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Date of Default and Date in the Notice of Default

(Reference: CSBF Guidelines Item 1, Section C; s. 36 and 37 CSBF Regulations, and CSBF Guidelines Item 14, Section D; s. 17 SBL Regulations 1993)

Lenders have requested clarification of the **date of default** in the *Small Business Loans (SBL) Regulations* and the **date in the Notice of Default** in the *Canada Small Business Financing (CSBF) Regulations*. These terms are important in establishing the commencement date of the 36 month limitation period for submitting a claim for loss.

Under the *Small Business Loans Regulations*, the date of default is the latest of:

- the date when a payment (interest or principal) is not made on the date it is due; or
- the date to which the interest was last paid by the borrower.

Under the *Canada Small Business Financing Regulations*, the date in the Notice of Default (box 20 of the Claim for Loss) is determined as follows:

1. when the borrower fails to comply with a material condition of the loan, the lender and the borrower should strive to remedy such failure;
2. where this is not possible, the lender must send a Notice of Default specifying a date by which the borrower must remedy the failure of material conditions stipulated;

3. when the borrower fails to act upon the Notice, the date in the Notice of Default is the date specified in such Notice.

Note: A material condition is one that could have an impact on the collection of the loan (e.g. failure to maintain insurance, pay property taxes). A minor failure by the borrower such as late filing of yearly financial statements is not a material condition and would not be considered a default.

Related Borrower - Independent Small Business

(Reference: CSBF Guidelines Item 2.2, Section A; s. 3(2) to 3(6) CSBF Regulations)

The Administration has received a number of enquiries from lenders regarding the interpretation of the terms “related borrower” and “independent small business” as defined under sections 3(2) to 3(6) of the *CSBF Regulations*. In essence, the Administration considers that “borrowers” are related when two or more small businesses are operating as different “persons”, but their operational structures (ie. revenues, administrative services, etc.) are linked in such a way that they are, for all intent and purposes, one small business, and therefore one borrower.

In this case, the “borrower” is eligible for a maximum loan amount of \$250,000. However, if the “related borrower” is operating an “independent small businesses” (as defined under section 3(6) of the *CSBF Regulations*), then each borrower is eligible for the maximum loan amount of \$250,000. An example may clarify these two terms.

Suppose a person owns and “controls” (as defined under s. 3(4) of the *CSBF Regulations*) three businesses - a trucking business, a mini-storage business and a fast food restaurant. According to section 3(2) of the *CSBF Regulations* all three businesses are related given all three are controlled by the same person. Hence, all three corporations are collectively eligible for the maximum loan amount of \$250,000 since they are considered a “related borrower”. However, if any one of the three were located at different premises and did not derive more than 25% of its actual or projected gross revenues from any of the other, then that business would be considered an **independent small business**.

In the event they are independent small businesses, each is eligible for the maximum loan amount of \$250,000, even though they are “related borrowers”. If two, or all, of the small businesses are sharing management and administrative services, facilities or overhead expenses, then collectively the small businesses are eligible for a maximum loan amount of \$250,000, providing the small businesses combined gross annual revenues does not exceed \$5,000,000.

Small Business Loans Administration

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