



Innovation, Science and
Economic Development Canada

Innovation, Sciences et
Développement économique Canada



CANADA SMALL BUSINESS FINANCING PROGRAM

GUIDELINES

June 2021

Introduction

The Canada Small Business Financing Act (the [Act](#)) aims to increase the availability of financing to establish, expand, modernize and improve Canadian small businesses. These Guidelines provide the Small Business Financing Directorate's (SBF Directorate) interpretation of the requirements of the Act and of the [Canada Small Business Financing Regulations](#) (the *Regulations*).

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

These Guidelines are divided into four sections:

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

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

The most recent version of the Guidelines is also available in the Tool Box for Lenders Section of our website at www.canada.ca/csbfp.

All correspondence concerning CSBF loans should be forwarded to:

Canada Small Business Financing Program
c/o Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, Ontario, K1A 0H5
Toll free info line: 1-866-959-1699
Fax: 1-343-291-1837
E-mail: csbfp-pfpec@ised-isde.gc.ca

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Making A CSBF Loan

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

Lenders may find the decision table below useful.

1. Is the potential borrower eligible? ([Item 2.1](#))

No ► Finance conventionally

Yes ▼

2. Is the business eligible? ([Item 2.2](#))

No ► Finance conventionally

Yes ▼

3. Is the potential borrower related to other CSBF loan borrowers? ([Item 2.4](#))

No ► Maximum available loan is 1\$ Million ([Item 3](#))

Yes ▼

4. Does the potential borrower pass the independent small business test? ([Item 2.4](#))

No ► Maximum loan is reduced by aggregate outstanding loans to related borrowers.

Yes ▼

5. Will the loan finance eligible purpose(s)? ([Item 4](#))

No ► Finance conventionally

Yes ▼

6. Is the maximum loan \$1 million or less, including amounts outstanding to related borrowers? ([Item 3](#))

No ► Reduce loan amount.

Yes ▼

7. Is the loan amount equal or less than the cost of the eligible assets? ([Item 5](#))

No ► Amend loan amount.

Yes ▼

8. Do the repayment terms, interest rate, charges and fees comply? ([Item 6](#))

No ► Amend terms and conditions.

Yes ▼

9. Do the security and documentation meet program requirements? ([Item 7](#))

No ► Correct Security and/or documentation defects.

Yes ▼

Register the loan with the SBF Directorate.

1. Due Diligence [\[Regs s. 8\]](#)

Lenders are expected to apply the same due diligence requirements as would be applied in respect of a conventional loan for the same amount. In addition, the lender must also perform the tasks outlined in paragraph 8 (a) and (b) of the *CSBF Regulations* which extend the meaning of due diligence to matters that lenders may or may not normally do for conventional loans of the same amount:

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

A lender can obtain either credit references or conduct credit checks on the borrower and on the persons who are responsible for the borrower. For example, for a newly incorporated borrower, it may be of no use to do a credit check or credit reference since the borrower has no credit history. In such a case, the lender should conduct credit checks or obtain credit references on principal(s) of the corporate borrower

The language used in section 8(b) requires a lender to do a risk assessment of the **borrower's ability** to repay the loan even if the determination of such an assessment is not part of the lender's normal procedures. The CSBF Program is entitled to ensure that such a risk assessment was completed prior to making the loan and as such, the Program would be able to request the results of the assessment when processing a claim for loss. This does not imply that the lender's decision in approving the loan will be questioned.

The CSBF Program's due diligence requirements apply not only in the loan approval process, but also in the administration of the loan. Due diligence would be relevant in the release and substitution of assets taken as security. Also, for example when a loan goes into default, lenders are expected to apply the same procedures as in their conventional loans in the collection, realization and legal proceedings of the defaulted loan in addition to complying with CSBF Program requirements.

2. Borrower, Small Business, Independent Small Business and Related Borrower

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

A borrower is a person that carries on or is about to carry on a small business and to whom a CSBF loan has been made. A person can be a physical person (an individual who operates a sole proprietorship or a partnership) or a legal person (corporation).

Before 30 June 2021, non-profit organizations (NPOs) were not considered eligible borrowers because they were primarily dedicated to the furtherance of objectives whose preponderant purpose was not profit or material gain. On June 30, 2021 the definition of "small business" was modified to include not for profit, charitable and religious organizations that carry on a business.

A trust and a holding corporation are not eligible borrowers for the reasons mentioned:

- A trust, whether a personal, private, or social trust is not a legal entity and, therefore, does not qualify for a CSBF loan
- The asset that the holding corporation acquires is not used in the operation of a business and is owned by another legal entity who is not the borrower.

2.2 Eligible Small Business [\[Act s.2\]](#)

A borrower must carry on a small business that meets the conditions set out below:

- business is carried on in Canada, with a place of business in Canada, and assets held in Canada for the purpose of operating the business;
- the business must offer its services or products to the public (includes retail and wholesale);
- For loans disbursed before June 30, 2021, its preponderant purpose is for profit or material gain, and not some other overarching purpose to which profit is merely incidental;
- **for an existing business:** during the fiscal year in which the CSBF loan is approved, its estimated gross [annual](#) revenues will not exceed \$10 million;
- **for a new business:** at the time the CSBF loan is approved, its estimated gross annual revenues during the first 52 weeks of operation will not exceed \$10 million.
- Small businesses, operated by foreign citizens are eligible to obtain a CSBF loan as long as the place of business is in Canada and the assets being purchased are to be used in Canada.
- A borrower can operate different businesses. For example, a person operating a sole proprietor or a partnership, or a corporation) whose main activity is farming (an ineligible business as explained under Item 2.3 below) could incorporate a snow removal business and this snow removal small business would be eligible to obtain a CSBF loan for the purchase or [improvement](#) of assets necessary for its operation. However, irrespective of how many businesses a borrower may carry on, the borrower is limited by the maximum loan amount (see Item 3 below) unless the small business test is met (see 2.4 below).
- A borrower operating in a service industry incidental to agriculture, described in [Group 02 of the SIC](#), is eligible to obtain financing; for example, a small business whose activity is to provide services to other farmers, such as harvesting services. Since the business is eligible, the [equipment](#) required to operate the harvesting small business would be eligible for financing under a CSBF loan.

NOTE: If the small business is engaged in an agency relationship with another person or business entity (e.g., real estate brokers and gas stations engaged in a principal-agent relationship) the gross revenue could be determined as the income coming into the business less any commissions or other obligation the business may have to pay in accordance with the principal-agent terms of agreement.

2.3 Ineligible Small Business

- businesses engaged in [farming](#) as defined in the [Standard Industrial Classification \(SIC\), 1980 of Statistics Canada, Major Group 01](#) Agricultural Industries. Since "farming" businesses are ineligible, any assets that are used in any of these industries are not eligible for financing under the CSBFA. Financing for farm related industries are available under the *Canadian Agricultural Loans Act* program;
- For loans made prior to June 30, 2021, any business not operating for profit, charitable or religious organization;
- any organizations not operating a business (e.g. a private club, only purpose is to collect donations).

An individual or a corporation that purchases real property for the sole purpose of rental (e.g., an apartment building, a commercial building) is not an eligible borrower. Financing for these types of purchases are available through [Canada Mortgage and Housing Corporation](#).

2.4 Independent Small Business and Related Borrower

The concepts of related borrower and independent small business were introduced in order to foster small business entrepreneurship and to limit the maximum outstanding loans to related borrowers to \$1 million.

Independent Small Business [\[Regs ss.1.1\(4\)\]](#)

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

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

If related borrowers pass the independent small business test, they are deemed to be not related borrowers for the purposes of the program, and each is eligible for a maximum loan of \$1 million.

Related Borrower [\[Regs ss.1.1\(2\)\(3\)\]](#)

If an existing borrower and/or potential borrowers are related and cannot pass the independent small business test, they are limited to a maximum outstanding loan of \$1 million amongst them.

Related borrower refers to any situation in which one borrower:

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

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

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

For these situations, the related borrowers are, collectively, eligible to have maximum outstanding loans of up to \$1 million .

Example: Three corporations (each corporation controlled by the same shareholder) operate the following businesses within the same premises: a trucking business, a [mini-storage](#) business and a fast food restaurant. Considering that the same individual controls all three corporations, the corporations would be considered related and together eligible for a maximum outstanding loan of \$1 million. However, if any of the corporations operates from different premises and does not derive more than 25% of its revenues from the other corporations, it would be considered an independent small business and eligible for a maximum outstanding loan amount of \$1 million. If all three pass the independent small business test, each is eligible for a maximum outstanding loan of \$1 million.

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

3. Maximum Loan Amount [\[Act par. 4\(2\)\(c\)\(d\)\]](#)

A borrower and [related borrowers](#) can borrow up to \$1 million* of which the maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements. The maximum amount that a borrower can have at any time includes the total of outstanding principal balances of all other CSBFA loans. Note that if the registration fee is financed, the maximum loan amounts would include the amount of the registration fee. The following are various scenarios that illustrate these maximum amounts:

- A borrower can finance up to \$1 million for purchase of real property, including the financing of the registration fee.
- A borrower can finance \$700,000 to purchase real property plus \$300,000 to purchase equipment for a total of \$1 million, including the financing of the registration fee.
- A borrower has an existing CSBFA loan used to finance real property with an outstanding balance of \$200,000. The borrower can finance \$600,000 for improvements to the real property and \$200,000 to purchase equipment, including the financing of the registration fee.
- A borrower can finance the purchase of equipment and leaseholds up to a maximum of \$350,000, including the financing of the registration fee.

If two or more borrowers amalgamate and at the time of an amalgamation the aggregate balance outstanding of all CSBFA loans previously made to any of the small businesses that amalgamate exceeds \$1 million, the loans held by the new legal entity resulting from the amalgamation continue to be eligible and in compliance with the *CSBF Acts and Regulations*.

If a borrower requires financing in excess of \$1 million to purchase assets which will be secured on an equal-ranking-basis with a CSBF loan and a [conventional loan](#), the lender must make separate loan documents (e.g. loan agreement, promissory note, etc.) for the CSBF and conventional loans. In the case of a conditional sales contract, one loan document can cover the conditional sale financing.

NOTE:

* Wherever the amount of \$1 million is used throughout these Guidelines, it is meant to include the restriction on the maximum loan amount of \$350,000, as set out above.

4. Loan Classes [\[Regs ss. 5\(1\)\]](#)

A CSBF loan may be used to finance:

- real property or immovables;
- leasehold improvements;
- equipment; and
- 2% registration fees.

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

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

4.1 Real Property or Immovables [\[Regs 5\(1\)\(a\)\(2\), ss.1\(1\)\]](#)

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*.

This type of loan is made when:

- the borrower is or will become the owner of real property or immovables, and;
- the loan will finance the purchase and/or improvement (improvement includes construction, renovation and modernization of the real property or immovables).

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

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

Example: A borrower wants to purchase a business that is located on a parcel of land that includes a building. The borrower will be using at least 50% of the land area, but only 10% of the square footage of the building for its business. In this case the 50% rule would be applied to the land. Alternatively, if the borrower intended to use 50% or more of the building and only 10% of the land, the 50% rule would be applied to the building.

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

NOTE: The 50% rule does not apply to the construction of real property or immovables. In such situations, only the portion necessary for the operation of the business is eligible for a CSBF loan.

- **The 3-year rule:** A loan to finance the purchase or improvement of real property is not eligible if the borrower intends to sell, lease or sub-lease the operational area in the three years following the date that the loan is made. The exception is in the case of lease or sub-lease if the small business is in any of the following industries as defined by Statistics Canada's Standard Industrial Classification, 1980:
 - mini-storage: 479 - Other Storage and Warehousing Industries;
 - health care: 86 - Health and Social Services Industries; or
 - hospitality: 91 and 92 - Accommodation, Food, and Beverage Services Industries.

