from one lender to another provided that:

- the transferee is a lender under the CSBFA;
- the Minister's liability resulting from the transfer, calculated in favour of the transferor (original lender), does not exceed the amount already paid by the Minister, and;
- the transferor's total number of transferred CSBF loans, during each 5-year period starting April 1, 1999, does not exceed the greater of 20 loans and 1% of the number of loans made and registered by it during that period. For any particular lender, the limit applies only to the transfers out i.e., transfers it makes to other lenders.

[[Regs ss.29\(1\)](#)]

**EXAMPLE:** A lender with 1 000 CSBF loans registered in one of the program's 5-year periods could transfer up to 20 of those loans. A lender with 3 000 loans could transfer up to 30.

Where the transferee completes new loan documentation for a transferred CSBF loan, the new loan can only finance the principal outstanding amount of the transferred loan. The new loan:

- must be made under the same class(es) of loan;
- must be for the same term as the original loan;
- must maintain the rank and nature of security as existed at the time of transfer;
- must maintain any personal or corporate guarantee or suretyship for the same amount;
- will be governed by the legislation in effect as at the date of the first disbursement of the funds for the original loan.

[[Regs s.30](#)]

**Requesting a Transfer:** The transferee must request a transfer by completing the form, "Request for the Transfer of a Loan between Lenders" (see [Section D, Item 4](#)). The request form must be signed by both lenders and the borrower. If the CSBFP Directorate determines that the requirements under ss. 29(1) of the CSBF Regulations have been met, it

will notify both lenders and the Minister's liability will continue in favour of the acquiring lender. If the requirements have not been met, both lenders will be notified.

**Effective Date of Transfer:** A transfer is effective on the date the CSBFP Directorate signs the request form. The Minister's liability for each lender will be adjusted on that date.

**Transferee's Responsibilities:** The transferee is responsible for:

- obtaining the relevant loan documentation from the transferor. In the event a future claim for loss is made, the transferee must provide all documentation to substantiate the loan. If a transferor refuses to provide documentation that is private and/or confidential (eg., internal loan authorizations), a written confirmation from the transferor as to the documented facts (e.g. the loan approval date), will be acceptable.
- satisfying itself that the loan complies with all of the requirements of the Act and Regulations. In the event of a claim for loss, failure on the part of the transferor to have complied with all program conditions, or its failure to have corrected any defects within the stipulated time frame, will result in rejection or reduction of the claim.
- paying the administration fee accrued from the beginning of the month in which the transfer is made between the lenders.

[\[Bulletin – October 1999\]](#)

**Note: To avoid transferring a CSBFA loan under which the Minister's liability would not continue, it is strongly recommended that the transferee (acquiring lender) notify the Minister prior to registering the transfer by submitting to the CSBFP Directorate a Request for Transfer form completed and signed by the borrower and both lenders (transferee and transferor). The lenders will then be informed whether the proposed transfer meets the terms and conditions of the Regulations.**

## 9.2 Bulk Transfer of Loans

This occurs when one lender assumes the administration and responsibility of loans when a branch of one lender ceases its lending operations and sells its CSBF loan portfolio to another lender. The CSBFP Directorate must be advised in writing of the details prior to a proposed bulk transfer, so the impact on the Minister's Liability to both lenders may be ascertained.

## 10 AMALGAMATION OF LENDERS

Lenders must advise the CSBFP Directorate in writing before the amalgamation date. Upon amalgamation, all loans made and claims paid in respect of the amalgamating lenders cease to exist and are deemed to have been made by the new lender, and:

- if the amount already paid to the amalgamating lenders is greater than the Minister's liability to the new lender, the liability of the Minister will be deemed to be equal to the amount of claims for loss already paid;
- The Minister's liability will continue to the new lender at the percentage (90%/50%/10% for loans made before April 1, 2009 or 90%/50%/12% for loans made on or after April 1, 2009) corresponding to the total loans considered to be made by the new lender (See [Item 15](#) of this Section).

[[Regs s.31](#); [Bulletin – April 2007](#)]

**EXAMPLE:** Loans made by Lender A total \$350,000; loans made by Lender B total \$1,650,000. Upon amalgamation, the total of the loans considered to be made will be \$2,000,000 and the Minister's liability for the new lender will be calculated on this amount.

If the Minister is notified after the date the amalgamation has taken place (according to the certificate of amalgamation) and claims have been paid after amalgamation but during the period before notification, any claims paid in excess of the Minister's liability to the amalgamating lenders, as of the date of amalgamation, must be reimbursed to the Minister.

## 11 DISCONTINUANCE OF LENDING BUSINESS

A lender who discontinues its commercial lending business and sells all its loan including outstanding CSBF loans to another lender must so notify the CSBFP Directorate in writing. The acquired loans will not be included in the calculation of the Minister's liability for the acquiring lender. In effect, each lender's portfolio will continue to be administered separately. [[Regs s.32](#)]

This requirement also applies when one lender acquires another lender.

## 12 REPORTING

Lenders must file two reports: an administration fee report, and an outstanding loan amounts report.

### 12.1 Administration Fee Payment and Report

For loans made under the CSBFA, lenders must pay the administration fee as follows:

- the fee is payable quarterly within 2 months after the end of each government fiscal year quarter (April 1 to March 31) [[Regs ss.4\(6\)](#)];
- quarterly statements must be submitted with the fee, substantiating the basis on which it was calculated. [[Regs ss.4\(7\)](#)].

NEW

If a lender is unable to provide the quarterly reconciliation statement, the lender may pay the fee quarterly based on estimates of the end-of-month balances. No quarterly reconciliation is therefore required for the first three quarters, but a reconciliation statement at year end (i.e., with the payment for the last quarter together and payment of any deficient administration fee) is to be provided by the lender by June 1 (2 months after the year end). [[Regs ss.4\(8\) and \(9\)](#)]

Lenders who report 50 or more loans, must submit an External Auditor's Report confirming the accuracy of the fees.

**SBLA Administration Fees:** For loans made under the Small Business Loans Act, the lender can continue remitting the administration fee at the end of the year, or opt for the quarterly payment if it is more convenient.

## 12.2 Outstanding Loan Amounts Report

On or before June 1 of each year, lenders must provide the CSBFP Directorate with a detailed report on all loans outstanding as at March 31 of that same year. The report must include the following information on each loan:

- the registration number;
- the borrower's name;
- the principal outstanding and not yet due and payable as at March 31, and;
- the outstanding principal that was due and payable as at March 31 for all loans in default, including those for which a claim for loss has been submitted but not paid. In these cases, lenders must report the date of default. [[Regs ss.34\(1\)](#)]

**NOTE: Lenders should insure that all outstanding loans are reported. If a previously reported loan no longer appears on the report, or if a balance of \$0 is shown in the report, the CSBFP Directorate will consider that the loan has been repaid. If a claim is subsequently submitted for the missing or zero balance loans, it cannot be paid unless the lender explains why the loan was omitted from the report and demonstrates that the 1.25% administration fee has been paid. A claim will only be paid if the lender pays any delinquent fee within 90 days of receiving a notice requesting payment.**

For remedies for inadvertent non-compliance of reporting a loan, see [Section C, Item 4](#).

For annual reporting on loans made under the *Small Business Loans Act*, lenders are required to report to the CSBFP Directorate by May 31 of every year the total loans outstanding as at March 31. Alternatively, lenders may follow the reporting requirements outlined in this Item.

## 13 AUDIT OR EXAMINATION

The CSBFA permits an audit or examination of the lender's documents, records and books of account relating to any CSBF loan. The CSBFP Directorate must provide a 21-day written notice prior to any such audit or examination. [[Act. s.15](#)]

Lenders are required to provide all reasonable assistance as well as the documents, records and books of account and to cooperate fully in the audit or examination. The Minister may refuse liability for payment of any loss sustained by an uncooperative lender.

