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Canada Small Business Financing Program

GUIDELINES



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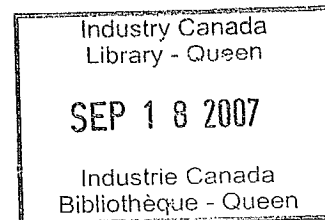
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GUIDELINES

Introduction



The purpose of these Guidelines is to assist lenders in the delivery of the program by providing the Administration's interpretation of the provisions of the Canada Small Business Financing Act (CSBFA) and the Canada Small Business Financing Regulations (CSBFR). Lenders should always refer to the Act and Regulations as they constitute the legal authority for the program.

The CSBFA continues the small business loans program introduced in 1961 by the *Small Business Loans Act* (SBLA). Its main purpose remains the same: to increase the availability of financing for the purpose of the establishment, expansion, modernization and improvement of small businesses.

Under the CSBFA the Minister is liable to pay to a lender a specified percentage of a loss sustained by it as a result of a loan, provided that the requirements of the Act and the Regulations have been met.

The CSBFR state the procedures and conditions in the granting and administering of Canada Small Business Financing loans (CSBF loans) and in the submission and substantiation of claims for loss for loans made after March 31, 1999.

These Guidelines are divided into five sections:

- Section A outlines the eligibility criteria when making a CSBF loan;
- Section B contains the procedures for the registration, administration and reporting of CSBF loans;
- Section C details the procedures to collect on the CSBF loan and to submit a claim;
- Section D deals with the administration, the realization process of loans made prior to April 1, 1999 under the SBLA and claim submission;
- Section E contains the annexes and forms to be used by lenders in the delivery of the program.

Lenders are expected to make and administer CSBF loans under the Act and Regulations with due diligence and with the same care as in the conduct of their ordinary business. The program's administration can be incorporated into the lenders' normal daily course of business while providing government guaranteed loans which small businesses might not otherwise be able to obtain.

Where lenders consider that a given situation is not clearly covered by the Act, Regulations or these Guidelines, they should seek clarification and direction from their head office, regional office or their central office. Where appropriate, and at the written request of the lender's head office, regional office or central office, a ruling may be obtained from the Administration.

It is suggested that lenders keep these Guidelines as a loose-leaf reference which may be updated on a periodic basis.

All correspondence concerning CSBF loans should be forwarded to:

Small Business Loans Administration
c/o Industry Canada
235 Queen Street
8th Floor East
Ottawa, Ontario
K1A 0H5

Telephone: (613) 954-5540
Fax: (613) 952-0290

These Guidelines, as well as the Act and the Regulations, are available on the Internet at:

<http://strategis.ic.gc.ca/csbfa>

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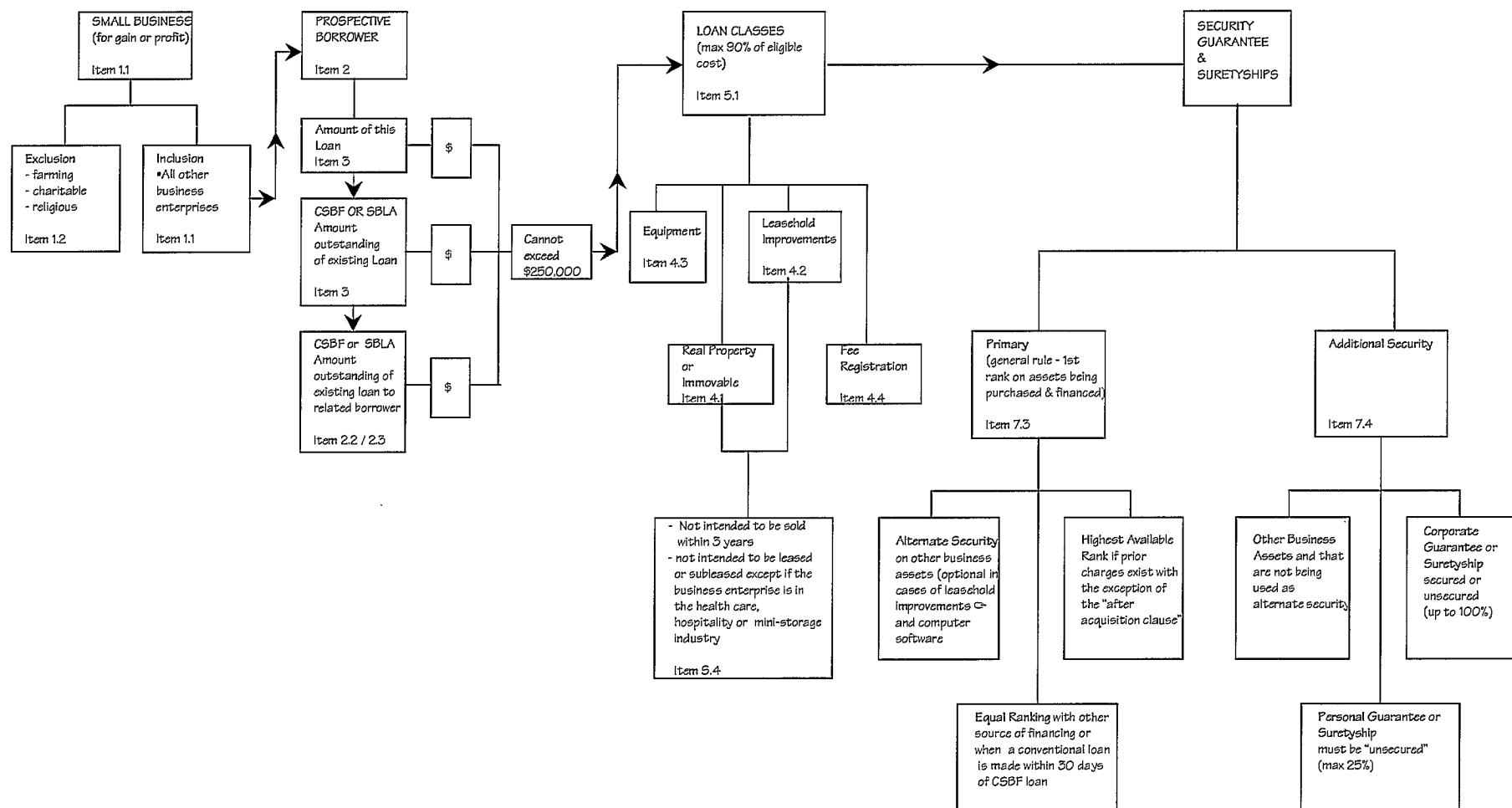
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MAKING A CSBF LOAN



Note: This flowchart is to be used only as a guide.
Lenders should consult the guidelines for more details.
The item number is in reference to section A.

☞ : Where leasehold improvements are being financed and there is a non arm's length relationship between tenant & landlord, then the lender must then take a mortgage on the real property or immovable

SECTION A - Making a CSBF Loan

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

Lenders may find it useful, in making a CSBF loan, to use the flow chart at the front of this section.

Act s.2

1. BUSINESS ELIGIBILITY

1.1 Eligible Small Business:

- business carried on in Canada;
- its purpose is for gain or profit, and
- for an existing business: the estimated gross annual revenues generated from all the operations within the small business of the borrower must not exceed \$5,000,000 for the business's fiscal year during which the CSBF loan is approved, or
- for a new business: the estimated annual gross revenues generated from all the operations within the small business of the borrower must not be expected, at the time the CSBF loan is approved, to exceed \$5,000,000 during the first 52 weeks of operation.

1.2 Ineligible Small Business:

- "farming" as defined in the Standard Industrial Classification of Statistics Canada, Major Group 01 - Agricultural Industries;
- charitable or religious organization;
- any business not operating for gain or profit (i.e. private club).

A small business can be operating different activities. As an example, a borrower whose main activity is farming could have a snow removal operation. The borrower would be eligible to obtain a CSBF loan for the purchase or improvement of assets necessary for the snow removal operation.

2. BORROWER, RELATED BORROWER AND INDEPENDENT SMALL BUSINESS

Related borrower and independent small business are new concepts being introduced as of April 1, 1999. Their objectives are:

- continuing to offer the support that is necessary to foster entrepreneurship to independent small business (Item 2.3 of this Section),
- limiting to \$250,000 the amount of loan that can be made to a borrower and related borrowers (Item 2.2 of this Section).

In essence, the Administration considers that "persons" are related when two or more small businesses are operating as different "persons", but their operational structure (i.e. revenues, sharing services...) is linked in such a way that they are, for all intents and purposes, one small business.

If a lender is faced with the possibility that two or more borrowers may be related, the independent small business test (Item 2.3 of this Section) might be useful.

It is a question of fact whether 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.

Regs ss.1(1)

2.1 **Borrower:** For the purpose of the definition of borrower, a person includes a sole proprietor, partnership and a corporation.

Regs ss.3 (2)
(3)

2.2 **Related Borrower:** For two or more borrowers to be related, there must be an element of control* between them, either singly (as a sole proprietor or partner) or through a related group (corporation or partnership). Related borrower refers to situations:

- where a person controls or is controlled by the borrower;
- where a person controls both a borrower and a corporation;
- where a person is or will be in partnership with the borrower;
- where there is an agreement between a person and a borrower to share administration services, management services, facilities, overhead expenses, employees or use the same premises.

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

Regs ss.3 (5)
(6)

Act par. 4 (2)
(b)
Regs ss.1 (3)

- 2.3 **Independent Small Business:** For the purpose of the CSBFR, different borrowers who are operating small businesses at different premises and neither one derives more than 25% of its actual or projected gross revenues from the other are considered independent small business and not related borrowers. Each borrower is then eligible for the maximum loan amount of \$250,000.

3. MAXIMUM LOAN AMOUNT

The maximum aggregate loan that can be made to a borrower and related borrower is \$250,000. It is calculated as of the day the loan is made (first disbursement date). It includes all outstanding principal balances of all loans made under the CSBFA and the SBLA.

If a borrower requires financing in excess of \$250,000 to purchase assets that are to 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;
except
- may, in the case of a conditional sales contract, make one loan document for the financing of the conditional sale.

4. LOAN CLASSES

There are four loan classes:

Real property or immovables
Leasehold improvements
Equipment
Registration fees

Assets in these loan classes must be used for the operation of the small business in Canada.

A CSBF loan can include assets from all classes without requiring submitting separate registration form for each class.

Regs par. 5
(1)(a)

- 4.1 **Real Property or Immovables¹:** This type of loan is made when a borrower is or will become the **owner** of a real property or immovables. It is used for the purchase or improvement* of real property or immovables necessary for the operation of the business.

¹ 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.

Regs par. 5
(1)(b)

- 4.2 **Leasehold Improvement:** This type of loan is made when the borrower is or will become the tenant of real property or immovables. Leasehold improvements are eligible under the following circumstances:

- leasehold improvements made by the borrower;
- leasehold improvements made by an owner of real property or immovables or by a franchisor, for a tenant, pursuant to a contract between the tenant and the owner or the franchisor; or
- existing leasehold improvements if purchased from a tenant (vendor). The Administration 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)(c)

- 4.3 **Equipment:** This type of loan is made for the purchase, capitalized installation costs or improvement* of equipment. It includes the purchase or development of 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.

Regs ss.1 (1)

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

Computer software developmental costs are eligible if:

- the software is for operational purposes and not for marketing or promotional purposes;
- the software is designed and developed by a specialized contractor/vendor;
- the contract provides the details for the software specifications;
- the contract is completed and the software is operational within one year from executing the contract;
- it results in the borrower acquiring ownership of the computer software; and
- it excludes operating cost, ongoing maintenance and services.

4.4 Registration Fee: This type of loan is made to finance part or all of the 2% registration fee which is calculated on the total loan made to finance real property or immovables, leasehold improvements or equipment. To be included as an eligible amount of the loan, this fee must be clearly indicated as a class of loan on the line "CSBFA Fee Financed" in the Loan Registration form. The \$250,000 maximum amount is inclusive of the fee amount financed.

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)

Ineligible

- Improvements to a family dwelling for non-commercial purposes
- Purchase of shares
- 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
- Intangibles (i.e. research and development costs, prepaid expenses, goodwill, etc.)

5. ELIGIBLE AMOUNT OF THE LOAN

In determining the amount of the CSBF loan, a lender should ensure that all the elements found under this item have been considered.

5.1 Eligible Expenditures:

For the purposes of the elements shown in items 4.1, 4.2 and 4.3 of this Section, costs include: transportation, freight and installation costs as well as architectural, engineering, design fees and non-refundable taxes and custom duties but are reduced by the amount of: grants, discounts, refunds and reimbursements or any type of applicable credits directly related to the assets financed. Any other costs not listed in this definition are considered ineligible incidental fees.

Regs ss.5(5)

- **90%:** The lender can finance up to 90% of the eligible cost (see definition in box above) of the assets, including non refundable taxes & custom duties.

Regs ss.5(6)

- **Trade-in:** Lenders may take the gross cost of the asset (as if there had been no trade-in) to calculate the eligible cost of the asset.
- **Non-refundable taxes:** It is the lender's responsibility to inform itself of the non-refundable nature of taxes (GST, PST or other) or custom duties that apply to assets financed.

Regs par. 6(a)

- **180 days:** When assessing the total cost of the project, a lender may include expenditures or commitments made within 180 days before the day on which the loan is approved.

