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**SBLA GUIDELINES
FOR
LENDERS**

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SBLA GUIDELINES FOR LENDERS

Small Business Loans Administration
Industry Canada

DECEMBER 1993

(Aussi disponible en français)



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INTRODUCTION

The Small Business Loans Act (the Act) is a federal government program designed to increase the availability of loans ("business improvement loans") to proprietors of business enterprises for the purpose of the establishment, modernization and improvement of small business enterprises. Under the Act, the Minister is liable to pay to a lender a specified percentage of a loss which may be sustained by a lender as a result of a loan made, provided requirements of the legislation have been met.

The Small Businesses Loans Regulations and the Small Business Loans Regulations, 1993 state the procedures to be followed and conditions to be met in the granting and administering of loans as well as submission and substantiation of claims for loss.

Lenders are expected to make business improvement loans with the same care as in the conduct of their ordinary business. The program has been designed to enable lenders to incorporate its administration into their normal daily course of business while providing government guaranteed loans to small businesses which might not otherwise be able to acquire the financing they require.

All correspondence concerning business improvement loans should be mailed to

Small Business Loans Administration
c/o Industry Canada
235 Queen Street, 8th floor (800D)
Ottawa, Ontario
K1A 0H5

Telephone: (613) 954-5540

Fax: (613) 952-0290

Lenders should request rulings from the Administration where they consider the situation is not clearly covered by the Act, Regulations or Guidelines and/or requires interpretation.

NOTE: It is suggested that lenders keep this issue of Guidelines as a loose-leaf reference which may be updated page by page on a periodic basis.



SECTION A

MAKING BUSINESS IMPROVEMENT LOANS (BIL's)

Under the Small Business Loans Act

1. MAXIMUM LOAN AMOUNT

1.1 \$250,000

1.2 The amount of the loan being made, plus any outstanding balance of principal owed by the borrower on loans previously obtained under the Act and/or the Fisheries Improvement Loans Act, plus the up-front 2% government fee if included in the loan, cannot exceed \$250,000.

2. REPAYMENT TERMS

2.1 The loan is considered to be made on the date of the first disbursement of the loan funds.

2.2 A maximum period of 10 years from the date of the first scheduled repayment of loan principal. The loan may be amortized over a longer period but final payment must be scheduled no later than the end of the 10-year maximum period after which the government guarantee ceases. See also section 17 of these Guidelines.

NOTE: The Administration will honour its obligation to pay a claim after the ten (10) year period, provided the time constraints mentioned in section 23 of these Guidelines are observed.

2.3 Repayment of loan principal must be scheduled at least annually.

- Instalments of repayment of principal do not have to be equal.
- Equal blended payments of principal and interest are permitted.

2.4 If the loan funds are advanced by more than one disbursement, the first scheduled instalment of repayment of principal must be payable no later than one year after the initial disbursement.

2.5 At the time a loan is made, the borrower must sign a promissory note or other evidence of indebtedness that sets out the loan amount, rate of interest payable and the repayment terms. A demand promissory note (by itself) does not satisfy these requirements.

NOTE: It is recommended that lenders include the following wording on their promissory note or other evidence of indebtedness: "The lender and the borrower may agree to alter the above repayment terms and interest rate."

3. MAXIMUM INTEREST RATE

- 3.1 For loans made after March 31, 1993, the rate of interest can be either floating or fixed.

At any time during the repayment period of a loan made after March 31, 1993, the lender and the borrower may agree to change from a floating interest rate to a fixed interest rate, and vice-versa.

- 3.2 Maximum floating rate: For loans made before April 1, 1993, the lender's prime lending rate in effect on each day of the term of the loan + 1%.
For loans made after March 31, 1993, the lender's prime lending rate in effect on each day of the term of the loan + 1 3/4%.
- 3.3 Maximum fixed rate: Not applicable to loans made before April 1, 1993. For loans made after March 31, 1993, the lender's residential mortgage rate in effect at the date the loan was made, if a new loan, or the date the renewal is made, if a loan renewal, or the date a loan is converted from a floating to a fixed rate loan + 1 3/4%.

NOTE: Where the repayment term of the loan exceeds the maximum repayment term for a residential mortgage available at the lender, the lender may charge an interest equal to that charged for its maximum repayment term for a residential mortgage, plus 1 3/4%, and renew the loan at the expiration of that period at the interest rate applicable at that time.

- 3.4 The lender may charge a lower interest rate than the maximum.
- 3.5 Where the lender pays an insurance premium under a policy which provides a benefit payable to the lender (for example, life insurance on an individual borrower or a shareholder of a company), the amount of the premium may be charged to the borrower. If the charge is combined with the rate of interest, the combined rate, as set out in the promissory note or other evidence of indebtedness, cannot exceed the prescribed maximum interest rate.
- 3.6 Prepayment penalty on fixed rate loan. If it is the practice of a lender to impose a prepayment penalty upon full payment of a fixed rate loan, such penalty should not exceed an amount equal to three months' interest. In such cases it is recommended that lenders include the following wording on their standard application form: "A prepayment penalty may apply". The amount of the penalty should also be clearly indicated in the loan agreement.

4. BUSINESS IMPROVEMENT LOAN

- 4.1 Proprietor: the person(s), partnership or incorporated body by whom the business enterprise is carried on or about to be carried on. An unincorporated division of a company is not, by itself, a proprietor. The lender makes a loan to a proprietor who is then called the borrower. The borrower must be the proprietor of the business enterprise.

4.2 **Business Enterprise:** this is the business or professional activity carried on or about to be carried on by the proprietor. Virtually all business enterprises are eligible to receive a business improvement loan.

Exceptions: The business of farming. A business having as its principal object the furtherance of a charitable or religious purpose or not operating for gain or profit.