Lenders will receive an audit or examination report within 21 days of the report's completion.

## 14 MINISTER'S LIABILITY

The limitation of the liability of the Minister to each lender for losses on CSBF loans provides a cap on the exposure of the Government of Canada under the CSBF program. This liability is calculated on the total of loans made and registered for each loan [lending period](#), by lender, as follows:

- 90% of the first \$250,000 in loans, plus;
- 50% of the next \$250,000, plus
- 10% of the total in excess of \$500,000 for loans made before April 1, 2009; or
- 12% of the total in excess of \$500,000 for loans made on or after April 1, 2009.

[[Act ss.6\(1\) and \(2\)](#)]

NEW

[Item 2, Section D](#) illustrates the Minister's liability calculation. This calculation is based upon the dollar amount of loans made and registered by a lender for each specific five-year period and is referred to as the Minister's liability. The Minister's liability in favour of a lender represents the "funds" from which the Minister reimburses 85% of the lender's eligible loss on each loan for which a claim is paid. Payments on claims, submitted by lenders, are deducted from the calculated total for the 5-year period in which the loan, that is the subject of the claim, was disbursed.

In a specified 5-year period, if the dollar amount of the claims paid to the lender reaches the amount of the Minister's liability for that lender, the Minister is unable to reimburse the lender for its losses on any further claims submitted for loans made within the period.

Industry Canada encourages all lenders to continue to submit administration fees after the Minister's maximum liability is reached. By continuing to pay the administration fee, a lender maintains certain program benefits. For any 5-year period, the Minister's liability to an individual lender can be increased by the registration of additional CSBF loans made by that lender, loan transfers from with another lender that has had a lower loss experience for

that period, amalgamations of lenders and acquisitions of another participating lending institution. Such adjustments to the Minister's maximum liability make it possible for the Minister to pay further losses sustained by lenders in that period or to pay claims previously reduced/rejected for "insufficient Minister's liability." Non-payment of the administration fee would render any outstanding loans in that 5-year period ineligible for future claims.

## **15 OFFENCES AND PUNISHMENT**

Offences under the CSBFA may arise as a result of:

- anyone making a false statement, a misrepresentation or furnishing false or misleading information;
- a borrower fraudulently disposing of any assets taken as security for the CSBF loan;
- a borrower fraudulently using the proceeds for the CSBF loan for a purpose other than acquiring the assets for which the loan was approved.

[\[Act ss.16\(1\)\]](#)

Such offences and punishment can be either:

- indictable (fine up to \$500,000 or up to 5 years in prison, or both); or
- summary conviction (fine up to \$50,000 or up to 6 months in prison, or both).

Any proceedings related to a summary conviction offence must be commenced within three years after the subject matter of the proceedings arose.

[\[Act ss.16\(2\) and \(3\)\]](#)

## SECTION C: Realization and Claim Submission

This section deals with CSBF loan collection and claim submission. Lenders may submit an interim claim prior to fully realizing on personal liabilities of borrowers or guarantors or sureties. Lenders may find the decision table below useful.

- |   |              |  |
|---|--------------|--|
| 1. Is the loan in default? ( <a href="#">Section C, Item 1</a> )  | <b>NO ►</b>  | Continue to administer loan.   |
| <b>YES ▼</b>  |              |  |
| 2. Can the default be remedied? ( <a href="#">Section C, Item 1</a> )   | <b>YES ►</b> | Work with borrower to remedy.  |
| <b>NO ▼</b>   |              |  |
| 3. May issue Notice of Default and Demand for Payment by specific date.   |              |  |
| 4. Does borrower remedy default within period specified?  | <b>YES ►</b> | Continue to administer loan.   |
| <b>NO ▼</b>   |              |  |
| <b>36-month period for submitting a claim for loss or request for extension begins</b>                              |              |  |
| 5. Realize on assets using normal procedures. ▼   |              |  |
| 6. Does complete realization on assets recover principal, interest and costs? ( <a href="#">Section C, Item 2</a> ) | <b>YES ►</b> | No further action required. ► <b>END</b>                                 |
| <b>NO ▼</b>   |              |  |
| 7. Is loan secured by guarantees?   | <b>NO ►</b>  | Submit final claim ( <a href="#">Section C, Item 5</a> )                 |
| <b>YES ▼</b>  |              |  |
| 8. Submit interim claim ( <a href="#">Section C, Item 6</a> ) and realize on guarantees.                            |              |  |
| 9. Is realization on guarantees complete?   |              |  |
| <b>YES ▼</b>  |              | <b>OR ▼</b>  |
| 10. Submit final claim ( <a href="#">Section C, Item 5</a> ) ▼  | <b>NO ►</b>  | Submit request for extension as required                                 |
| <b>36-month period for submitting a claim for loss or request for extension expires</b>                             |              |  |
| 11. Is additional information requested?  | <b>NO ►</b>  | No further action required.  |
| <b>YES ▼</b>  |              |  |
| 12. Comply with requests. ▼   |              |  |
| 13. Is claim eligible as submitted? ( <a href="#">Section C, Item 7</a> )   | <b>NO ►</b>  | Claim is reduced and paid ▼  |
| <b>YES ▼</b>  |              | <b>OR ▼</b>  |
| Claim is paid as submitted. ▼   |              | Claim is rejected. ▼   |
| <b>NO FURTHER ACTION REQUIRED</b>   |              | <b>APPEAL PROCESS AVAILABLE</b><br>( <a href="#">Section C, Item 5</a> ) |

# 1 DEFAULT, NOTICE OF DEFAULT AND DEMAND FOR REPAYMENT

## 1.1 Default and Required Procedures

A default occurs when a borrower fails to comply with a material condition of a loan agreement, including any amendments (e.g., revision of repayment terms, etc.), a deed of hypothec, or any other document signed by the borrower and the lender. To be material, the failure to comply must have the potential to affect the collection of the loan. Material items could include a borrower's failure to make interest and/or principal payments, to maintain insurance, to pay property taxes, or to dispose of a secured asset without authorization, provided these were required as part of the loan agreement between borrower and lender. A minor failure on the part of a borrower, such as late filing of yearly statements, would not be considered material and therefore would not amount to default.

[[Regs s.36](#); [Bulletin – September 2000](#)]

**Follow Normal Lending Practices:** In a situation where loan payments are current, but a borrower is found to be in default of some material condition that could jeopardize the lender's ability to realize on security or otherwise recover the loan balance, the lender may follow its normal lending practice in taking action against the borrower.

NEW

**Notice of Default:** If a default situation is not remedied and the lender and borrower cannot agree to amend the loan agreement to remedy the default, the lender may send a Notice of Default and demand that the borrower comply with the conditions specified in the notice within a specified period of time. [[Regs ss.37\(1\)](#); [Bulletin – September 2000](#)]

**Demand For Repayment:** If a borrower fails to comply with the conditions in the Notice of Default, the lender shall issue a demand for repayment within a specified period of time. [[Regs ss.37\(2\)](#); [Bulletin – September 2000](#)]

**NOTE: The lender can use one document to issue the Notice of Default and demand for repayment.**

## 1.2 Time Limitation for Claim Submission

The time limit for submitting claims for loss is 36 months and begins on the date when the period specified in the Notice of Default expires.

NEW

If the lender does not send a Notice of Default, the 36-month period will begin on the day after a final payment amount is received from the borrower.

A "Request for Extension of Claim Submission Date" form (see [Section D](#)) must also be submitted within 36 months following the expiration of the period specified in the notice of default. [[Regs ss.38\(2\) and \(3\)](#)]

## 2 REALIZATION

If a borrower fails to comply with the Demand for Repayment, the lender must take any or all of the following measures to minimize its loss:

- seize, take possession of and sell or engage a third party to sell secured assets;
- realize on any security and guarantees or suretyships;
- realize on any insurance policies;
- reach and fully implement a compromise settlement with the borrower or with a guarantor or surety or any other person on behalf of the borrower, guarantor or surety;
- take legal action where the cost of the proceedings is estimated to be less than the amount to be recovered;
- file a writ of execution and execute where appropriate.