Regs ss.5(3)

- **Decontamination cost:** Decontamination cost of real property or immovables is eligible provided that:
 - it is made in conjunction with the purchase of real property or immovable that is necessary for the operation of the business;
 - it is required under a federal or provincial law;
 - the decontamination plan is disclosed to the lender on or before the day on which the CSBF loan is made; and
 - the CSBF loan is secured by a first mortgage on the real property or immovables.

Regs par. 38
(4)(a)

The above costs must be supported by invoices, purchase agreements, etc. In the event that a claim for loss is submitted, copies of these as well as proof of payment will be required.

Regs ss. 5(5)

Regs par 6(a)

Regs ss. 9(1)

Regs ss. 1(1)

Regs ss. 9(4)

Regs ss. 9(2)
(3)

5.2 Ineligible Expenditures:

- **Borrower's labour:** The cost attributed to the borrower's labour (including employees, shareholders and directors of a corporation) is not an eligible expenditure.
- **Term loan:** Expenditures or commitments that are/or were previously financed by the borrower on a term loan are ineligible.

The administration defines a term loan to mean a loan with regular scheduled payments. Bridge financing is not considered a term loan.

5.3 Appraisal:

- 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 (as defined in the Income Tax Act, Section E of these Guidelines);
 - purchases all or substantially all of the assets of a going concern*;
 - purchases from the lender or its representative an asset that is or was used to secure conventional loans;
 - 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.

* going concern: 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.

- 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.
- The appraisal must be:
 - received by the lender before the loan is approved;
 - made within 180 days before the CSBF loan approval date, and
 - made by an appraiser who is a member of a professional association, or
 - in the case of an equipment loan, where there is no professional association of appraisers, made by a person that is qualified to

association of appraisers, made by a person that is qualified to make such an appraisal.

In all cases, the appraiser must be at arm's length from the borrower. Where the assets are being sold by the lender, the appraiser must also be at arm's length from the lender.

The appraisal costs are the responsibility of the borrower and cannot be provided by the loan funds or debited to the loan account.

5.4 Limitations

Regs par. 5
(2)(a)

- **The 50% rule:** The Administration recognizes that in certain situations a borrower may purchase real property or immovables, the total area of which can be in excess of the operational area required to carry on the business.

In such cases, lenders can finance up to 90% of the eligible cost of the purchase of real property or immovables provided the borrower uses, 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 area in excess of the operational area is not subject to the 3-year rule (see below) and can be leased.

Any subsequent improvements, whether structural or within the walls of the operational area being used by the business, are eligible to be financed and the 50% rule will not apply. However, improvements made to the portion of the premises that will not be used for the operation of the business are ineligible.

Regs par.
5(2)(b)
ss. 5(4)

- **The 3-year rule:** The 3-year rule applies where a CSBF loan is made to finance the purchase or improvement of real property or immovables, the purchase of leasehold improvements or any improvements to a tenant's premises. It means that, at the time the CSBF loan is made and for the next three years, it is not the intention of the borrower to sell, lease or sub-lease the operational area for which the loan is made except if the business is in: mini-storage, "479 - Other Storage and Warehousing Industries"; health care, "86 - Health and Social Services Industries"; and hospitality "91 and 92 - Accommodation, Food, and Beverage Services

Industries". Refer to the Standard Industrial Classification of Statistics Canada, 1980.

In determining the eligibility of the borrower, the lender must consider the purpose for which the borrower intends to use the assets financed and not only the operation that is being carried on in the premises. The following example illustrates this:

Example: If a management company purchases a building to rent offices to doctors, financing under CSBFA would be ineligible because the borrower (management company) is in the business of leasing property while it is the tenants (doctors) who are in the health services industry. However, the management company could finance the purchase of computers for the operation of its own management business.

6. REPAYMENT TERMS, RATE OF INTEREST AND OTHER FEES AND CHARGES

6.1 Repayment Terms

- **Maximum term:** The CSBF loan has to be repaid in full within 10 years from the date of the first scheduled principal payment. If repayment of the loan is amortized over a period longer than 10 years, a balloon payment must be scheduled no later than at the end of the 10 year maximum period.
- **Instalments:** Repayment of CSBF loan principal must be scheduled at least annually with the first instalment of principal scheduled no later than one year from the date the loan is made.

Payments should 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. Although the CSBFR provide for a maximum rate of interest, lenders may charge interest rates lower than the maximum mentioned below.

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 par. 6
(b)

Regs ss. 10(2)

Regs par. 12
(a)

The maximum fixed rate is the lender's residential mortgage rate* plus 3% (including the 1.25% annual administration fee). The rate is set at either:

- the day the CSBF loan is made, or
- the day the CSBF loan document is signed when such document is to be registered with the security documents.

* The residential mortgage rate that is in effect for an equivalent loan period. In the case of a loan term longer than 5 years, use the 5 year residential mortgage rate if there is no rate for that loan term.

At any time during the repayment period of a CSBF loan, the lender and borrower may agree to convert the interest rate or prepay the loan. To calculate the conversion charge or prepayment penalty, refer to Items 4 and 5, Section B of these Guidelines.

6.3 Other Fees and Charges: The lender cannot at any time, before or after default, request from the borrower a fee, service charge, or charge of any kind other than:

- interest;
- registration fee;
- a charge for preparing and registering the security document.
Where the lender requires the security document to be prepared and registered and the borrower has the option to choose the supplier of these services, the cost for these services can be charged by the lender to the borrower if this charge is equal to or less than the amount that the lender would charge for a conventional loan.
- premiums for life and/or disability insurance at the request of the borrower. Such insurance can be payable by a premium or expressed as a percentage of the CSBF loan. When the insurance is expressed as a percentage of the loan, it must be shown distinctively and separately in the loan document and cannot be combined with the rate of interest charged on the loan.

The cost of the prepaid insurance and charges for the taking of security cannot be financed by a CSBF loan.

Regs ss 10(1)

7. LOAN DOCUMENT AND SECURITY

7.1 **Loan Document:** On or before the day the CSBF loan is made, the lender and borrower must sign a document that sets out the following:

- loan amount
- rate of interest
- repayment terms
- frequency of principal payments
- date of first principal payment

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.

7.2 **Security:** Security for CSBF loans is divided into 2 groups:

- primary security, and
- additional security.

Guarantees and suretyships ² are considered additional security.

² 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.

7.3 **Primary Security:** This security is mandatory and also includes alternate security where applicable.

Regs ss. 14(1)

- **First ranking:** As a general rule, when the CSBF loan is made to finance the purchase of real property or immovables or equipment, the security will consist of a first charge on the assets financed. The security is to be registered in 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(3)

- **Alternate security:** If the CSBF loan is financing leasehold improvements or computer software, the lender can either take a first ranking security on the assets financed or take 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 and consequently, the lender must treat such security in the same manner as any other primary security.

Alternate security must not be treated as additional security.

Regs ss.
14(2)

Regs ss.
14(4)

Regs ss.14(5)

- **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 must be equal in rank.
- **30 days equal ranking:** The 30 days equal ranking provision is a new concept. Its objective is to consider, as a whole, the project submitted by the borrower.

It means that if within 30 days before or after the CSBF loan is made, the lender makes a term loan to finance assets that would have been eligible for financing under the CSBFA, the security taken for the term loan and the CSBF loan will become equal in ranking and in proportion to the total financing. The following example illustrates this concept.

Example: If within 30 days of making a CSBF loan of \$100,000 for leasehold improvements, a lender makes a term loan of \$300,000 for equipment, the CSBF loan and the term loan will be equal in rank on all the assets. In realization, the proceeds 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 that both loans were amortized over the same period.

The Administration will consider only the assets belonging to the business as requiring equal ranking. Assets outside of the business are not included in this provision.

- **Highest available rank:** If, at the time the CSBF loan is made, prior security exists on the assets to be financed by the CSBF loan, the lender's security for the loan 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.

- **After-acquired clause:** This concept was introduced in the 1996 Guidelines and specific provisions are now contained in the CSBFR. It means that if the prior charge flows from an “after-acquired” clause included in the security (e.g. general security agreement or universal movable hypothecs³) 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 covered by a first charge on the new asset.

³ The term “general security agreement” 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.

In cases where the CSBF loan is secured by an instrument containing an “after- acquired” clause, and the lender subsequently finances an 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.

- **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, Section E of these Guidelines).

This requirement is independent of and not affected by the provisions relating to unsecured personal guarantees or suretyships.

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 as security the real property or immovables. 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.

- 7.4 **Additional Security:** Wherever appropriate, the lender may wish to further secure the CSBF loan and take additional security on other assets of the business or 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. Refer to Item 2.2, Section C of these Guidelines for realization

Regs s. 17

Regs s. 19

Regs s. 20

Regs s. 8

on guarantees or suretyships.

- **Asset:** As additional security, a lender can take security on any other asset belonging to the borrower's business.
- **Personal guarantee or suretyship:** A lender can take **unsecured** personal guarantees or suretyships up to 25% of the original amount of CSBF loan. 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.

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

If, at the time the CSBF loan is made, 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 to 25% of the amount of the loan disbursed.

A CSBF loan is ineligible if the lender has taken a personal guarantee or suretyship that is secured by collateral assets or exceeds 25% of the amount of the loan disbursed. Remedies for inadvertent non-compliance can be found at Item 4, Section C of these Guidelines.

- **Corporate Guarantee or Suretyships:** The lender may take a **secured** or **unsecured** corporate guarantees or suretyships for the disbursed amount of the CSBF loan.

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 would include but would not be limited to:

- conducting a credit check on the borrower, or
- obtaining credit references, and
- completing an assessment of the repayment ability of the borrower.

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. Lenders are reminded of their responsibilities to minimize the loss.

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.

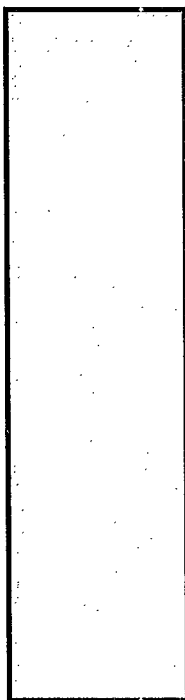
9. DOCUMENTATION

Lenders may use their own loan-related documentation (e.g. application form, loan document, etc.).

10. CHECKLIST

When assessing the eligibility of a loan, lenders may find the following checklist useful:

- ☐ business is eligible (see Item 1);
- ☐ borrower is eligible (see Item 2);
- ☐ gross annual revenue of business is not or will not be greater than \$5 million (see Item 1);
- ☐ aggregate of the outstanding loans to the borrower and related borrowers is not greater than \$250,000 (including outstanding loans 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 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);
- ☐ 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);
 - ☐ term of loan is not greater than 10 years (see Item 6.1);
 - ☐ first scheduled principal repayment is within one year of the date the loan is made (see Item 6.1);
 - ☐ rate of interest does not exceed 3% above the prime rate or the 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, 7.3 and 7.4);
 - ☐ 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 the procedures involved to obtain the guarantee under the CSBFA, the authorized changes that can be made to the loan and the procedures lenders must follow to maintain the guarantee.

Regs ss.2(1),
3(1)

1. CSBFA LOAN REGISTRATION

- the CSBF loan must be registered within 3 months from the date of first disbursement;
- the Loan Registration form (Section E, of these Guidelines) must be signed by a responsible officer of the lender and by the borrower. Forms that are not properly completed will be returned unprocessed;
- the government guarantee is limited to the amount of the CSBF loan registered;
- a fee loan that is not registered as such will not be guaranteed under the CSBFA;
- in order to register the CSBF loan, a cheque for the registration fee must accompany the form.

Act ss. 3(4)

***Transitional rule:** Loans approved before April 1st, 1999, and disbursed on or after April 1st but before July 1st, 1999 are registered under the CSBFA, but are subject to the provisions of the Small Business Loans Act and Regulations. (Act ss.3(4)). For these loans, lenders will be required to provide additional information which the Administration will communicate directly to the lender registering the loan. All loans disbursed on or after July 1st, 1999 will be governed by the provisions of the CSBFA and CSBFR.*

Regs ss.2(2)

1.1 **Modification of Loan Classes and Amounts:** It is expected that, at final disbursement, lenders will notify the Administration of any changes in the loan classes and/or amounts in the event that these differ from the loan classes and/or amounts originally registered on the Loan Registration form.

1.2 **Late Registration:** If the Minister believes that failure to register within 3 months from the date of first disbursement was inadvertent, then the Minister must extend the 3 month registration period to 6 months. In this situation, the lender must provide a full explanation of the inadvertence.

It is recommended that a CSBF loan be registered as soon as the first disbursement is made. **Lenders should not delay registration until the final disbursement is made.** The Administration will not consider a late registration in such a situation as inadvertent.

2. REGISTRATION AND ADMINISTRATION FEE: PAYMENT AND REFUND

Regs ss.4(1)

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 cheque, payable to the Receiver General for Canada, must accompany the Loan Registration form;
- a lender can finance the registration fee (Item 4.4, Section A of these Guidelines).

Act s.12
Regs ss.4(2)

2.2 Administration Fee:

- the annual administration fee of 1.25% is calculated on the end-of-month loan balances (including loans that are in the realization process);
- this fee can be charged to the borrower only through the interest rate (Item 6.2, Section A of these Guidelines);
- this fee is payable within 2 months after the end of each quarter.