4.3 **Requirements:** The business enterprise must be carried on in Canada for gain or profit:

- a) for an existing business the estimated annual gross revenue must not exceed \$5,000,000 for the fiscal period during which the loan was approved;
- b) for a new business the estimated annual gross revenue, must not be expected, at the time the loan was approved, to exceed \$5,000,000 during the first 52 weeks of operation.

5. CLASSES OF LOANS

Equipment Loans
Premises Loans
Land Loans
Fees Loans

5.1 **Equipment Loans:** Made to the proprietor of a business enterprise for the purpose of financing the purchase, installation, renovation, improvement or modernization of equipment necessary, in the opinion of the lender, for the operation of the business enterprise.

NOTE: Installation expenses are those which will be added to the cost of the asset(s) and capitalized.

5.2 **Premises Loans:** Made to the proprietor of a business enterprise who:

- a) is or is to become the owner of the premises through construction or purchase;
- b) is or is to become the owner or the tenant of the premises and where the loan is made for the purpose of financing the renovation, improvement or modernization of the premises or the purchase of existing renovations, improvements or modernizations necessary, in the opinion of the lender, for the operation of the business enterprise;

Rules

The 3-year rule: The assets financed with the loan are not intended for resale, lease, or sublease within 3 years after the date of the loan. This rule does not apply to businesses in the hospitality and health care industry.

NOTE: Businesses in the hospitality and health care industry are those found in the Standard Industrial Classification (Statistics Canada) under the headings of "Health and Social Services Industries" and "Accommodation, Food, and Beverage Service Industries". They must, however, meet other eligibility criteria (see subsections 4.2 and 4.3 of these Guidelines).

The 3-year rule should be applied first and then, if part of the asset being financed is or will be in excess of the size necessary, in the opinion of the lender, for the operation of the business enterprise, the 50/50 rule should be applied.

The 50/50 rule: Where premises are or will be in excess of the size necessary, in the opinion of the lender, for the operation of the business enterprise, premises loans must meet at least one of the following criteria:

i) the area occupied, or to be occupied within 90 days, by the business enterprise must be at least 50% of the total area of the premises for which the loan is made;

OR

ii) the annual revenue derived from the part of the premises which is in excess of that necessary, in the opinion of the lender, for the operation of the business enterprise must not exceed 50% of the total annual gross revenue (inclusive of the lease revenue) of the business enterprise

5.3 Land Loans: Made to the proprietor of a business enterprise for the purpose of financing the purchase of land including any building or structure on the land necessary, in the opinion of the lender, for the operation of the business enterprise.

a) The 3-year rule applies to all land loans. See subsection 5.2 of these Guidelines.

b) The 50/50 rule applies to all land loans. See subsection 5.2 of these Guidelines.

5.4 Fees Loans: See subsection 10.2 of these Guidelines.

5.5 Requirements: The following apply to equipment, premises and land loans:

a) the amount of the loan must not exceed 100% (April 1, 1993 to December 31, 1995 only) of the cost of the asset(s) financed with the loan funds, as evidenced by an invoice, a deed of sale, a purchase contract, an auditor's certificate, etc.; after December 31, 1995, only 90% of eligible costs may be financed;

b) the date of commitment to the transaction, as evidenced by an invoice, a deed of sale, a purchase contract, an auditor's certificate, etc., must not predate the date of the lender's approval of the loan by more than 180 days;

NOTE: The Administration is conscious that the 180-day predate period will not accommodate all transactions whereby proprietors of business enterprises acquire, otherwise, eligible assets. The 180-day predate period is a legislative provision that cannot be extended by the Administration.

c) the lender must obtain an independent appraisal where the borrower is not purchasing the assets at arm's length. The amount of the loan should be based upon the lesser of the current market value as reflected in the lender's independent appraisal and the cost of purchase of the asset(s);

NOTE: Such appraisal costs may be passed on to the borrower, but they should not be provided by the loan funds nor debited to the loan account.

d) the lender must obtain a written declaration from the borrower regarding:

i) the existence of other loans, guaranteed by the government, under the provisions of the Small Business Loans Act and the Fisheries Improvement Act,

ii) the annual gross revenue of the business enterprise, and

iii) in the case of land and premises loans (except loans made to businesses in the hospitality and health care industries), that, at the time the declaration is made, it is the intention of the borrower to respect the 3-year rule;

e) the assets being financed with the loan must, in the opinion of the lender, be necessary, in the opinion of the lender, for the operation of the business enterprise, and intended to be used within 90 days of the last disbursement of the loan funds.

5.6 **Eligibility of Loan Purposes:** Virtually all business and professional enterprises, with the exceptions noted in subsection 4.2 of these Guidelines, are eligible under the program, but care must be taken to ascertain that the purpose of the loan is eligible.

6. **EXAMPLES OF ELIGIBLE LOAN PURPOSES**

- Computer software
- Ships, boats
- Water supplies and drainage systems
- Display cases
- Moulds used for production
- Dies
- Equipment for rental to the public such as automobile vehicles, power tools and videos
- Architect and engineering fees
- Building permits
- Landscaping
- Paving of parking areas
- Access sidewalks
- Fences
- "Leasehold improvements" including alterations already in place
- Non-arm's-length transaction. See subsection 5.5(c) of these Guidelines.
- GST, PST, freight

7. **EXAMPLES OF INELIGIBLE LOAN PURPOSES**

- Private clubs
- Stock in trade (inventory)
- Land for development, resale, lease, or sublease (see subsections 5.2 and 5.3 of these Guidelines) within 3 years
- Improvements to a family dwelling for non-commercial purposes
- Share purchases
- Permits & licenses whether attached to vehicle, ship, or premises
- Goodwill
- Franchise fees
- Feasibility studies
- Vehicles for personal uses
- The cost of any materials, labour or services provided by the borrower
- Land and premises for resale, leasing or subleasing within 3 years from the date of the loan. See subsections 5.2 and 5.3 of these Guidelines.
- Intangibles such as research and development costs or prepaid expenses.