[\[Regs ss.37\(3\)\]](#)

Lenders should apply the same policies and procedures used in their normal business practices to minimize any losses. For example, if a lender normally insures secured assets once a loan has defaulted, it should follow this practice in the case of CSBF loans.

Where the secured assets are sold, the lender should provide with the claim documentation any appraisals obtained to substantiate the reasonableness of the sale price. If the asset is sold to a related party, an appraisal must be provided with the claim. [\[Item 6.2, Section B\]](#)

Lenders do not require the CSBFP Directorate's permission to sell or abandon assets taken as security or to reach a compromise with any of the parties obliged to repay a loan. They should consider the relative cost effectiveness of realizing or not realizing on the security and the method chosen for realization. Before incurring legal costs to obtain judgment, a lender should investigate whether the parties involved have the means to satisfy it. Before realizing on an asset, the lender should determine whether the sale proceeds will exceed the realization costs, including assessing the amount and validity of any priority claims (i.e., government priority claims).

**NOTE: If a lender has valid and enforceable security, the fact that a lender may abandon the security because it is unable to realize on the security or it is not cost effective to realize on the security, will not invalidate a claim for loss. However, a lender is required to provide documentation substantiating the realization or non-realization of secured assets when a claim for loss is submitted.**

[\[Bulletin – December 1999\]](#)

**Methods of Realization:** Realization on business assets can include sale by auction, advertisements and bids, negotiations with potential interested parties, etc. It can also include assignment of the debt to a third party. In this case, the lender typically receives a flat sum in exchange for the obligation. In reviewing a claim for loss, the CSBFP

Directorate will expect documentation of the reasonableness of any decision to assign, including the relative value of the lump sum to the obligation, the prospects for realization by more conventional methods, and justification for abandoning recovery against guarantors or sureties. The transaction between the lender and the third party is then finalized and no further monies are expected to be paid to the lender by that third party

**Environmental Problems:** If it is suspected that an environmental problem does or may exist, lenders should apply the same policies and procedures used in its normal course of business. Any decision to abandon security on the basis that realization would make a lender responsible for environmental clean-up should be supported with relevant documentation.

## 2.1 Other Assets of the Business

Since the borrower has an obligation to repay the total CSBF loan, all assets of the business are subject to realization. Where a borrower has business assets other than those held as security for the loan, the lender is expected to follow its normal lending practices in determining the cost effectiveness of realizing on those other assets.

## 2.2 Guarantees or Suretyships (personal or corporate)

A lender must take reasonable steps to collect from guarantors or sureties. Such steps can include legal action and/or compromise settlements. There is no limit to the amount a lender may realize on corporate guarantees or suretyships. Realization on personal guarantees or suretyships is limited to the lesser of:

- the amount of the guarantees or suretyships signed by the guarantors or sureties plus interest, taxed costs, legal fees and disbursements and other costs, and;
- 25% of the CSBF loan disbursed in cases where the loan disbursed is less than the loan registered, plus interest, taxed costs, legal fees and disbursements and other costs.

**NOTE: Lenders are encouraged to settle out-of-court on any guarantees or suretyships and to resort to a legal judgement only when it is cost effective. Abandoning procedures against guarantees or suretyships because realization is not cost effective will not invalidate a claim for loss. However, a lender is required to provide documentation substantiating the realization or non-realization of guarantees or suretyships when a claim for loss is submitted.**

## 2.3 Liability of Sole Proprietors and Partners

A borrower operating as a sole proprietorship or as a partnership is liable for 100% of the repayment of a CSBF loan.

Upon default, the lender can realize on the personal assets of the sole proprietor or partner up to, in the aggregate, 25% of the amount of the loan that was disbursed plus interest,

taxed costs, legal fees and disbursements and other costs. This liability is in addition to personal guarantees or suretyships from any other person. This liability may be collected by a voluntary settlement or by legal procedures. [[Regs ss.37\(4\)](#)]

## 2.4 Compromise Settlements

A lender can, at its discretion, make compromise settlements when realizing on guarantees or suretyships or on the personal assets of sole proprietors or partners, based on the financial situations of the obligants. Such settlements can be made before or after a judgement has been obtained. The reasons and basis for compromise settlements must be well documented. Examples of documentation to support a subsequent claim for loss include: Credit Bureau Reports, Investigation Reports, recent Personal Statements of Affairs, letters of negotiation between lender and obligant or their representatives, proof of payment of the settlement amount and, release of the borrower, guarantor or surety.

## 3 SHARING OF REALIZATION PROCEEDS AND COSTS

A lender should apply proceeds and costs to a CSBF loan only where they are clearly identifiable as belonging to the loan. Where proceeds and costs are attributable to some combination of CSBF loans, loans made under SBLA, and conventional loans, they must be prorated among the respective loans in a fair and equitable manner.

One or more of the following can be used to achieve an equitable treatment for all parties:

- where realization proceeds can be clearly identified with specific loans, prorate costs incurred on behalf of the combined loans on the basis of the amount realized for each;
- where neither realization proceeds nor costs can be clearly identified with individual loans, prorate proceeds and costs according to the unpaid principal amount of each outstanding loan at the date specified in the Notice of Default (items 1.1 and 1.2, Section C);
- where the above do not apply, prorate proceeds and/or costs according to the outstanding principal amount of each loan claimed in the Statements of Claim filed in the legal proceedings;
- where collection relates to personal guarantees or suretyships or personal obligations of sole proprietors or partners held for a CSBF loan and for a conventional loan, prorate costs and realization proceeds of this collection according to the lesser amount of the guarantee or the personal obligation (limited to 25% of the loan amount disbursed) or the principal outstanding on the loan on default (items 1.1 and 1.2, Section C).

**Prior charges:** Where a lender has a prior charge on the assets held for a CSBF loan and costs are incurred in the liquidation of the security, the sale proceeds must be applied in the following order: preferred claims, legal fees and other costs. The net amount of the realization will then be applied to the loans according to the rank of security held.

## 4 NON-COMPLIANCE REMEDIES

In certain specified cases of non-compliance, payment of a claim is permitted, provided that the non-compliance is remedied as stipulated in the Regulations. **In each instance of non-compliance, the non-compliance must be inadvertent.** The specific instances and the remedial action the lender must take are as follows:

INADVERTENT NON-COMPLIANCE ISSUE(S)	REMEDIES AND CONDITIONS FOR CLAIM PAYMENT
50% rule requirement The 3 year rule requirement Decontamination costs requirement Incidental costs (other than non-refundable taxes and customs duties) included in the loan. <a href="#">[Regs s.24]</a>	If the lender is able to provide documented evidence that the non-compliance is the result of inaccurate information provided by the borrower, the claim will be paid as if the non-compliance had not occurred.
NEW Missing proof of purchase and payment documents in the claim for loss Ineligible assets financed Expenditures made more than 180 days before approval date Assets previously secured by a term loan Ineligible decontamination costs <a href="#">[Regs s.25]</a>	Loan is adjusted to 90% of the eligible expenditures <a href="#">Eligible loan amount</a> is adjusted downward by invoices or costs not in compliance, and claims are paid for the portion of loan for which documentation is satisfactory. Realization costs and proceeds are prorated as per the percentage of the eligible loan to the total loan disbursed. However, costs and proceeds that pertain only to the eligible or ineligible portion of the loan, are applied 100% to the respective portion.
Security requirements have not been met, making the security unenforceable <a href="#">[Regs s.25]</a>	If non-compliance relates to additional security, claim will be paid as if the security had never been taken. If non-compliance relates to all the primary security, claim will be rejected. If non-compliance relates only to some of the primary security, claim will be paid on that portion of the loan for which the security is valid and enforceable.
NEW Appraisal requirements not met <a href="#">[Regs s.25.1]</a>	In the case of equipment loan and leasehold improvement loan, the lender must provide documentation substantiating the value of the asset during the period of 180 days before the date of loan approval. This documentation may be dated before the date of loan approval (maximum 180 days) or may be dated at any time after the date of loan approval. The documentation from the person setting out the value of the assets must attest that the assets were examined through a site visit. A letter which states that the value was based roughly on the description in the purchase invoice will <u>not be accepted</u> .  This provision does not apply in the case of real property loans. The lender is still required to provide an appraisal that is made within 180 days before the loan is approved.
NEW Loan agreement does not contain all of the terms <a href="#">[Regs s.25.2]</a>	In the event the loan agreement signed by the borrower and the lender does not contain all of the loan terms, the lender can provide documentation substantiating those terms (e.g. any documentation signed or acknowledgment by the borrower).
Requirements for guarantees or suretyships not satisfied <a href="#">[Regs s.26]</a>	Claim will be paid if the loss was not affected by the non-compliance and Lender has reimbursed amounts realized on guarantees or suretyships in excess of 25% of the loan amount disbursed, exclusive of interest and costs