Regs ss.4(4)

Transitional Rule: For loans made under CSBFA from April 1, 1999 to March 31, 2000, the administration fee is calculated on the end-of-month loan balances and payable by June 1st, 2000; as of April 1, 2000, the administration fee is payable quarterly.

Reporting on the administration fee can be found under Item 12.1 of this Section. Remedies for inadvertent non-compliance of the payment of administration fees can be found in Item 4, Section C of these Guidelines.

Regs ss.4(10)

2.3 Refund: Request for refund of registration and administration fee must be submitted in writing by the lender (not the borrower) within one year from the date the CSBF loan is made, and in the following circumstances:

- CSBF loan disbursed is less than the registered amount of the loan:
 - the 2% fee refund applies to the undisbursed portion of the registered CSBF loan;
 - the undisbursed portion of the CSBF loan will be deleted from the lender's loan records.
- CSBF loan is determined to be ineligible by the lender:
 - the registration and administration fees are fully refundable;
 - a full explanation as to why the CSBF loan is ineligible and proof that the administration fee was paid, are required;
 - upon refund, the Administration will delete the loan from its records.

3. RENEWAL AND REVISION OF TERMS:

Regs ss.10(3)

- **Renewal of terms:** Where the repayment term is less than 10 years and the CSBF loan is in good standing, the lender and the borrower may agree to renew the term of the loan for additional term or terms, as long as the loan is repaid in full within 10 years from the date of the original first scheduled principal payment. The rate of interest, as of the date of renewal, must be calculated in accordance with Item 6.2, Section A of these Guidelines.
- **Revision of terms:** The lender and the borrower may agree to revise the repayment terms of the CSBF loan at any time, without

Regs s.11

the approval of the Administration.

Any such revisions must comply with the following:

- the maximum term,
- the maximum rate of interest, and
- instalments provisions.

Where a revision of the repayment terms will extend the aggregate term beyond 10 years, lenders may accommodate the borrower. This can be done by extending the amortization of the loan over a period longer than 10 years and scheduling a balloon payment at the end of the 10th year period. If the borrower is unable to make the balloon payment, a revision of terms for the balloon payment can be approved by the Administration during the last two years of the loan term. The authorization for such a revision must be requested in writing and obtained from the Administration. The lender is to provide the grounds for the request and the appropriate documentation to support the request.

4. CONVERSION OF FIXED AND FLOATING INTEREST RATES

At any time during the repayment period of the CSBF loan, the lender and the borrower may agree to convert a fixed interest rate and a floating interest rate:

- a fixed interest rate loan may be converted to a floating interest rate loan. The lender may impose a conversion charge*;
- a fixed interest rate loan may be converted to another fixed interest rate loan. The lender may impose a conversion charge*;
- a floating interest rate loan may be converted to a fixed interest rate loan. No conversion charge may be imposed in such a case.

* A conversion charge may not exceed the greater of:

- three months interest on the outstanding principal balance of the loan, and
- the amount by which
 - the net present value of the outstanding principal balance of the loan for the remainder of the loan term, calculated at the date of the conversion and discounted at the Bank of Canada Bank Rate as of the date of the calculation, exceeds
 - the net present value of a loan for the amount of the outstanding principal balance of the loan that would be made on the date of conversion for the remainder of the loan term, and discounted at the Bank of Canada Bank Rate as of the date of calculation of the net present value.

Regs ss.10(4)

Regs ss.10(6)

Regs ss.10(5)

Regs
ss.10(7)(8)(9)

5. PREPAYMENT

Each year, on the anniversary of the day on which the CSBF loan is made, a borrower may prepay up to 10% of the original amount of the loan **without penalty**. This privilege is non-cumulative.

Where the borrower prepays more than 10% of the original amount of the CSBF loan on the anniversary of the day on which the loan is made or where the borrower prepays the whole or any part of the loan at any time, the lender may impose a prepayment penalty* on the amount in excess of the 10% or on the amount prepaid.

* The prepayment penalty may not exceed the greater of:

- three months interest on the excess amount or the amount prepaid, and
- the amount by which
 - the net present value of the excess amount or the amount prepaid for the remainder of the loan term calculated at the date of prepayment and discounted at the Bank of Canada Bank Rate as of the date of the calculation, exceeds
 - the net present value of a loan for the excess amount or the amount prepaid if it were made on the prepayment date for the remainder of the loan term, and discounted at the Bank of Canada Bank Rate as of the date of calculation.

6. SUBSTITUTION AND RELEASE OF PRIMARY AND ADDITIONAL SECURITY

Regs s.15

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; and
 - the ranking for the security on the other assets remains the same or higher.
- **Additional security:** The lender can substitute additional assets or guarantees or suretyships for any other assets or guarantees or suretyships irrespective of the nature of security provided that the value of the replacement security, guarantees or suretyships is equal to or greater than the value of the original one.

Regs ss.16(1)

Regs par.
16(2)(a)

Regs par.
16(2)(b)

Regs s. 18

Regs s. 21

6.2 **Release:** The lender may, under the following conditions, release any secured assets:

Primary Security:

- the CSBF loan is in good standing and the outstanding CSBF loan amount has been reduced by the amount of the original cost of the assets being released or,
- 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 CSBF loan.
- when an asset is being disposed of by the borrower to a party in a non-arm's length transaction, an appraisal is required and the amount to be applied to the loan will be the greater of:
 - sale price, or
 - appraised value.
- 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 amount reduced or to be reduced from the CSBF loan must be on a proportionate basis (e.g. outstanding principal balance).

Additional Security:

- for the assets, the CSBF loan must be in good standing;
- for a guarantee or suretyship, the loan must be in good standing and the principal amount of the CSBF loan must have been reduced by at least 50%.

The Administration does not need to be informed at the time of substitution or 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 in respect to the CSBF loan.

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), it is important that the lender 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. It is not necessary for the lender to inform immediately the Administration of the borrower's change of name. However, the change should be reflected in the annual report on loans outstanding at year end. In the event of a claim for loss, these documents will be required.

8. TRANSFER OF LOANS BETWEEN BORROWERS

This is a new provision. Its purpose is to facilitate, where appropriate, the sale of a business whereby the purchaser can assume the outstanding CSBF loan and the original borrower can be released of its obligation.

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, outgoing partner if

- ⊙ the lender, exercising due diligence, approves as the new borrower: the purchaser, the new partner or the remaining partners;
- ⊙ the total loans outstanding (CSBF loans and SBLA loans), by the new borrower and related borrowers, is not greater than \$250,000;
- ⊙ the lender maintains or takes security 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.

The lender is not obliged to release the original borrower. In exercising due diligence, the lender may determine that release of the original borrower would affect the ability of the lender to collect the CSBF loan. In such a situation, the original borrower need not be released.

- *Where a sole proprietor or partnership acquires the assets secured by a CSBF loan, the lender shall have the sole proprietor or partners acknowledge that their personal liability is based on the amount of the loan originally disbursed.*
- *Where a corporation acquires the assets secured by a CSBF loan from a sole proprietor or partnership and the lender releases the original borrower, then the lender shall replace the personal liability of the sole proprietor or partners with a personal guarantee or suretyship (e.g. the shareholders of the corporation), which guarantee shall be limited to 25% of the amount of the loan originally disbursed.*

9. TRANSFER OF LOANS BETWEEN LENDERS

When a CSBF loan is transferred to another lender, the Administration deducts from the transferor lender (original lender) the amount of the original loan for the purpose of calculating the Minister's liability, which amount is transferred to the transferee lender (acquiring lender). These transactions have an effect on the Minister's liability and it is possible, in cases where the transferor lender (original lender) has used all of the Minister's liability, that the transfer would cause the Minister's liability of the transferor lender (original lender) to become negative. Should this situation arise, the Administration will not accept the transfer of the CSBF loan.

At the request of the borrower, it is possible to transfer a CSBF loan from one lender to another provided that:

- the transferee lender (acquiring lender) is a lender under the CSBFA;
- the Minister's liability resulting from the transfer, calculated in favour of the transferor lender (original lender), does not exceed the amount already paid by the Minister; and
- the transferor lender's (original lender) total number of transferred

CSBF loans during the 5 year period starting April 1, 1999 and ending on the date of transfer does not exceed the greater of 20 and 1% of the number of loans made by the transferor lender (original lender) during that period.

Where the transferee lender (acquiring lender) finds it necessary to complete new documentation for the transfer of a CSBF loan, the lender may make a loan to finance the outstanding amount of the transferred loan. Such a loan must be made under the same class of loan, same loan term and maintain the rank and nature of security as existed on the transferred loan at the time of transfer. If the loan was secured by a guarantee or suretyship, either personal or corporate, the transferee lender (acquiring lender) should maintain those securities.

To avoid transferring CSBF loans whereby the Minister's liability would not continue, it is strongly recommended that the transferee lender (acquiring lender) requests the transfer from the Administration before committing any funds to pay out the transferor lender (original lender).

The transferee lender (acquiring lender) must notify the Administration by completing the "Request for the Transfer of a Loan between Lenders" form (Section E of these Guidelines). This form must be signed by the lenders and the borrower.

If the Administration determines that the requirements have been met, both lenders will be notified and the Minister's liability will continue in favour of the transferee lender (acquiring lender).

It is the responsibility of the transferee lender (acquiring lender) to satisfy itself that the transferor lender (original lender) met all of the terms and conditions of the Act and Regulations. Furthermore, the transferee lender (acquiring lender) is responsible for the payment of the administration fee accrued from the beginning of the quarter in which the transfer is being made. In the event that a claim for loss is eventually submitted, failure on the part of the transferor lender (original lender) to have complied with all the program conditions and which were not corrected within the stipulated time frame, will constitute reason for the rejection or reduction of the claim for loss. The transferee lender (acquiring lender) is required to submit all documentation to substantiate the loan in the event a claim for loss is made.

10. AMALGAMATION OF LENDERS

Lenders who intend to amalgamate shall so notify the Administration in writing in advance of amalgamation day. Upon amalgamation, the Minister's liability to the new (amalgamated) lender continues, and:

- the loans made, under the CSBFA or the SBLA, by the amalgamating lenders are considered to have been made by the new lender;
- the claims for loss paid to each of the amalgamating lenders are considered to have been paid to 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 already paid.
- The Minister's liability will continue to the new lender at the percentage corresponding (90%/50%/10%) to the total loans considered to be made by the new lender (Item 15 of this Section).

Example: Total loans made by Lender A is \$350,000; total loans made by Lender B is \$1,650,000. The Minister's liability for Lender A accumulates at 50% and for Lender B at 10%. 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 thereafter continue accumulating at 10%.

If the Minister is notified after the date the amalgamation has taken place (per 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, accumulated 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 of its outstanding loans to another lender must so notify the Administration in writing. The loans, thus acquired, will not be included in the calculation of the Minister's liability for the lender who acquires those loans. In effect, each lender's portfolio will continue to be administered separately.

12. REPORTING

There are two types of reports that the lender must provide:

- Administration fee statement
- Annual report on the total amount outstanding on all loans.

12.1 Administration Fee Statement: For loans made under the CSBFA, lenders will have to pay the Administration fee on a quarterly basis, however, this new regime will be phased in as follows:

Regs ss.4(3)

- From April 1, 1999 to March 31, 2000
 - the administration fee must be paid on or before June 1st, 2000;
 - the lender remits one lump sum payment; and
 - the lender is not obligated to produce a reconciliation statement; but
 - in the absence of a reconciliation statement, the lender must provide an External Auditor's Report confirming the accuracy of the fee.

Regs
ss.4(4)(5)

- From April 1, 2000 to March 31, 2001
 - the fee is payable quarterly within 2 months after the end of each quarter;
 - the fee is based on estimates of the end-of-month-loan balances except for the last quarter:
 - for the last quarter, the fee is based on the end-of-month balances, and with the fee remittance, the lender must include:
 - a reconciliation statement for the full year, or
 - in the absence of a reconciliation statement, the lender must provide an External Auditor's Report confirming the accuracy of the fee;
 - any overpayment of a quarterly payment based on an estimate must be claimed or deficiency paid on or before June 1st, 2001.

Regs ss.4(6)

- From April 1, 2001 and following
 - the fee is payable quarterly within 2 months after the end of each quarter;
 - quarterly statement must be submitted with the payment of the fee, substantiating the basis on which the fee was calculated; and
 - any overpayment must be claimed or deficiency paid on or before June 1st of the following year.

Regs ss.4(8)

Where the Minister believes that a lender is unable to provide the quarterly reconciliation statement and the minister advises the lender in writing, the lender may pay the fee quarterly but based on

estimated of the end-of-month loan balances. No quarterly reconciliation is required but a reconciliation statement at year end will be provided by the lender.

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 Annual Report on the Total Amount Outstanding on CSBF

Loans: Lenders shall provide to the Administration the following reports:

Regs. ss.34(3)

- before June 1, 2000, the total amount of principal outstanding on all loans as at March 31, 2000

Regs. ss.34(2)

- before June 1, 2001*, and every June 1 thereafter, the report will 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 principal and interest outstanding due and payable as at March 31.

* The report required on or before June 1, 2001 is for two years and must include the above information as at March 31, 2000 and March 31, 2001.

Remedies for inadvertent non-compliance of reporting a loan can be found at Item 4, Section C of these Guidelines.

For annual reporting on loans made under the Small Business Loans Act, please refer to Item 12, Section D of these Guidelines.