8. SECURITY

8.1 At the time the loan is made, the lender must take an enforceable security interest in the land, premises or equipment acquired by the borrower and financed by the loan.

8.2 The security can be

- a mortgage or hypothec on real property
- a chattel mortgage or commercial pledge
- a debenture
- a general security agreement which must include a detailed description of the collateral
- a conditional sales contract
- other similar security consistent with normal lending practice.

8.3 Where the loan is the sole source of financing of the asset(s) (apart from the funds provided by the borrower), and where no prior charges are held by the lender, any other financial institutions or other secured creditors on the land, premises or equipment, the lender's security for the loan must be a first charge.

8.4 Where the loan is one of two or more sources of financing of the asset(s) (apart from the funds provided by the borrower), the lender's security for the loan must rank *pari passu* with the other sources of financing provided for the asset(s).

8.5 If, at the time the loan is made, prior charges exist in favour of the lender, other financial institutions or other secured creditors, such charges will continue to rank ahead of the security taken in support of the loan.

NOTE: The lender's prior charges must predate the date of the loan by at least 60 days. If the purpose of the loan is to finance the purchase of assets by the borrower, the lender's prior charges must precede the date of the purchase.

8.6 While it is not a requirement of the government's "guarantee" a lender may, in addition to the security described above, take personal guarantees. Such personal guarantees, whether obtained from individuals who have an interest in the business enterprise or not, cannot

- be secured
- exceed 25% of the amount of the loan for the combined personal guarantees.

NOTE: The owner in a sole proprietorship and the partners of a partnership are also personally liable (in aggregate) for 25% of the amount of the loan. As they are the borrowers and their liability stems from their covenant to pay, they cannot be their own, or each other's guarantors. The lender cannot take their personal belongings, other than the assets of the business enterprise, as collateral security. For the impact on proprietorships and partnerships, refer to subsection 21.3 of these Guidelines.

8.7 The restrictions in subsection 8.6 do not apply to corporate guarantees.

8.8 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% thereafter.

NOTE: A lender cannot avoid absorbing its 10% or 15% share of the loss by taking compensative security of any kind. Any recovery from such additional security is required to be applied to the interest and outstanding principal of the loan before the amount of loss is established and claimed.

9. CHECKLIST

Lenders may use their own documentation (application form, promissory note, etc.) and may find the following useful as an aide-memoire.

- Eligible loan purpose?
- Eligible type of business?
- Revenues not in excess of \$5 Million per annum?
- Other loans outstanding?
- Within \$250,000 maximum, inclusive of the fee loan?
- Copies retained of evidence of eligible expenditures?
- Documentation (i.e., paid invoices, cancelled cheques where applicable, etc.) evidencing application of loan proceeds, retained?
- Promissory note or other evidence of indebtedness signed?
- Security registered?
- Funds disbursed to borrower, vendor, third party?
- Loan Registration Request and Fee Submission Form submitted with 2% fee to Small Business Loans Administration?

10. LOAN REGISTRATION AND PAYMENT OF FEE

10.1 Loan Registration and Payment of Fee

Within 3 months from the date the loan is made (see subsection 2.1 of these Guidelines) the lender must send a properly completed Loan Registration Request and Fee Submission form to the Small Business Loans Administration together with the 2% fee. Payment is made via the lender's cheque or draft payable to the Receiver General for Canada. Once the loan has been registered by the Administration, the above form will be returned, together with a Loan Registration and Fee Receipt Acknowledgement form. Both should be retained by the lender.

NOTE: For (late) registration of loans made prior to April 1, 1993, see subsection 18(a) of these Guidelines.

10.2 Fees Loan

The 2% fee can be added to the loan provided the total amount of the loan, including the 2% fee, does not exceed \$250,000. The 2% fee is calculated on the total of the Equipment, Premises and Land Loans. No fee is applicable to the Fees Loan. The government/lender loss sharing ratio applies to these loans. No specific security respecting a Fees Loan is required.

10.3 Fee Reimbursement

Within one year from the date of the loan (see subsection 2.1 of these Guidelines) the lender may apply for a partial or total refund of the fee paid under the following circumstances:

- a) Partial refund: Where the lender advanced less than the amount of the loan registered, the Small Business Loans Administration will, upon request in writing, issue a Loan Registration Modification Acknowledgement form and a cheque for the 2% fee applicable to the undisbursed portion of the registered loan. Where a Fees Loan is involved, the refund must be applied to reduce such loan.
- b) Total refund: Where the lender determines that the loan is not a guaranteed business improvement loan, the Small Business Loans Administration will, upon request in writing, issue a cheque for the amount of the 2% fee paid and delete the loan from its records.

10.4 Loan Registration - Modification

At any time during the administration of a loan, irrespective of whether it is in default or not, in order to reflect the correct facts, a lender may correct the name of the borrower from that which was registered by the Administration. For example, a loan actually made to 123456 CANADA INC., but registered in the name of JOHN DOE, or vice versa, can be corrected to reflect the correct borrower, 123456 Canada Inc. The lender must notify the Administration of the modification by letter and include copies of the original Loan Registration Request and Fee Submission form and Loan Registration and Fee Receipt Acknowledgement form. The Administration will issue a Loan Registration Modification Acknowledgement form. See sections 12 and 13 of these Guidelines.

SECTION B

ADMINISTERING BUSINESS IMPROVEMENT LOANS

11. LOAN IDENTIFICATION

Once the SBLA Administration acknowledges its registration of a loan by returning to the lender the Loan Registration Request and Fee Submission form together with its Loan Registration and Fee Receipt Acknowledgement form, the involvement of the Administration in respect of that loan is, by and large, completed. While there are actually very few instances where correspondence is needed, the lender may, however, encounter situations that should be reported to the Administration. Where this occurs, it is important that any letter or other contact concerning a loan identify the loan registration number indicated on the Loan Registration and Fee Receipt Acknowledgement form, the 8-digit transit number of the lender's branch that granted the loan and the full name of the borrower as it appears on the Loan Registration and Fee Receipt Acknowledgement form. Following are some of the matters that may be cause for a lender to contact the Administration.