<p>Non-allowable fee or charge Interest rate in excess of maximum Insurance premium and charge for taking the security is combined with the rate of interest under the loan and not set out separately in the loan agreement. <a href="#">[Regs s.27]</a></p>	<p>Claim will be paid if the loss was not affected by the non-compliance, and Borrower is reimbursed for overcharges, or If the lender is unable to reimburse the borrower (e.g. borrower is bankrupt, borrower corporation is dissolved, sole proprietor is deceased, borrower cannot be located), the lender must submit evidence, with the claim for loss, that it attempted to reimburse the borrower but was unable to do so. In this case the total of the overcharge will be deducted from the loss payable to the lender.</p>
<p>Non-payment of the administration fee <a href="#">[Regs s.23]</a></p>	<p>Claim will be paid if the lender pays the fee within 90 days from the day the lender's head office receives the notice of non-payment. Payment cannot be deducted from the claim for loss payments and must be paid separately from a quarterly payment. A letter indicating the purpose of the cheque and the method of calculation is to accompany the payment.</p>
<p>Failure to file the Outstanding Loan Balance Report <a href="#">[Regs s.28]</a></p>	<p>Claims will only be paid when report is received</p>
<p>10 year repayment term exceeded <a href="#">[Regs 28.1]</a></p>	<p>In the event the 10 year term is exceeded (whether on the original loan agreement, any amendments or renewals), the claim will be paid only if the default occurred before the expiry of the 10 years calculated from the date of the first payment of principal and interest</p>

NEW

#### 4.1 Inadvertent Errors

Upon discovery of its error, a lender must take immediate corrective action wherever possible.

INADVERTENT ERROR	REMEDIES AND CONDITIONS FOR CLAIM PAYMENT
Renewal of fixed rate loan term not made when scheduled.	In the absence of any documentation to the contrary, it will be deemed that the interest rate for the interim period remains the same as the previous interest rate.
Loan financed at 100% instead of 90%	The loan will be adjusted to 90% of the eligible project documentation and the claim paid.
Lender error increased the loss on a loan	Claim for loss will be adjusted to negate the effects of the error. For example, if a lender neglects to program automatic loan payments, the claim will be paid as if the payments had been made.
Proof of claim not filed with the Trustee before the final distribution of dividends.	The amount of dividends which would have been received by the lender had a proof of claim been filed on time will be applied against the loan.

## 4.2 Uncorrectable Non-Compliances

If a lender does not comply with the requirements of the Act and Regulations, a claim for loss cannot be paid.

Examples of such situations include:

- a loan made to an ineligible borrower (e.g., farming under the Standard Industrial Classification, 1980 of Statistics Canada, Major Group 01);
- a loan made to a borrower with gross annual revenues exceeding \$5,000,000 at the time the loan was approved;
- all the loan proceeds were used for an ineligible purpose (e.g., financing inventory or goodwill);
- an independent appraisal that was required for all the financed assets was not obtained when approving a loan and no other documentation was obtained to corroborate the value of the equipment and leasehold improvements;
- all assets were purchased more than 180 days prior to the loan approval date;
- a claim or a final claim after an interim claim was paid (or request for extension) not submitted within the required time frame.

## 5 SUBMITTING A CLAIM FOR LOSS

A claim for loss may be submitted as a regular claim, an interim claim, or an incremental claim. A lender may also submit an appeal of a claim decision.

### 5.1 Regular Claim for Loss

A regular claim for loss is made after realization on all security, guarantees or suretyships and/or personal liability (as in the case of a sole proprietorship or partnership) is complete, and all proceeds have been applied to the loan.

If a lender submits a claim for loss before realizing on asset security, the claim will be considered premature and rejected. However, it is important to note that the 36-month claim submission limitation continues to run and the complete claim, including the realization on the assets, must be submitted within the 36 month calculation period explained in [Item 1.2 of this section](#).

Where no proceeds were realized or if it is not cost effective or impossible to realize on any of the primary security, additional security, and/or guarantees or suretyships etc., a claim for loss may still be submitted. The claim should include an explanation and all supporting documents to substantiate why realization was not possible, not cost effective or was abandoned and why no further recovery can be made. Since all means of recovery have been exhausted, a regular claim is also considered a final claim.

## 5.2 Interim claim for loss

An interim claim for loss is made when realization on the primary security and any additional security on the business assets is complete, but before the lender has fully implemented a compromise or fully realized on the guarantees or suretyships or personal liability of the sole proprietor or partner. A portion of the claim payment will be held back.

In addition to expediting payment of claims to lenders, the objectives of the interim claim are to allow lenders sufficient time:

- to fully implement a compromise settlement (including a proposal under the Bankruptcy and Insolvency Act)
- to fully realize on guarantees or suretyships and/or on the personal liability of sole proprietors or partners.

[\[Regs ss.39\(1\)\]](#)

Realizing on guarantees or suretyships or on the personal liability of sole proprietors or partners means:

- fully recovering the amount owing under a guarantee or suretyship and/or a personal liability;
- negotiating and fully settling a compromise agreement;
- registering a judgment and filing a writ of execution, where appropriate

If, following an interim claim, a lender's realization efforts fail to bring full payment of the compromise, guarantee or suretyship amount or the personal liability amount, it can submit a final claim for the shortfall. If an interim claim is not followed by a final claim or a request for extension, within the established deadline, the interim claim becomes the final claim. The date of the proposed final claim submission indicated by the lender in the interim claim form must be a reasonable one; otherwise, the CSBFP Directorate will contact the lender in order to establish an acceptable date. [\[Regs ss.39\(5\)\]](#)

**NOTE: A lender may choose to submit an interim claim for loss for loans made under the *Small Business Loans Act* using the provisions of the CSBF Regulations. Payment of interest in this case is calculated for 24 months, not 36 months. [\[Regs ss.38\(8\)\]](#)**

**5.2.1 Holdback:** The holdback from the interim claim payment is the Minister's share (85%) of:

- any compromise not yet paid;
- the amount of any guarantee or suretyship or personal obligation that is outstanding;
- the amount owing under any judgment order, including accrued/accruing interest and costs owing;
- proposals to creditors

As the holdback is only an estimate, there may be instances where a lender collects more than the amount on which the holdback was calculated. In such situations, the Minister's share of the excess must be remitted to the CSBFP Directorate.