Act. s. 15

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 Administration must give a 21 day notice in writing prior to any such audit or examination.

Lenders shall provide all reasonable assistance as well as the documents, records and books of account and shall cooperate fully in

the audit or examination. Any refusal by lenders may result in the Minister not being liable for payment of any loss sustained by that lender.

Once the report of the audit or examination is completed, a copy is to be provided to the lender within 21 days.

14. ENVIRONMENTAL RISK

If it is suspected that an environmental problem does or may exist during the administration of the CSBF loan, lenders are advised to apply the same policies and procedures used in their normal course of business for such cases.

15. MINISTER'S LIABILITY

For each five-year period commencing April 1, 1999, the Minister's liability in favour of all lenders accumulates up to a maximum aggregate of \$1.5 billion. For each lender the aggregate liability of the Minister is calculated as follows:

- a) 90% of the first \$250,000 of the total loans registered in that period;
- b) 50% of an additional \$250,000 of the total loans registered in that period; and
- c) 10% of the total amount of loans registered in excess of \$500,000 indicated in (a) and (b) above.

The Minister's liability in favour of a lender represents the "funds" from which the Administration reimburses the lender 85% of the eligible loss of each loan for which a claim is paid.

16. OFFENCES AND PUNISHMENT

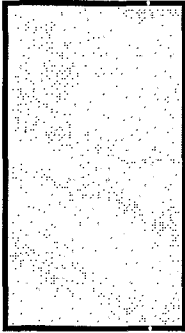
Offences under the CSBFA may arise as a result of:

- 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

Act ss.6(1)

Act ss.6(2)

Act s.16



approved.

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 may be started within three years after the subject matter arose.

SECTION C - Realizing on a CSBF Loan and Claim Submission

This section deals with loan collection and claim submission. New provisions now allow lenders to submit an interim claim prior to full realization of compromise settlements, guarantees or suretyships. The interim claim procedure also applies for loans made under the Small Business Loans Act.

Regs s.36

1. DEFAULT, NOTICE OF DEFAULT AND DEMANDING REPAYMENT

A default occurs when the borrower fails to comply with a material condition of the CSBF loan agreement, including any amendments to it (e.g. revision of repayment terms, etc.). Such a condition must be material to the loan and have an impact on the claim for loss such that it would affect the collection of the loan. A minor failure on the part of the borrower such as late filling of yearly statements would not be material and would therefore not be considered to be a default.

Regs. ss37(1)

- 1.1 Notice of Default:** If a default situation cannot be remedied and the lender and borrower cannot agree to amend the loan agreement to remedy the default, the lender must send a notice of default and demand that the borrower comply with the conditions specified in the notice within a specified period of time.

The 36 month limitation for the submission of a claim commences at the expiration of the period of time specified in the notice of default.

Regs ss.37(2)

- 1.2 Demanding Repayment:** If the borrower fails to comply with the conditions specified in the notice of default, the lender shall demand repayment within a specified period of time.

The lender can use one document to send the notice of default and demand for repayment.

Regs. ss37(3)

2. REALIZATION

If the borrower fails to repay the outstanding CSBF loan amount pursuant to the demand for repayment, the lender must take any or all of the following measures to minimize the loss:

- seize, take possession of, arrange to sell or engage a third party to sell secured assets;
- realize on any security and guarantees or suretyships;
- realize on any insurance policies;
- 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.

Lenders should apply the same policies and procedures used in their normal business practices to minimize any losses. Lenders are required to retain on file all documents substantiating the realization or non-realization of secured assets, guarantees or suretyships.

If it is suspected that an environmental problem does or may exist, lenders are advised to apply the same policies and procedures used in their normal course of business.

- 2.1 **Assets of the Business:** As the borrower has an obligation to repay the total CSBF loan, all assets of the business are subject to realization. Where the borrower has business assets over and above those held as security for the loan, lenders are expected to follow their normal lending practices in determining the cost effectiveness of realizing on those particular assets.
- 2.2 **Guarantees or Suretyships (personal or corporate):** The lender must take reasonable steps to collect from the guarantors or sureties. Such steps may include legal action and/or compromise settlements.

Lenders are reminded that realization of personal guarantees or suretyships is limited to the lesser of:

- the amount of the guarantees or suretyships as signed by the guarantors or sureties, and
 - 25% of the amount 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.

Lenders are reminded that in realizing corporate guarantees or suretyships, they are not bound by the 25% rule.

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.

Regs ss. 37(4)

- 2.3 **Liability of Sole Proprietors and Partners:** A borrower operating as a sole proprietor or as a partnership is liable for 100% of the repayment of the 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 may be collected by a voluntary settlement or by legal procedures.

- 2.4 **Compromise Settlements:** In all cases where the lender is realizing on the guarantees or suretyships or on the personal assets of sole proprietors and partners, compromise settlements can be made, at the discretion of the lender, based on the financial circumstances of the parties involved. Such settlements can be made before or after a judgement has been obtained. The reasons and basis of any such compromise settlement must be well documented.

3. **SHARING OF REALIZATION PROCEEDS AND COSTS**

The lender should apply the proceeds and costs to the CSBF loan where they are clearly identifiable as belonging to the loan. Where realization proceeds and costs incurred to realize on the CSBF loan, loans made under the Small Business Loans Act and conventional loans are not clearly identifiable, they must be prorated between the respective loans in a manner that is fair and equitable to all parties.

The following methods are most commonly used in determining the equitable treatment of all parties, and circumstances may justify a combination of them:

- where realization proceeds are clearly identifiable as belonging to the respective loans, any costs incurred on behalf of all loans combined should be prorated on the basis of the amounts realized for each individual loan;
- where realization proceeds and costs are not clearly identifiable as belonging to the loan, proceeds and costs are prorated according to the unpaid principal amount of each outstanding loan at the date of default;
- where the above methods are not applicable, proceeds and/or costs may be prorated according to the outstanding principal amount of each loan claimed in the statement of claim where there is a judgement.

Where the lender has a prior charge on the assets held for the 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

If a lender does not comply with the requirements of the CSBFA and CSBFR, a claim for loss cannot be paid. In certain specified cases of non-compliance, payment of a claim is permitted provided that the non-compliance is remedied as stipulated in the CSBFR. The specific instances of non-compliance and the remedial action the lender must take in each case are as follow:

	Loan non-compliance	Remedial action and conditions for claim payment
Reg s. 24	<ul style="list-style-type: none"> • 50% rule requirement • the 3 year rule requirement • decontamination requirement • incidental costs included in the loan 	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent</i> • <i>the lender shall provide documented evidence that the non-compliance is the result of inaccurate information provided by the borrower.</i>
Regs s.25	<ul style="list-style-type: none"> • missing proof of purchase / payment • ineligible assets financed • expenditures made > 180 days before approval date • assets previously secured by a term loan • ineligible decontamination costs • appraisal requirements not met • security requirements not met 	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent</i> • <i>loan is adjusted by the lesser of:</i> <ul style="list-style-type: none"> • <i>90% of the eligible expenditures and</i> • <i>the percentage declared by the lender in the Loan Registration form multiplied by the eligible expenditures.</i>
Reg s. 26	requirements for guarantees or suretyships not satisfied	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent</i> • <i>the amount recovered from the realization of the guarantees or suretyships must not be greater than 25% of the loan amount disbursed (exclusive of interest and cost).</i>
Reg s.27	<ul style="list-style-type: none"> • 10 year repayment term exceeded • 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 	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent.</i> • <i>the loss was not affected by the non-compliance and,</i> • <i>the borrower was reimbursed for any overcharges</i>
Reg s. 23	non-payment of the administration fee	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent.</i> • <i>the lender pays the fee within 90 days from the day the lender's head office receives the notice of non payment.</i>
Reg. s. 28	reports on loans outstanding	<ul style="list-style-type: none"> • <i>the non-compliance was inadvertent.</i> • <i>the Minister receives the report</i>

Regs 38(2)(3)

Regs s.39

5. SUBMITTING A CLAIM FOR LOSS

5.1 Type of Claim for Loss: A lender can submit a claim for loss or an interim claim for loss.

- A claim for loss means the lender has realized on all the security, guarantees or suretyships or personal liability (as in the case of the sole proprietor and partnership).
- An interim claim for loss means the primary security and any additional security on the business assets has been fully realized but the lender has not fully implemented a compromise or fully realized on the guarantees or suretyships or personal liability of the sole proprietor or partner.

5.2 Time Limitations for Claim Submission: As a general rule, a claim for loss or an interim claim for loss should be submitted within 36 months following the expiration of the period specified in the notice of default (Item 1.1 of this Section). A request for an extension to delay the submission of a claim can be made before the expiration of the 36 months, by completing and submitting to the Administration, for approval, the "Request for Extension of Claim Submission Date" form (Section E of these Guidelines).

If a claim for loss is submitted prior to a lender having realized on primary security, the claim for loss will be considered premature and will be returned to the lender. However, if it is impractical or impossible to realize on all or parts of the primary security and/or additional security (including guarantees or suretyships), a claim for loss may still be submitted. Accompanying the claim for loss must be an explanation, and all supporting documents, outlining why all the primary security and/or additional security could not be realized and why no further recovery can be made.

6. INTERIM CLAIM PROCEDURES

This is a new provision. The objectives are:

- to allow the lender sufficient time to fully implement a compromise settlement or fully realize on guarantees or suretyships or on the personal liability of sole proprietor or partners;
- to expedite the payment of claims to lenders, and
- to minimize the cost of the program.

To realize on guarantees or suretyships or on the personal liability of sole proprietor or partners means:

- to fully realize on the guarantees or suretyships or personal liability;
- to negotiate and fully settle a compromise settlement;
- to register a judgement and file a writ of execution where appropriate.

If at the time of the payment of an interim claim, the date is known when a compromise settlement or guarantee or suretyship will be fully implemented or realized, the Administration will pay the claim and consider the payment of the interim claim to be an extension to the 36 months limitation period for the submission of the final claim when applicable. On the claim payment summary, the Administration will advise the lender of the date for the final claim submission, and if no final claim or request for an extension is received by that date, the file will be closed, and no further claims can be submitted.

If the date of the full implementation of the compromise settlement or if the date of the full realization of the guarantee or suretyship is not known at the time of the payment of the interim claim, a date will be established by the lender and the Administration at the time of the payment of the interim claim. On the claim payment summary, the Administration will advise the lender of the established date, and the lender must then submit a final claim on or before that established date or request a further extension.

In the case of an interim claim, where the Administration does not receive the final claim in the time frame specified above and does not receive a request for another extension to submit the final claim, the interim claim will be deemed to be a final claim and the Minister will be subrogated in the amount paid.

After an interim claim has been paid and where the lender receives full, partial or no proceeds from the compromise settlement or guarantees or suretyships, the lender shall so notify the Administration, in writing, and provide all documents relating to such realization with the final claim, if any.

The lender may choose to submit an interim claim for loss for loans made under the Small Business Loans Act using the same procedures as set out above. However, in such a case, payment of interest on the claim will be governed by subsection 38(8) of the CSBFR and calculated for 24 months and not 36 months.

7. ESTABLISHING THE AMOUNT OF THE CLAIM FOR LOSS

The amount of loss shall be determined by the Administration by aggregating the following:

- unpaid principal amount of the CSBF loan at the expiration of the period specified in the notice of default;
- application of gross proceeds of security realization, payments by guarantors or sureties, recoveries from the borrower, insurance proceeds and all other proceeds;
- uncollected taxed legal costs;
- legal fees and disbursements;
- other costs incurred by the lender in endeavouring to collect the loan or in realizing on security. The lender can only include costs paid to parties other than the lender's employees;
- taxes that may be reimbursed to the lender must be deducted;
- interest, at the rate specified in the loan document, on the unpaid principal amount of the loan from the day to which interest has been paid by the borrower up to the day of the next scheduled payment; and
- for 24 months after the first scheduled payment date as in the previous paragraph or until the date of payment by the Administration whichever is earlier, interest will be paid,
 - for the first 12 months of this period, at the rate (as per the loan document) that was in effect on the day of the subsequent first scheduled payment date in the previous bullet; and
 - thereafter at one-half that rate.

For an interim claim for loss, the Administration will deduct either the full amount of the compromise or the full amount of the guarantee or suretyship.

Even though an extension for a claim submission beyond 36 months can be granted, the Administration is not permitted to pay interest beyond the above noted 24 month period.

Once a payment of principal and/or interest has been applied to the CSBF loan, a reversal of such a payment after five (5) working days have elapsed will be disallowed for the purpose of establishing the loss.

Act s. 8

Regs ss.
38(4)(5)(6)

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

The government/lender loss sharing ratio is 85%/15%. A lender cannot avoid absorbing its 15% share of the loss by taking compensatory security of any kind or claiming from the borrower/guarantor after payment of the claim.

