



Aboriginal Affairs and Northern Development Canada

Internal Audit Report

Audit of Management of Negotiation Loans

Prepared by:

Audit and Assurance Services Branch

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ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
BC	British Columbia
BCR	Band Council Resolution
BCTC	British Columbia Treaty Commission
DG	Director General
HQ	Headquarters
FMSS	Financial Management and Strategic Services
FN	First Nation
FNITP	First Nation and Inuit Transfer Payment System
FSAGNU	Funding Services for Aboriginal Governance and Negotiations Unit
TAG	Treaties and Aboriginal Government
ToR	Terms of Reference

EXECUTIVE SUMMARY

Background

The objective of negotiation loan funding is to support active participation by First Nations (FN) and First Nations organizations and to promote a balanced exchange of ideas in negotiating the settlement of comprehensive land claims, specific claims, and treaties. Aboriginal Affairs and Northern Development Canada (AANDC)'s direct loans portfolio has two active programs in support of this objective: (1) Native Claimant Direct Loans are loans made to Native claimants across Canada (excluding British Columbia (BC)) to defray the costs related to the negotiation of comprehensive land claims and specific claims, and (2) loans to FNs in BC, where loans are made to support their participation in the British Columbia treaty process. In BC, the British Columbia Treaty Commission (BCTC) is an independent third party established by the three principals to the BC treaty process to oversee the treaty process and administer negotiation support funding to First Nations engaged in treaty negotiations.

Negotiations loans, outside of BC, are managed by the Funding Services for Aboriginal Governance and Negotiations Unit (FSAGNU), within the Treaties and Aboriginal Government (TAG) Sector. In BC, TAG's Negotiations West Branch manages some aspects of negotiation loans provided to FNs in that province, but the majority of the process is managed by the third party, the BCTC.

Audit Objective and Scope

The scope of the audit included Management Control Frameworks and Core Management Control elements that help ensure effective governance, risk management, stewardship and accountability to support the management of negotiation loans. In addition, the scope included key elements of the loan life cycle process including assessment and approval of applications, development and authorization of loan agreements, administration and compliance monitoring of agreements and conditions; recovery/repayments and loan write-offs; tracking and reporting of outstanding loan amounts.

The audit considered the potential impact of the Department's recently announced Results-Based Approach to Treaty and Self-Government Negotiations on the associated Negotiations Loans.

The audit scope did not include negotiation loan funding associated with the Specific Claims process, as this area was reviewed as part of the 2012 *Audit of AANDC Support to the Specific Claims Process*.

Statement of Conformance

This audit conforms with the Internal Auditing Standards for the Government of Canada, as supported by the results of the quality assurance and improvement program.

Observed Strengths

The audit observed a number of strong operational practices and processes in place to support the efficient and effective delivery of negotiation loans related to comprehensive claims.

Specifically the audit noted:

- The process to manage negotiation loans associated with comprehensive claims is clearly defined and formalized, understood by TAG staff, and communicated to stakeholders.
- Controls over loans processing exist, and they are being executed effectively, and in compliance with policy and applicable legislation.
- Environmental scans have been performed to monitor the potential financial burden on FNs created by their loans. TAG is also working on an approach to help accelerate the negotiation process, which in turn would reduce the overall loan amount advanced to a FN to come to an agreement.
- There is on-going communication between the loan funding recipients, and AANDC staff. In BC there are channels of communication between funding recipients, the BCTC, and AANDC staff.

Conclusion

Overall the audit found that AANDC has implemented key governance and operational processes and controls to support the efficient and effective delivery of required services and support to the loans management process. The audit, however, did identify some opportunities where improvements could be made in the areas of governance, risk management and stewardship. A summary of observed strengths, and recommendations for improvements, is below.

Recommendations

The audit identified areas where control practices and processes could be improved, resulting in four recommendations, as follows:

1. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that the negotiation loans program is a standing/regular item on a (likely pre-existing) independent oversight body, so that appropriate governance is exercised over the negotiation loans program.
2. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should establish clear objectives specific to negotiation loans, as well as performance measures, to further support monitoring of the status and collectability of negotiation loans.
3. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management process, specific to

negotiation loans, is established to appropriately identify, assess, mitigate and monitor the risks related to negotiation loans on a regular basis.

4. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector and the Chief Financial Officer, should monitor the adequacy of regional accounting support and consider the feasibility of centralizing the accounting function in the management of comprehensive claim negotiation loans to AANDC Headquarters.