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

Example 1: A doctor who has a medical practice may wish to purchase a building for the purpose of leasing space to physiotherapists. The building purchase would not be eligible because the doctor merely wishes to purchase the building to lease to other businesses, thereby, resulting in the doctor being, for the purpose of the building transaction, in the business of leasing commercial property rather than the [health care industry](#). The doctor's small business that is purchasing the building would, however, be eligible to apply for a loan to purchase equipment the business requires to carry on its operations.

If the doctor above wished to purchase a building for the operation of a nursing home that met the definition of a small business, he could be eligible for a CSBF loan because the business of operating a nursing home falls within Statistics Canada's Standard Industrial Classification, 1980, category 86 - Health and Social Services Industries.

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

Example 2: A business that provides office services such as conference rooms, secretarial work, photocopying, etc. and that makes office space available on a short term basis (by the hour, by the day, by the week), would be eligible to obtain a loan to purchase premises or do improvements to premises if the end user of the premises (the licensee), has the right to occupy the premises under a contractual licensing agreement.

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

4.2 Leasehold Improvements [\[Regs par. 5\(1\)\(b\), \(4\)\]](#)

This type of loan is made when:

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

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

The 3-year rule [\[Regs ss. 5\(4\)\]](#): A loan to finance the purchase of leasehold improvements is not eligible if the borrower intends to sub-lease the operational area in the three years following the date that the loan is made. The exception to this is if the small business is in any of the following industries as defined by Statistics Canada's Standard Industrial Classification, 1980:

- mini-storage: 479 - Other Storage and Warehousing Industries;
- health care: 86 - Health and Social Services Industries; or
- hospitality: 91 and 92 - Accommodation, Food, and Beverage Services Industries.

NOTE: Leasehold improvements are not improvements to real property or immovables. If the borrower is operating a small business (a tenant) on real property or immovables that is not owned by the borrower, a loan to finance such improvements is a loan for leasehold improvements and not improvements to real property or immovables. The reason for this is that the borrower (tenant) is not the owner of the real property or immovable. If such a loan is treated by a lender as a real property or immovables loan, a subsequent claim on that loan may be affected since the maximum loan amount for leasehold improvements (\$350,000) may be exceeded resulting in an adjustment on the eligible amount of the loan.

4.3 Equipment [\[Regs par. 5\(1\)\(c\)\]](#)

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

4.3.1 Computer software and website development

Computer software includes:

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

Eligible web site development costs:

- hardware and software to run the web site
- developing the infrastructure and programming the web site
- adding new functions, improvements of the capacity or performance to a web site (programming)
- the initial graphic design

Ineligible web site development (expensed under generally accepted accounting principles):

- planning costs
- costs incurred to develop content
- operating costs of the borrower, such as fees paid to the host of the web site, ongoing maintenance, repair, and upgrades
- on-site supplier services, (other than installation and debugging costs that are specifically part of a contract for eligible development costs)

The computer software and web development costs are eligible provided that the computer software, improvements to the software, or the web site:

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

The purchase of a website is eligible. However, the website must be "necessary for the operation of the business" such that the intended use is for the clients of the business to obtain information about the business, display inventory and services available for sale. The value and cost related to the website must be considered as a capital cost of the business in order to be eligible for financing under the program.

4.4 Registration Fee

All or part of the 2% registration fee may be financed as part of a CSBF loan. It is calculated on the total loan made to finance real property or immovables, leasehold improvements, and/or equipment, as described in Items 4.1 to 4.3 of these Guidelines. The fee must be clearly indicated as a separate class of loan on the line "CSBF Loan Fee Financed" in the Loan Registration form.

If the registration fee is financed, the maximum loan amount for each asset class must include the registration fee associated with those assets. That is, the maximum loan amount is \$350,000 for equipment and leasehold improvements and their registration fee, and \$1 million including real property and its registration fee. Therefore, a lender cannot finance the maximum of \$350,000, or \$1 million, plus the associated registration fee. The following table illustrates how the financing of the registration fee is factored in the determination of the maximum loan amount:

Equipment and/or Leasehold Improvements Financed	Real Property Financed	Registration Fee Financed	Total Assets and Registration Fee Financed	Maximum Loan Amount
	\$700,000	\$14,000	$\$700,000 + \$14,000 = \$714,000$	\$714,000
\$340,000		\$6,800	$\$340,000 + \$6,800 = \$346,800$	\$346,800
\$350,000		\$7,000	$\$350,000 *$	\$350,000
\$340,000	\$450,000	$\$6,800$ $(\$340,000 \times 2\%)$ $\$9,000$ $(\$450,000 \times 2\%)$	$\$340,000 + \$6,800 = \$346,800$ $\$346,800 + \$450,000 + \$9,000 = \$805,800$	\$805,800
\$350,000	\$100,000	$\$7,000$ $(\$350,000 \times 2\%)$ $\$2,000$ $(\$100,000 \times 2\%)$	$\$350,000 *$ $\$350,000* + \$100,000 + \$2,000 = \$452,000$	\$452,000
\$350,000	\$650,000	$\$7,000$ $(\$350,000 \times 2\%)$ $\$13,000$ $(\$650,000 \times 2\%)$	$\$350,000 *$ $\$350,000 + \$650,000 * = \$1,000,000$	\$1 million

*Registration fees cannot be financed since the maximum loan amount for this loan class has been reached. Alternatively, the lender could reduce the amount of the assets financed if the borrower needs to finance the registration fee.

5. Eligible Amount of the Loan

5.1 Eligible Expenditures [\[Regs ss. 5\(5\)\]](#)

- **Percentage of financing:** The percentage of financing can be negotiated with the borrower and determined by the lender based on its internal lending policies and the risk associated with the borrower.
- **Discounts, refunds etc.:** Costs related to the asset(s) financed by the CSBF loan must be reduced by the amount of grants, discounts, refunds and reimbursements or any type of applicable credits directly related to the asset(s).
- **Trade-in equipment:** Lenders may use the gross cost of the purchased equipment, e.g., vehicles, irrespective of the value of the trade-in, to calculate the [eligible cost](#).
- **Transportation and installation:** Freight and installation, related to the asset being financed, may be included.
- **Non-refundable taxes [\[Regs ss. 5\(6\)\]](#):** Non-refundable taxes (e.g. on air conditioners, tires) or customs duties may be included as part of the eligible cost of an asset. Eligible cost must not include any refundable items (GST, HST, PST or other). The lender is responsible for ensuring only non-refundable taxes, etc. are included in the amount financed.
- **180-day rule [\[Regs ss. 6\(1\)\]](#):** When determining the total cost of a project, a lender may include expenditures or commitments made within 180 days prior to the earliest of the date on which the loan is approved or, if the approval has conditions, the date of the conditional approval as outlined in [Item 5.5.2](#). A non-refundable deposit constitutes both a commitment and expenditure. If an asset is leased under a lease contract that provides an option to purchase the asset, the commitment date is the date the option is exercised.

The table below outlines the various scenarios for the 180-day rule:

Transaction Prior to 180 days from date of loan approval	Transaction Within 180 days prior to the date of loan approval or after	Eligible Amount
Invoice and expenditure \$100 000		NIL
	Invoice and expenditure \$100 000	\$100 000
Invoice \$100 000	Expenditure \$100 000	\$100 000
Expenditure \$100 000	Invoice \$100 000	NIL
Invoice \$100 000 Expenditure \$20 000	Expenditure \$80 000	\$80 000
Expenditure \$20 000	Invoice \$100 000 Expenditure \$80 000	\$80 000
Conditional contract (invoice) \$100 000 Expenditure (deposit) \$20 000	Expenditure \$80 000 Conditions waived on contract (invoice)	\$100 000
Conditional contract (invoice) \$100 000 Expenditure (deposit) \$20 000 Conditions waived on contract (invoice)	Expenditure \$80 000	\$80 000

Examples of Eligible Expenditures

- Access sidewalks
- Architectural, engineering and design fees related to the project being financed with the loan
- Brokerage fees related to the importing of equipment
- Contractor's profit if shown separately in the contract or invoice
- Dies and jigs
- Display cases
- Fences
- Landscaping (e.g., trees, plants, stone walks, ponds, benches, outdoor lighting) provided it is included in the purchase or improvement to real property or leasehold improvements
- Moulds used for production
- Paving of parking areas
- Sand and gravel pits
- Undivided share of an eligible asset that is required for the operation of a commercial business (e.g., a 60% share in a building or equipment) where the owners of the asset are or will be operating businesses independent of each other. The financing must be made to the entity carrying on the small business, not to another entity created specifically to own and manage the asset. An undivided share is a full share in an asset, a share that is not separated into parts. In the case of real property or immovables, a person owning property as a tenant in common would have an undivided share of the property.
- Water supplies and drainage systems
- Wood lot (timber must be capitalized)

5.2 Ineligible Expenditures

- **Borrower's labor** [[Regs ss.5\(5\)](#)]: The cost attributed to the borrower's labor (including employees and shareholders and directors of a corporate borrower) is not an eligible expenditure. However, the cost of subcontractors hired by the borrower is eligible.
- **Pre-existing term loan** [[Regs ss.6\(1\)](#)]: Expenditures or commitments currently or previously financed by the borrower on a term loan are ineligible. The Directorate defines a term loan as any loan with regularly scheduled payments. Bridge financing, a line of credit and a conditional sales contract are not considered term loans.
- **Shares:** In the acquisition of shares, the loan is being advanced to a shareholder for the sole purpose of acquiring shares in the corporation. Funds are not being advanced to the corporation. In a share purchase, the purpose of the loan is to finance the equity in the corporation; it is not being used to finance an acquisition of assets. The acquisition of shares is not eligible for financing.
- **Vendor take back financing:** When a vendor finances part of the purchase price, the amount of that financing is not eligible for a CSBF loan.
- **Exchange or barter:** Since the asset was already acquired and paid for by an exchange of goods or services, the CSBF loan cannot be used to generate funds for either of the parties involved. The only exception to this rule pertains to trade-ins which serve as partial payment during the acquisition of an asset financed by a CSBF loan.