12. CHANGE OF LENDER

Loans can be transferred from one lender to another. The lender to whom a loan is being transferred must notify the Administration of the transfer within three months of its occurrence. The written notification will indicate the following:

- Loan registration number;
- Name and address of the borrower;
- Original amount of the loan;
- Outstanding balance being transferred;
- Name and transit number of both the original lender and the lender assuming the loan;
- Date of the transfer.

The Administration will record the loan in the name of the lender acquiring the loan and issue a Loan Registration Modification Acknowledgement form to the acquiring lender.

It will be the responsibility of the lender acquiring the loan to satisfy itself that the original lender met all of the terms and conditions of the program. In the event that a claim for loss is eventually submitted, failure on the part of the original lender to have complied with all of the SBLA conditions and which are not corrected upon transfer will constitute reason for the rejection or reduction of the claim.

NOTE: For the purposes of SBLA, a transferred loans is not a new loan. It is recorded by the new lender as having been made when the funds were disbursed by the original lender. Any corrective measures by the new lender, with respect to security, late registration, etc. are limited to those stated in section 18 of these Guidelines. In addition, the administration of a transferred loan must comply with the SBLA terms and conditions in effect when the transferred loan was originally made.

13. CHANGE OF NAME OF THE BORROWER

When a borrower changes its name 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, letters patent, etc. In the event of a claim for loss, these documents will be required. It is not necessary for the lender to inform the Administration of the borrower's change of name. If the lender wishes the new name to be recorded by the Administration, a letter to that effect with attached copies of the Loan Registration Request and Fee Submission form and the Loan Registration and Fee Receipt Acknowledgement form will suffice. The Administration will issue a Loan Registration Modification Acknowledgement form.

14. SALE OF PLEDGED ASSETS BY THE BORROWER

- a) When the borrower disposes of any asset that is part of the security taken by the lender, the proceeds from such disposal should be applied to the loan. It is expected that in most cases, the entire proceeds of disposal will be applied to the loan. This applies in the case of pledged assets that are sold, traded-in, sold for salvage or destroyed, where such destruction is covered under an insurance policy (unless the insurance proceeds are used to immediately replace the destroyed asset and the new asset is included in the loan security). An explanation of such loan reduction should be kept on file. The lender does not need to inform the Administration at the time but should provide a full explanation should a claim for loss be submitted. The application of such proceeds should not be considered to be prepayment of scheduled principal.
- b) Where a lender learns of an asset disposal after the fact and the disposal proceeds have not been applied in reduction of the relative business improvement loan, the lender should take such action as is necessary to protect the interest of the lender and the government including requiring additional security to be pledged in support of the loan.

15. SALE OF THE BORROWER'S BUSINESS / CHANGE OF PROPRIETOR

In this case there will be a change of proprietor of the business enterprise. One frequent instance is where the sole proprietor or a partnership of individuals decides to incorporate. Ideally, in the case where the assets of a business change hands, especially from one sole proprietorship or partnership to another, the loan should be repaid entirely. However, the lender may choose to continue to carry the loan in its present form, that is, in the name of the original borrower and under the original terms of repayment. In that case, the lender must continue the original obligation of the borrower and to ensure that the lender's security is maintained. The assumption of the loan by the new proprietor is an agreement between the new proprietor and the borrower which is not related to the loan and is not recognized by the Administration. In the case of a corporate borrower whose shareholders sell their shares to other parties, the loan is not affected. The lender need not inform the Administration of such transactions, at the time they occur, but will be required to provide details upon the event of a claim for loss.

NOTE: Where a sole proprietor incorporates or takes on a new partner or where there is a change in the partners of a partnership, if the loan is not repaid entirely, the original borrower remains liable. The lender's security position must also be maintained.

16. MAINTENANCE OF SECURITY

The legislation gives authority to the lender to substitute security pledged in support of a loan. The lender must, however, maintain adequate security throughout the term of the loan. Adequate security means security which conforms to the level of coverage of a loan, which is considered to be the minimum level acceptable under normal lending practices. Such substitution should be properly recorded, documented and details kept in the borrower's file. The Administration does not need to be informed at the time but the lender must be ready to provide a full explanation should a claim for loss be submitted in respect of the loan.

NOTE: With the exception of the circumstances described in subsection 14(a) of these Guidelines, the lender has no authority to release security without a substitution, to release the priority ranking of the security, nor to allow any increase in prior charges.

17. AMENDING THE REPAYMENT TERMS

The lender and the borrower may agree to revise the repayment terms of a loan at any time during the life of a loan irrespective of whether it is in good standing or in default, generally without the necessity of seeking the prior written approval of the Administration. However, should the revision of the repayment term have the effect of extending

the total repayment period beyond 10 years (see subsection 2.2 of these Guidelines), authorization must be obtained from the Small Business Loans Administration by submitting a Request for Revision of Terms form (Schedule E3).

NOTE: It would be a rare case where an extension of the repayment term beyond ten years would be authorized.

18. NON-COMPLIANCE REMEDIES

If, at the time a loan is made, a lender inadvertently failed to comply with some requirements, the following remedies can be applied, within the following time frames, provided the loan is NOT IN DEFAULT.

- a) Loan not registered: The lender can register a loan up to one year after the initial disbursement of the loan funds. An explanatory letter should accompany the Loan Registration Request and Fee Payment form.
- b)
 - i) 10-Year Repayment Term Exceeded: The promissory note or other evidence of indebtedness and the security documents can be corrected within 2 years of the initial disbursement of the loan funds.
 - ii) Non-Conforming Repayment Terms: The promissory note or other evidence of indebtedness can be corrected within 2 years.
- c) Interest Rate in Excess of Maximum Permitted or Unauthorized Charges to the Loan Account: 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.
- d) Enforceable Security not Taken: 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 section 8 of these Guidelines.