1. BACKGROUND

1.1. Introduction

This audit was included in the 2012-2013 to 2014-2015 Risk-based Audit Plan approved by the Departmental Audit Committee on February 23, 2012. The audit was selected on the basis that there has not been recent audit work performed in this area and negotiation loan authorities are set to expire in 2014. The purpose of this audit is to provide independent, objective and supportable information that can be relied on to assess the management of the negotiation loans process.

1.2. Negotiation loans

Through its policies on native claims, the federal government has made a commitment to negotiating comprehensive claims in a fair and equitable manner.

In order to attain its objective AANDC has established a loans program to enable First Nations (FN)s and FN organizations to prepare for negotiations, consult with their members, and to fully participate at levels equitable with government in the negotiation process. Specifically, the objective of negotiation loans is to support active participation by FNs and First Nations organizations and to promote a balanced exchange of ideas in negotiating the settlement of comprehensive land claims, specific claims, and treaties.

AANDC's direct loans portfolio has two active programs in support of this objective: (1) Native Claimant Direct Loans are loans made to Native claimants to defray the costs related to the negotiation of comprehensive land claims and specific claims across Canada (excluding BC), and (2) Direct Loans are made to FNs in British BC to support their participation in the British Columbia treaty process. In BC, the British Columbia Treaty Commission (BCTC) is an independent third party established by the three principals to the BC treaty process to oversee the treaty process and administer negotiation support funding to First Nations engaged in treaty negotiations.

Departmental Responsibility for Comprehensive Claim Negotiation Loans:

Loan funding is provided to eligible Comprehensive claimants on the basis of negotiation priorities and mandates established by the federal cabinet. The Senior Assistant Deputy Minister (SADM) of Treaties and Aboriginal Government (TAG) is responsible for determining funding levels, administering the fund and monitoring the loan agreements.

National Management of Comprehensive Claim Negotiation Loans (Non-BC claims):

The Financial Management and Strategic Services (FMSS) directorate is responsible for administering the loan funding process for comprehensive claims outside of BC. Specifically, the Funding Services for Aboriginal Governance and Negotiations Unit (FSAGNU) is responsible to assess the FN's negotiation loan funding proposal, negotiate and approve the

loan agreement, approve the advance payment and monitor the FN negotiation loan expenditures.

Management of Comprehensive Claim Negotiation Loans in British Columbia:

The process is different for FNs situated in BC. In 1993, the federal and provincial governments and the First Nations Summit launched the BC treaty process and established the BCTC, referred to as “the keeper of the process”. As such the BCTC coordinates the negotiations, monitors progress as well as allocate the funds to support FNs participation. Specifically, the BCTC has been delegated, through legislation, the responsibility to assess the loan funding proposals, negotiate the loan agreement and monitor related expenditures. Aside from loan funding agreements, AANDC (TAG Negotiation West) does not have access to negotiation loan funding documentation, including work plans, loan funding proposals, FNs financial statements or reports of expenditures. AANDC’s (TAG Negotiation West) responsibility is limited to the approval of negotiation loan agreements and advances. These approvals are based on the BCTC’s recommendation.

General Terms of Comprehensive Claim Negotiation Loan Agreements:

Loan funding may be made available to the claimant on an annual basis once a validated claim has been formally accepted by the Minister and when a negotiation process has been agreed upon. Loan support may continue until a final claim settlement agreement has been ratified by the parties, as long as negotiations remain active.

Loans for comprehensive claims are interest free for the claimant up to the date where an agreement in principal is reached. Advances made after that date bear interest at an annual rate equal to the rate established by the minister of finance in respect to borrowing by crown corporations from the consolidated revenue fund. In BC, loans are also interest free during Final Agreement negotiations. This interest-free period is time-limited and will need to be renewed with TAG’s authorities.

The loans are recoverable as a first charge upon settlement of the claim, unless otherwise stated in the final agreement.

Statistics on Comprehensive Claim Negotiation Loans:

As at January, 2013, Canada was owed approximately \$817 million in outstanding principal and interest. Of this amount, approximately \$70 million was in the process of being repaid by FNs that have concluded treaties. The remainder of \$746 million is for 75 claims that are still ongoing, which makes the average loan per active claim approximately \$10 million. It should be noted that over the years, the negotiation loans associated with 15 claim settlements have been repaid in full. Some have also requested accelerated payments to save interest costs.

The table below provides a breakdown of the current outstanding negotiation loan funding.