**5.2.2 Final Claim Submission Date:** If the lender has advised when a compromise settlement will be fully implemented, or a guarantee or suretyship, or personal liability realized, the final claim submission date will be set accordingly. If the date is not known, a final claim submission date will be established by the lender and the CSBFP Directorate. The date for submission of the final claim will be, at the least, 36 months from the date specified in the Notice of Default or the date of last payment on the loan in the event there was no Notice of default (Refer to [Item 1.1](#) of this Section). In any event, the CSBFP Directorate will advise the lender of the final claim submission date on the Claim Calculation Summary for an interim claim and the lender will be required to submit a final claim or a request for extension before the established date.

It is the lender's responsibility to ensure that a final claim for loss or a request for an extension is submitted within the established deadline. If the CSBFP Directorate does not receive a final claim or a request for an extension before the established date, the interim claim is deemed to be final. The Minister then becomes subrogated to the rights of the lender to the extent of the amount paid. [[Regs ss.39\(4\) and \(5\); Bulletin – January 2000](#)]

### **5.3 Incremental Claim for Loss**

An incremental claim for loss is made to request payment of amounts in addition to the total claimed on a regular, interim, or final claim for loss. For example, if a lender receives additional legal or other costs after its final claim for loss has been paid, it can submit an incremental claim.

### **5.4 Appeal**

An appeal is a request to the CSBFP Directorate to review a decision (communicated in a Claim Calculation Summary) to disallow all or part of a claim for loss. In some cases, the lender need only provide some new information or documentation to have the previous decision revised. In other cases, it must provide a detailed explanation of why the contravention or non-compliance cited in the Claim Calculation Summary does not apply to the loan.

### **5.5 Missing Information and Documentation**

Where there is missing information or documentation needed to process the claim payment, the CSBFP Directorate will notify the lender by telephone (followed by a fax confirmation) or in writing and allow the lender five weeks to supply the missing documents or information. If no reply is received within that time frame, the claim will be adjusted or rejected in accordance with the information already provided.

## 6 ESTABLISHING THE AMOUNT OF THE CLAIM FOR LOSS

### 6.1 Calculating the loan loss

The amount of loss is calculated as follows:

**Outstanding loan amount:** Unpaid principal amount of the CSBF loan at the expiration of the period specified in the notice of default;

**Less:**

- proceeds of security realization, payments by guarantors or sureties, recoveries from the borrower,
- insurance proceeds and all other proceeds;
- taxes that may be reimbursed to the lender;
- any inadvertent overcharges of interest, fees or other charges;

NEW

**Plus:**

- uncollected taxed legal costs;
- legal fees and disbursements;
- any other third party costs incurred by the lender (excluding lender's employees) while trying to recover the loan or realize on security;
- interest on the outstanding principal amount of the loan, at the rate specified in the loan document, from the date to which the borrower paid interest to the date of the next scheduled payment, plus
- interest at the loan rate above, for a further 12 months or until the claim is paid, whichever is earlier, plus
- interest at one-half the loan rate above, for an additional 12 months or until the claim is paid, whichever is earlier

[[Regs ss.38\(7\) and \(8\); Bulletin – May 2000](#)]

If a lender inadvertently claims less (or more) than that to which it is entitled, the claim will be adjusted upwards (or downwards).

### 6.2 Determining the [Eligible Loan Amount](#) for Claims

The calculation of the claim payment is based on the eligible loan amount. For each loan class (equipment, real property, leasehold improvements), the eligible cost and proof of payment are calculated as follows in order to determine the eligible amount of the loan:

[[Bulletin – July 2006](#)]

**Step 1 - Eligible cost of assets purchased:** The eligible cost represents 90% of the total amount (less refundable taxes) in the invoice/purchase contract and for which there is proof of payment. Any invoice/purchase without proof of payment is excluded.

**Note:** For those loans that require an appraisal, the eligible cost is the lesser of the cost of the eligible assets in the invoice/purchase contract (less refundable taxes) and the appraised value of the eligible assets.

**Step 2 - Eligible proof of payment:** The eligible proof of payment is the *lesser of*:

- the amount of the payment that equals the amount of the invoice/purchase contract (less refundable taxes), and
- the amount of the payment if it is less than the amount of the invoice/purchase contract (less refundable taxes) .

**Step 3 -Eligible amount of the loan:** The eligible amount of the loan is the *lesser of*:

- Step 1: the eligible cost of assets purchased, and
- Step 2: the eligible proof of payment

The following example illustrates these calculations:

Class of loan	Amount of the cost of asset purchased less refundable taxes	Proof of payment	Step 1 Eligible cost of asset purchased (90% of cost less refundable taxes)	Step 2 Eligible proof of payment	Step 3 Lesser of Step 1 and 2 Eligible amount of loan
Equipment	\$1,080.00	\$1,150.00	\$972.00	\$1,080.00	\$972.00
Equipment	\$3,240.00	\$2,000.00	\$2,916.00	\$2,000.00	\$2,000.00
Equipment	\$540.00	\$ 0.00	\$ 0.00	\$0.00	\$0.00
Equipment	\$2,630.00	\$2,630.00	\$2,367.00	\$2,630.00	\$2,367.00
<b>Total Eligible Equipment</b>	<b>\$7,490.00</b>	<b>\$5,780.00</b>	<b>\$6,255.00</b>	<b>\$5,710.00</b>	<b>\$5,339.00</b>
Leasehold Improvements	\$1,620.00	\$3,000.00	\$1,458.00	\$1,620.00	\$1,458.00
Leasehold Improvements	\$0.00	\$1,000.00	\$0.00	\$0.00	\$0.00
Leasehold Improvements	\$5,000.00	\$4,600.00	\$4,500.00	\$4,600.00	\$4,500.00
<b>Total Eligible Leasehold Improvements</b>	<b>\$6,620.00</b>	<b>\$8,600.00</b>	<b>\$5,958.00</b>	<b>\$6,220.00</b>	<b>\$5,958.00</b>
<b>Eligible amount of loan</b>					<b>\$11,297.00</b>

### 6.3 Factors Affecting the Amount Payable

**Prorating:** Legal fees, disbursements, and costs and realization proceeds are applied in a manner that is fair and equitable to all parties (See [Section C, Item 3](#)). Where only part of

the loan has been determined to be eligible, the pro rata calculation will also take into account the eligible percentage of the loan.

Where legal fees, disbursements, and costs and realization proceeds can be directly attributed to the eligible (or ineligible) part of a loan, they will be applied 100% to that part of the loan.

**Costs:** Since collection procedures are normally undertaken after default, generally only costs incurred after default are eligible for repayment. However, there may be instances where the costs incurred before default are eligible. The following are the details:

- **Costs incurred before default:**

- **Utilities:** Payment of utilities to help a borrower continue its operation is not an eligible cost.
- **Municipal taxes:** Payment of a borrower's taxes on a secured property while the loan is in good standing (well before it goes into default) would be considered a loan to the borrower and not related to recovering the loan. To be eligible, the lender would have to demonstrate it made efforts to recover the taxes from the borrower prior to default. For taxes paid shortly before default, the lender would be required to show that they were paid only for the purposes of protecting its security.
- **Suppliers:** Payment of a supplier's invoice, billed to the borrower, is not an eligible cost.
- **Insurance:** Arrears paid to help the borrower continue its operation are not an eligible cost.
- **Salaries:** Payment of salaries to the borrower's employees is not an eligible cost.
- **Rent:** If a landlord seizes financed assets or if the assets are included in a negotiated settlement, payment of rent in arrears is an eligible cost only if the premises contain realizable assets that secure the loan, and the appraised value of the assets is greater than the rent arrears.

- **Costs incurred after default:**

- **Utilities:** Arrears that form a lien on property, taken over by a lender, are eligible costs. Costs incurred after the lender takes over the property are eligible.
- **Municipal taxes:** Tax arrears, as well as taxes incurred after a lender has taken over a property, are eligible costs.
- **Suppliers:** Payment of a supplier's invoice, billed to the borrower, is an eligible cost if a secured asset is being held by a supplier, or a supplier has attached a lien on the asset, or if the work invoiced is necessary to maintain the value of the asset or to maximize its value upon realization.
- **Insurance:** A lien cannot be placed on a property for insurance arrears, therefore, arrears paid when a lender takes over a property are not an eligible

cost. Insurance premiums paid by a lender after it takes over a property, and until the property is sold, are an eligible cost.