8. DOCUMENTING CLAIM FOR LOSS SUBMISSIONS

When a lender submits an interim claim for loss or a claim for loss, copies of the following documents must be submitted:

- ☐ a properly completed Claim For Loss Form certified by both the responsible loan officer of the lender and his/her supervisor (Section E of these Guidelines);
- ☐ the borrower's loan application form and/or a copy of the lender's documentation signifying approval for the loan;
- ☐ the Loan Registration form, the Loan Registration and Fee Receipt Acknowledgement Form, and the Loan Registration Modification Acknowledgement Form, if applicable;
- ☐ the cost and proof of payment of the purchase, or improvement of real properties or immovables, leasehold improvements and equipment;
- ☐ the borrower's statement of loan account, (computer print-out, etc.) showing the date the loan proceeds were advanced, all payments of principal and interest, and all other entries to the loan account;
- ☐ the loan document;
- ☐ if interest rate is fixed, document substantiating the lender's residential rate;
- ☐ the documents relating to the primary, additional and alternate security, and guarantees or suretyships;
- ☐ the documents evidencing any revision of repayment terms;
- ☐ the documents evidencing the sale of security;
- ☐ a report of the unrealized security, including guarantees or suretyships or personal liability of the sole proprietor or partnership;
- ☐ the 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;

Regs s. 40

- ☐ evidence of bankruptcy/receivership (notice of first meeting of creditors, including the statement of the bankrupt as to the assets and liabilities), the lender's proof of claim against the bankrupt estate (which is to include the total amount owing on the loan), and the Trustee's/Receiver's final report. Where the Trustee's final report is not yet available, the lender/trustee's comments as to the probability of receiving dividends from the estate should be provided and the final report should be eventually sent to the Administration when available;
- ☐ any approved request for extension of claim submission deadline;
- ☐ the documents evidencing the landlord's distraint action against loan security, if available; otherwise, an explanation providing details of the distraint action;
- ☐ the appraisal;
- ☐ all other documents when requested by the Administration to process the claim for loss.

9. SUBROGATION

Once a claim is final, the Minister is subrogated in all the rights of the lender up to the amount paid.

In the case of an interim claim, where the Administration does not receive a final claim or a request for further extension before the date specified in the claim payment summary, the administration will deem the interim claim to be a final claim.

10. POST-CLAIM RECEIPTS OF PROCEEDS

The Administration's share of any monies received after the payment of a claim for loss (e.g. dividends, etc...) is to be forwarded to the Administration, with a cheque payable to the Receiver General for Canada. The name of the borrower, the source of the funds, the date of the collection, the amount of any sums deducted from the gross proceeds, and a summary of the lender's pro rata calculations, where the funds are shared with other loans are to be included with the payment.

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ECTION D – Loans made under the Small Business Loans Act (SBLA) and its Regulations

This section deals with the procedures involved to obtain the guarantee under SBLA, the authorized changes that can be made to the loan, the realization process and submission of claims for loss (including interim claims for loss). Lenders will be referred to Sections B and C of these Guidelines for those procedures that are similar to the Canada Small Business Financing Act and its Regulations.

Provisions dealing with the making of a loan under SBLA are not covered in these Guidelines since the lending period is over. In administering and collecting loans, lenders must apply the same care and procedures as those that would be applied in their ordinary business.

Regs. ss. 23(1)

1. LOAN REGISTRATION

- the loan must be registered within 3 months from the date of the initial disbursement;
- the Loan Registration form must be signed by a responsible officer of the lender and by the borrower. Loan Registration forms that are not properly completed will be returned unprocessed;
- the government guarantee is limited to the amount of the loan registered;
- in order to register the loan, a cheque for the registration fee must accompany the form.

Transitional rule: Loans approved before April 1st, 1999, and disbursed on or after April 1st but before July 1st, 1999 are registered under the CSBFA, but are subject to the provisions of the Small Business Loans Act and Regulations. (Act ss.3(4)). For these loans, lenders will be required to provide additional information which the Administration will communicate directly to the lender registering a loan. All loans disbursed on or after July 1st, 1999 will be governed by the provisions of the CSBFA and CSBFR.

Regs. ss. 23(2)

- 1.1 **Late Registration:** The Minister can extend the 3 month registration period to 1 year from the date of the initial disbursement provided that the loan is not in default. In this situation, the lender must provide justification for the late registration.

It is recommended that a loan be registered as soon as the first disbursement is made. **Registration should not be delayed until the lender has made its final disbursement.**

2. REGISTRATION AND ADMINISTRATION FEE: PAYMENT AND REFUND

Regs. s. 23.1

2.1 Registration Fee:

- the registration fee is 2% of the total amount of the loan for equipment, premises and land;
- a cheque, payable to the Receiver General for Canada, must accompany the Loan Registration form;
- a lender can finance the registration fee.

Regs. s. 23.2

2.2 Administration Fee:

- the annual administration fee is 1.25% of the yearly average of the end-of-month loan balances (including loans that are in the realization process);
- this fee can be charged to the borrower only through the interest rate;
- the fee is payable by May 31 of each year.

Reporting on the administration fee can be found under Item 12 of this Section.

- 2.3 **Refund of Registration Fee:** Request for refund of registration fee must be submitted in writing by the lender (not the borrower), within one year from the first disbursement of the loan and in the following circumstances:

- the loan disbursed is less than the amount of the loan registered:
 - the refund applies to the undisbursed portion of the registered loan;
 - the undisbursed portion of the loan will be deleted from the lender's loan records.

- the loan is determined to be ineligible by the lender:
 - the fee is fully refundable;
 - a full explanation as to why the loan is ineligible is required;
 - upon refund, the Administration will delete the loan from its records.

3. RENEWAL AND REVISION OF TERMS

Regs. ss. 12(4)

- **Renewal of terms:** Where the repayment term is less than 10 years, the lender and the borrower may agree to renew the term of the loan for additional term or terms, as long as the loan is repaid in full within 10 years from the date of the original first scheduled principal payment. The rate of interest, as of the date of renewal, must not exceed the maximum rate allowed under section 14 of the Regulations.

Regs. s.13

- **Revision of terms:** The lender and the borrower may agree to revise the repayment terms of the SBLA loan at any time without the approval of the Administration, provided there is an actual or impending default. The Administration interprets "impending default" to mean a situation where a revision of terms will reduce the risk of, or prevent, a default in the foreseeable future. Refer to Item 3 of Section B of these Guidelines.

Regs. ss.
12(5)(6)

4. CONVERSION OF FIXED AND FLOATING INTEREST RATES

The CSBFR now allow lenders to convert a fixed interest rate loan to another fixed interest rate loan. Although there were no specific provisions for such a conversion in the Small Business Loans Regulations, the Administration will allow lenders to convert such a loan and lenders can impose the prescribed conversion charge. Refer to Item 4, Section B of these Guidelines.

Regs. ss. 12(7)

5. PREPAYMENT

Provisions for prepayment are the same as loans made under the CSBFA. Refer to Item 5, Section B of these Guidelines.

Regs. ss. 16(7)

6. SUBSTITUTION AND RELEASE OF SECURITY

6.1 Substitution:

Provisions for substitution of security and personal and corporate guarantees are the same as loans made under the CSBFA. Refer to Item 6.1, Section B of these Guidelines.

Regs. ss. 16(8)

6.2 Release of Assets:

- For an equipment loan, the lender may release the assets provided that:
 - the loan is not in default,
 - at least two years have elapsed since the date of the final disbursement of the loan proceeds, and
 - the principal balance of the loan has been reduced by an amount equal to the original cost of the equipment released.
- For a land or premises loan, the lender may release the assets where:
 - they are expropriated, and
 - the proceeds of the expropriation are applied to the loan.
- For the release of personal guarantees, the loan must be in good standing, and the principal amount of the loan must have been reduced by at least 50%.

Regs. ss. 16(9)

Regs. ss.
16(10)

7. CHANGE OF NAME OF THE BORROWER

Provisions for the change of name of the borrower are the same as loans made under the CSBFA. Refer to Item 7, Section B of these Guidelines.

8. TRANSFER OF LOANS BETWEEN BORROWERS

The CSBFR now allow for the transfer of loans between borrowers. The Administration is extending the provisions to include loans made under SBLA. Refer to Item 8, Section B of these Guidelines.

Regs. ss. 24(2)

9. TRANSFER OF LOANS BETWEEN LENDERS

The procedures and the effects of transferring a loan from one lender to another are the same as for loans made under the CSBFA. The only difference is the period upon which the calculation for the total number of loans that can be transferred. Under SBLA, the calculation (the greatest of 20 or 1%) is based on the number of loans outstanding for each lender as of the last preceding March 31.

For information on the procedures and effect of a transfer, refer to Item 9, Section B of these Guidelines.

Regs. ss. 24(1)

10. AMALGAMATION OF LENDERS

Provisions for the amalgamation of lenders are the same as for loans made under the CSBFA. Refer to Item 10, Section B of these Guidelines.

Regs. ss. 24(1)

11. DISCONTINUANCE OF LENDING BUSINESS

Provisions for the discontinuance of lending business are the same as for loans made under the CSBFA. Refer to Item 11, Section B of these Guidelines.

12. REPORTING

There are two types of reporting that the lender must provide:

Regs. s. 20

- **Report of Balance Outstanding of Loans:** By May 31 of every year, lenders are required to provide to the Administration a report that details, per period, the total loans outstanding as of March 31. This report is prepared on an E5 form.
- **Annual Administration Fee Payment:** For loans made as of April 1, 1995, the annual administration fee is 1.25% of the yearly average of the end-of-month loan balances. This fee must be paid by May 31 and accompanied by a completed External Auditors Report.

Lenders may consent to the payment of the administration fee under the provisions of sub-section 3(2) of the CSBFA. In such a case, the payment of the administration fee is outlined in Item 2.2, Section B of these Guidelines.

Notwithstanding the above, lenders may elect to follow the reporting requirements outlined in Item 12.2, Section B of these Guidelines.

13. ENVIRONMENTAL RISK

Provisions for the environmental risk are the same as for loans made under the CSBFA. Refer to Item 14, Section B of these Guidelines.

Regs. s. 17

14. DEFAULT AND DEMANDING REPAYMENT

A loan is in default when any payment of interest or principal in respect of the loan is not made on the date it is due.

However, where the borrower makes a payment of interest beyond the date specified in the above paragraph, then the date of default will be the date to which the interest was last paid to by the borrower.

If the lender decides that the default situation cannot be remedied (e.g. revision of repayment terms is not appropriate), it must demand repayment of the entire amount of the outstanding balance of the loan (principal and interest). The lender should call the loan in the same way that it calls its other loans or advances.

The limitation for the claim submission (19 months for loans made prior to April 1, 1993 or 36 month for loans made as of April 1, 1993 but before April 1, 1999) commences on the date of default.

15. REALIZATION

Provisions for the realization on secured assets and guarantees are the same as for loans made under the CSBFA. Refer to Item 2, Section C of these Guidelines except for the following three sub-items:

- 15.1 **Assets of the Business:** All assets of the business enterprise, including those not specifically acquired with the loan proceeds, are subject to realization. Where the business enterprise has assets over and above those held as security for the loan, lenders are expected to follow their normal lending practice in determining the cost effectiveness of realizing on those assets and, if appropriate, in realizing on those assets. Lenders are required to retain on file all documents pertaining to the realization of the security and, if appropriate, to provide the rationale for dealing with the other assets of the business enterprise.
- 15.2 **Guarantees:** The lender must take reasonable steps to collect from the guarantors. Compromise settlements can be made at the discretion of the lender, based on the financial circumstances of the guarantors.
 - For loans made prior to April 1, 1993, the lender was not limited in the amount or the percentage of the personal guarantee that it could obtain to secure the BIL
 - For loans made as of April 1, 1993, the following applies:
 - the personal guarantee was limited to 25% of the amount of the loan;
 - the lender cannot collect any more than 25% of the amount of the loan disbursed even though the lender took a 25% guarantee of the amount of the approved or registered BIL. Should a lender collect more than 25% of the amount of the loan disbursed, the Administration will instruct the lender to remit to the guarantor the excess amount. Proof of repayment to the guarantor is required before the audit of the claim for loss can be completed.

Regs. Par.
18(2)(d)

15.3 **Compromise Settlement:**

- In respect of loans made prior to April 1, 1993, a lender cannot make a compromise settlement with a borrower prior to submission of a claim for loss unless the borrower is, at the time of the settlement agreement, a corporation which does not have and is not expected to have, in the future, any assets which can be realized upon. Sole proprietors and partners are liable for 100% of the loan; compromise settlements with any person other than the borrower can be made prior to the claim submission. Lenders are required to obtain approval from this administration when such settlements are to be made with the borrower prior to the claim submission as well as after payment of the claim by the Administration. Documents outlining the reasons for the compromise should be submitted with the request.
- In respect of loans made on or after April 1, 1993 only, compromise settlements with the borrower can be made prior to submission of a claim for loss, at the discretion of the lender, based on the financial circumstances of the borrower. The reason for and basis of any compromise settlement with a borrower should be well documented.

16. **SHARING OF REALIZATION PROCEEDS AND COSTS**

Provisions for the sharing of realization proceeds and costs are the same as for loans made under the CSBFA. Refer to Item 3, Section C of these Guidelines.

17. **NON-COMPLIANCE REMEDIES**

If, at the time a loan is made, a lender inadvertently failed to comply with some requirements of the Small Business Loans Act or its Regulations, the following remedies may be applied, as long as the borrower has not been or is not presently in default.