Examples of Ineligible Expenditures

- Building permits
- Feasibility studies, business plans
- Franchise fees
- Goodwill
- Improvements to real property or immovables, where the vendor, as the owner of that real property or immovable, is selling those improvements
- Improvements to a family dwelling for non-commercial purposes
- Inventory
- Permits & licenses used in the operation of eligible assets
- Prepaid expenses
- Printed materials (brochures, flyers, business cards, menus, photocopies)
- Professional fees (e.g., legal, accounting, appraisal, incorporation costs)
- Research/ development costs
- Supplies (e.g., paper, staplers, pens, uniforms, erasers)
- Survey costs
- Training Costs
- Vehicles for personal use
- Warranties
- Working capital

5.3 Proof of Purchase and Proof of Payment [\[Regs par.38 \(4\)\(a\)\]](#)

Eligible expenditures must be supported by proof of purchase (invoices, purchase agreements, etc.) in the name of the borrower. The invoices and purchase agreements must provide details of the items being purchased (e.g., make, model, serial numbers etc.) or the work being done. In the event a claim for loss is submitted, proof of purchase and proof of payment documentation must be included as follows:

- **Cancelled cheque:** A cleared cheque from the borrower payable to the supplier and accompanied by the invoice is the preferred proof of payment.
 - **Debit/Credit Card, Line of Credit:** (except from the supplier of the asset): A receipt of payment by debit or credit card or through a line of credit is also acceptable. No proof is required to demonstrate that the borrower subsequently paid off the credit card or the line of credit. Alternatively, a credit card or bank statement is acceptable provided the statement shows the same amount and name of the vendor as the invoice.
 - **Cash payment:** A supplier's invoice stamped "PAID", indicating "IN CASH", or a printed invoice indicating the payment has been made in cash, can be accepted for an amount less than \$500.00. The stamp must bear the name of the supplier.
 - **Sales contract:** Formal executed sales contracts in respect of acquisitions of real property or [going concerns](#), for example, generally make reference to the purchase price paid and contain a section referring to the payment and indicating "receipt whereof is hereby acknowledged." Such an attestation by a lawyer or notary is sufficient proof of payment.
 - **Attestation:** A receipt or an attestation by the supplier to the effect that the invoice has been paid is acceptable. Where the loan disbursement is effected by a lawyer or notary, the SBF Directorate accepts a photocopy of the Deed of Sale or the lawyer/notary's Trust Statement confirming that the vendor has been paid, or confirmation from the vendor's lawyer that the funds for the purchase of the assets were received.
 - **Invoice in the name of the borrower and payment made by a third party:** Documentation must be provided that the borrower repaid the third party (e.g., a cheque made by the borrower payable to the third party.). A written confirmation from the third party is
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acceptable provided it confirms that the borrower did in fact repay the third party. A confirmation only stating that the third party has no rights in the assets or is a gift to the borrower is not acceptable.

- **Invoice in the name of a third party and the payment made by the borrower:** Documentation from the third party is required to substantiate the transfer of ownership. When assets financed by the loan are realized, even if no evidence exists to support the transfer of ownership, the fact that assets were available for realization confirms ownership and therefore the Minister will consider that requirements are met.

NOTE: The issuance of shares by a corporation in exchange for the price of the purchased asset is NOT considered proof of payment for that asset since there is no cash payment by the corporation.

5.4 Determining the Eligible Loan Amount

To determine the eligible amount of the loan, the cost and proof of payment for each loan class (equipment, real property, leasehold improvements) are calculated as follows:

Step 1 - Eligible cost of assets purchased:

The eligible cost represents the total amount (less refundable taxes) in the invoice/purchase contract for which there is proof of payment. Any invoice/purchase without proof of payment is excluded.

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

Step 2 - Eligible proof of payment:

The eligible proof of payment is the *lesser of*:

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

Step 3 - Eligible amount of the loan:

The eligible amount of the loan is the *lesser of*:

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

The following example illustrates these calculations

Class of loan	Cost of asset purchased less refundable taxes	Step 1—Proof of payment	Step 2—Lesser of Step 1 and cost of asset purchased
Equipment	\$1,080	\$1,150	\$1,080
Equipment	\$3,240	\$2,000	\$2,000
Total Eligible Equipment	\$4,320	\$3,150	\$3,080
Leasehold Improvements	\$1,620	\$3,000	\$1,620
Leasehold Improvements	\$0	\$1,000	\$0
Total Eligible Leasehold Improvements	\$1,620	\$4,000	\$1,620
Eligible amount of loan			\$4,700

Summary of eligible costs form: The CSBF Program has developed a [Summary of Eligible Costs form](#) (Annex of these Guidelines) to assist lenders in calculating the eligible amount of the loan.

The lender need only submit the proof of purchase and payment for the principal amount outstanding on the loan as of the date of default.

5.5 Appraisal [\[Regs.s.9\]](#)

A lender must obtain an appraisal of the market value of the asset or services intended to improve an asset, when the borrower:

- **Purchases an asset or services intended to improve an asset from a person not at arm's length.**

The concept of a party not at arm's length from the borrower is described in [section 251 of the Income Tax Act](#) in the Annex of these Guidelines which defines related persons as individuals connected by blood, marriage, or adoption (includes father, mother, brother, sister, common law couples) and any situation involving different degrees of control by these persons or corporations. Control is not defined by a specific percentage and can be a question of fact, even between two non-related parties.

For example, the borrower may have signed an acknowledgment on the registration form that restaurant equipment was purchased from an at arm's length supplier. However, a corporate search reveals that the corporate supplier in fact is controlled (sole shareholder) by the borrower's brother. In such a case, an appraisal of the value of the restaurant equipment would be required.

If a person, not at arm's length from the borrower, sells the borrower an asset, or services intended to improve an asset, which it previously purchased from a vendor at arm's length to the borrower,

no appraisal is required. Such a transaction must be supported by proof of cost (invoice and proof of payment) of the assets or services intended to improve an asset showing that the price the borrower paid does not exceed the amount that the not at arm's length vendor paid to the original vendor and; the purchase from the original vendor has taken place within 180 days of the date the loan is approved.

The "services intended to improve an asset" applies to labor and minor material costs incurred to improve or fix an asset, for example, the cost for a mechanic to repair a motor in a transport truck or the cost for painters to paint a building.

- **Purchases all or substantially all of the assets of a going concern** [[Regs ss.1\(1\)](#)]

The term "going concern" is defined as a business that has carried on operations at any time within 60 days prior to purchase or, in the case of a small business that operates on a seasonal basis, during the season prior to purchase.

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

The following are also deemed to be purchases of a going concern: a franchisor selling a franchise under its control, and a franchisee selling its franchise business to a new franchisee.

The Purchase and Sale Agreement of a going concern is for the purchase of specified assets of the vendor (e.g., real property, equipment, leasehold improvements, inventory, goodwill, interest in a franchise, telephone, etc.). The Agreement should set out the allocation of the purchase price for each of the assets listed in the agreement. In the absence of such allocation, other documentation setting out such allocation (e.g., the purchaser's financial statements, election filed with Canada Revenue Agency etc.) may be sufficient to establish that the purchased assets are eligible. A value set out in an appraisal of the asset(s) will not be accepted as the allocation for the asset(s).

- **Purchases, from the lender or its representative, an asset that is or was used to secure a conventional loan.**

5.5.1 Determining Eligible Cost when an Appraisal is Required [[Regs ss. 9\(4\)](#)]

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

- the cost of purchasing the asset, or services to improving the asset, and;
- the appraised value of the asset, or the services to improve the asset.

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

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

5.5.2 Other Appraisal Requirements [[Regs ss. 9\(1\)\(2\)](#)]

The appraisal must be:

- received by the lender before the loan is approved. If a loan is approved conditional on obtaining an appraisal, the approval date will be the date upon which a valid appraisal is provided.
- made not more than 180 days before the CSBF loan approval date. In the event the appraisal is made more than the 180 days, the SBF Directorate may accept an update to the appraisal from the same appraiser provided the update is made within 180 days before the date of loan approval, and
- made by an appraiser who is a member of a professional association (there are no exceptions where the loan relates to real property or immovables) and who is **at arm's length** from the borrower; or
- in the case of an equipment loan or a leasehold improvement loan, where there is no professional association with members qualified to make such an appraisal:
 - for an equipment loan, an appraisal can be made by an expert in the field (a supplier of similar equipment, auctioneer, etc.), who is at arm's length from the borrower;
 - for a leasehold improvements loan, an appraisal can be made by a general construction contractor, a construction estimator, an engineer, an architect, a contractor of that specific leasehold improvement (e.g., a plumber, bricklayer etc.), construction consultant or interior designer.
 - since an appraisal for equipment and leasehold improvements can be made by other experts, the following information should be included in the appraisal:
 - the name and signature of the person who performed the appraisal, and the name of the appraisal business;
 - where and when the appraisal was made;
 - that the assets were physically inspected and the condition of those assets;
 - the appraisal must be for a fair market value of the assets or services.

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

- the book value of the assets;
- the value assessed by a municipality or other level of government for tax purposes; or
- an estimate on assets or services that the appraiser has not physically or virtually inspected.

NOTE: In all cases, the appraiser must be impartial and at arm's length from the borrower. Where the assets are being sold to the borrower by the lender, the appraiser must also be at arm's length from the lender. Appraisal costs are the responsibility of the borrower. They cannot be included in the CSBF loan or debited to the loan account.

6. Repayment Terms, Rate of Interest, Other Fees and Charges

On or before the day of the first disbursement of the CSBF loan funds, the borrower and the lender must sign a document setting out the principal amount of the loan, the rate of interest, the repayment terms, the frequency of the payments of principal and interest and the day on which the first payment of principal and interest is due. This document can be in the form of a promissory note, a loan agreement, a bank contract or any other document that the lender registers to secure the repayment of the loan. Lenders may use their own loan-related documentation (e.g. application form, loan document, etc.).

6.1 Repayment Terms [\[Regs ss. 10\(1\)\(2\), 6\(2\)\]](#)

- **Maximum term:** The maximum term (length of government coverage) the CSBF Program can apply to a loan is as follows:
 - For loans made before February 19, 2016, 10 years to finance leasehold improvements, equipment or real property;
 - For loans made after February 18, 2016, 10 years for leasehold improvements and equipment and 15 years for real property.

The repayment of the loan can be amortized over a period longer than 10 or 15 years (for example, a mortgage on a real property with an interest term of 5 years and an amortization of 25 years). However, in such a case, the balance of the loan at the end of the 10 or 15 year period from the date of the first scheduled payment must be converted to a conventional loan. The expiry of the term can be no more than 10 or 15 years from the date of the first scheduled payment of principal and interest, as specified in the initial loan document (i.e., the promissory note or equivalent document). To calculate the maximum loan term of 10 or 15 years, the 1st payment payable under the loan document should be used, irrespective of the fact that it's a payment of principal, a payment of interest or a payment of principal and interest.

- **Payments:** Payments may be adapted to a borrower's needs (i.e. blended, seasonal or escalating). For a CSBF loan, at least one payment of interest and one payment of principal must be scheduled to be made each year. Such payments of principal and interest need not occur on the same date. The first [instalment](#) of principal and interest must be scheduled no later than one year from the date of the first disbursement of the loan funds.

For renewal and amendments of the terms of the loan, please refer to Item 11 of these Guidelines.

6.2 Rate of Interest [\[Regs. s. 12\]](#)

The Regulations provide for either a floating or a fixed maximum rate of interest. Lenders may charge interest rates lower than the maximums 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).
- The maximum **fixed rate** is the lender's posted single family residential mortgage rate plus 3% (including the 1.25% annual administration fee). Use the rate for a mortgage term equivalent to the CSBF loan term.
 - Where the term of the fixed rate CSBF loan is longer than 5 years and the lender has no rate for that loan term, the 5-year posted single family residential mortgage rate can be used. If the CSBF loan is made for an irregular term (e.g., 30 months), lenders should follow their usual procedures to establish the residential interest rate for loans with irregular terms.
 - The fixed rate is set at either the day:
 - on which the first disbursement of the funds is made for the CSBF loan;
 - on which the CSBF loan document is signed;
 - on which the loan is renewed or the loan term is amended.

NOTE: At any time during the repayment period of a CSBF loan, the lender and borrower may agree to convert the interest rate, from floating to fixed or vice versa, or to prepay the loan. Any charges

related to such conversions must be equal to or less than those charged in a conventional loan of the same amount. See Item 12 of these Guidelines.