- **Salaries:** Payment of employees' salaries, to operate a business in order to maximize realization of the security, is an eligible cost.
- **Rent:** If assets must be kept on rented premises to maximize realization, the rent is an eligible cost, provided it is not more than the appraised value of the assets.

**Environmental risk/costs:** A lender that suspects an actual or potential environmental problem during the administration or the realization process of a CSBF loan should apply the remedial policies and procedures used in their normal course of business.

**Legal Fees and Disbursements:** Only fees and disbursements directly related to loan recovery are eligible costs.

- **Legal Fees and Disbursements incurred before default:**
  - Costs not related to recovering the loan, such as costs to correct loan or security documents, or to obtain financial information in order to assess risk, are not eligible costs.
  - Costs incurred for an action against the borrower or the guarantor or surety in order to realize on asset security or on the guarantee are eligible costs.
- **Legal Fees and Disbursements incurred after default:**
  - Costs incurred to take action against the borrower or the guarantor or surety in order to recover the loan, are eligible.
  - Costs paid by the lender on behalf of the borrower, such as the costs for incorporation or services not related to recovering or attempting to recover from the borrower or the guarantor or surety, are not eligible.

**Input Tax Credits:** In some jurisdictions, lenders can claim an Input Tax Credit (i.e. a tax refund), such as PST and HST paid on costs and legal fees and disbursements paid to third parties in the loan recovery process. Refundable taxes are not eligible for reimbursement on the claim for loss submission.

**Interest:** Even though the time limit for claim submission may be extended beyond 36 months, the Regulations do not provide for payment of interest beyond the 24-month period as described in 6.1 above. In the case of an interim claim, when a final claim is submitted, interest is based on the holdback amount and calculated as follows (whichever comes first):

- from the date the interim claim is paid until the date the final claim is paid, or;
- until the expiry of the 24-month period.

**Application of Proceeds:** Where a lender has realized on security collected under guarantees or suretyships, or recovered funds from a borrower, the proceeds will be applied to the principal outstanding on the date these proceeds were received by the lender.

**NOTE: Reversal of a principal and/or interest payment more than 5 working days after it has been applied to a CSBF loan will be disallowed for the purpose of establishing a lender's loss, unless a subsequent payment, for the same or a higher amount, is made by the borrower. If a subsequent payment smaller than the amount reversed is made, the difference between the amount reversed and the amount applied will be disallowed.**

**NOTE: The [loss sharing ratio](#) between the government and the lender is 85% and 15% respectively. A lender cannot avoid absorbing its 15% share of the loss by taking compensatory security of any kind or by making a claim against the borrower/guarantor after payment of the claim. [[Act s.8](#)]**

## **7 DOCUMENTING CLAIM FOR LOSS SUBMISSIONS**

Copies of the following documents must be submitted with claims for CSBF loan losses:

- A properly completed Claim for Loss form (See [Section D](#)), certified by an authorized representative of the lender;
- The borrower's loan application form and/or a copy of the lender's documentation of approval for the loan;
- The Loan Registration form, the Loan Registration and Fee Receipt Acknowledgement form, and where applicable, the Loan Registration Modification Acknowledgement form;
- The cost and proof of payment of the eligible assets. To expedite the payment of the claim, a summary of the invoices and proof of payment should be provided. [[Section A, Item 5](#); [Bulletins– August 1999](#), [September 1999](#), [May 2000](#)]
- Appraisals and an update to the appraisal, if applicable, of the purchased assets, in the case of [non-arm's length transactions](#), and of the assets in a going concern purchase or where assets are purchased from the lender or its representative;
- A loan account statement (computer print-out, etc.) showing the dates the loan proceeds were advanced, all payments of principal and interest, and all other entries to the loan account;
- The loan document (i.e., promissory note or equivalent) and any renewal documents;
- In the case of fixed rate loans, a document substantiating the lender's posted single family residential mortgage rate;
- Documents evidencing any revision of repayment terms;

- Documents relating to the primary, additional and alternate security, and guarantees or suretyships;
- The Notice of Default and Demand for Payment documents sent to the borrower and other obligants;
- Documents evidencing the landlord's seizure of loan security, if available, or details of the seizure;
- Documents evidencing the sale of security, including any appraisals obtained to substantiate the reasonableness of the sale price (if selling to a related party, an appraisal should definitely be provided); [[Bulletin – December 1999](#)]
- Where costs and/or realization proceeds are to be shared between the CSBF loan and a lender's other loans, a statement indicating the other loans the lender has advanced to the borrower and guarantors, along with principal balances outstanding on those loans, both after default and after the realization of security held for those loans;
- An explanation if the amount realized from security is less than the appraised value; [[Bulletin – December 1999](#)]
- A description and appraised value of any unrealized asset held as security, where liquidation of assets may take considerable time (e.g. a property sale that is expected to be protracted);
- Justification for abandoning security, including supporting appraisals, or evidence of penury or the impracticality of collecting in the case of guarantors or sureties, sole proprietors or partners;
- An estimate of the value of any missing security and details of any efforts the lender has made to locate it;
- A report of outstanding guarantees or suretyships and/or personal liability of the sole proprietor or partner(s);
- Documents supporting any settlement with the borrower or third parties, including guarantors or sureties;
- Invoices/receipts supporting costs claimed;
- The detailed solicitor's billing showing total time spent, work performed and rate per hour charged;
- The Statement of Claim, Judgement and Writ of Execution;
- Bankruptcy
  - evidence of bankruptcy/receivership (e.g. notice of first meeting of creditors, the bankrupt's statement of assets and liabilities) for both the borrower and any guarantor(s);

- the original and any revised proof of claim together with all annexes;
  - the Trustee's/Receiver's final report must also be submitted. If the Trustee's final report is not available, the lender/trustee's comments as to the probability of receiving dividends from the estate should be provided. In all cases, the final report is to be sent to the CSBFP Directorate when available.
- Details of any suspected wrongdoing by borrowers (e.g. fraudulent activities) and details of follow-up action by the lender. [[Bulletin – December 1999](#)]

## **8 SUBROGATION AND POST-CLAIM RECEIPTS OF PROCEEDS**

Once a claim is final, the Minister is subrogated to all the rights of the lender up to the amount paid. [[Regs s.40](#)]

When a final claim is paid, no further collection measures are to be initiated or pursued by a lender or its agents (e.g. a collection agency). However, a lender can execute judgments obtained before the final claim was submitted. For example, if a lender obtained a judgment and registered a lien on the borrower's or guarantor's or surety's residence during the realization process, it may collect on the lien when the residence is sold.

The lender must forward to the CSBFP Directorate 85% of any money it receives after the payment of the final claim (e.g. money received on judgments, dividends from Trustees, etc.). The cheque must be made payable to the Receiver General for Canada and include supporting documents (e.g., release, lawyer's correspondence, the source of the funds etc.) and a detailed calculation of how the lender arrived at the CSBFP Directorate's share.

Where a claim has been submitted without the Final Report or Statement of Receipts and Disbursements of a Trustee in bankruptcy or Receiver, a copy of the Trustee's or Receiver's final report/statement and the share of any dividends are to be forwarded to the CSBF Directorate as soon as it is received by the lender.

If the lender inadvertently either excluded the CSBF loan from the proof of claim or has inadvertently claimed a lesser amount for the CSBF loan, the CSBF Directorate will deem the proof of claim was filed and will calculate the amount owing from the lender.