Table 1. Negotiation loan funding amounts as of January 2013

	Ongoing Claims	Loan amounts for ongoing claims* (Millions)	Settled Claims currently in repayment	Outstanding loan amounts for settled claims* (Millions)	Total outstanding negotiation loan funding* (Millions)
Non-BC Loans	19	\$296	5**	\$55	\$351
BC Treaty Process Loans	56	\$450	2	\$16	\$466
Totals	75	\$746	7	\$70	\$817

* Amounts are approximations

**Three of the settled claims in Yukon include loans to elders that are included in the outstanding loan amounts.

AANDC has recognized that increasing total loan amounts are creating a financial burden to First Nations, and in some instances the prospect of having to repay the loans has deterred the possibility of completing a final agreement.

2. AUDIT OBJECTIVE AND SCOPE

2.1. Audit objective

The objective of the audit was to assess the effectiveness and efficiency of the controls in place to support the management of negotiation loans, including compliance with relevant legislative and Treasury Board and AANDC policy requirements. More specifically, the audit assessed whether:

1. AANDC has effective governance controls in place to support the management of the negotiation loans process;
2. AANDC has effective controls in place to manage the risks related to all stages of the loan process; and
3. Efficient and effective controls are in place to help ensure that negotiation loans are managed in accordance with Treasury Board legislation and Departmental policies.

2.2. Audit scope

The scope of the audit included Management Control Frameworks and Core Management Control elements that help ensure effective governance, risk management, stewardship and accountability to support the management of negotiation loans. In addition, the scope included key elements of the loan life cycle process including assessment and approval of applications, development and authorization of loan agreements, administration and compliance monitoring of agreements and conditions; recovery/repayments and loan write-offs; tracking and reporting of outstanding loan amounts.

The audit considered the potential impact of the Department's recently announced Results-Based Approach to Treaty and Self-Government Negotiations on the associated Negotiations Loans.

The audit scope did not include negotiation loan funding associated with the Specific Claims process, as this area was reviewed as part of the 2012 *Audit of AANDC Support to the Specific Claims Process*.

3. APPROACH AND METHODOLOGY

The audit was conducted in accordance with the requirements of the [Treasury Board Secretariat Policy on Internal Audit](#) and followed the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*. The audit examined sufficient, relevant evidence and obtained sufficient information to provide a reasonable level of assurance in support of the audit conclusion.

The probability of significant errors, fraud, non-compliance, and other exposures was considered during the planning phase.

The principle audit techniques used included:

- Interviews with key individuals from FSAGNU, TAG Negotiations West's Negotiation Support Unit in BC, Corporate Accounting and Reporting Services (Chief Financial Officer Sector), and representatives of the BCTC;
- Review of relevant documentation related to the comprehensive claims loan agreements in the areas of reporting, policies, procedures, templates and guidelines, contracts, agreements and budgets;
- Assessments of the adequacy, effectiveness, efficiency, and economy of management practices, financial controls and accountability structures in place for the loan cycle process;
- Testing of ten loans managed by Headquarters (HQ), ten loans managed by the BCTC/TAG Negotiations West, and two loan repayments;
- Audit fieldwork was conducted primarily at AANDC HQ in Gatineau.

The approach used to address the audit objective included the development of audit criteria against which observations, assessments, and conclusions were drawn. The audit criteria developed for this audit are included in Appendix A.

4. CONCLUSION

Overall the audit found that AANDC has implemented key governance and operational processes and controls to support the efficient and effective delivery of required services and support to the loans management process. The audit, however, did identify some opportunities where improvements could be made in the areas of governance, risk management, and stewardship.

5. FINDINGS AND RECOMMENDATIONS

Audit findings and related recommendations for improvement are categorized below by the following key elements: governance; risk management; stewardship, and accountability.

5.1. Governance

The SADM of the TAG Sector, or delegate, is responsible for determining claimant funding levels, administering funds and monitoring loan agreements. The FMSS directorate is responsible for loan funding for comprehensive claims outside of BC. For claimants in the BC treaty process, loans management is administered by the BCTC in accordance with a Master Loan Agreement signed by the Principals (Canada, BC, and the First Nations Summit) and the BCTC.

Although a formal independent oversight body specific to the management of negotiation loans nationally (including BC loans), with a defined governance structure and Terms of Reference has not been implemented, we have noted that other committees exist where issues related to loans are discussed. The TAG Senior Management Committee meets on a weekly basis to discuss programs managed by the sector. Issues arising regarding comprehensive claims and related loans would be discussed during those meeting. Attending the meetings are the SADM, TAG, and Sector Director Generals (DGs).