6.3 Other Fees and Charges [\[Acts, 10; Regs s.13\]](#)

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

- Interest (including the annual administration fee)
- The registration fee
- A charge for preparing and registering the security document of the same amount: Such amount must be equal to or less than the amount typically charged for a similar conventional loan. The borrower should have the option of contracting directly for preparation and registration of the required security document. A lender can charge the costs (equal to or less than those charged on a conventional loan of the same amount) of an inspection by a third party of the borrower's business premises to ensure that the business is operating and that the financed assets are on the business premises.
- Premiums for life and/or disability insurance: If life and/or disability insurance are required as a loan condition, the lender must offer the borrower the option of purchasing the lender's insurance policy or another provider's policy. If the borrower chooses the lender's policy and opts to finance the insurance, the premium can be expressed as fixed payments or as a percentage of the CSBF loan. If the insurance premium is expressed as a percentage of the CSBF loan, it cannot be combined in the loan's interest rate unless the calculation for such premium is shown clearly and separately in the loan document. Insurance premiums cannot be calculated for the term of the loan and cannot be capitalized and added on the loan. Such capitalization of insurance premiums is not eligible. In the event the capitalization of insurance premiums is shown in the loan account, the lender will be requested to adjust the loan statement.
- A charge that is equal to or less than those charged in a conventional loan of the same amount for the following:
 - the conversion of a fixed interest rate loan to a floating interest rate loan;
 - the conversion of a floating rate interest loan to fixed rate interest loan; and
 - prepayment of all or part of a loan.
- The lender may require the borrower to pay any other cost that a lender charges for a conventional loan of the same amount (e.g. loan set-up, annual review, renewal fees). Lenders cannot charge these fees on loans made before April 1, 2014 even though the lender may perform services on the loan after March 31, 2014 (e.g. annual review, renewal).
- Any other fees: If other fees or charges (subject to the eligibility described above) are expressed as a percentage of the CSBF loan, they cannot be combined in the loan's interest rate unless the calculation for such charges is shown clearly and separately in the loan document. Any eligible fees must be charged and collected from the borrower and cannot be the subject of any subsequent claim.

NOTE: The cost of the prepaid insurance, charges for the taking of security or any other charges cannot be financed by a CSBF loan. Also, such costs cannot, in any way, be capitalized on the loan account to increase the principal amount of the loan.

7. Security [\[Regs ss.14\]](#)

The types of security for CSBF loans are as follows:

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

Lenders must ensure that the security is made valid and enforceable as of the date of the first disbursement on the CSBF loan and at all times during the duration of the loan including at the time of realization of the security.

The requirements for the substitution and release of security are explained in Item 13 of these Guidelines.

*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*.

Valid and Enforceable Security

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

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

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

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

Security on leasehold improvements can be problematic. The uncertainty of whether valid and enforceable security has been obtained on leasehold improvements in the cases of fixtures or building materials can perhaps be avoided if the lender takes a general security agreement pursuant to [ss. 14\(3\)](#) of the *CSBF Regulations*, or a specific security interest in other assets of the business (see section on Alternate security below). This would be regarded as taking security on other business assets and would satisfy the security requirements. Where a CSBF loan finances leasehold improvements to a tenant borrower and where the lender is unable to take a valid charge on the assets(s) financed by the loan, the lender must, in accordance with ss. 14(3) of the *CSBF Regulations* take security on any other assets(s) of the small business as security for the repayment of the CSBF loan. Other assets of the small business may include the receivables, inventory, equipment or equity investments of the business enterprise. A pledge of capital stock of a corporate CSBF borrower and non-business enterprise assets (i.e., personal assets) of a sole proprietor or of an unincorporated partner are not eligible as "other" security of the small business.

NOTE: Where the lender's security is determined to be not enforceable, this non-compliance may be remedied if certain conditions are satisfied by the lender as explained in [Item 24.2](#) of these Guidelines.

7.1 Primary Security

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

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

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

Alternate security [Reqs ss.14(3)]: If a CSBF loan finances leasehold improvements or computer software, the lender must 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 for the loan. In this case, the lender must treat such security in the same manner as any other primary security.

NOTE: Alternate security, once taken, becomes primary security and is to not be treated as additional security.

Equal ranking security [Reqs ss.14(2)]: 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), the security taken on the assets financed (the conventional loan and the CSBF loan) must be equal in rank.

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

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

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

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

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

Highest available rank [Reqs ss.14(5)]: If, at the time of the first disbursement of CSBF loan funds, prior security exists on the assets financed, the lender's security shall be a charge of the highest available

rank. As a general rule, this situation will arise when the loan is made for improvements to an asset on which there is already a prior charge.

If a loan is being transferred from one lender to another or the borrower already has financing with another lender and the other lender authorizes additional CSBFA financing for the same asset, the lender's security on the additional assets is a charge of the highest available rank.

Example: a lender has a conventional first ranking mortgage transferred from another lender and at the same time the borrower wants to do improvements to the real property. The lender can approve a loan for the additional financing and secure it with a second mortgage on the property as long as the conventional first ranking loan does not exceed the outstanding loan amount of the other lender at the time the CSBF loan is granted.

Example: the borrower has a CSBF mortgage on the real property with lender A and lender B authorizes financing for improvements to the real property. Lender B can secure the financing with a second ranking mortgage on the real property if that is the highest available rank.

After-acquired clause [Regs. 14(5)]: Where the prior charge flows from an "after-acquired clause" in the security document (e.g. a [general security agreement](#) or universal movable hypothec**) held by the lender or another creditor, the lender is required to obtain all the postponements of rank for the assets being financed by the loan to ensure that the security in the asset is a first rank security. This will result in the CSBF loan being secured by a first charge on the new asset.

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

Borrower and landlord not at arm's length:

[Sub-section 14\(6\)](#) has been repealed and no longer applies to loans made after February 18, 2016. What this means is that where a lender is financing leasehold improvements and the borrower and the landlord are not at arm's length, the lender cannot take security for the loan on the landlord's real property. The security for the loan must be on the financed assets, that is, the leasehold improvements.

In the event a lender in its credit decision process decides to take a mortgage on the real property of the landlord, this would be permitted only if the following conditions are met:

- the landlord is a corporate entity;
- the lender has taken a corporate guarantee from the landlord under [s. 20](#) of the CSBFR;
- the amount of the mortgage on the real property is the same as the amount of the corporate guarantee.

If the landlord is not a corporation, that is, it is an individual or a group of individuals and the lender has taken a personal guarantee from that landlord, the lender could not secure the guarantee with a mortgage on the real property because under s. 19 a personal guarantee must be unsecured.

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

In some jurisdictions the only way the lender can secure a mortgage from the landlord is to take a guarantee or suretyship for 100% of the leasehold improvement loan and secure the guarantee or suretyship with a collateral mortgage on the property for the same amount. Where the landlord is an individual and this is the only guarantee or suretyship held for the loan, if the guarantee or suretyship does not clearly indicate that it is taken only for the benefit of the collateral mortgage, a lender can:

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- realize on the property held under the collateral mortgage, and;
 - if the proceeds from the property liquidation were insufficient to repay the indebtedness, realize on the personal assets of the guarantor or [surety](#) (the landlord) for an amount not exceeding 25% of the original loan amount for loans made before April 1, 2014 or the amount of the guarantee or suretyship for loans made after March 31, 2014.

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

7.2 Additional Security [\[Regs s.17\]](#)

The lender may further secure the CSBF loan with additional security on any other assets of the business.

NOTE: Personal assets cannot be used to secure a CSBF loan.

7.3 Guarantees or Suretyships

A lender may wish to further secure a CSBF loan by way of a guarantee or suretyship, personal or corporate. The guarantee or suretyship may provide for interest that would ordinarily be included in any judgment that the lender may obtain. See Item 22.2 of these Guidelines for realization on guarantees or suretyships.

[Personal guarantees or suretyships](#) [\[Regs ss.19\(1\)\]](#): A lender can take **unsecured** personal guarantees or suretyships up to the original amount of the loan disbursed

The guarantee document may provide for payment of interest on any judgment, taxed costs, legal fees, disbursements, and other costs relating to legal proceedings against the guarantor or surety. Subject to the conditions regarding the non-compliance for personal guarantees in [Item 24.2](#) of these Guidelines, a CSBF loan may be ineligible if the lender has taken a personal guarantee or suretyship that is secured by collateral assets.

Unless clearly indicated on the document, a personal guarantee or suretyship must be considered at its face value not as a percentage of the original loan amount. For example, an equipment loan is authorized for \$200,000 and is fully disbursed. The lender takes a personal guarantee of \$50,000 or 25% of the amount of the loan. The loans defaults with an outstanding principal balance of \$130,000. The personal guarantee must be enforced for \$50,000, not 25% of the outstanding balance at default.

When personal guarantees or suretyships are taken from more than one person, the liability can be joint and several or individual. In all cases, if separate guarantees are taken from several guarantors and the lender intends that the guarantees be joint and several, either the guarantee documents or some other loan documentation should indicate this intention. [\[Regs ss.19\]](#)

A personal guarantee or suretyship does not preclude a lender from also obtaining an assignment or postponement of shareholder's loans, because such an assignment or postponement would not

constitute a demand for payment upon the guarantor or surety and has no realizable value in the event the borrower becomes insolvent.

As a rule, a borrower operating as a sole proprietorship or partnership is liable for 100% of the repayment of the CSBF loan disbursed.

Limiting a sole proprietor or partners' liability on their personal or non-business assets for a CSBFA loan: The liability of the borrower (sole proprietor, partnership, or corporation) cannot be limited on any of the borrower's business assets at the time the loan is approved nor during the realization on the assets of the business. The lender may, however, limit the realization on the personal or non-business assets of the sole proprietor or partners if:

- **The lender and the borrower enter into an agreement to limit realization of personal assets:** During the loan approval stage of a CSBF Program loan, the lender and the sole proprietor or partners may enter into an agreement that limits the realization on the personal or non-business assets of the sole proprietor or partners; or
- **The lender obtains judgment against the sole proprietor or partners:** Once a loan defaults, a lender may take legal action against a sole proprietor or partners. The amount claimed in such an action must be for the outstanding amount of principal and interest on the loan. Once a judgment is obtained, the lender may limit the amount or percentage of the judgment it can realize on the personal or non-business assets of the sole proprietor or partners [\(paragraph 37\(4\)\(a\) of the CSBF Regulations\)](#). If the lender collects less than the amount of the judgment, a rationale needs to be provided to Innovation, Science and Economic Development Canada.
- **The lender and the borrower enter into a compromise settlement:** Under [paragraph 37\(3\)](#) of the CSBF Regulations, once the CSBFA loan goes into default, lenders may, at any time, enter into a compromise settlement with the borrower. As indicated in [Item 22.4](#) of the CSBFP Guidelines, such a settlement may or may not include realizing on the personal or non-business assets of the sole proprietor or partners. The reasons and basis of the compromise settlement should be well documented.

Lenders should consult their legal counsel for any questions on the legal feasibility or mechanism to limit realizations on personal or non-business assets of sole proprietors and partners.

Corporate Guarantee or Suretyships: The lender may take **secured or unsecured** corporate guarantees or suretyships. There is no limit on the amount of the corporate guarantee or suretyship.