Act ss. 3(7)

Loan non-compliance	Remedial action and conditions for claim payment
10 year repayment term exceeded	<i>the promissory note and the security documents can be corrected within 2 years of the initial disbursement of the loan funds.</i>
non-conforming repayment terms	<i>the promissory note can be corrected within 2 years of the initial disbursement of the loan funds.</i>
<ul style="list-style-type: none">• interest rate in excess of maximum• non-allowable fee or charge	<i>overcharges can be corrected within 2 years of the first disbursement of the loan funds. The overcharged sum must be credited to the loan account or to the borrower's current account if the borrower has already paid the lender the overcharged amount. In the latter case, the lender should keep a record of such credit.</i>
security requirements	<i>this can be remedied by taking required security within 2 years from the first disbursement of the loan funds, provided the security priority ranking is in conformity with the taking of the security and the delay has not adversely affected the lender's security position.</i>

Where a lender has failed to meet any of the above requirements within the prescribed period of time, the loan will not be a guaranteed loan.

18. SUBMITTING A CLAIM FOR LOSS

A lender can submit a claim for loss or an interim claim for loss. The submission procedures in Item 5, Section C of the Guidelines are the same except for the following:

Regs. ss.
19(2)(3)

- For loans made prior to April 1, 1993, it is anticipated that the lender will have realized on all security and guarantees before submitting its claim for loss. The lender has a maximum of 19 months from the date of default to submit a claim for loss. The lender may request an extension of this period prior to the passage of 19 months from the date of default. The Administration may extend the claim submission deadline one or more times.
- For loans made after March 31, 1993, a claim for loss should be submitted within 36 months from the date of default (Item 14 of this Section). A request for an extension to delay the submission of a claim can be made by completing and submitting to the Administration, for approval, the "Request for Extension of Claim Submission Date" form (Section E of these Guidelines) before the expiration of the 42 months.

19. INTERIM CLAIM PROCEDURES

Lenders may choose to submit an interim claim for loss in situations where it has realized on the business assets but not on the guarantees. In such a case, payment of interest on the claim will be governed by subsection 38(8) of the CSBFR and calculated for 24 months and not 36 months.

Lenders should use the same procedures as in Item 6, Section C of these Guidelines.

20. ESTABLISHING THE AMOUNT OF THE CLAIM FOR LOSS

Refer to Item 7, Section C of these Guidelines. Establishing the amount of the claim for loss is identical as for loans made under the CSBFA. The difference is in the calculation of the interest. In the case of a loan made under SBLA, interest is calculated as follows:

- for loans made prior to April 1, 1993, interest for 180 days from the date interest was last paid by the borrower at the full rate (calculated by the Administration), which was in force on that date, and thereafter, at one-half that rate until the claim for loss is paid.

- for loans made on or after April 1, 1993:
 - interest, at the rate specified in the promissory note, on the unpaid principal amount of the loan from the day to which interest has been paid by the borrower and ending on the day before the date the loan became due and payable; and
 - for 36 months after the date the loan became due and payable or until the date of payment by the Administration whichever is earlier, interest will be paid,
 - for the first 12 months of this period, at the rate (as per the promissory note) that was in effect on the day the loan became due and payable; and
 - thereafter (for a maximum of 24 months) at one-half that rate.

The government/lender loss sharing ratio is:

- 85%/15% for loans made during the period April 1, 1985 to March 31, 1993;
- 90%/10% for loans made during the period April 1, 1993, to December 31, 1995; and
- 85%/15% for loans made during the period January 1, 1996 to March 31, 1999.

A lender cannot avoid absorbing its share of the loss by taking compensatory security of any kind or claiming from the borrower/guarantor after payment of the claim.

21. DOCUMENTING CLAIM FOR LOSS SUBMISSIONS

Provisions for documenting claim for loss submissions are the same as for loans made under the CSBFA. Refer to Item 8, Section C of these Guidelines.

22. MINISTER'S LIABILITY

For the following periods:

Lending Period 9:	April 1, 1983 to March 31, 1985;
Lending period 10:	April 1, 1985 to March 31, 1990;
Lending period 11:	April 1, 1990 to March 31, 1993;

Act ss. 5(2)

the Minister's liability was calculated as follows:

- a) 90% of the first \$125,000 of the total loans registered in a lending period;
- b) 50% of an additional \$125,000 of the total loans registered in that lending period; and
- c) 10% of the total amount of loans registered in excess of \$250,000 indicated in (a) and (b) above.

For lending Period 12 (April 1, 1993 to March 31, 1999), the maximum aggregate was increased to:

- a) 90% of the first \$250,000 of the total loans registered;
- b) 50% of an additional \$250,000 of the total loans registered; and
- c) 10% of the total amount of loans registered in excess of \$500,000 indicated in (a) and (b) above.

If the aggregate amount of claim for loss payments to a lender for any one lending period reaches the maximum liability as calculated above, subsequent claims for loss, submitted by the lender in that lending period, cannot be reimbursed by the Administration.

Act s. 9

23. OFFENCES AND PUNISHMENT

Offences under the Small Business Loans Act may arise as a result of:

- anyone making a false statement, a misrepresentation or furnishing false or misleading information;
- a borrower fraudulently using the proceeds for the loan for a purpose other than stated in the application for the loan.

Such offences are summary convictions (fine up to \$1,000). Any proceedings related to a summary conviction offence may be started within three years after the subject matter

Regs. s. 21

24. SUBROGATION

Once a payment of a claim is made, the Minister is subrogated in all the rights of the lender in respect of that loan.

25. POST-CLAIM RECEIPTS OF PROCEEDS

After payment of the Claim for Loss, the lender may be requested to continue to actively follow up on an account in order to effect recovery and to provide reports on any developments. Specific action may be directed by the Administration from time to time. This could range from a request that an account be lodged with a collection agency/skip tracer or the judgment be executed, to a request for the gathering of more detailed information on a guarantor's circumstances.

In such cases, all reasonable expenses in connection with any action undertaken on the loan may be claimed or deducted from recovered funds, as appropriate.

Where lenders are unable to collect any funds due to the fact that the obligant is unable to repay and improvement in his/her financial situation is unlikely in the future, current detailed personal and financial data, preferably by way of a statutory declaration, or a statement of affairs and an updated Credit Bureau report should be submitted. If the obligant's whereabouts is unknown, a copy of a recent report from a skip tracing agency or collection agency indicating the obligant cannot be located should be submitted.

When the Administration decides to discontinue further action, the lender will be advised.

SECTION E – Annex and Forms

This section contains the following annex and forms that the lender will need to deliver the program:

1. The annex is an excerpt from the *Income Tax Act* for the definition of the term “not at arm’s length”;
2. Loan Registration Form;
3. Request for the Transfer of a Loan Between Lenders;
4. Request for Extension of Claim Submission Date;
5. Claim for Loss.

These forms are to be used for loans made under the *Canada Small Business Financing Act* and the *Small Business Loans Act*.

ANNEX

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Section 251 (1)

- (1) **Arm's length.** For the purposes of this Act,
- (a) related persons shall be deemed not to deal with each other at arm's length; and
 - (b) it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.

Section 251 (2)

- (2) **Definition of "related persons".** For the purpose of this Act, "related persons", or persons related to each other, are
- (a) individuals connected by blood relationship, marriage 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 (i) or (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.

Section 251 (3)

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

Section 251 (3.1)

(3.1) **Relation where amalgamation or merger.** 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.

Section 251 (3.2)

(3.2) **Amalgamation of related corporations.** 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 (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.

Section 251 (4)

- (4) **Definitions concerning groups.** In this Act,
 "related group" – "related group" means a group of persons each member of which is related to every other member of the group;
 "unrelated group" – "unrelated group" means a group of persons that is not a related group.

Section 251 (5)

- (5) **Control by related groups, options, etc.** For the purposes of subsection (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.

Section 251 (6)

- (6) **Blood relationship, etc.** 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; 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.

Proposed amendment to s. 251(1).

19. (1) Subsection 251(1) is amended by striking out the word "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

- (b) a taxpayer and a trust 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, is beneficially interested in the trust; 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.

Applicable: After December 23, 1998.



CANADA SMALL BUSINESS FINANCING ACT
LOAN REGISTRATION FORM

Note: You must read the attached instructions and fill in all of the boxes or use N/A if not applicable, otherwise the form will be returned.

LENDER				FOR OFFICE USE ONLY	
1 Lender's name and address (print)		2 CPA transit no.			
Postal code		3 Lender's loan or folio no.			
BORROWER					
4 Name and address of the entity directly obligated to repay the loan (print)		5 Telephone no.			
Postal code		6 GST registration no.			
		or <input type="checkbox"/> Exempted from GST			
7 Operating name of business (if different from the name reported in Line 4)					
8 Type of borrower (should correspond to Line 4)		9 Borrower's estimated annual gross revenue			
<input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited company		Borrower's estimated annual gross revenue $\$$ <u> </u> Cannot exceed \$5,000,000			
10 Industrial sector (use one of the letters from A to S as per instructions and print a concise description of the main activity of the business resulting from the loan)		11 Type of project being financed (check only one box)			
Sector <input type="checkbox"/> Description of activity		<input type="checkbox"/> Start-up <input type="checkbox"/> Expansion / Improvements			
		<input type="checkbox"/> Purchase of assets of a going concern			
		If purchase of assets of a going concern, check one box under (a) and complete (b)			
		a) <input type="checkbox"/> Arm's length <input type="checkbox"/> Non-arm's length			
		b) Percentage of loan, if any, used for expansion / improvement \rightarrow %			
12 Number of years the business seeking the loan has been operating. Indicate NEW if the loan applies to the purchase of a going concern.		13 Assets located on an Indian Reserve			
<input type="checkbox"/> New <input type="checkbox"/> 1 to 3 years <input type="checkbox"/> More than 3 years		<input type="checkbox"/> Yes <input type="checkbox"/> No			
14 Type of operation		15 If franchise or operating under a management contract: Name and address of franchisor or contractor		16 Number of current full-time equivalent employees on the payroll at time of loan application	
<input type="checkbox"/> Franchise <input type="checkbox"/> Operating under a management contract with supplier of assets <input type="checkbox"/> Other		Postal code		17 Number of additional persons to be employed (full-time equivalent) as a direct result of this loan	
LOAN					
18 Aggregate amount of guarantees or suretyships obtained for the loan to be registered			19 Rank of asset security obtained		
Personal \$ <u> </u> Corporate \$ <u> </u> <input type="checkbox"/> None			<input type="checkbox"/> First charge <input type="checkbox"/> Equal ranking <input type="checkbox"/> Other		
Personal guarantees or suretyships cannot exceed, in aggregate, 25% of line 32					
20 Term of loan (in months)		21 Date of approval of the loan		23 Interest margin in addition to the floating prime rate or fixed mortgage rate	
Year Month Day		Year Month Day		<input type="checkbox"/> Floating (prime rate) + % = % <input type="checkbox"/> Fixed (mortgage rate) Cannot exceed 3% Total interest rate	
Cannot exceed 120					
24 If applicable, charges payable by the borrower to the lender for:					
a) Taking security \$ <u> </u>		b) Life or disability insurance Expressed as an annual premium \$ <u> </u> Expressed as a percentage of the loan % <u> </u>			

CLASS OF LOAN		AMOUNT OF LOAN TO BE REGISTERED
25	Purchase of / Improvements to real property or immovables (owner)	\$
26	Leasehold improvements (tenant) - New	+
27	Leasehold improvements (tenant) - Purchase of existing improvements	+
28	Equipment (excluding software)	+
29	Software	+
30	Sub-total (Lines 25 to 29)	=
31	CSBF loan fee financed (if applicable) maximum 2% of Line 30	+
32	TOTAL AMOUNT OF LOAN TO BE REGISTERED (add Lines 30 and 31)	=

33 Registration fee (2% of Line 30) cheque payable to Receiver General
 \$ _____
Do not round to nearest dollar

34 Percentage of asset cost financed by the CSBF loan
 _____ %
Cannot exceed 90%

BORROWER'S ACKNOWLEDGEMENT AND CONSENT

I, the borrower (or responsible officer of the company),

1) certify that:

a) the elements financed in Lines 25 to 29 include only the eligible costs as defined in the attached instructions and do not include any incidental fees other than non-refundable taxes and custom duties;

b) the total amount of the proposed loan and the principal amount outstanding, in respect of the borrower and all borrowers related to that borrower within the meaning of the Regulations, does not exceed \$250,000 (including outstanding SBLA loans);

c) if the loan is to finance the purchase of real property or immovables:

- at least 50% of the area is used for or is intended to be used within 90 days after the final disbursement, for the operation of the small business;

☐ Yes

☐ Not Applicable

d) if the loan is to finance the purchase or improvement of real property or immovables or leasehold improvements:

- the assets are not intended to be resold, leased or subleased within 3 years after the day on which the loan is made except for small businesses in the health care, hospitality or mini-storage industries;

☐ Yes

☐ Not Applicable

e) if the loan or part of the loan is to finance leasehold improvements, the borrower and the landlord are at arm's length.

☐ Yes

☐ No

☐ Not Applicable

2) consent to:

1) the audit by industry Canada representatives of the loan approval and administration file held by the lender in respect of the loan.

2) the release by industry Canada of information with respect to the borrower's or related borrower's outstanding loans to another lender to whom the borrower applies for a loan.

It is an offence to make any false statements or misrepresentations on this registration form and is subject to punishment as stated in section 16 of the Canada Small Business Financing Act.