On an annual basis, the Senior Management Committee goes through an exercise where comprehensive claims are reviewed individually. This “Table Review” process consists of reviewing the status of active comprehensive claims and assessing the likelihood of completing an agreement, which affects the amount of outstanding loans as well as new loans being issued. This process provides management the opportunity to review the claim loan amounts against the Department’s financial mandate for that claim to identify repayment risks for FNs whose loan amounts may be an excessive burden based on their potential settlement amount.

AANDC has announced that it will be moving towards a result-based approach to its participation in treaty negotiations which consist of focusing efforts and resources on the most productive tables where there is a greater possibility of agreement. By focusing resources on the most productive tables, the average length of time to arrive at an agreement should decrease, which in turn should reduce the amount of funding required by the FNs and reduce repayment risks. This would increase the probability of loans being repaid as they are payable once an agreement has been ratified.

Although the oversight function performed for comprehensive claims overall does assist with loans management, an independent oversight function would help oversee management’s direction, plans and actions to monitor its appropriateness in support of expected outcomes.

5.1.1 Loans processed by the BCTC

Loans allocated to FNs situated in BC are managed by the third party provider BCTC under the BC Treaty Process. The intent of delegating the management of the loans to a third party is to ensure that this process does not unduly influence the negotiation process. The idea is that the loan funding provided to FNs for participation in treaty negotiations should not be controlled by the negotiation teams that represent Canada and the province of BC, who are

parties to the negotiations. As such the BCTC has general discretion to allocate negotiation supporting funding, in accordance with agreed upon funding guidelines and allocation criteria. The process of managing the comprehensive claims and treaty negotiations in BC, including the loans, was agreed to by the First Nations Summit, and the Governments of Canada and British Columbia. The agreed upon responsibilities of the BCTC was legislated into law by the Province of BC through the *Treaty Commission Act* of 1996 and by Canada through the *British Columbia Treaty Commission Act* (1995).

As a result, AANDC has limited access to information in regards to the activities being funded by the loans. As per the funding agreement, the BCTC must provide AANDC with an annual funding budget, an annual report as well as annual audited statements of the BCTC. On an individual loan basis, AANDC is provided with copies of the loan agreement (signed by the FN and BCTC), a payment schedule and the Band Council Resolution (BCR) or Directors' Resolution (DR) authorizing the loan. AANDC is not privy to the FN's work plan or the FNs audited financial statements, including the loan expenditure schedule. Because of this, under the legislation, AANDC has limited oversight of loans managed by the BCTC and cannot attest as to the reasonableness of the loan requested in relation to the work plan submitted by the FN, nor attest to whether funds were expended in accordance with the loan agreement terms and conditions. This presents a risk for AANDC as it is unable to monitor and attest that expenses funded are in compliance with the activities approved in the work plan and in compliance with AANDC policy and guidelines. Currently the only avenue for AANDC to mitigate this risk is through establishing a strong working relationship with representatives from the BCTC such that AANDC can raise concerns about specific negotiating tables, and their level of negotiation funding, with the goal that the BCTC will exercise additional due diligence, and provide AANDC assurances on the appropriateness of the loans.

Canada, the province of BC, the First Nations Summit and the BCTC are currently engaged in the Treaty Revitalization Process, aimed at making improvements to the current treaty process. Topics of discussion include ideas to improve the Treaty process overall, as well as making technical improvements, such as adjusting the master loan agreement template. This represents the key forum for AANDC to express concerns and recommend changes to address potential gaps in the current process. One of the main changes requested by AANDC is to implement a tripartite work plans to support improved access to information for the BCTC to allocate funding, for AANDC to monitor negotiation activity in advance of signing loan agreements and to support greater due diligence and monitoring for BC's negotiation loan funding and related expenditures.

Through the revitalization process, AANDC should continue to pursue opportunities to have greater access to reporting information, such as FNs' Audited Financial Statements and loan expenditure schedules, to allow better due diligence to be performed on the expenditure of loan funding according to the terms and conditions of the loan agreement.

Recommendation:

1. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that negotiation loans program is a standing/regular item on a (likely pre-existing) independent oversight body, so that appropriate governance is exercised over the negotiation loans program.

5.1.2 Strategic Direction and Planning

The audit noted that TAG has a clearly defined and communicated strategic direction and objectives in regards to comprehensive claims, which are aligned to its mandate. It was observed that TAG's 2011-2012 business plan identifies a number of challenges related to comprehensive claims which affect the loans issued as well as reimbursement.