8. Checklist

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

- ☐ Borrower is eligible (see [Item 2](#));
- ☐ Business is eligible (see Item 2);
- ☐ Gross annual revenue of business is not or will not be greater than \$10 million;
- ☐ Aggregate of the outstanding loan balances to the borrower and related borrowers is not greater than \$1 million of which the maximum amount of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements (see [Item 3](#));
- ☐ Assets financed fall within the prescribed classes (see [Item 4](#));
- ☐ The percentage of financing does not exceed the eligible cost of the assets (see [Item 5.1](#));
- ☐ Date of purchase or commitment to purchase the assets is within 180 days before the day the loan is approved (see Item 5.1);
- ☐ Expenditures or commitments were not previously financed by the borrower on a term loan (see [Item 5.2](#));
- ☐ Appraisals and update to appraisal, if applicable, have been made and received, where applicable (see [Item 5.5](#));
- ☐ Evidence is on file to support the cost of assets financed (i.e. Invoices, contracts, purchase and sale agreements, etc.) (see [Item 5.4](#));
- ☐ 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 5.3](#));
- ☐ The 50% rule has been observed, where applicable (see [Item 4.1](#));
- ☐ The three year rule has been observed, where applicable (see Item 4.1);
- ☐ Term of loan is not greater than 10 or 15 years (see [Item 6.1](#));
- ☐ First scheduled payment of principal and interest is within one year of the date the first disbursement of the loan funds is made (see Item 6.1);
- ☐ Rate of interest does not exceed the 3% above the prime rate or the posted single family residential mortgage rate of the same term (see [Item 6.2](#));
- ☐ The lender has not charged any cost over what a lender charges for a conventional loan of the same amount;
- ☐ Insurance, if required, is held over the assets given as security;
- ☐ Required security has been/will be taken (see [Item 7](#));

Registration, Administration and Reporting

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

9. CSBF Loan Registration [Regs ss.2(1), 3(1)]

In order for a loan to be registered under the CSBFA:

- the first disbursement on the loan must have been made;
- the registration request must be postmarked no later than 3 months after the date of the first disbursement of loan funds
- the Loan Registration form (see [Annex](#)) must be signed by an authorized representative of the lender and by the borrower;
- a lender's cheque for the registration fee must accompany the form.

NOTE: The names of the guarantor(s) and/or the names of the shareholder(s) for a corporate borrower must be listed on the loan registration form. In the case of a co-operative with share capital, the names of the shareholders must be listed. If the co-operative is without share capital, the names of the board of directors members must be listed in the registration form.

9.1 Electronic Loan Registration [Regs. ss.3(2)(3)(4)]

The CSBF Program has introduced an electronic system that enables lenders to register loans in a secure web-based environment, transfer/receive registration fees/refunds, and obtain up-to-date information about their loan portfolios.

Lenders are able to electronically:

- submit new, modify existing, withdraw pending, and de-register loan registrations
- receive and print registration confirmation and modification acknowledgements
- view the status of registrations and claims
- submit and track registration fee transfers for new loans as well as modified loan amounts
- request and receive refund payments for decreased loan amounts

To learn more about how your financial institution can take advantage of this improved business protocol, please contact the CSBF Program at 1-866-959-1699 or by e-mail at csbfp-pfpec@ised-isde.gc.ca.

9.2 Late Registration [Regs ss.2 (2)]

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

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

9.3 Modification of Loan Classes and Amounts

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

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

- the lender details the new loan amount(s) by class of loan;
- the 2% registration fee related to the increase accompanies the request;
- the increase relates to the same project;
- the legal status of the borrower remains the same as on the initial loan registration;
- the loan is in good standing and all other terms and conditions of the *Act and Regulations* are met (e.g., maximum loan amount, security requirements; requirement to repay the first instalment of the loan principal and interest within one year; term of loan is not greater than 10 or 15 years as detailed in [Item 6.1](#));
- the lender amends the registered security to reflect the increased amount; and
- there are no modifications to the "Borrower's Acknowledgment and Consent" section of the original registration form.

10. Registration and Administration Fee: Payment and Refund

10.1 Registration Fee [[Regs ss.4\(1\)](#)]

- the registration fee is 2% of the total amount of the CSBF loan for real property or immovables, leasehold improvements and equipment;
- the lender's cheque (a borrower's cheque is not accepted) for the registration fee, payable to the Receiver General for Canada, must accompany the Loan Registration;
- If the SBF Directorate has approved the lender enabling it to register loans electronically, the lender may submit and pay the registration fee electronically;
- the registration fee can be financed as part of the CSBF loan ([Item 4.4](#) of these Guidelines).

10.2 Administration Fee [[Acts. 12](#); [Regs ss.4\(2\)\(9\)](#)]

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

See [Item 17.1](#) of these Guidelines for reporting on and payment of the administration fee. See [Item 24.2](#) for remedies for inadvertent non-compliance of the requirement to pay administration fees.

10.3 Refund of Registration fee and/or Administration Fee [[Regs pars. 4\(10\)\(a\)\(b\)](#)]

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

- **Partial refund:** If the total funds disbursed are less than the registered amount of the loan:
 - the lender will provide details of the revised amount for each loan class of the loan;
 - refund of the 2% fee will apply to the undisbursed portion of the registered loan, and;
 - upon refund, the CSBF loan will be adjusted in the program's loan records;
- **Full refund:** If the lender determines the loan is ineligible:
 - a full refund of registration and administration fees may be requested;
 - a detailed explanation why the loan is ineligible (e.g., the loan was not disbursed, the assets were not acquired, etc.) and proof that the administration fee was paid, are required; and
 - upon refund, the amount of the loan will be deducted from the program's loan records.

Prepayment of a loan by the borrower does not constitute a valid reason for applying for a full refund of the registration fee if the loan was eligible at the time it was active. There is no refund of registration fee and administration fee for those loans for which a claim has been submitted and for which an adjustment or a rejection of the claim was made.

11. Renewal and Amendment of Terms

The approval of the SBF Directorate is **not required** where the lender and the borrower agree;

- at the end of a loan term to renew the term of the loan for an additional term or terms; or
- at any time to amend the repayment terms of the CSBF loan.

However, any such renewal or amendment must comply with the terms of the loan, rate of interest and other fees and charges outlined in Items [6.2 and 6.3](#) of these Guidelines. For example:

- the new CSBFP term of the loan is not greater than 10 or 15 years (as detailed in [Item 6.1](#)) from the date of the original first scheduled payment of principal and interest;
- the interest rate, at renewal or amendment, must not be greater than the prescribed maximum rate;
- the terms of the loan must provide a minimum of one principal and interest payment each year, with the first payment scheduled to be made within one year of the date the amendment or renewal revision is made;
- the terms of the renewal or amendment are set out in a document signed by the lender and the borrower or in the format or manner stipulated in the original loan document.

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

The loan amortization period, however, may be increased beyond 10 years or 15 years. In such a case, either a balloon payment must then be scheduled to ensure full repayment of the CSBFP loan before the end of the tenth or 15th year or, at the loan's 10 or 15 year anniversary, a conventional loan must be made for the period exceeding the 10 or 15 years.

Where the original loan documentation makes reference to the process for the renewal of the loan that does not require the borrower's signature, the renewal documentation could be signed by only the lender provided the borrower is notified in writing of the terms of the renewal and the borrower has made payments pursuant to the terms of the renewal.

12. Prepayment and Conversion of Fixed and Floating Interest Rates

Lenders may require the borrower to pay, in the following situations, a charge equal to or lesser than in a conventional loan of the same amount:

- prepayment of all or part of a loan
- the conversion of a fixed interest rate loan to a floating interest rate loan;
- the conversion of a floating rate interest loan to fixed rate interest loan.

13. Substitution and Release of Security

13.1 Substitution

Primary security [\[Reqs.s.15\]](#): Assets taken as primary security can be substituted by other business assets provided that:

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

Additional Security and Guarantees or Suretyships [\[Reqs.s.22\]](#): The lender can substitute additional assets or guarantees or suretyships for any other assets or guarantees or suretyships, provided the value of the replacement security, guarantees or suretyships is equal to or greater than the value of the original one. If there is a substitution of guarantees, the SBF Directorate should be informed of the names of the new guarantors.

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

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

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

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

13.2 Release Without Substitution or Replacement

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

13.2.1 Primary Security [\[Regs par.16\(2\)\(b\)\]](#)

- the loan is in good standing and the outstanding loan amount has been reduced by the amount of the original cost of the assets being released, or; [\[Regss.16\(1\)\]](#)
- when an asset is being disposed of by the borrower to a party in an arm's length transaction and all the sale proceeds are applied to the loan or; [\[Regs par.16\(2\)\(a\)\]](#)
- when an asset is being disposed of by the borrower to a party in a non-arm's length transaction, an appraisal of the asset (made within 180 days before the sale) must be obtained and the amount to be applied to the loan will be the greater of:
 - the sale price, or
 - the appraised value

NOTE: For business assets taken as security under the provisions of equal ranking or the 30 days equal ranking, the lender can release security under the same conditions as above, except that the CSBF loan principal balance must be reduced on a proportionate basis with that of the conventional loan.

13.2.2 Additional Security [\[Regs s.18\]](#)

Assets included in additional security may be released provided the loan is in good standing. Where a lender has obtained security on the assets financed by the CSBF loan (primary security) and security on other assets of the small business (additional security) such as security on inventory in the case of a GSA, the additional security may be released or postponed by the lender provided the loan is in good standing.

13.2.3 Guarantees and Suretyships [\[Regs s.21\]](#)

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

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

Lenders should take note of the following:

- in the case of a joint and several guarantee or suretyship, a guarantor or surety can be released even if the borrower has not repaid the lender at least 50% of the principal amount of the loan because the remaining guarantors or sureties continue to be responsible for the face value of the guarantee or suretyship;
- in the case of individual guarantees or suretyships that are not joint and several, lenders should ensure that if one guarantor or surety is released, there is no reduction in the aggregate value of the guarantee or suretyship. Arrangements should be made for a replacement to be found or for the remaining guarantors or sureties to fulfill the initial obligation.

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

13.3 Postponement

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

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

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

14. Change of Name of the Borrower

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

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

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

NOTE: Where the borrower does change the legal status by which the small business is carried on (i.e., a sole proprietor that incorporates in order to carry on the same business), this situation is treated as a transfer of loans from borrower to borrower and the following Item 15 should be followed.

15. Transfer of Loans Between Borrowers [Regs. s.33, par37(4)(a)]

The provision for transfers between borrowers is intended to facilitate the sale of a small business, enabling the purchaser to assume responsibility for an outstanding CSBF loan and the original borrower to be released of its obligation.

In each of the following situations:

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

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

- the lender, exercising due diligence, approves the purchaser, new partner or remaining partners as borrower(s);
- the total of outstanding CSBF loans by the new borrower and related borrowers, is not \$1 million of which the maximum of \$350,000 is used to finance the purchase or improvement of equipment and the purchase of leasehold improvements;
- the new or remaining security is of the same rank in the assets secured by the loan, and;
- any existing guarantee or suretyship is replaced with one of equal or greater value.

NOTE: When a loan is transferred:

- **to a sole proprietorship or to a partnership**, the lender must obtain confirmation from the new individuals that they accept personal responsibility for the initial amount of the loan made. The lender may provide the sole proprietor or partner with confirmation that the lender will only realize on their personal assets up to 25% of the original amount of the loan for loans made before April 1, 2014 or in the case of a loan made after March 31, 2014, the principal outstanding on the loan. This should not be in the form of a guarantee and should not be combined with any joint and several guarantees from third parties. It is necessary to inform the SBF Directorate of the names of the new sole proprietor or new partner(s).
- **to a corporation from a sole proprietorship or a partnership** with the release of the initial borrower, the lender may replace the sole proprietor's or partners' personal liability with a personal guarantee or suretyship from the shareholders of the corporation for the amount of the guarantee taken on the loan. It is necessary to inform the SBF Directorate of the names of the new shareholder(s) and/or the new guarantors.

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

Where a loan is being transferred between borrowers, the lender must approve the purchaser of the assets as a borrower. Such a borrower must carry on a small business and, thus, the business must meet all of the requirements under the definition of small business in [s. 2 of the CSBFA](#): the business must be carried on in Canada for profit, its annual gross revenues must not exceed \$10 million and, for loans made prior to 30 June 2021, it cannot be in farming or be a charitable or religious organization.