Name of borrower or responsible officer of the company (print)	Signature of borrower or responsible officer of the company	Date
		Year Month Day
		Date
		Year Month Day

LENDER'S ACKNOWLEDGEMENT

I, responsible officer of the lender, certify that:

a) to the best of my knowledge, the information contained herein is complete and accurate;

b) the loan was approved in accordance with the due diligence requirements of the Canada Small Business Financing Regulations;

c) the loan complies with all the eligibility requirements of the Canada Small Business Financing Act and Regulations;

d) no fees or charges other than those authorized by the Act and Regulations and declared on this form have been paid or are payable by the borrower.

Name of responsible officer of the lender (print)	Title	Date
		Year Month Day
Signature	Telephone no.	Enter the fax number where acknowledgement can be sent after business hours
		FAX no.

MAKE LENDER'S CHEQUE PAYABLE TO "RECEIVER GENERAL FOR CANADA"
and send with form to:

Small Business Loans Administration
8th Floor East
235 Queen Street
Ottawa, Ontario K1A 0H5

INFORMATION ON THE PROGRAM AND FORMS AVAILABLE AT:

<http://strategis.gc.ca/csbfa>

INSTRUCTIONS FOR THE LENDER

1. Indicate the name, address and postal code of the lender branch where the loan was authorized / approved.
2. Enter the transit number approved by the Canadian Payments Association (**8 digits**) that matches the address reported in Line 1.
3. Enter the **complete** loan number or folio assigned to the loan by the lender. Do not submit registration form until the loan number has been assigned by the lender.
4. Enter the name, address and postal code of the entity directly obligated to repay the loan. For a business operating as a sole proprietorship or partnership, enter the name(s) of the proprietor or partners.
5. Enter the telephone number of the borrower.
6. Enter the Goods and Services Tax (GST) number assigned to the borrower by the Federal Government (9 digits), **not** the Provincial Sales Tax number. If the business is exempted from obtaining a GST number, please indicate so. If new and not yet received but applied for, indicate "to follow" and forward GST number when received.
7. Provide the operating name of the business if the name is different from the legal entity or person(s) directly obligated to repay the loan (e.g. a franchise name).
8. Check **only one** of the boxes. (Should correspond to Line 4.)
9. Indicate the business's **estimated** gross annual revenue for the fiscal period, of not less than 52 weeks, in which the loan is approved by the lender. The amount **cannot exceed five million dollars**.
10. Indicate in the box which of the following industrial sectors (**one only**) best describes the borrower's main business activity resulting from the loan (use the letter, not the SIC or NASIC), and **write a concise and clear description** of the main activity (please print).

A - Agriculture (support activities), Forestry, Fishing and Hunting B - Mining and Oil and Gas Extraction C - Utilities D - Construction E - Manufacturing F - Wholesale Trade G - Retail Trade H - Transportation and Warehousing I - Information and Cultural Industries J - Finance and Insurance	K - Real Estate and Rental and Leasing L - Professional, Scientific and Technical Services M - Administrative and Support, Waste Management and Remediation Services N - Educational Services O - Health Care and Social Assistance P - Arts, Entertainment and Recreation Q - Accommodation Services R - Food Services and Drinking Places S - Other Services
--	---
11. Identify the type of project for which the loan is made:
 - a) start-up;
 - b) expansion or improvement; or
 - c) purchasing assets of a going concern: 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.

If the loan is in respect of purchasing assets of a going concern:

 - check one box under a) to indicate if it has been purchased at arm's length or not, and
 - enter in b) the percent of the loan used for expansion / improvement if any. Enter **N/A** if the whole loan is in respect of purchasing assets of a going concern.
12. Check the appropriate box to indicate the number of years the business seeking the loan has been operating. Indicate **New** if the loan applies to the purchase of a going concern.
13. Check the appropriate box. This refers to the location of the assets.
14. Check **only one** of the boxes. Operating under a management contract with a supplier of assets means: an agreement between a supplier of assets (e.g. vending machines) and the borrower, with the right for the asset(s) to be exploited in a territorial area, whereby the borrower also enters into a contract with the supplier for the placement of the asset(s) and servicing, collecting revenues and for other administrative services related to the daily conduct of the business..
15. If operating under a franchise agreement or a management contract with the supplier of the assets financed by the loan, enter the name, address and postal code of the legal entity operating as the franchisor or as the management contractor.
16. Indicate the number of persons (including the owner) on the payroll of the business at the time of application. A full time employee counts as one (1) employee. A part time employee counts as one third (1/3). Round off to the nearest whole number.
17. Indicate the number of additional persons (full-time or equivalent) to be employed as a direct result of this loan.
18. If applicable indicate the total amount of guarantees or suretyships obtained. Personal guarantees or suretyships **must be unsecured and cannot exceed (in aggregate) 25%** of the amount of the loan to be registered in Line 32. Corporate guarantees or suretyships may be secured but cannot exceed the full amount of the loan.
19. Check the appropriate box(es).
20. Indicate the number of months covered by the term of the loan. **Cannot exceed 120 months as of the first scheduled payment of principal.**
21. Enter the date of the final approval of the loan by the responsible officer of the lender. (*A CSBF loan approved before April 1, 1999 and disbursed between March 31 and July 1, 1999 is to be governed under the rules of the SBL Act*).
22. Enter the date of the first disbursement of the loan **by the lender to the borrower (do not enter the loan approval date)**. The loan is to be registered within three months following the day of the first disbursement.
23. Enter the % **above** the prime rate or the residential mortgage rate charged to the borrower.
24. If applicable, enter
 - a) the amount charged by the lender for taking and preparing security;
 - b) the amount of life and disability insurance expressed as an annual premium or a percentage of the loan.
- 25.-29. Enter only the amount loaned against each class of asset which was financed by the loan to be registered (**maximum 90% of the eligible costs**).

25. Amount of loan to be used to purchase a property, or to make improvements to a property where the borrower is the owner.
26. Amount of loan to be used to make improvements to a property where the borrower is a tenant.
27. Amount of loan to be used to purchase existing improvements to a property where the borrower is a tenant.
28. Amount of loan to be used to purchase, install and/or improve equipment, excluding software.
29. Amount of loan to be used to purchase or develop, and to install software required for the business operation.
30. The amount reported in Line 30 must be detailed in Lines 25, 26, 27, 28 or 29.
31. Enter the part of the Registration fee (maximum 2% of the sub-total reported in Line 30) which is financed by the loan.
32. The amount reported in Line 32 represents the total amount guaranteed under the CSBFA.
33. The Registration fee, representing 2% of the sub-total amount of the loan (Line 30), must equal the lender's cheque attached to the Loan Registration form.
34. Indicate the % of the total cost of eligible assets that are financed by the loan. **The amount financed cannot exceed 90%.**

INSTRUCTIONS FOR THE BORROWER

Eligible costs

For the purposes of the elements shown in Lines 25 to 29, costs include: transportation, freight and installation costs as well as architectural, engineering, design fees and non-refundable taxes and custom duties but reduced by the amount of: grants, discounts, refunds and reimbursements or any type of applicable credits directly related to the assets financed. Any other costs not listed in this definition are considered ineligible incidental fees.

Related borrowers

For the purpose of the Regulations, borrowers who are operating a small business at different premises and neither one derives more than 25% of its actual or projected gross revenues from the other are considered independent small businesses and not related borrowers.

Two or more borrowers are related, if:

- there is an element of control between them, either as a sole proprietor, partner or through a related group such as a corporation or a partnership; or
- a person who is not in partnership with the borrower but who is operating or intends to operate a business, has agreed to share, with the borrower, management services, administrative services, facilities or overhead expenses for the operation of their respective small business.

Purchase of real property or immovables

A loan may not be made to finance the purchase of real property or immovables (land and/or buildings) unless, at the time the loan is approved by the lender, the borrower intends to use at least 50% of the area of the real property or immovables for the operation of the small business within 90 days after the final disbursement under the loan agreement.

Sale, leasing and subleasing of assets

If a loan is made to finance real property or immovables or leasehold improvement, the borrower cannot intend to:

- sell the assets financed within 3 years after the day on which the loan is made; or
- lease or sublease the real property or immovables within three years after the day on which the loan is made except if the borrower is operating a small business in the health care, hospitality or mini-storage industries. These industries are classified under the 1980 Standard Industrial Classification published by Statistics Canada under the Major Group 86, 91, 92 and 479 respectively.

Leasehold improvement not at arm's length

If the loan is made to finance leasehold improvements and the relation between the tenant and landlord is not at arm's length as defined in the Income Tax Act, the lender must secure the loan by a mortgage on the real property or immovable that is the subject of the leasehold improvement.

Offences and punishments

It is an offence to:

- make a false statement or misrepresentation, furnish false or misleading information;
- dispose of assets taken as security without the consent of the lender and with fraudulent intent; or
- use the proceeds of the loan, with fraudulent intent, for a purpose that does not fall within the scope of the loan.

A borrower who commits an offence:

- is guilty of an indictable offence and liable to a fine of up to \$500,000 or to imprisonment of up to five years, or to both; or
- is guilty of an offence punishable on summary conviction and liable to a fine of up to \$50,000, or to imprisonment of up to six months, or to both.



CANADA SMALL BUSINESS FINANCING ACT
SMALL BUSINESS LOANS ACT
REQUEST FOR THE TRANSFER OF A LOAN BETWEEN LENDERS

This form is to be used to transfer loans made under to the *Canada Small Business Financing Act (CSBFA)* or the *Small Business Loans Act (SBLA)*. It is recommended that the transferee (acquiring) lender records with the Department the transfer before committing any funds to pay out the transferor (original) lender.

BORROWER

Borrower's name and address (print)

Loan registration no.	Date loan made Year Month Day	Original amount of the loan registered with the Minister \$	Outstanding balance at date of request to transfer \$
-----------------------	--	--	--

Name of borrower or responsible officer (print)

Telephone no.

Fax no.

Signature

Year Month Day

The borrower hereby acknowledges that it has requested the loan be transferred to the Transferee Lender. Documentation with respect to the loan may be released to the Transferee Lender and / or Industry Canada.

TRANSFEROR (ORIGINAL LENDER)

Lender's name and address (print)

Transit no.

Name and title of responsible officer of Transferor Lender (print)

Telephone no.

Fax no.

Signature

Year Month Day

The Transferor lender acknowledges the request to transfer the loan. Upon approval by the Minister, the original amount of the loan will be deducted from the transferor's portfolio of registered loans.

TRANSFEE (ACQUIRING LENDER)

Lender's name and address (print)

Transit no.

Name and title of responsible officer of Transferee Lender (print)

Telephone no.

Fax no.

Signature

Year Month Day

For loans made as of April 1, 1995, the Transferee lender consents to the payment of the 1.25% administration fee.

- Notes: 1. Upon approval by the Minister, the original amount of the loan will be added to the Transferee's portfolio.
2. It is the responsibility of the Transferee lender to satisfy itself that the loan meets all of the provisions of the Act and the Regulations.

ACKNOWLEDGMENT BY THE MINISTER OF INDUSTRY CANADA

The Minister acknowledges that the requirements of section 29 of the Canada Small Business Financing Regulations have been met and the Minister deems the transfer to have taken place as of the date indicated below.

Approved on behalf of the Minister

Name and title (print)

Signature

Year Month Day

Note: The Minister is not liable to pay any loss with respect to the loan being transferred if the lenders have not complied with the provisions stipulated in the respective Acts and Regulations.

Forward to: Industry Canada
Small Business Loans Administration
8th Floor East
235 Queen Street
Ottawa, Ontario K1A 0H5
Telephone: (613) 954-5540
Fax: (613) 952-0290
Internet site: <http://strategis.ic.gc.ca/csbfa>



CANADA SMALL BUSINESS FINANCING ACT
SMALL BUSINESS LOANS ACT
REQUEST FOR EXTENSION OF CLAIM SUBMISSION DATE

To be used by Lenders to request an extension beyond the prescribed or otherwise approved period.

LENDER

Lender's name and address (print)

Transit no.

Telephone no.

Postal code

Fax no.

INFORMATION ON LOAN

Borrower's name (print)

Loan registration no.

Date loan made

Year

Month

Day

Original amount of the loan

\$

Principal outstanding

\$

Date specified in Notice of Default. Enter the date the lender has given the borrower to comply with a condition of the loan agreement.

Year

Month

Day

Loans approved under the CSBFA (on or after April 1, 1999)

Date of Default. Enter the date any payment of interest or principal due on the loan was not made or the date to which interest has been paid, whichever is the most recent.

Year

Month

Day

Loans approved under the SBLA (prior to April 1, 1999)

State reason for default, remedial action taken and / or proposed and reason for requesting an extension of the Claim for Loss Submission Date.

List details of security, guarantees or suretyships held together with estimated liquidation value, amount of prior and preferred claims and the estimated net proceeds available toward the loan.

The lender requests that the Claim for Loss Submission Date be extended to:

Year

Month

Day

Name and title of responsible officer of the lender (print)

Signature

Year

Month

Day

APPROVAL

Based on the information contained herein, the Claim for Loss Submission Date is herewith extended to:

Year

Month

Day

Approved on behalf of the Minister

Name and title (print)

Signature

Year

Month

Day

Note: The Minister's approval of the extended Claim for Loss Submission Date in no way provides or implies concurrence with any action taken or proposed by the lender.
The Minister is not liable to pay any loss with respect to this loan unless the lender has complied with the requirements of the Acts and respective Regulations.