The business plan includes key planning objectives for comprehensive claims such as advancing the level of comprehensive claims agreements negotiated and advancing agreements in principal and final agreement negotiations. In addition performance measures exist, such as, the percentage of productive negotiation tables, as well as the number of agreements reached. However, planning objectives and key performance indicators specific to loans have not been established.

Without funding, a majority of FNs would not be able to participate actively and/or on an equal level in the comprehensive claims negotiation process. As such, the sustainability of the negotiation loans program is critical to the Government of Canada in its commitment to negotiating comprehensive claims in a fair and equitable manner. Establishing clear objectives specific to the loan funding program, would assist management in focusing its resources to help ensure the sustainability of funds for negotiation activities.

In addition, key performance indicators, and a related performance measurement process, that are linked to the program objectives, would further support program monitoring and sustainability. A more robust process would support the monitoring of the negotiation loans portfolio, the assessment of performance against objectives, and any applicable management action.

Recommendation:

2. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should establish clear objectives specific to negotiation loans, as well as performance measures, to further support monitoring of the status and collectability of negotiation loans.

5.2. Risk Management

In order to help ensure that loan funding is provided to comprehensive claim negotiations that are productive and to increase the probability of reimbursement an effective risk management framework should be in place. The audit examined whether a documented approach to risk management related to negotiation loans that includes documented risk identification, assessment, mitigation and monitoring had been implemented.

As part of the 2012-2015 Corporate Business Plan exercise, a sector level risk assessment was completed by TAG which identified five areas of risk:

- Government and Aboriginal Partnership;
- External Partnership;
- Legal;
- Implementation; and

- Resource Alignment and Program Alignment.

Although the assessment did not identify specific risks related to the management of negotiation loans, the risks identified do have a direct impact on loans related to comprehensive claims. The assessment identified, regarding Government and Aboriginal Partnership risks, there is a risk that treaty negotiation and mandating processes take time, and as a result, may impact loan recoverability. Another risk indirectly linked to loans is the risk of litigation for alleged failure to implement negotiated treaties. The related identified mitigation strategies included identifying key priorities and focusing on allocation of resources in FNs with higher likelihood of negotiation success.

In addition, we have noted that management is well aware of risks related to negotiation loans and have implemented strategies to mitigate these risks. In the course of our audit, management has identified the following risks directly related to loan management:

- The risk that FNs are not able to repay the loans due to the inability to reach agreement on a final treaty settlement;
- The risk that loan amounts are too large;
- The risk that loans issued are greater than the budgeted amounts;
- The risk that loans due are not renewed or collected.

Although the current risk assessment completed as part of the 2011-2012 Corporate Business Plan Exercise, assessed the risks associated within the Sector, it did not represent a fulsome environmental scan of all of the strategic and operational risks that may impact the loans management process, and didn't measure the risks for likelihood or impact. Additionally, the loans risks identified above, and ad hoc mitigating strategies, have not been broadly communicated within the sector. TAG would benefit from completing formal risk assessment exercise to determine the areas which are most at risk to help focus their efforts towards priority activities. The Sector should formally define and document a risk management process to identify, assess, mitigate and monitor risk associated with negotiation loans.

Recommendation:

3. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management process, specific to negotiation loans, is established to appropriately identify, assess, mitigate and monitor the risks related to negotiation loans on a regular basis.

5.3. Stewardship

5.3.1 Loan Management Processing Controls

The Loan Management process is clearly defined and formalized, understood by staff, and communicated to stakeholders. The FSAGNU and TAG Negotiations West have implemented a number of controls to help ensure that loans are processed in accordance with funding guidelines. In addition, the audit found that controls are in place to help ensure that disbursements are in accordance with the *Financial Administration Act (FAA)*. Audit testing found that these controls over loans processing (timelines, documentation and decisions

approval) are functioning effectively. The sections below outline audit observations related to key sections of the negotiation loan management process. Within each section, any key differences in the process for BC versus non-BC loans are outlined.

Funding Proposal:

Once the claim (non BC claims) has been accepted for negotiation by the Minister, loan funding may be available to the claimant on the basis of negotiation priorities and mandates previously established by Cabinet. To obtain loan funding, claimants must first submit a funding proposal. The funding proposal must be supported by a detailed negotiation work plan for the fiscal year which has been approved by both the claimant and the federal negotiator. The work plan provides details as to the number of meetings, duration and location of meetings, the legal work required, studies, consultants/experts to be hired as well as the required communications. Each task is priced based on pre-determined rates. For non-BC loans, the funding proposal is reviewed by a FSAGNU funding officer and is subject to peer review.