The lender needs to inform the SBF Directorate in writing of such transactions at the time they occur. In the event of a claim for loss, it must provide explanations and documentation to show that program requirements have been met. Where the loan is being transferred to a corporation, the lender must also provide the SBF Directorate the names of the shareholders of the corporation that is acquiring the loan.

16. Transfer of Loans Between Lenders

16.1 Transfer of Loan at the Request of the Borrower [[Regs s.29, 30](#)]

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

- the transferee is a lender under the CSBFA;
- the Minister's liability resulting from the transfer, calculated in favor of the transferor (original lender), does not exceed the amount already paid by the Minister. When a loan is transferred between lenders, the SBF Directorate deducts the amount of the original loan from the total loans made and registered by the transferor (original lender), and adds it to the account of the transferee (acquiring lender). It is possible in a rare case, where the transferor has used all or nearly all of the Minister's liability, the transfer would cause the claims already paid to exceed the maximum amount of the Minister's liability. In this case, the SBF Directorate will not accept the transfer and the lenders could transfer the loan as a conventional loan.

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

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

Requesting a Transfer: The transferee must request a transfer by completing the form, "Request for the Transfer of a Loan between Lenders" (see [Annex](#) of these Guidelines) signed by both lenders and the borrower. If the SBF Directorate determines that the requirements under [ss. 29\(1\)](#) of the CSBF Regulations have been met, it will notify both lenders and the Minister's liability will continue in favor of the acquiring lender. If the requirements have not been met, both lenders will be notified.

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

Transferee's Responsibilities: The transferee is responsible for:

- obtaining the relevant loan documentation from the transferor. In the event a future claim for loss is made, the transferee must provide all documentation to substantiate the loan. If a transferor refuses to provide documentation that is private and/or confidential (e.g., internal loan authorizations), a written confirmation from the transferor as to the documented facts (e.g. the loan approval date), will be acceptable.

- satisfying itself that the loan complies with all of the requirements of the Act and Regulations. In the event of a claim for loss, failure on the part of the transferor to have complied with all program conditions, or its failure to have corrected any defects within the stipulated time frame, will result in rejection or reduction of the claim.
- paying the administration fee accrued from the beginning of the month in which the transfer is made between the lenders.

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

16.2 Other Loan Transfers: Amalgamation and Acquisition of Lenders, Discontinuance of Lending Business, Bulk Transfer of Loans [\[Regs. s. 31\]](#)

There are other occurrences (as described below) when loans may be transferred and the Minister's liability of a lender may be affected:

- A lender amalgamates with another lender ("amalgamation");
- A lender acquires another lender ("acquisition");
- A lender discontinues its lending business and sells all outstanding loans to another lender ("discontinuance");
- A lender closes a branch or branches and sells the branch's or branches' outstanding loans to another lender ("bulk transfer").

In each of these situations lenders are requested to contact the CSBF Program in writing before the completion of the occurrence so that the lender can be informed of the effect of this action on its Minister's liability.

Amalgamation: all loans made and claims paid in respect of the amalgamating lenders cease to exist and are deemed to have been made by the new lender, and:

- if the amount already paid to the amalgamating lenders is greater than the Minister's liability to the new lender, the liability of the Minister will be deemed to be equal to the amount of claims for loss already paid;
- The Minister's liability will continue to the new lender at the percentage 90%/50%/12% corresponding to the total loans considered to be made by the new lender.

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

Acquisition, discontinuance and bulk transfer: the loans made by the transferor lender are deemed to have been made by the transferee lender and all claims paid to the transferor shall be deemed to have been paid to the transferee. If the amount already paid to the transferor lender on the loans being transferred is greater than the Minister's liability on the loans being transferred, the liability of the Minister will be deemed to be equal to the amount of claims for loss already paid;

EXAMPLE: Lender A purchases four branches of Lender B which had \$1 million in CSBF loans at those branches and \$300,000 in claims on those loans. The \$1 million in loans would be added to Lender A's total loans and the \$300,000 in claims would be added to the amount of claims already paid to Lender A. The Minister's liability would then be recalculated.

17. Reporting

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

17.1 Administration Fee Payment and Report [\[Regs ss.4\(2\)\(7\)\(8\)\(9\)\]](#)

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

- the fee is payable quarterly within 2 months after the end of each government fiscal year quarter (April 1 to March 31), that is, by September 1, December 1, March 1 and June 1;
- quarterly statements must be submitted with the fee, substantiating the basis on which it was calculated.

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

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

17.2 Outstanding Loan Amounts Report [\[Regs ss.34\(1\)\]](#)

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

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

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

Refer to [Item 24.2](#) for remedies for inadvertent non-compliance of reporting a loan.

18. Audit or Examination [\[Act s. 15\]](#)

The *CSBFA* permits an audit or examination of the lender's documents, records and books of account relating to any CSBF loan. The SBF Directorate must provide a 21 -day written notice prior to any such audit or examination.

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

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

19. Minister's Liability [\[Act ss. 6\(1\)\(2\)\]](#)

The limitation on the Minister's liability to each lender for losses on CSBF loans provides a cap on the exposure of the Government of Canada. This liability is calculated on the total of loans made and registered for each five-year lending period*, by lender, as follows:

- 90% of the first \$250,000 in loans, plus;
- 50% of the next \$250,000, plus
- 12% of the total in excess of \$500,000.

*A lending period refers to a period of 5 years in which the liability of the Minister of Innovation, Science and Economic Development Canada is calculated under [ss.6\(1\)](#) of the CSBFA based on the value of the loans registered and the payment of claims for eligible losses submitted by lenders:

- Period C5: April 1, 2019 to March 31, 2024
- Period C4: April 1, 2014 to March 31, 2019
- Period C3: April 1, 2009 to March 31, 2014

The Minister's liability calculation is based upon the value of loans made and registered by a lender for each five-year period. This liability in favor of a lender represents the "funds" from which the Minister pays 85% of the lender's eligible loss on each claim submitted for a loan. Payments on claims are deducted from the calculated total for the 5-year period in which the loan, that is the subject of the claim, was disbursed.

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

Innovation, Science and Economic Development Canada encourages lenders to continue to submit administration fees after the Minister's maximum liability is reached. By doing this a lender maintains certain program benefits: the Minister's liability to an individual lender can be increased in any 5-year period by the registration of additional CSBF loans, loan transfers from another lender that has had a lower loss experience for that period, amalgamations of lenders and acquisitions of another participating lending institution. Such adjustments to the Minister's maximum liability make it possible for the Minister to pay further losses sustained by lenders in that period. Non-payment of the administration fee renders any outstanding loans in that 5-year period ineligible for future claims.

Below is an example of the calculation on the loans made by a lender

Year	Loans made (000s)	Minister's liability added this year (000s)	Loan losses (000s)	Minister's share of loss	Claims paid (000s)	Balance of Minister's Liability (old balance + added liability - claims paid) (000s)
1	\$2,000	First \$250 @ 90%= \$225 Next \$250 @	\$100	85%	\$85	\$530 - \$85 = \$445

Year	Loans made (000s)	Minister's liability added this year (000s)	Loan losses (000s)	Minister's share of loss	Claims paid (000s)	Balance of Minister's Liability (old balance + added liability - claims paid) (000s)
		50% = \$125 \$1,500 @ 12% = \$180 TOTAL \$530				
2	\$3,000	\$3,000 @ 12% = \$360	\$200	85%	\$170	\$445 + \$360 - \$170 = \$635
3	\$4,000	\$4,000 @ 12% = \$480	\$400	85%	\$340	\$635 + \$480 - \$340 = \$775
4	\$2,000	\$2,000 @ 12% = \$240	\$200	85%	\$170	\$775 + \$240 - \$170 = \$845
5	\$4,000	\$4,000 @ 12% = \$480	\$300	85%	\$255	\$845 + \$480 - \$255 = \$1,070
NOTE: Minister's liability accumulates in 5-year program periods. Year 6 begins a new period.						
6			\$200	85%	\$170	\$1,070 - \$170 = \$900
7			\$300	85%	\$255	\$900 - \$255 = \$645
TOT	\$15,000	\$2,090	\$1,700	85%	\$1,445	\$355

Monies received from a lender after the payment of the final claim for loans will be applied to reduce the total value of claims paid to that lender in the calculation of the lender's Minister's liability. [\[Regs. ss. 40\(3\)\]](#) See also [Item 27](#).

20. Offences and Punishments [\[Act ss.16\]](#)

Offences under the CSBFA may arise as a result of:

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

Such offences and punishment can be either:

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

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

Realization and Claim Submission

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

1. Is the loan in default? ([Item 21](#))

No ▶ Continue to administer loan.

Yes



2. Can the default be remedied? ([Item 21](#))

Yes ▶ Work with borrower to remedy.

No



May issue Notice of Default and Demand for Payment of the loan by a specified date.



3. Does borrower remedy default within period specified?

Yes ▶ Continue to administer loan.

No



Applicable 60-month period for submitting a claim for loss or request for extension begins ([Item 21.2](#))



4. Realize on assets using normal procedures.

5. Does complete realization on assets recover principal, interest and costs? ([Item 22](#))

Yes ▶ No further action required.

No



6. Is loan secured by guarantees?

No ▶ Submit final claim ([Item 25](#))

Go to question 9

Yes



7. Submit interim claim ([Item 25.2](#)) and realize on guarantees.



8. Is realization on guarantees complete?

No ▶ Submit request for extension as required by [Item 21.2](#).

Yes



Submit final claim. Note: Applicable 60 -month period for submitting a claim for loss or request for extension. ([Item 25](#))



9. Is additional information requested?

No ▶ No further action required.

Yes ▼

Comply with requests.

10. Is claim eligible as submitted? ([Item 25.6](#))

No ▶ Claim is reduced and paid or Claim is rejected.

APPEAL PROCESS AVAILABLE ([Item 25.4](#))

Yes



Claim is paid as submitted. **NO FURTHER ACTION REQUIRED**

21. Default, Notice of Default and Demand for Repayment

21.1 Default and Required Procedures [\[Regs s.36, 37\(1\)\(2\)\]](#)

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

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

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

Demand For Repayment: If a borrower fails to comply with the conditions in the Notice of Default, the lender should issue a demand for repayment within a specified period of time.

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

21.2 Time Limitation for Claim Submission [\[Regs ss. 38\(2\) and \(3\)\]](#)

The time limit for submitting claims for loss to the SBF Directorate is 60 months and begins after the day on which the borrower made the last payment (principal or interest) on a loan under the terms of the loan agreement.

Should an extension to the claim submission period be required, a "Request for Extension of Claim Submission Date" (Request) form ([see Annex](#)) must be submitted before the expiration of the current claim submission deadline (i.e. the applicable 60-month period as set out above, or the agreed upon extension date). The new deadline for claim submission will become the **date** (not the period) approved in the Request, provided this request was indeed submitted prior to the expiry of the claim submission period.

The SBF Directorate will approve a Request based on the information provided by the lender. Such an approval may be annulled should the information be found to be incorrect in a claim for loss submission.