19. LOANS IN DEFAULT

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. When this occurs, the lender may consider a revision of repayment terms. See section 17 of these Guidelines.

20. CALLING THE LOAN

If the lender decides that the default situation cannot be corrected, it must demand repayment of the entire amount of the outstanding balance of the loan. Unless, in the judgment of the lender, time is of the essence, the lender should call the loan in the same way that it calls its other loans or advances. The "calling" of the loan is an implicit prerequisite to submitting a claim for loss, therefore, the date that the loan is due and payable is important for claim for loss purposes.

21. REALIZING ON COLLATERAL SECURITY AND GUARANTEES AND COLLECTING FROM BORROWERS

If the outstanding balance of principal and accrued interest on the loan is not paid on the date specified in the demand, the lender must collect the loan by realizing on the collateral security and the guarantees, and collect from the borrower, whether it is a corporation, a sole proprietor, or the partners in a partnership. As soon as they are received, the proceeds from the realization should be applied first to costs incidental to the realization and chargeable to the borrower, then, pursuant to long-standing Administration policy, to interest accrued to the date on which the funds are received, and then to the principal of the loan.

21.1 Realizing on Collateral Security

All documents pertaining to the realization of the collateral security should be retained as they will be part of the documentation accompanying an eventual claim for loss.

21.2 Realizing on Guarantees

- a) Personal Guarantees: The lender must take reasonable steps to collect from personal guarantors. Compromise settlements can be made at the discretion of the lender, based on the financial circumstances of the guarantors. For loans made after March 31, 1993, see subsection 8.6 of these Guidelines.
- b) Corporate Guarantees: The lender must take reasonable steps to collect from corporate guarantors. Compromise settlements can be made at the discretion of the lender, based on the financial circumstances of the guarantor.

21.3 Collecting from Borrowers

- a) Individuals whether Sole Proprietors or Partners: For loans made prior to April 1, 1993, sole proprietors and partners of a partnership (unless they are limited partners) are liable for the total amount outstanding on the loan. For loans made after March 31, 1993, the personal liability of an individual as a sole proprietor, or of several individual partners as a group, cannot exceed 25% of the original amount of the loan. For loans made after March 31, 1993, compromise settlements can be

made prior to submission of a claim for loss, at the discretion of the lender, based on the financial circumstances of the individuals.

- b) Corporations: For loans made after March 31, 1993, compromise settlements can be made prior to submission of a claim for loss, at the discretion of the lender, based on the financial circumstances of the corporation. It is expected that such settlements will not put in jeopardy the lender's right to collect from any personal or corporate guarantors which have, or may have in the future, any assets of value.

NOTE: The reason for and basis of any compromise settlement should be well documented in writing.

22. SHARING OF COSTS AND MONIES COLLECTED

Where monies are collected and/or costs are incurred on behalf of both the loan and other loans from the same lender, the costs incurred and the monies collected are to be prorated between the respective loans as follows:

- a) based on the amounts outstanding at the date of default, or
- b) where there is a judgment, based on the principal loan amounts claimed on the Statement of Claim, or
- c) where the realization proceeds are readily identifiable as belonging to the loan or to the other loans from the same lender, costs which were incurred on behalf of all loans are to be prorated on the basis of the amounts realized for the respective loans.

NOTE: Where the lender has a prior charge on security held for the loan and costs are incurred in the liquidation of the security, all such costs must be deducted from the proceeds before the lender's position is satisfied.

23. TIME CONSTRAINTS

For loans made prior to April 1, 1993, the lender has 19 months from the date of default to submit a claim for loss. Upon the lender's provision of an SBL-100 (Request for Extension of Claim Submission Date form) the SBL Administration may, if justified, extend the claim submission deadline one or more times.

For loans made after March 31, 1993, the lender has 36 months from the date the loan becomes in default to submit a claim for loss. The Small Business Loans Administration will grant one extra period of 6 months if justified and requested in writing by the lender.

NOTE: Where a borrower is in default and the balance outstanding on the loan is due and payable, the loan can be reinstated as mentioned in section 17 of these Guidelines. The reinstatement of the loan has the effect of annulling the default as the starting date of the 36 months mentioned above.

24. ENVIRONMENTAL RISK

- 24.1 The lender should avoid getting involved in an environmental situation or putting itself in a liability situation when it is known that an adverse environmental assessment has been made by a public authority or there is a strong indication an environmental problem exists.
- 24.2 The government guarantee will apply to environment related costs incurred by the lender where these costs pertain to the asset(s) financed with the loan or taken as security for the loan, whether the environmental damage existed at the time the loan was made or not.
- 24.3 If, to the knowledge of the lender, a defaulted borrower becomes involved in an environmental situation, the lender should report the facts to the Administration immediately in order that a course of action may be decided upon.

SECTION C

CLAIMS FOR LOSS

25. TIMING FOR SUBMISSION

Once the lender has established a loss, a claim for loss may be submitted to the Small Business Loans Administration. It is anticipated that, on loans made prior to April 1, 1993, the lender will have realized on all collateral security and guarantees before submitting its claim for loss. On loans made after March 31, 1993, the lender must have realized on all collateral security and guarantees and collected from the borrower before submitting its claim for loss. In this latter case, if, in the lender's judgment, it is impractical or impossible to realize on all or part of the security or collect the balance outstanding from the borrower, a claim for loss may be submitted. An explanation why all security could not be realized upon and no further recovery could be made from the borrower should, however, be provided.