In our review of ten loan files processed at HQ, we found that all files included a funding proposal which was supported by an approved work plan. In addition, the audit also noted evidence of review by a funding officer.

For loans related to claims under the BC treaty process, the work plans as well as the funding proposal are reviewed and processed by the BCTC. These documents are not available for review by AANDC. As such, in our review of ten loan files processed in BC, we were unable to access funding proposal documentation.

Loan Agreements:

Non-BC Loans: Once a proposal has been assessed, a loan agreement is drafted and forwarded to the FN for review and approval. The funding agreements are standardized and provide details as to the terms and conditions, eligible expenses as well as the requirements for each advance.

Once the agreement has been approved by representatives of the FN and returned with an approved BCR, the agreement is approved by the DG of FMSS Branch for loans managed in HQ.

BC Loans: For loans in BC, the BCTC will send AANDC (TAG Negotiation West) a package containing the prepared loan agreement, signed by the FN, a Schedule of Payments, the FN banking information and the approved BCR or DR. The loan agreement is reviewed by the Manager of the Negotiation Support Unit, TAG Negotiations West and approved by the DG, TAG Negotiations West. The expectation on the part of the BCTC is that these loan agreements be executed within 48 hours of receipt by AANDC.

In our review of 20 loans processed within the period under scope, we found that each loan was supported by a loan agreement which had been approved by representatives of the FN as well as the proper delegated DG. In addition, all loan agreements reviewed included a BCR.

Loan Advances:

At HQ, advances are usually provided to the FN on a quarterly basis. As specified in the loan agreement, the FN must submit a promissory note, progress report as well as financial statements prior to the loan advance being disbursed. Once a year, the FN must also provide a copy of its audited financial statements. The information is reviewed by the FSAGNU finance officer to assess whether the funds have been disbursed in accordance with the original funding proposal.

In BC, the loan agreements provided by the BCTC include a schedule of payments, to be distributed on a monthly basis. When the agreement is approved by the DG, TAG Negotiations West, this payment schedule is loaded into the First Nations and Inuit Transfer Payment System (FNITP). The monthly loan disbursements are approved by the DG TAG Negotiations West.

In our review of ten loans managed at HQ we found evidence of review by the FSAGNU finance officer prior to each advance being disbursed. In each case, we noted that the advance had been approved by the proper delegated authority.

In the case of ten loans reviewed in BC it was noted that all disbursements had been approved by the proper delegated authority, and were in line with the disbursement schedule included in the loan agreement.

Loan Monitoring/Reporting:

Non-BC Loans: As noted above, FNs are required to submit a number of reports throughout the year to allow the FSAGNU to monitor the expenditures to help ensure they are in compliance with the funding agreement. Specifically, FNs must submit a progress report as well as financial statements (unaudited) prior to the next advance being issued. In addition, the FNs must submit a copy of their audited financial statements, including a schedule specific to loan funding, on an annual basis.

At the end of the year, FSAGNU performs a more detailed review of negotiation related expenses. In cases where the eligible expenditures are lower than the advanced amount, monies would be retained from the next year's agreed upon funding amount.

In our review of ten loans managed at HQ we have found that all required documentation had been received prior to advances being issued. We also noted, through our review and discussion with staff, evidence of review by the FSAGNU finance officer prior to each advance being disbursed.

BC Loans: In BC the monitoring and the review of loan funding reporting requirements is managed by the BCTC. AANDC is not provided with copies of the FNs audited financial statements that include a detailed loan expenditure schedule. The BCTC will provide AANDC with a Summary of Auditors' Opinions which are updates in the form of letters, on the number of audits that haven't been received by the due date. AANDC is not provided with details of the contents of audits, or provided with the names of the FNs that are past due. Subsequently and only when there is a continuing failure to file an acceptable audit, will the BCTC indicate to AANDC which FN is not satisfying the reporting obligations.

Audited Financial Statements: First Nations recipients must provide their audited financial statements to AANDC as part of the reporting requirements of other program funding (e.g. Band Support Funding, Education). In addition, as per the requirements of Bill C-27 the *First Nations Financial Transparency Act 2013*, First Nations are required to publically disclose their audited consolidated financial statements (including online publishing). The availability, however, of these financial statements would not assist in the monitoring of the loan expenditures, as these documents would only include the total loan funding received in a given year, but would not include the detailed schedule statement of how the loan funding was expended.

Loan Repayments:

Loans are repayable by the FN when the loan agreement comes due or once a treaty comes into effect. The repayment term and payment schedule are detailed in an annex included in the final treaty agreement. The repayment is recoverable as a first charge against the claim. This is usually done by a deduction of the repayment amount against the capital transfer payments.