21.2.1 Time Limitation for Additional Claim [\[Regs par. 38.1\(1\)\(2\)\]](#)

If a lender has been paid a claim for loss, but wishes to submit an additional claim for previously unclaimed losses after the expiry of the claim submission period, a lender may do so under the following conditions:

- The lender's failure to submit the additional claim within the prescribed time limits was inadvertent.
- The additional claim is for previously unclaimed costs and proof of purchase of the assets financed or legal fees and disbursements, and other costs;
- For a regular claim for loss: the additional claim for loss is submitted within 12 months after the applicable 60-month period or after the date specified in the approved extension of the claim submission date described above.
- For a final claim following payment of an interim claim: the additional claim for loss is submitted within 12 months after the lender notifies the SBF Directorate that it has realized on 100% of the holdback or, if the lender has realized on less than 100% of the holdback, the date the claim is made final (i.e., the date the lender is notified of the decision).

The table below outlines the time limits for the submission of additional claims:

Type of Claim	Claim Scenario	Time Limit for Additional Claim
Regular Claim	Final Claim	60-months plus 12 months
	Extension	Date of extension plus 12 months
Interim Claim	Lender notifies SBF Directorate that 100% of holdback was realized	Date of notification plus 12 months
	Lender realizes less than 100% of holdback and submits final claim	Date claim made final (when lender is notified of decision) plus 12 months

- If the additional claim is with respect to reimbursement for a deemed trust claim by the Canada Revenue Agency or a provincial revenue department, the further claim may be submitted at any time. However, the further claim will be limited to legal fees, disbursements and other costs related to the deemed trust.

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

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

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

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

Where the secured assets are sold, the lender should provide with the claim documentation any appraisals obtained to substantiate the reasonableness of the sale price. If the asset is sold to a related party, an appraisal must be provided with the claim.

[Item 13.2 of these Guidelines; [Regs par. 16\(2\)\(b\)](#)]

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

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

Methods of Realization: Realization on business assets can include sale by auction, advertisements and bids, negotiations with potential interested parties, etc. It can also include assignment of the debt to a third party. In this case, the lender typically receives a flat sum in exchange for the obligation. In reviewing a claim for loss, the SBF Directorate will expect documentation of the reasonableness of any decision to assign, including the relative value of the lump sum to the obligation, the prospects for realization by more conventional methods, and justification for abandoning recovery against guarantors or sureties. The transaction between the lender and the third party is then finalized and no further monies are expected to be paid to the lender by that third party.

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

22.1 Other Assets of the Business

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

22.2 Guarantees or Suretyships (personal or corporate)

A lender must take reasonable steps to collect from guarantors or sureties. Such steps can include legal action and/or compromise settlements. There is no limit to the amount a lender may realize on corporate guarantees or suretyships. Realization on personal guarantees or suretyships is limited to the amount of the guarantees or suretyships signed by the guarantors or sureties plus interest, taxed costs, legal fees and disbursements and other costs, and;

If a lender has personal or corporate guarantees or suretyships (guarantees) on its conventional loan(s) with the borrower in addition to guarantees on CSBF Program loan(s), the lender should take legal proceedings at the same time against all guarantees. The lender should not favor proceeding against the guarantees on its conventional loan(s) first to the detriment of the guarantees on the CSBF Program loan(s).

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

22.3 Liability of Sole Proprietors and Partners [\[Regs ss. 37\(4\)\]](#)

A borrower operating as a sole proprietorship or as a partnership is liable for 100% of the repayment of a CSBF loan. The lender must take measures under [ss. 37\(3\)](#) of the CSBF Regulations to recover the outstanding amount on the loans. These proceedings include legal action against the sole proprietor or the partners.

The liability of the sole proprietor or partners is in addition to personal guarantees or suretyships from any other person. This liability may be collected by a voluntary settlement or by legal procedures.

In the case of a judgment obtained against the sole proprietor or the partners, the lender is limited in the amount it can realize on the personal assets of the sole proprietor or partner up to the original amount of the loan disbursed plus interest, taxed costs, legal fees and disbursements and other costs.

22.4 Compromise Settlements

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

23. Sharing of Realization Proceeds and Costs

[\[Regs par. 38\(7\)\(d\)\]](#)

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

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

- where realization proceeds can be clearly identified with specific loans, prorate costs incurred on behalf of the combined loans on the basis of the amount realized for each;

- where neither realization proceeds nor costs can be clearly identified with individual loans, prorate proceeds and costs according to the unpaid principal amount of each outstanding loan at the date specified in the Notice of Default ([Items 21.1 and 21.2](#) of these Guidelines);
- where the above do not apply, prorate proceeds and/or costs according to the outstanding principal amount of each loan claimed in the Statements of Claim filed in the legal proceedings;
- where collection relates to personal guarantees or suretyships or personal obligations of sole proprietors or partners held for a CSBF loan and for a conventional loan, prorate costs and realization proceeds of this collection according to the lesser amount of the guarantee or the personal obligation up to the principal outstanding on the loan on default (Items 21.1 and 21.2 of these Guidelines).

NOTE: In calculating the loss under the CSBF Regulations, the amount may include costs incurred by the lender for the purpose of collecting or attempting to collect, the CSBFA loan from the borrower or the guarantor. If costs are not directly related to actions taken by the lender to collect the CSBFA loan, they will not be eligible for the calculation of the loss.

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

Deemed trust: Where CSBF and conventional loan assets are subject to deemed trust claim under Canada Revenue Agency or any provincial department of revenue and the lender has paid the amount related to the deemed trust, the costs shall be prorated according to the amount of the realization of those assets.

24. Non-compliance with CSBF Program Requirements

24.1 Uncorrectable Non-compliances

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

- a loan made to an ineligible borrower (e.g., farming under the Standard Industrial Classification, 1980 of Statistics Canada, Major Group 01);
- a loan made to a borrower with estimated gross annual revenues exceeding \$10 million ;
- all the loan proceeds were used for an ineligible purpose (e.g., financing inventory or goodwill);
- an independent appraisal that was required for all the financed assets or services intended to improve an asset was not obtained when approving a loan and no other documentation was obtained to corroborate the value of the real property, equipment and leasehold improvements;
- all assets were purchased more than 180 days prior to the loan approval date;
- a claim or a final claim after an interim claim was paid (or request for extension) was not submitted within the required time frame.
- the security taken was not valid and enforceable and the remedies described in the security non-compliance section have not been taken.

24.2 Non-compliance Remedies

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

Inadvertent non-compliance issue(s)	Remedies and conditions for claim payment
Loan Class Conditions	
<ul style="list-style-type: none"> • 50% rule requirement • The 3-year rule requirement • Decontamination costs requirement • Incidental costs (other than non-refundable taxes and customs duties) included in the loan. <p>[Reqs s.24]</p>	<p>If the lender is able to provide documented evidence that the non-compliance is the result of inaccurate information provided by the borrower, the claim will be paid as if the non-compliance had not occurred.</p>
Proof of Purchase and Payment	
<ul style="list-style-type: none"> • Missing proof of purchase and payment documents in the claim for loss • Ineligible assets financed • Expenditures made more than 180 days before approval date • Assets previously secured by a term loan • Ineligible decontamination costs <p>[Reqs s.25]</p>	<p>The amount of principal outstanding on the loan is adjusted to the amount of the eligible assets.</p> <p>Realization costs and proceeds will then be prorated to the percentage of the eligible amount of the principal outstanding of the loan . However, costs and proceeds that pertain only to the eligible or ineligible portion of the loan are applied 100% to the respective portion.</p>
Appraisal	
<p>Appraisal requirements not met [Reqs s.25.1]</p>	<p>In the case of equipment loan and leasehold improvement loan, the lender must provide documentation substantiating the value of the asset during the period of 180 days before the date of loan approval. This documentation may be dated before the date of loan approval (maximum 180 days) or may be dated at any time after the date of loan approval. The documentation from the person setting out the value of the assets must attest that the assets were examined through a site visit. A letter which states that the value was based roughly on the description in the purchase invoice will not be accepted.</p> <p>This provision does not apply in the case of real property loans. The lender is still required to provide an appraisal that is made within 180 days before the loan is approved.</p> <p>If an appraisal is not provided, the proof of purchase and payment for that asset will be ineligible.</p>
Loan Agreement	
<p>Loan agreement does not contain all of the terms [Reqs s.25.2]</p>	<p>In the event the loan agreement signed by the borrower and the lender does not contain all of the loan terms, the lender can provide documentation substantiating those</p>

Inadvertent non-compliance issue(s)	Remedies and conditions for claim payment
	terms (e.g. any documentation signed or acknowledgment by the borrower).
Security	
Security requirements have not been met [Regs s.25]	<p>If non-compliance relates to additional security, claim will be adjusted by the value of the assets as of the date of default of the loan.</p> <p>If non-compliance relates to all the primary security and cannot be remedied under s. 25.3 of the CSBF Regulations, the claim will be rejected.</p> <p>If an asset that is the object of primary security is substituted for another asset of the small business under s. 15 of the CSBFR and the value of the replacement asset is less, the loan will be adjusted by the difference in the value of the respective assets.</p> <p>If non-compliance relates only to some of the primary security, claim will be paid on that portion of the amount of principal outstanding on the loan for which the security is valid and enforceable.</p>
Enforceable security requirement has not been met [Reg. s. 25.3]	<p>If the primary security taken by the lender on an asset is not enforceable, the Minister will pay the associated claim for loss, provided the following conditions are met:</p> <ul style="list-style-type: none"> • the non-compliance was inadvertent; • the funds for the loan have been advanced by the lender to the borrower; • there is a security agreement signed by the borrower containing a description which identifies the collateral; • the lender's security interest or charge over the financed assets (equipment, leasehold improvements, real property or immovables) has been registered in the appropriate provincial registry system and the security complies with s. 14 of the CSBF Regulations; • the lender provides documentation substantiating that: <ul style="list-style-type: none"> ○ the lender or its agent performed a site visit of the borrower's small business premises between the date that the loan was approved and 90 days after the final disbursement under the loan agreement. ○ the lender or its agent confirmed that the financed assets under ss. 5(1) were delivered to and installed at the borrower's small business premises. <p>The non-compliance remedy set out above applies only to the financed assets that are observed and confirmed on the business premises of the borrower.</p> <p>Agent of the lender can include, for example:</p>

Inadvertent non-compliance issue(s)	Remedies and conditions for claim payment
	<ul style="list-style-type: none"> • for equipment loans: an expert in the field (a supplier of similar equipment, auctioneer, etc.); • for leasehold improvements loans: a general construction contractor, a construction estimator, an engineer, an architect, a contractor of that specific leasehold improvement (e.g., a plumber, bricklayer etc.), construction consultant or interior designer; • for real property loans: a real estate agent, a real estate appraiser; • the agent of the lender must be at arm's length from the borrower. <p>Please note that an appraisal does not replace a site visit unless it satisfies all of the conditions set out above. Also, a mere reference in the lender's approval documents that a site visit was made will not suffice unless the conditions set out above are satisfied.</p> <p>A Site Visit Suggested Checklist has been developed to clarify the type of information which should be verified during a site visit. It is recommended that lenders refer to the Innovation, Science and Economic Development Canada Form for the wording and content.</p>
Maximum Loan Amount	
Maximum loan amount exceeded for a borrower [Regs. s. 25.4]	Only the maximum loan amount for the total loan and each asset class will be eligible and the amounts in the claim will be adjusted and pro-rated accordingly: outstanding loan amount, costs etc.
Guarantees and Suretyships	
Requirements for guarantees or suretyships not satisfied [Regs s.26]	The amount of the lender's loss will be paid less the amount of the personal or corporate guarantee taken but not realized. Where a secured personal guarantee or suretyship has been taken, the lender must provide proof that the security has not been realized on and has been released; otherwise, the claim will be rejected.
Fees and Interest Rate	
<ul style="list-style-type: none"> • Non-allowable fee or charge • Interest rate in excess of maximum • Insurance premium and charge for taking the security is combined with the rate of interest under the loan and not set out separately in the loan agreement. • Allowable fees overcharged to the borrower [Regs s.26]	Claim will be paid if: <ul style="list-style-type: none"> • the loss was not affected by the non-compliance, and • the borrower is reimbursed for overcharges. If the lender is unable to reimburse the borrower (e.g. borrower is bankrupt, borrower corporation is dissolved, sole proprietor is deceased, borrower cannot be located), the lender must submit evidence, with the claim for loss, that it attempted to reimburse the borrower but was unable to do so. In this case the total of the overcharge will be deducted from the loss payable to the lender.
Administration Fee	

Inadvertent non-compliance issue(s)	Remedies and conditions for claim payment
Non-payment of the administration fee [Regs s.23]	Claim will be paid if the lender pays the fee within 90 days from the day the lender's head office receives the notice of non-payment. Payment cannot be deducted from the claim for loss payments and must be paid separately from a quarterly payment. A letter indicating the purpose of the payment and the method of calculation is to accompany the payment.
Outstanding Loan Balance Report	
Failure to file the Outstanding Loan Balance Report [Regs s.28]	Claims will only be paid when report is received
10 or 15 Year Term	
10 or 15 year repayment term exceeded [Regs s.28.1]	In the event the 10 or 15 year term is exceeded (whether on the original loan agreement, any amendments or renewals), the claim will be paid only if the default occurred before the expiry of the 10 or 15 years calculated from the date of the first payment of principal and interest is due.