26. ESTABLISHING AMOUNT OF CLAIM FOR LOSS

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

- a) unpaid principal amount of the loan (after application of proceeds of collateral security realization, payments by guarantors, and recoveries from the borrower);
- b) uncollected taxed legal costs
- c) all other uncollected legal fees (including those which the Administration may be required to be taxed by the Department of Justice) and disbursements relating to the loan i.e., out of pocket disbursements paid to parties other than the lender's employees and;
- d) other disbursements actually incurred by the lender in endeavouring to collect the loan or in realizing on security, and which were not paid by the borrower or for which sale proceeds were inadequate to cover payment. Included are out of pocket expenses incurred by employees of the lender in the administration of the loan such as travel, hotel accommodations and meals. Also included are life insurance premiums paid by the lender after the loan has gone into default;

- e) uncollected accrued interest on the unpaid principal amount of the loan
- i) for loans made prior to April 1, 1993, interest for 180 days from the date interest was last paid - 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 is paid.
- ii) for loans made after March 31, 1993:
- for the period beginning on the day following the day on which the last instalment was made by the borrower, and ending on the day before the date the loan became due and payable at the Administration's full rate, and
 - from the day the loan became due and payable until the date of payment by the Administration or 36 months, whichever is earlier. Interest will be paid at the Administration's full rate for the first 12 months of this period and thereafter (for a maximum of 24 months) at one-half that rate.

For convenience, the interest rate calculated by the Administration will be as follows:

- for floating rate loans the interest rate will be based upon a prime rate calculated as the arithmetic mean of the prime rates fixed by the Canadian Imperial Bank of Commerce, the Bank of Montreal, The Royal Bank of Canada, The Toronto-Dominion Bank, The Bank of Nova Scotia and The National Bank of Canada, rounded to the nearest one eighth of one percent + the additional percentage charged by the lender up to the maximum of 1% for loans made prior to April 1, 1993 and 1 3/4% for loans made after March 31, 1993. See subsection 3.2 of these Guidelines.
- for fixed rate loans, the interest rate used will be that specified on the borrower's promise to repay or amendments thereof in effect at the time of default.

NOTE: Where a lender has realized on security, collected under guarantees, or recovered funds from a borrower, prior to submitting a claim for loss, these proceeds should be applied as per subsection 21 of these Guidelines.

If the date to which interest was last paid from these sources falls within that period in which the Administration pays only one-half the full rate of interest, the Administration will pay interest to the

lender (on its claim for loss) at that one-half rate from the date interest was last paid (from realization proceeds, etc.) to the earlier of the date the claim is paid and the last day of the 36th month following the day the loan became due and payable.

- 26.2 For loans made before April 1, 1985, 100% of the loss sustained by a lender as determined above is payable by the Administration.

For loans made between April 1, 1985 and March 31, 1993, 85% of the loss sustained by a lender as determined above is payable by the Administration.

For loans made between April 1, 1993 and December 31, 1995, 90% of the loss sustained by a lender as determined above is payable by the Administration.

For loans made between January 1, 1996 and March 31, 1998, 85% of the loss sustained by a lender as determined above is payable by the Administration.

- 26.3 Once a payment of principal and/or interest has been applied to the loan, such payment cannot be reversed after five (5) working days have elapsed.

27. DOCUMENTING CLAIM SUBMISSIONS

Upon sustaining a loss, a lender may submit a claim documented as follows:

- a) a signed Schedule E-4;
- b) a copy of the signed application form or a copy of the lender's documentation signifying approval for the loan;
- c) a copy of the Loan Registration and Fee Receipt Acknowledgement form;
- d)
 - i) evidence showing the actual cost of the equipment, premises, and/or land;
 - ii) evidence showing that the loan proceeds were used to finance the cost of the asset(s);
- e) a copy of the borrower's statement of loan account (liability ledger card, computer print-out, etc.) showing the date the loan proceeds were advanced, all payments of principal, all payments of interest, and all other entries to the loan account;
- f) a copy of the borrower's promissory note or other evidence of indebtedness. See subsection 2.5 of these Guidelines;

- g) a copy of the demand letter declaring the loan due and payable and the date payment is required;
- h) a copy of the borrower's declaration mentioned in paragraph 5.5(d) of these Guidelines;

If applicable:

- i) a copy of documentation evidencing any revision in repayment terms;
- j) a copy of documents evidencing the sale of security;
- k) a statement of unrealized security, including guarantees;
- l) a copy of the security documents;
- m) a copy of documents supporting any settlement with the borrower or third parties, including guarantors;
- n) a copy of invoices/receipts supporting costs claimed or costs deducted from asset sale proceeds;
- o) a copy of the detailed solicitor's billing showing total time spent and rate per hour charged for the fee aspect of the billing;
- p) a copy of the Statement of Claim, Judgement and Writ of Execution;
- q) evidence of bankruptcy/receivership, a copy of the lender's proof of claim against the bankrupt estate of obligants (which is to include the total amount owing on the loan), and the Trustee's/Receiver's final report, where one has been issued;
- r) a copy of any approved request for extension of claim submission deadline;
- s) a copy of documents evidencing the landlord's distraint action against loan security, if available, otherwise, an explanation providing details of the distraint action;
- t) in the case of non-arm's length transactions, a copy of the appraisal obtained on the assets being financed;
- u) other documents, if and when requested by the Administration to process the claim.

28. REPORT ON HISTORY OF ACCOUNT

The "History of Account", to be included on Schedule E-4, must include brief comments, as appropriate, on the following:

- a) purpose of loan and description and function of assets being acquired;
- b) problems leading to default;
- c) description of method used to dispose of the collateral security, success of action taken, and recommended action to dispose of unrealized security;
- d) an explanation why, in the opinion of the lender, the gross amount of proceeds realized from the disposal of collateral security and recoveries from the guarantors and the borrower(s) were considered reasonable;
- e) in every case where security is sold and, to the knowledge of the lender, the purchaser is a party to or has an interest in the loan (i.e., lender, borrower, shareholder, guarantor, landlord, original vendor, etc.) or is related to the borrower by marriage or otherwise, an explanation as to why sale and the amount realized was considered to be appropriate;
- f) if personal guarantees remain outstanding, financial and employment data on the guarantors supported by recent personal financial statements, the lender's opinion as to the potential for future recoveries, its recommendation for further collection action, and the estimated costs involved;
- g) if there is an outstanding judgment taken for the loan and other advances of the lender, provide calculations to indicate the portion of the judgment which pertains to the loan;
- h) details of any suspected wrong doing by the borrower which may affect the amount of a claim (such as the conversion of assigned security) and details of the action taken by the lender to remedy the situation. The Administration will seek the opinion of the Department of Justice on the appropriateness of requesting an investigation by the RCMP.