In our review of two loan files for claims that had been settled, we found that the repayment amounts had been completed in accordance with the agreed upon repayment schedule. In both cases, the loan repayment was deducted from the capital transfer amounts.

Interest:

Interest on loans is incurred from the date the loan is incurred until it is fully repaid. For non-BC negotiations, Interest on loans taken after an agreement in principal (AIP) has been agreed upon is charged to the FN. In BC interest on these loans is not incurred until the treaty comes into effect.

In our review of two loan files for claims that had been settled, we found that interest on loans taken post AIP had been calculated and charged to the FN. We also noted that interest was deducted from the capital transfer payment to the FN.

Loan Write-Off:

In cases where there is little prospect for settlement, the Minister may formally discontinue the negotiations with the FN. In these cases, the loan funding ceases. The Department may then opt to write-off the outstanding debt.

AANDC has established a formal process to write-off debts where they are determined to be uncollectable. For debt write-off greater than \$25,000 the write-off must be submitted to the Departmental write-off Review Committee. In cases where outstanding debt is greater than \$100,000, Ministers approval is required based on the Committees recommendation. All write-offs must then be submitted to Treasury Board for approval.

Debt written off must be repaid by AANDC to the Consolidated Revenue Fund through the Claims Envelope. As such prior to submitting the request to Treasury Board, funds availability must be confirmed.

It has been noted that there can be substantial delays between the approval of the write-off by the Committee and the submission to Treasury Board. In some cases the delays were in excess of seven years.

As funds may no longer be available by the time the submission is proposed to Treasury Board, Management should consider establishing a deadline after which the committee approval becomes stale dated and no longer valid. At that point a fresh Committee approval should be sought.

5.3.2 Transition of Finance function in BC

As part of the Deficit Reduction Action Plan, AANDC is streamlining the provision of corporate services by creating regional hubs to deliver these services to regional offices. A regional Accounting hub is being created in the Winnipeg Regional Office, and will be servicing western regions, including BC Regional Office. This means that the accounting operations in the BC office will be eliminated. Currently, TAG Negotiations West relies on BC's accounting operations to process the release of loan advancements (executing Sec. 33 of the FAA). According to management, after the transition, this function will likely be taken over by the Regional Accounting Hub in Winnipeg.

Management has expressed concerns about the impact this transition will have on their ability to meet the legal obligation of reviewing and approving a loan agreement in 48 hours. The time difference physical distance, and the potential lack of loans experience of financial staff could cause delays in approving the loan and the initial disbursement within the expected timeframe.

While this transition is taking place, there may be an opportunity to look at centralizing the accounting process for comprehensive claim negotiation loans within HQ Chief Financial Officer Sector, to the same HQ unit that authorizes the release of non-BC loan disbursements. This may allow for centralized processing, tracking, and reporting of loan advances, interest, and recoveries. By leveraging the pre-existing capacity in this unit, there is opportunity to streamline and create efficiencies within this component of the process. The feasibility of centralizing the accounting function of all negotiation loans should be considered within the context of the operational requirements of the TAG Negotiations West office.

Recommendation:

4. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector, and the Chief Financial Officer should monitor the adequacy of regional accounting support and consider the feasibility of centralizing the accounting function in the management of comprehensive claim negotiation loans to AANDC Headquarters.

5.4. Accountability

The audit found that the loans management authorities, roles, responsibilities and accountabilities are well defined, communicated, and understood throughout the branch. The same was found in British Columbia, that, within the context of the BC treaty process, TAG Negotiations West authorities, roles, responsibilities and accountabilities were well defined communicated and understood throughout the organization.

Loan Management Change - BC

Prior to the accounting operations being relocated to Winnipeg, the assessment of loan request for loans (submitted by the BCTC) had been performed by BC Corporate Services. This function is now being executed by the Negotiation Support Unit – West. Interviewees mentioned concerns in regards to the capacity of the Negotiation Support staff to manage these loans. Although staff members have received some training as well as a procedures manual, the personnel currently assigned does not have prior financial experience relevant to perform some of the responsibilities associated with this function. To ensure a smooth execution of these responsibilities, staff responsible for processing the loan agreements would benefit from training on how to review and interpret the loan agreements, training on how to interpret audited financial statements, as well as some specific FNITP system user training. This desire for some additional technical training aside, the audit found that staff members had a clear understanding of their authorities, roles, responsibilities and accountabilities.