## **SECTION D: Annex, Forms and Glossary**

This section contains the following annex and forms for use with loans made under the CSBFA and SBLA:

[Section 251 of the \*Income Tax Act\* for the definition of the term not at arm's length](#)

[Example of Minister's Liability Calculation](#)

[Loan Registration Form](#)

[Request for the Transfer of a Loan Between Lenders](#)

[Request for Extension of Claim Submission Date](#)

[Claim for Loss](#)

Summary of Eligible Costs

[Glossary](#)

## **SECTION 251 OF THE *INCOME TAX ACT***

This section is the statutory provision for determining arm's length relationships.

### **251. (1) For the purposes of this Act,**

- (a) related persons shall be deemed not to deal with each other at arm's length;
- (b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to sub clauses 248(25)(b)(iii)(A)(II) to (IV); and
- (c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

### **Definition of "related persons"**

- (2) For the purpose of this Act, "related persons", or persons related to each other, are
  - (a) individuals connected by blood relationship, marriage or common-law partnership or adoption;
  - (b) a corporation and
    - (i) a person who controls the corporation, if it is controlled by one person,
    - (ii) a person who is a member of a related group that controls the corporation, or
    - (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
  - (c) any two corporations
    - (i) if they are controlled by the same person or group of persons,
    - (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
    - (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
    - (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
    - (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
    - (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

### **Corporations related through a third corporation**

- (3) Where two corporations are related to the same corporation within the meaning of subsection 251(2), they shall, for the purposes of subsections 251(1) and 251(2), be deemed to be related to each other.

### **Relation where amalgamation or merger**

- (3.1) Where there has been an amalgamation or merger of two or more corporations and the new corporation formed as a result of the amalgamation or merger and any predecessor corporation would have been related immediately before the amalgamation or merger if the new corporation were in existence at that time, and if the persons who were the shareholders of the new corporation immediately after the amalgamation or merger were the shareholders of the new corporation at that time, the new corporation and any such predecessor corporation shall be deemed to have been related persons.

### **Amalgamation of related corporations**

- (3.2) Where there has been an amalgamation or merger of 2 or more corporations each of which was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the amalgamation or merger, the new corporation formed as a result of the amalgamation or merger and each of the predecessor corporations is deemed to have been related to each other.

### **Definitions concerning groups**

- (4) In this Act,

"related group" « groupe lié »

"related group" means a group of persons each member of which is related to every other member of the group;

"unrelated group" « groupe non lié »

"unrelated group" means a group of persons that is not a related group.

### **Control by related groups, options, etc.**

- (5) For the purposes of subsection 251(2) and the definition "Canadian-controlled private corporation" in subsection 125(7),
- (a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;
  - (b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,
    - (i) to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that

- time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,
- (ii) to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time;
  - (iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or
  - (iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and
- (c) where a person owns shares in two or more corporations, the person shall, as shareholder of one of the corporations, be deemed to be related to himself, herself or itself as shareholder of each of the other corporations.

**Blood relationship, etc.**

- (6) For the purposes of this Act, persons are connected by
- (a) blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;
  - (b) marriage if one is married to the other or to a person who is so connected by blood relationship to the other;
    - (b.1) common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship to the other; and
  - (c) adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.

## EXAMPLE OF MINISTER'S LIABILITY CALCULATION

Below is the calculation of Minister's liability on a lender's portfolio for loans made before April 1, 2009

Year	Loans made (000s)	Minister's liability added this year (000s)	Loan losses (000s)	Minister's share of loss	Claims paid (000s)	Balance of Minister's Liability (old balance + added liability - claims paid) (000s)
1	\$2,000	First \$250 @ 90%= \$225 Next \$250 @ 50%= \$125 \$1,500 @ 10%= \$150 TOTAL \$ 500	\$100	85%	\$85	\$500 less \$85 = \$415
2	\$3,000	\$3,000 @ 10%= \$300	\$200	85%	\$170	\$415 + \$300 - \$170 = \$545
3	\$4,000	\$4,000 @ 10%= \$400	\$400	85%	\$340	\$545 + \$400 - \$340 = \$605
4	\$2,000	\$2,000 @ 10%= \$200	\$200	85%	\$170	\$605 + \$200 - \$170 = \$635
5	\$4,000	\$4,000 @ 10%= \$400	\$300	85%	\$255	\$635 + \$400 - \$255 = \$780
NOTE: Minister's liability accumulates in 5-year program periods. Year 6 begins a new period.						
6			\$200	85%	\$170	\$780 - \$170 = \$610
7			\$300	85%	\$255	\$610 - \$255 = \$355
<b>TOT</b>	<b>\$15,000</b>	<b>\$1,800</b>	<b>\$1,700</b>	<b>85%</b>	<b>\$1,445</b>	<b>\$355</b>

Below is the calculation of Minister's liability on a lender's portfolio for loans made on or after April 1, 2009

Year	Loans made (000s)	Minister's liability added this year (000s)	Loan losses (000s)	Minister's share of loss	Claims paid (000s)	Balance of Minister's Liability (old balance + added liability - claims paid) (000s)
1	\$2,000	First \$250 @ 90%= \$225 Next \$250 @ 50%= \$125 \$1,500 @ 12%= \$180 TOTAL \$ 530	\$100	85%	\$85	\$530 less \$85 = \$445
2	\$3,000	\$3,000 @ 12%= \$360	\$200	85%	\$170	\$445 + \$360 - \$170 = \$635
3	\$4,000	\$4,000 @ 12%= \$480	\$400	85%	\$340	\$635 + \$480 - \$340 = \$775
4	\$2,000	\$2,000 @ 12%= \$240	\$200	85%	\$170	\$775 + \$240 - \$170 = \$845
5	\$4,000	\$4,000 @ 12%= \$480	\$300	85%	\$255	\$845 + \$480 - \$255 = \$1,070
NOTE: Minister's liability accumulates in 5-year program periods. Year 6 begins a new period.						
6			\$200	85%	\$170	\$1,070 - \$170 = \$900
7			\$300	85%	\$255	\$900 - \$255 = \$645
<b>TOT</b>	<b>\$15,000</b>	<b>\$2,090</b>	<b>\$1,700</b>	<b>85%</b>	<b>\$1,445</b>	<b>\$645</b>