29. POST-CLAIM FOLLOW-UP

- 29.1 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.

29.2 Procedures:

- a) In a broad sense, the lender is expected to undertake whatever action it deems appropriate in the circumstances, provided that such action is commercially reasonable and in keeping with good lending practice.
- b) Specific action may be suggested or requested 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 all cases, the action / enquiries undertaken is to be by the lender and in its name.
- c) All reasonable out-of-pocket expenses in connection with any action undertaken on behalf of the Administration, with the exception of expenses incurred by employees of the lender, may be claimed or deducted from recovered funds, as appropriate. Where expenses are incurred on behalf of the Administration and other advances made by the lender, the expenses are to be prorated between the loans. The lender should first determine the amount of expenses applicable to the loan (see subsection 22 of these Guidelines) then calculate for the 85%/15% or 90%/10% Administration/lender sharing.
- d) Any engagement of a collection agency (other than for a "locate" action) is to be on a "contingency" fee basis. Legal action should not be undertaken through a collection agency without the prior written agreement of the Administration.
- e) After a claim has been paid, the lender may effect a compromise settlement with any obligant. Substantiation of the lender's action in settling on a debt (direct or indirect liability) is required, usually via a statutory declaration or verified data in a personal financial statement which details employment, family income/expense, etc.
- f) The Administration's share of any monies collected after payment of a claim are to be forwarded to the Administration, with a cheque payable to the Receiver General for Canada. Included should be a statement showing the name of the borrower, the source of the funds, the date collection was made, 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.

- g) In the sharing of proceeds from the sale of security or collection on personal debts (direct or indirect), the lender should first determine the amount of proceeds applicable to the loan (see subsection 22 of these Guidelines) then calculate for the 85%/15% or 90%/10% Administration/lender sharing.
- h) Where a bankruptcy has occurred, the lender is expected to submit, to the Trustee of the estate, a proof of claim related to the loan. The amount claimed must include, in addition to any sums due to the lender, the full amount owing to the Administration. When the bankruptcy has been finalized, a copy of the Trustee's Final Report of Receipts and Disbursements, where one has been issued, as well as the Administration's share of any dividends received by the lender, are to be submitted.

29.3 While the Administration has some discretion to discontinue action to recover a personal debt (direct or indirect), in order to make such a decision, the Administration must be provided with:

- if the obligant is penniless and improvements in his/her financial situation are unlikely in the future, current and detailed personal and financial data, preferably by way of a statutory declaration, and an updated Credit Bureau report;
- 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

29.4 When all possible collection action has been taken and either all security (including guarantees) has been realized upon or the Administration has decided to discontinue further action, the lender will be advised that the file is being closed and that it need take no additional recovery action on the Administration's behalf.

SECTION D

FORMS

30. FORMS

When making and administering Business Improvement Loans and submitting claims for loss, the following forms are to be used:

- Loan Registration Request and Fee Submission form
- Request for Revision of Terms form
- Request for Extension of Claim Submission Deadline form
- Claim for Loss form

Each lender is responsible for reprinting and stocking its own supply of these forms.



SMALL BUSINESS LOANS ACT
LOAN REGISTRATION REQUEST AND FEE SUBMISSION

Small Business Loans Administration
235 Queen Street
Ottawa, Canada K1A 0H5

As required by the Small Business Loans Act and its regulations, the lender having, on the date shown below, made a Business Improvement Loan as indicated, requests that the said Business Improvement Loan be registered and the fee, as specified and enclosed, be acknowledged.

Name and address of Lender		Name and address of borrower (not the trade name)	
Transit No. of Lender		Approximate age of Business enterprise when Loan made	Postal Code
Certified Correct		_____ years	or <input type="checkbox"/> New Business
Name of Responsible Officer of the Lender	Telephone No.	Employment statistics	
		Number of persons on the payroll of the Business Enterprise at date this loan was applied for	_____
		Number of additional persons to be employed by Business Enterprise as a result of this loan	_____
Signature _____ Date _____		Type of borrower	
		<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Partnership
			<input type="checkbox"/> Limited company

LOAN DETAILS		
Purpose	Amount	Date of first disbursement (Day, Month, Year)
<input type="checkbox"/> 301 - Equipment	\$ _____	Fee Details The loan will not be registered unless the fee payable to the Receiver General for Canada accompanies this FORM (i.e., a lender's own remittance - not a borrower's cheque)
<input type="checkbox"/> 302 - Premises	\$ _____	
<input type="checkbox"/> 303 - Land	\$ _____	
<input type="checkbox"/> Sub-Total	\$ _____	
<input type="checkbox"/> 304 - Fee	\$ _____	
Full amount of Loan	\$ _____	X 2% = \$ _____

LENDERS CHECKLIST

Refer to the Lender's Guidelines for details

<input type="checkbox"/> Borrower eligible	<input type="checkbox"/> Loan(s) not in excess of \$250,000
<input type="checkbox"/> Purpose of loan eligible	<input type="checkbox"/> Security taken
<input type="checkbox"/> Percentage of loan to asset(s) financed (not over 100% until December 31 1995 and 90% thereafter)	<input type="checkbox"/> Personal guarantees do not exceed 25% of loan amount
<input type="checkbox"/> Gross annual revenue not in excess of \$5 million	<input type="checkbox"/> Rate of interest not in excess of 1.75% above Prime or Residential rate
<input type="checkbox"/> Term of loan not more than 10 years	<input type="checkbox"/> Evidence that funds were disbursed for stated purpose
<input type="checkbox"/> Right of tenancy for premises loans (i.e. lease)	<input type="checkbox"/> Appraisal if "non-arms length" transaction