Based on audit activities conducted the audit found no significant gaps related to accountability within the FSAGNU at Headquarters, and the Negotiation Support Unit – West in Vancouver.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that the negotiation loans program is a standing/regular item on a (likely pre-existing) independent oversight body, so that appropriate governance is exercised over the negotiation loans program.</p>	<p>On September 4th, 2012, the Minister announced plans to move to a more results based approach to negotiations. The annual table review exercise allows senior management and the Minister to assess the alignment of resource plans and priorities for negotiations to achieve results. Negotiation loans accumulated will be among the factors considered in the assessment of each table. The department is working with central agencies on an approach to report annually on regional negotiation plans that will provide additional oversight on negotiations.</p>	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government</p>	<p>April 2013</p>
<p>2. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should establish clear objectives specific to negotiation loans, as well as performance measures, to further support monitoring of the status and collectability of negotiation loans.</p>	<p>The objective is to focus resources on those tables producing results. The revised table review exercise will assess performance at individual tables and determine if results are being achieved. Performance measures to support the status and collectability of loans is dependent on successful negotiations. The regional plans will also identify alternative approaches to achieve results for</p>	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government</p>	<p>April 2013</p>

	less productive tables. Collection of loans will be a consideration in these approaches, including appropriate action to remove loans from departmental books should negotiations be disengaged.		
3. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management process, specific to negotiation loans, is established to appropriately identify, assess, mitigate and monitor the risks related to negotiation loans on a regular basis.	The department is moving to improve the annual table assessment process to include, among other issues, information related to the debt accumulated for a particular negotiation and an assessment of the likelihood of arriving at an agreement in the future. Regional management plans will include the financial implications related to loans and appropriate mitigation and risk management strategies.	Senior Assistant Deputy Minister, Treaties and Aboriginal Government	April 2013
4. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector and the Chief Financial Officer, should monitor the adequacy of regional accounting support and consider the feasibility of centralizing the accounting function in the management of comprehensive claim negotiation loans to AANDC Headquarters.	The CFO Sector, in collaboration with TAG West, BC Region and Manitoba Corporate Services will explore the best placing and responsibility for the accounting and the support functions for the release of loan advancements.	Senior Assistant Deputy Minister, Treaties and Aboriginal Government Chief Financial Officer	June 1, 2013

Appendix A: Audit Criteria

An audit plan was developed using a risk-based approach to identify key risks facing the efficient and effective management of loans. Principle techniques used to identify the key risks included interviews with management and key stakeholders, and a documentation review. Key risks were then linked to the core processes and practices in place within AANDC that are designed to mitigate these risks. This information was then used to determine the audit criteria to support the objectives and scope of the audit.

Audit Criteria	
Governance	
1.1	An oversight body has been established to ensure the effectiveness and efficiency of the management of negotiation loans including loans managed by the BCTC.
1.2	AANDC has in place operational plans and objectives aimed at achieving its strategic objectives in relations to negotiation loans.
1.3	External and internal environments are monitored to obtain information that may signal a need to re-evaluate objectives, policies and/or control environment.
1.4	The oversight body is provided with sufficient, complete, timely and accurate information.
1.5	Lines of communication exist between the AANDC, FNs, the British Columbia Treaty Commission (BCTC), other internal units, such as, the claims unit, to support the identification, delivery and change management of the AANDC services in support of the management of loans.
1.6	Management has established processes to develop and manage agreements and third-party contracts.
Risk Management	
2.1	Management identifies the risks that may preclude the achievement of its objectives in regards to negotiation loans and, in consideration of repayment and fraud risks.
2.2	AANDC assesses the risks it has identified in regards to loans.
2.3	AANDC formally responds to its risks.
Effective Loans Management Controls	
3.1	Lines of communication exist between the AANDC, FNs, the BCTC, other internal units such as the claims unit, to support the identification, delivery and change management of the AANDC services in support of the management of loans.
3.2	The activities, schedules and resources needed to achieve objectives have been integrated into the budget.
3.3	Financial management policies and authorities are appropriately designed, communicated and monitored to mitigate financial risks.
3.4	Compliance with financial management laws, policies and authorities is monitored regularly.

3.5	Management has established processes to develop and manage agreements and third-party contracts. Specifically in regards to agreements with FNs as well as the BCTC.
3.6	AANDC has identified appropriate performance measures specific to loans which are linked to planned results.
3.7	AANDC monitors actual performance against planned results and adjusts course as needed.
3.8	Human resources planning is aligned with strategic and business planning.