## GLOSSARY

<b>Annual</b>	Periods of 365 or 366 days fixed by calendar dates (e.g. July 5, 2008 to July 4, 2009). <a href="#">Regs par.10(2)(b)</a>
<b>Borrower</b>	A person who carries on or is about to carry on a small business to whom a loan has been made under the <i>Canada Small Business Financing Act</i> or the <i>Small Business Loans Act</i> . The business can be a sole proprietorship, partnership, or corporation. <a href="#">Regs ss.1(1)</a>
<b>Business carried on in Canada</b>	A business with a place of business in Canada and assets for operating the business held in Canada. <a href="#">Act s.2</a>
<b>Cancelled cheque</b>	A cheque that has been negotiated or cleared by the borrower and a vendor's financial institution.
<b>Conventional loan</b>	A loan that is not subject to the CSBFA or SBLA. <a href="#">Regs ss.1(1)</a>
<b>Corporate guarantee</b>	In Common Law, a pledge given by a corporation, other than the borrower, to repay part or all of a borrower's debt in case of default (Equivalent to "corporate suretyship" in the Civil Code of Quebec.). <a href="#">Regs s.20</a>
<b>CSBFA</b>	Canada Small Business Financing Act (Act)
<b>CSBFP Directorate</b>	The Canada Small Business Financing Program Directorate, the branch of Industry Canada responsible for administering CSBF loans and SBLA loans.
<b>CSBFR</b>	Canada Small Business Financing Regulations ( <a href="#">Regulations</a> )
<b>Default</b>	A borrower's failure to comply with a material condition of the CSBF loan agreement, including any amendments to the loan agreement, a deed of hypothec, or any other document signed by the borrower and the lender. Such a condition must be material to the loan such that it would affect the collection of the loan <a href="#">Regs s.36</a>
<b>Eligible cost</b>	Amount indicated on a paid invoice or purchase contract, less any directly related refundable taxes, grants or discounts.
<b>Eligible loan amount</b>	Sum of the registration fee, if financed, plus the lesser of 90% of the eligible costs and 100% of the eligible proof of payment.
<b>Equipment</b>	Equipment used or to be used in the course of carrying on the small business, and includes computer software, any ship, boat, or other vessel used or to be used in navigation and water supply systems. It does not include inventory of the small business except inventory that is leased by the borrower to the borrower's customers. <a href="#">Regs ss.1(1)</a>
<b>Farming</b>	A business classified under Major Group 01 – <i>Agricultural Industries</i> , of the <i>Standard Industrial Classification, 1980</i> , published by Statistics Canada. If more than 50% of the business' gross annual revenues are from farming, it is ineligible for CSBFA financing.
<b>General Security Agreement</b>	A charge on all the assets of a business, including assets acquired after the agreement is made. Also called a GSA. Universal Movable Hypothec under the Civil Code of Quebec.
<b>Going concern</b>	A business that has carried on operations at any time within 60 days prior to being purchased. If a seasonal business, one that operated during the season prior to purchase. <a href="#">Regs ss.1(1)</a>
<b>Guarantee</b>	In Common Law, a pledge given by one legal entity to answer for the all or part of the debt of the borrower. (Suretyship in the Civil Code of Quebec) <a href="#">Regs s.19 &amp; s. 20</a>
<b>Health care industry</b>	A business enterprise classified under the Major Group 86 - <i>Health and Social Service Industries</i> of the <i>Standard Industrial Classification, 1980</i> , published by Statistics Canada. <a href="#">Regs ss.1(1)</a>
<b>Holdback</b>	The amount retained from an interim claim payment. For CSBF claims, the Minister holds back its 85% share of any unrealized outstanding liability of the borrower or guarantor(s).
<b>Hospitality industry</b>	A business enterprise classified under the headings: Major Group 91- <i>Accommodation Service Industries</i> or Major Group 92- <i>Food and Beverage Service Industries</i> . of the <i>Standard Industrial Classification, 1980</i> , published by Statistics Canada. <a href="#">Regs ss.1(1)</a>

<b>Improvement</b>	Includes construction, renovation and modernization, and, with respect to equipment, installation. <a href="#">Regs ss.1(1)</a>
<b>Independent Small Businesses</b>	The business enterprises carried on by related borrowers: that are operating separate small businesses at different premises; and where neither business derives more than 25% of its actual or projected gross revenues from the other. <a href="#">Regs ss.3(6)</a>
<b>Instalment</b>	One of a series of payments required to pay off a CSBF loan. At least one principal payment must be scheduled annually and the first principal payment must be scheduled no later than one year from the date of the first disbursement of the loan funds. <a href="#">Regs par. 10(2)(b)</a>
<b>Interim Claim</b>	A claim for loss that is submitted once realization is complete on all business assets but before realization on the borrower's and any guarantors' liability has been finalized. <a href="#">Regs s.39.</a>
<b>Lending Period</b>	One of a series of 5-year periods in which the Minister of Industry Canada has a liability to pay claims for eligible losses to lenders under the CSBFA. Act ss.6(1) or under SBLA Period C3: April 1, 2009 to March 31, 2014 Period C2: April 1, 2004 to March 31, 2009 Period C1: April 1, 1999 to March 31, 2004 Period 12: April 1, 1993 to March 31, 1999
<b>Loan</b>	A loan that meets the conditions regarding the eligibility of the lender, borrower and small business. The loan must also be made for expenditure or a commitment that falls within the scope of one or more of the prescribed classes of loan and the cost of these expenditures or commitment must not exceed the prescribed limits. <a href="#">Act s.2</a>
<b>Loan term</b>	Period set out in a loan agreement for repayment of the total amount of the loan. <a href="#">Regs ss.1(1)</a>
<b>Loss sharing ratio</b>	The relative percentages of loss for which the minister and lender are responsible. The current loss sharing ratio is 85/15. <a href="#">Act s.8</a>
<b>Minister</b>	The Minister of Industry is designated as the Minister for the purpose of this Act. <a href="#">Act s.2</a>
<b>Mini-storage industry</b>	A business enterprise classified under the heading 479 - <i>Other Storage and Warehousing Industries</i> of the <i>Standard Industrial Classification, 1980</i> , published by Statistics Canada. <a href="#">Regs ss.1(1)</a>
<b>Non-arm's length transaction</b>	Transaction made between related parties as described in section 251 of the Income Tax Act which defines related persons as individuals connected by blood relationship, marriage or adoption and any situation involving different degrees of control by these persons or corporations. Control is not defined by a specific percentage and can be a question of facts, even between two non-related parties. <a href="#">Regs ss.1(2)</a>
<b>Personal Guarantee</b>	In Common Law, a pledge given by an individual person to answer for the all or part of the debt of the borrower. ("Suretyship" in the Civil Code of Quebec). <a href="#">Regs s.19</a>
<b>Program liability ceiling</b>	Maximum amount of the Minister's aggregate contingent liability in respect to the aggregate principal of loans made by all lenders for a 5-year lending period. The liability ceiling is currently \$1.5 billion. <a href="#">Act s.6</a>
<b>Proof of payment</b>	Evidence of payment of the documents constituting the proof of purchase used to calculate the eligible cost. Examples include cancelled cheques, debit card or credit cards transactions, attestation and formally executed sales contracts.
<b>Proof of purchase</b>	Documentation supporting expenditures that are the subject of financing under the program. Examples are deeds of sale, invoices, and purchase agreements.
<b>Related Borrowers</b>	Two or more borrowers are deemed to be related where one borrower: <ul style="list-style-type: none"> <li>• controls, directly or indirectly, the other borrower;</li> <li>• is controlled, directly or indirectly, by the same person or group of persons as the other borrower</li> <li>• carries on a small business in partnership with the other borrower;</li> <li>• shares administration/management services, equipment, facilities, or overhead expenses with the other borrower but not in partnership with the borrower. In this case, the two businesses are deemed to be one small business entity and are, collectively, eligible for a maximum loan of \$500,000 (of which a maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements). If two or more borrowers are related, they are, between them, only eligible to obtain a maximum loan amount of \$500,000 (of which a maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements). <a href="#">Regs ss.3(2)</a></li> </ul>

<b>SBLA</b>	<i>Small Business Loans Act</i> , predecessor to the CSBFA.
<b>Small business</b>	A business being carried on in Canada for gain or profit, with estimated gross annual revenue of not more than \$5 million. It does not include the business of farming or a business having as its principal object, the furtherance of a charitable or religious purpose. <a href="#">Act s.2</a>
<b>Substantially all</b>	In analyzing a specific transaction to assess whether the sale involves “substantially all” of the assets of a going concern, lenders should consider the percentage of total assets being sold, whether the transaction would fundamentally change the nature of the business, and whether the vendor can continue its normal business activities without the assets that are being sold. <a href="#">Regs par.9(1)(b)</a>
<b>Surety</b>	<i>Civil Code</i> of Quebec terminology for the person, other than the borrower, that makes a pledge to pay part or all of the borrower’s debt if the borrower defaults on its loan. (Equivalent to “guarantor” in Common Law) <a href="#">Regs s.19</a> & <a href="#">s. 20</a>
<b>Suretyship</b>	<i>Civil Code</i> of Quebec terminology for the pledge given by someone to answer for all or part of the debt of another. (Equivalent to “guarantee” in Common Law.) <a href="#">Regs s.19</a> & <a href="#">s. 20</a>
<b>Universal Movable Hypothec</b>	<i>Civil Code</i> of Quebec term for a General Security Agreement.