**REQUEST FOR REVISION
OF TERMS**

SCHEDULE E3

Transit N°

Please Type or Print Clearly

Tick Type of Loan <input type="checkbox"/> Farm Improvement Loan <input type="checkbox"/> Small Business Loan <input type="checkbox"/> Fisheries Improvement Loan	Borrower's Name (Surname first) Borrower's Current Address		Loan Number _____	
			Purpose of Loan _____	
			Date of Note _____ day _____ month _____ year	
Name and Mailing address of lender _____ _____		Interest Rate _____ % Paid To _____ day _____ month _____ year	Principal Original Loan \$ _____ Amount Outstanding \$ _____	
Present Terms _____	(\$) _____	Terms for which approval sought _____		(\$) _____
Security Held (give present estimated value) _____				
Particulars of Other Loans under Relative Act				
Loan N°	Purpose	Original Amount \$	Outstanding \$	Arrears \$
State reason for request for revision: _____ _____ (day/month/year)				
Submit in duplicate to appropriate department _____ _____			For Government use only Above revision approved _____ _____ (day/month/year)	



Government of Canada

Gouvernement du Canada

Regional Industrial Expansion

Expansion industrielle régionale

SMALL BUSINESSES LOANS ACT

REQUEST FOR EXTENSION OF CLAIM SUBMISSION DATE

SCHEDULE SBL-100

Used by "banks" to request an extension beyond the 19 months prescribed or an otherwise approved period.

Please Type or Print Clearly

Name and Address of Lender		Transit No.	
Name of Borrower	Current Address	Postal Code	State Transit No. shown on registered schedule 2 if not the same as above.

Business Improvement Loan (B.I.L.) Details

No.	Date Made day month year	Purpose	Default Date day month year
Original Amount	Interest Rate	Principal Outstanding	Amount of Principal in Arrears
\$	%	\$	\$
			Last payment on Account
			Date D M Y
			Amount applied against
			Principal interest
			\$ \$

With respect to the above business improvement loan outstanding to this borrower, the "bank" requests that the Claim for Loss Submission Date be extended to

day	month	year
-----	-------	------

List details of security held together with estimated gross current liquidation value, amount of prior charges and net available toward B.I.L.

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

Date submitted day month year	Signature and Title of responsible officer of the "bank"
----------------------------------	--

Note. The Minister is not liable to pay any loss with respect to this B.I.L. unless, inter alia, the "bank" has complied with the requirements of subsections 19 (1.1) (1.2) (1.3) of the SBL Regulations.

Mailing Address:

Department of Regional Industrial Expansion
Small Business Loans Administration
235 Queen Street. (H1G8)
Ottawa, Ontario
K1A 0H5

FOR DEPARTMENTAL USE ONLY

The Claim for Loss Submission Date is herewith extended to

day	month	year
-----	-------	------

The Minister's approval of the extended Claim for Loss Submission Date in no way provides or implies his concurrence with any action taken or proposed by the "bank" as the SBL Regulations prescribe such responsibility and authority to the "bank" but not to the Minister.

Approved on behalf of the Minister

Per _____
Small Business Loans Administration

_____ Date



CLAIM FOR LOSS

SCHEDULE E4

Please Type or Print Clearly

Tick Type of Loan <input type="checkbox"/> Farm Improvement Loan <input type="checkbox"/> Small Business Loan <input type="checkbox"/> Fisheries Improvement Loan	Name and Address of Lender	Transit No. 												
Name of Borrower (Surname First)		Current Address												
The following documents are attached: <table style="width:100%; margin-top: 10px;"> <tr> <td><input type="checkbox"/> Application form with relevant receipts/paid cheques evidencing purchases</td> <td><input type="checkbox"/> Approved requests for revision of terms</td> </tr> <tr> <td><input type="checkbox"/> Registered copy of E2</td> <td><input type="checkbox"/> Statement of unrealized security</td> </tr> <tr> <td><input type="checkbox"/> Statement of loan account</td> <td><input type="checkbox"/> Invoice(s) or receipt(s) to support cost payment</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Copy of Judgment and Writ of Execution</td> </tr> </table>			<input type="checkbox"/> Application form with relevant receipts/paid cheques evidencing purchases	<input type="checkbox"/> Approved requests for revision of terms	<input type="checkbox"/> Registered copy of E2	<input type="checkbox"/> Statement of unrealized security	<input type="checkbox"/> Statement of loan account	<input type="checkbox"/> Invoice(s) or receipt(s) to support cost payment		<input type="checkbox"/> Copy of Judgment and Writ of Execution				
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Original loan data	Amount \$ _____	Date of note _____ <small>(day/month/year)</small>	Interest of _____ %	Loan number _____										
Claim items: <table style="width:100%; margin-top: 5px;"> <tr> <td style="width:60%;"></td> <td style="text-align: center;"> <small>day month year</small> From <table style="display: inline-table; border: 1px solid black; text-align: center;"> <tr> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> </tr> </table> * </td> <td style="width:10%; text-align: center;">\$</td> <td style="width:20%;"></td> </tr> </table>						<small>day month year</small> From <table style="display: inline-table; border: 1px solid black; text-align: center;"> <tr> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> <td style="width: 20px; height: 20px;"> </td> </tr> </table> *				\$				
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* The value of interest due to date claim approved and the total claim will be entered by respective Government Department			Total claim *											
Brief history of account:														
Date submitted <small>(day/month/year)</small>		Signature on behalf of lender												



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 Canada. Small Business Loans S623
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