Forward to: Industry Canada
Small Business Loans Administration
8th Floor East
235 Queen Street
Ottawa, Ontario K1A 0H5
Telephone: (613) 954-5540
Fax: (613) 952-0290
Internet site: <http://strategis.ic.gc.ca/csbfa>

CANADA SMALL BUSINESS FINANCING ACT SMALL BUSINESS LOANS ACT CLAIM FOR LOSS

LENDER

1 Lender's name and address (print) <div style="text-align: right;">Postal code</div>	4 Lender's name and address to whom payment should be forwarded (if different from Line 1) <div style="text-align: right;">Postal code</div>
2 CPA transit no. 	3 Lender's loan or folio no.
5 Loan registration no. 	<div style="text-align: right;">Name of contact</div> <div style="text-align: right;">Fax no.</div>

BORROWER

6 Borrower's name and address (print) <div style="text-align: right;">Postal code</div>	7 If business is a franchise, provide the name and address of franchisor <div style="text-align: right;">Postal code</div>
Operating name of business (if different)	
8 History of business, purpose for which the loan was made	

LOAN

9 CLASS OF LOAN	ELIGIBLE COST (A)	% OF COST FINANCED BY CSBF / SBLA LOAN (B)	ELIGIBLE AMOUNT OF THE LOAN (A x B)
Purchase of / Improvements to real property or immovables (owner)	\$		\$
Leasehold improvements (tenant) - New	\$		\$
Leasehold improvements (tenant) - Existing	\$		\$
Equipment (excluding software)	\$		\$
Software	\$		\$
CSBF / SBLA loan fee financed	\$	100 %	\$
TOTAL ELIGIBLE	\$		\$

10 Lender's loan approval date <div style="text-align: right;">Year Month Day</div>	11 Date of first scheduled repayment of principal <div style="text-align: right;">Year Month Day</div>	12 Date of first purchase or commitment by borrower for assets financed <div style="text-align: right;">Year Month Day</div>
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Loan registration no.

SECURITY AND GUARANTEES OR SURETYSHIPS

13 Description of security and guarantees or suretyships taken

14 Reason(s) for loan default (enter codes in boxes) and explain reason(s) for business failure

15 Describe the realization process for the secured assets, the guarantees or suretyships and the personal liability of the sole proprietor or partnership. Have all the secured assets, guarantees or suretyships or personal liability been realized (check boxes below)? If not, explain the reasons why these were not realized. Indicate any potential for additional recovery.

Primary security	Additional security on business assets	Guarantees or suretyships		Personal liability of sole proprietor or partnership
		Personal	Corporate	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No

PROVIDE INFORMATION ON EACH BORROWER / GUARANTOR OR SURETY

16	Name(s)	Status	Net Worth Codes	Judgment obtained	Date of judgement Year Month Day	Amount applicable to CSBF / SBLA loan	Judgement interest rate
				<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
				<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
				<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%
				<input type="checkbox"/> Yes <input type="checkbox"/> No		\$	%

LOSS

17	Date to which interest was paid by the borrower	Year	Month	Day	Interest rate	18	Date of next scheduled payment after the date in Line 17	Year	Month	Day	Interest rate
					%						%
19	Date of default	Year	Month	Day	Interest rate	20	Date in the notice of default	Year	Month	Day	Interest rate
	For loans approved prior to April 1, 1999 under SBLA				%		For loans approved on or after April 1, 1999 under CSBFA				%
Outstanding principal balance of borrower's loan(s) (at date specified in Lines 19 or 20)											
21	Total loans (including SBLA and CSBF loan)	22	SBLA loan or CSBF loan	23	% of SBLA loan or CSBF loan to total loans						
\$		\$		%							

LOSS CALCULATION

24	Year	Month	Day	Total loan amount disbursed			\$
Date of first loan disbursement							
25	Year	Month	Day	26 Total principal repayments			- \$
Date of last payment on principal							
				Principal loan outstanding			= \$
				27 Costs	28 Method of sharing	29 % of sharing	
				Total legal costs			
				\$			+ \$
				Total other costs			
				\$			+ \$
				AMOUNT OF GROSS LOSS			= \$
30 Amounts from disposal of security less any registered prior or preferred claims							
Source of proceeds codes							
1 Real property or immovables		4 Equipment		7 Personal guarantees or suretyships			
2 Leasehold Improvements - new		5 Software		8 Corporate guarantees or suretyships			
3 Leasehold Improvements - existing		6 Other assets		9 Personal liability			
				10 Miscellaneous			
Year	Month	Day	Amount of proceeds	Source of proceeds code	28 Method of sharing	29 % of sharing	Amount applied to SBLA / CSBF loan
			\$				\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$
			\$				\$
TOTAL PROCEEDS							\$ - \$
SUB-TOTAL							= \$
31 Interim claim							
Less holdback (full amount of the compromise or the full amount of the guarantee(s) or suretyship(s))							- \$
AMOUNT OF LOSS (EXCLUDING INTEREST)							= \$

Copies of the following pertinent documents must accompany this claim for loss:

- ☐ the borrower's loan application form and/or a copy of the lender's documentation signifying approval for the loan;
- ☐ the Loan Registration Form;
- ☐ invoices, contracts, purchase and sale agreements, franchise agreements, vendor's declaration or other evidence substantiating the costs of the assets financed;
- ☐ evidence that the assets financed by the loan were paid by the borrower (such as cancelled cheques, credit card receipts, vendor's receipted invoice);
- ☐ the borrower's statement of loan account, (computer print-out, etc.) showing the date and the amount of the loan disbursed, all payments of principal and interest and all other entries to the loan account;
- ☐ the loan document or promissory note;
- ☐ if interest rate is fixed, documents substantiating the lender's residential mortgage rate;
- ☐ the documents relating to the primary, additional and alternate security, and guarantees or suretyships;
- ☐ documents evidencing any revision of repayment terms;
- ☐ notice of default and demand for repayment;
- ☐ documents evidencing the sale of security;
- ☐ report and documents of the unrealized security, including guarantees or suretyships or personal liability of sole proprietor or partnership;
- ☐ documents supporting any settlement with the borrower or third parties, including guarantors or sureties;
- ☐ invoices/receipts supporting costs claimed and proof of payment;
- ☐ the detailed solicitor's billing showing total time spent, work performed, rate per hour charged and proof of payment;
- ☐ the Statement of Claim, Judgement and Writ of Execution;
- ☐ documents in relation to the bankruptcy / receivership;
- ☐ any approved request for extension of claim submission deadline;
- ☐ documents evidencing the landlord's distraint action against loan security, if available; otherwise, an explanation providing details of the distraint action;
- ☐ the appraisal;
- ☐ for loans made prior to April 1, 1993, application form signed by the borrower and certified by a responsible officer of the lender.

CERTIFICATION

We, the undersigned responsible officers of the lender certify, that:

- to the best of our knowledge, the information contained herein is true and accurate;
- for loans made under the *Canada Small Business Financing Act and Regulations*, the lender has:
 - a) acted in accordance with the due diligence requirements referred to in section 8 of the *Regulations* in making, administering and collecting the loan;
 - b) taken all measures to minimize the loss in respect of the loan as required by sub-section 37(3) of the said *Regulations*;
 - c) complied with all the eligibility requirements of the said *Act and Regulations*;
- for loans made under the *Small Business Loans Act and Regulations* due care has been taken to minimize the amount of the loss and the lender has complied with all the eligibility requirements of the said *Act and Regulations*.

SIGNATURES

Name and title (print)	Date Year Month Day	Signature
Name and title (print)	Date Year Month Day	Signature
Indicate contact name to obtain information	Telephone no.	FAX no.

Forward your claim to:

Industry Canada
Small Business Loans Administration
8th Floor East
235 Queen Street
Ottawa, Canada K1A 0H5
Tel: (613) 954-5540
Fax: (613) 952-0290

Internet site: <http://strategis.ic.gc.ca/csbfa>

INSTRUCTIONS

1. Indicate the name, address and postal code of the lender who has responsibility for the loan account.
2. Enter the transit number of the lender branch indicated in Line 1.
3. Enter the complete loan or folio number assigned to the loan by the lender.
4. Enter the name, address and postal code to whom the payment should be forwarded (if different from Line 1) and the name of the person to whom payment should be directed.
5. Enter the loan registration number (6 digits) assigned by the Small Business Loans Administration.
6. Enter the borrower's name (as registered), the most recent address and postal code. Provide the operating name of the business, if different from the borrower's name.
7. If the business is a franchise, enter the name, address and postal code of the franchisor.
8. Describe the history of the business and the purpose for which the loan was made. Indicate any transfer of loan between borrowers or lenders.
9. For each class of loan, enter:
 - the eligible cost as substantiated by invoices, contract and proof of payment;
 - the percentage of cost financed by SBLA or CSBF loan as indicated in the Loan Registration Form;
 - the calculation of the eligible amount of the loan for each class.
10. Enter the date the loan was approved by a responsible officer of the lender.
11. Enter the date of the first scheduled repayment of principal.
12. Enter the date of the first purchase or commitment by borrower for assets financed. This date is the date on the invoice or the contract, not the date of payment.
13. Describe the asset security and guarantees or suretyships originally obtained on the loan and any subsequent amendment(s).
14. Indicate in the boxes the two principal reason(s) for the loan default using the codes below and explain in further detail the reasons for the failure of the small business.

- | | |
|---|--|
| 1 - Poor management skills | 6 - Difficulties with major suppliers or customers |
| 2 - Inadequate equity capital | 7 - Loss of key management |
| 3 - Adverse developments in the industry or economy | 8 - Fraudulent business activities |
| 4 - Personal problems of the principal | 9 - Excessive cash drain by owner |
| 5 - Unrealistic plans and projections | 10 - Other |

15. Briefly describe the realization process with respect to the secured assets, guarantees or suretyships, the personal liability of the sole proprietorship or partnership. Explain the reasons why any securities, guaranties or suretyships or personal liability were not realized, and indicate the potential for any additional recovery.
16. Provide the full name(s) of each borrower, guarantor or surety. Using up to two of the following codes, indicate **which best** describe the status of the borrower, guarantor or surety:

- | | |
|----------------------------|---------------------------------------|
| 1 - Bankrupt | 6 - Severe hardship |
| 2 - Cannot be located | 7 - Non-resident |
| 3 - Compromise settlement | 8 - Further action not cost effective |
| 4 - Liability extinguished | 9 - Some possibility of recovery |
| 5 - Unable to pay | 10 - Good possibility of recovery |

Indicate the estimated net worth of the borrower(s), the guarantor(s) or surety(ies) at the date of claim for loss preparation.

- | | |
|-------------------------|-------------------------|
| 1 - Nil | 4 - \$50,001- \$100,000 |
| 2 - \$1 - \$10,000 | 5 - Over \$100,000. |
| 3 - \$10,001 - \$50,000 | 6 - Not known |

17. Enter the date to which interest was paid by the borrower and the interest rate in effect on that date.
18. Enter the date of the next scheduled payment pursuant to the loan document or any revision to the loan document. Enter the interest rate in effect on that date.
19. For loans approved under SBLA, enter the date on which any payment of interest or principal in respect of the loan was not made on the date it was due or the date to which interest has been paid, whichever is the most recent. Enter the interest rate in effect on that date.
20. For loans approved under CSBFA, enter the date to which the lender has given the borrower to comply with a condition of the loan document.

21. Enter the outstanding balance of all the borrowers' loans, including the SBLA and the CSBF loans.
22. Enter the outstanding balance of the borrower's SBLA or CSBF loan as at the date specified in Lines 19 or 20.
23. Enter the percentage of SBLA or CSBF loans to total loans (Line 22 divided by Line 21).
24. Enter the date on which the first disbursement was made on the loan.
25. Enter the date of the last payment on principal made by the borrower.
26. Enter all principal repayments made by the borrower. Note that any reversal of payment (principal and / or interest) must be made within 5 days of crediting the account.
27. Enter separately the legal costs or other costs incurred by the lender in collecting or attempting to collect on the loan (deduct any refundable totals or credits).
28. Indicate how the costs (Line 27) and proceeds (Line 30) are allocated.

If costs are incurred and / or proceeds related to the SBLA loan, CSBF loan and other loans from the same lender, the costs and / or proceeds must be pro-rated between respective loans in a manner that is fair and equitable to all parties and circumstances may justify a combination of them:

 - 1 - realization proceeds and costs can be clearly identifiable as belonging to the loan;
 - 2 - where realization proceeds are clearly identifiable as belonging to the respective loans, any costs incurred on behalf of all loans combined should be pro-rated on the basis of the amounts realized for each individual loan;
 - 3 - where realization proceeds and costs are not clearly identifiable as belonging to the loan, proceeds and costs are pro-rated according to the unpaid principal amount of each outstanding loan at the date of default;
 - 4 - where the above methods are not applicable, proceeds and / or costs may be pro-rated according to the outstanding principal amount of each loan claimed in the statement of claim where there is a judgement.
29. Enter the percentage of the sharing of costs and/or proceeds allocated to the SBLA loan or the CSBF loan.
30. Enter the date, the amount and sources of proceeds codes. Where applicable, pro-rate according to Lines 28 and 29. Any registered prior or preferred claims should be deducted before entering the amount of proceeds.
31. Enter the amount of the holdback if an interim claim. (The holdback is: the full amount of the guarantees or suretyships or the amount of the compromise or settlement).

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Canada. Industry Canada (1999)
Canada Small Business Finance

DATE DUE DATE DE RETOUR	
CARR MCLEAN	38-296