24.3 Inadvertent Errors

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

Inadvertent error	Remedies and conditions for claim payment
Renewal of fixed rate loan term not made when scheduled.	In the absence of any documentation to the contrary, it will be deemed that the interest rate for the interim period remains the same as the previous interest rate.
Lender error increased the loss on a loan	Claim for loss will be adjusted to negate the effects of the error. For example, if a lender neglects to program automatic loan payments, the claim will be paid as if the payments had been made.
Proof of claim not filed with the Trustee before the final distribution of dividends.	The amount of dividends which would have been received by the lender had a proof of claim been filed on time will be applied against the loan.

25. Submitting a Claim for Loss

Subject to the time limitations for claim submissions outlined in [Item 21.2](#) of these Guidelines, a claim for loss may be submitted as a regular claim, an interim claim, or an additional claim. A lender may also submit an appeal of a claim decision.

25.1 Regular Claim for Loss

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

If a lender submits a claim for loss before realizing on asset security, the claim will be considered premature and rejected. However, it is important to note that the applicable 60-month claim submission limitation continues to run and the complete claim, including the realization on the assets, must be submitted within the applicable 60-month calculation period explained in Item 21.2 of these Guidelines.

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

25.2 Interim claim for loss [\[Regs ss.39\(1\), \(5\)\]](#)

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

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

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

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

- fully recovering the amount owing under a guarantee or suretyship and/or a personal liability;
- negotiating and fully settling a compromise agreement;
- demonstrating that the realization of the guarantee or suretyship, in whole or in part, is not cost effective.

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

25.2.1 Holdback

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

- any compromise not yet paid (including confirmed dividends where the borrower or guarantor has filed for bankruptcy;
- the amount of any guarantee or suretyship, or compromise settlement with the borrower or guarantor that is outstanding;
- the amount owing under any judgment order, including accrued/accruing interest and costs owing;
- proposals to creditors

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

25.2.2 Final Claim Submission Date [\[Regs ss.39\(4\)\(5\)\]](#)

If the lender has advised when a compromise settlement will be fully implemented, or a guarantee or suretyship, or personal liability realized, the final claim submission date will be set accordingly. If the date is not known, a final claim submission date will be established by the lender and the SBF Directorate. The date for submission of the final claim will be, at the least, the applicable 60 months (Refer to [Item 21.2](#) of this Section). In any event, the SBF Directorate will advise the lender of the final claim submission date on the Claim Calculation Summary for an interim claim and the lender will be required to submit a final claim or a request for extension before the established date.

It is the lender's responsibility to ensure that a final claim for loss or a request for an extension is submitted within the established deadline. If the SBF Directorate does not receive a final claim or a request for an extension before the established date, the interim claim is deemed to be final. The Minister then becomes subrogated to the rights of the lender to the extent of the amount paid.

25.3 Additional Claim for Loss [\[Regs s.38.1\]](#)

An additional claim for loss may be made to request payment of amounts not claimed on a regular, interim, or final claim for loss. For example, if a lender receives additional legal or other costs after its final claim for loss has been paid, it can submit an additional claim. The submission of such additional claims is subject to a 12 month limitation period as described in [Item 21.2.1](#) of these Guidelines.

25.4 Appeal

An appeal is a request to the SBF Directorate to review a decision (communicated in a Claim Calculation Summary) to disallow all or part of a claim for loss. Depending on the reason for the adjustment or rejection of the claim for loss, the lender may need to provide some new information or documents to have the previous decision revised or a full explanation together with any supporting documentation detailing why the contravention or non-compliance cited in the Claim Calculation Summary does not apply to the loan.

25.5 Missing Information and Documentation

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

25.6 Documenting Claim for Loss Submissions

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

- ☐ A properly completed Claim for Loss form (See [Annex](#)), certified by an authorized representative of the lender;
- ☐ The borrower's loan application form and a copy of the lender's documentation to substantiate the approval of the loan (Approval date and due diligence requirements) [[Item 1](#)] of these Guidelines;
- ☐ The loan document (i.e., promissory note or equivalent) and any renewal documents;
- ☐ In the case of fixed rate loans, a document substantiating the lender's posted single family residential mortgage rate for the same term;
- ☐ Documents evidencing any revision of repayment terms;
- ☐ A loan account statement (computer print-out, etc.) showing the dates the loan proceeds were advanced, all payments of principal and interest, and all other entries to the loan account;
- ☐ The cost and proof of payment of the eligible assets for the outstanding principal amount of the loan as at the date of default. To expedite the payment of the claim, a summary of the invoices and proof of payment should be provided. [[Item 5.3](#) of these Guidelines];
- ☐ For additional claims [[Item 25.3](#) of these Guidelines]:
 - ☐ Cost and proof of payment of the purchase or improvement financed by the loan that were not previously claimed;
 - ☐ In the case of a claim submitted under a deemed trust by Canada Revenue Agency (CRA) or a provincial department of revenue, the documentation supporting such deemed trust claims and proof of payment by the lender;
 - ☐ Any legal or other costs not previously claimed.
- ☐ Appraisals and an update to the appraisal, if applicable, of the purchased assets, in the case of non-arm's length transactions, of the assets in a going concern purchase or where assets are purchased from the lender or its representative;
- ☐ Documents relating to the primary, additional and alternate security, and guarantees or suretyships;
- ☐ Site Visit Suggested Checklist, if applicable
- ☐ The Notice of Default and Demand for Payment documents sent to the borrower and other obligants;

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- ☐ Documents evidencing the landlord's seizure of loan security, if available, or details of the seizure;
 - ☐ Documents evidencing the sale of the secured assets, including any appraisals obtained to substantiate the reasonableness of the sale price (if selling to a related party, an appraisal must be provided);
 - ☐ Where costs and/or realization proceeds are to be shared between the CSBF loan and a lender's other loans, a loan statement indicating the other loans the lender has advanced to the borrower and guarantors, along with principal balances outstanding on those loans, both after default and after the realization of security held for those loans;
 - ☐ An explanation if the amount realized from security is less than the appraised value;
 - ☐ A description and appraised value of any unrealized asset held as security, where liquidation of assets may take considerable time (e.g. a property sale that is expected to be protracted);
 - ☐ Justification for abandoning security, including supporting appraisals, or evidence of penury or the impracticality of collecting in the case of guarantors or sureties, sole proprietors or partners;
 - ☐ An estimate of the value of any missing security and details of any efforts the lender has made to locate it;
 - ☐ A report of outstanding guarantees or suretyships and/or personal liability of the sole proprietor or partner(s);
 - ☐ Documents supporting any settlement with the borrower or third parties, including guarantors or sureties;
 - ☐ Invoices/receipts supporting costs claimed, including proofs of payments;
 - ☐ The detailed solicitor's billing showing total time spent, work performed and rate per hour charged;
 - ☐ The statement of claim, Judgment, the Defense (if applicable) and Writ of Execution including the date of birth and last known address of any individual named as a defendant in the judgment or other documents that would allow proper identification of the individual.
 - ☐ Bankruptcy
 - o evidence of bankruptcy/receivership (e.g. notice of first meeting of creditors, the bankrupt's statement of assets and liabilities) for both the borrower and any guarantor(s);
 - o the original and any revised proof of claim together with all annexes;
 - o Except in cases where the SBF Directorate is dealing directly with the Trustee ([Item 27](#) of these Guidelines), the Trustee's/Receiver's final report must also be submitted. If the Trustee's final report is not available, the lender/trustee's comments as to the probability of receiving dividends from the estate should be provided. In all cases, the final report is to be sent to the SBF Directorate when available.
 - ☐ Details of any suspected wrongdoing by borrowers (e.g. fraudulent activities) and details of follow-up action by the lender.

26. Establishing the Amount of the Claim for Loss

26.1 Calculating the loan loss [\[Regs ss. 38\(7\) and \(8\)\]](#)

The amount of loss is calculated as follows:

OUTSTANDING LOAN AMOUNT: Unpaid principal amount of the CSBF loan at the expiration of the period specified in the notice of default;

LESS

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

PLUS

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

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

In order to determine the eligible amount of the loan for claim purposes, please refer to [Items 5.3](#) and [5.4](#) of these Guidelines.

26.2 Factors Affecting the Amount Payable

Prorating: Legal fees, disbursements, and costs and realization proceeds are applied in a manner that is fair and equitable to all parties (See [Item 23](#) of these Guidelines). Where legal fees, disbursements, and costs and realization proceeds can be directly attributed to the eligible (or ineligible) part of a loan, they will be applied 100% to that part of the loan. If only part of the principal outstanding on loan has been determined to be eligible, the pro rata calculation will also take into account the eligible percentage of the principal outstanding on the loan.

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

	Costs incurred before default	Costs incurred after default
Utilities	Payment of utilities to help a borrower continue its operation is not an eligible cost	<ul style="list-style-type: none"> • Arrears that form a lien on property, taken over by a lender, are eligible costs. • Costs incurred after the lender takes over the property are eligible.
Municipal taxes	<ul style="list-style-type: none"> • Payment of a borrower's taxes on a secured property while the loan is in good standing (before it goes into default) is considered a loan to the borrower and not related to recovering the loan. To be eligible, the lender would have to demonstrate it made efforts to recover the taxes from the borrower prior to default. • For taxes paid shortly before default, the lender would be required to show that they were paid only for the purposes of protecting its security. 	Tax arrears, as well as taxes incurred after a lender has taken over a property, are eligible costs.
Suppliers	Payment of a supplier's invoice, billed to the borrower, is not an eligible cost.	Payment of a supplier's invoice, billed to the borrower, is an eligible cost if a secured asset is being held by a supplier, or a supplier has attached a lien on the asset, or if the work invoiced is necessary to maintain the value of the asset or to maximize its value upon realization.
Insurance	<ul style="list-style-type: none"> • Arrears paid to help the borrower continue its operation are not an eligible cost. • A lien cannot be placed on a property for insurance arrears, therefore, arrears paid when a lender takes over a property are not an eligible cost. 	Insurance premiums paid by a lender after it takes over a property, and until the property is sold, are an eligible cost.
Salaries	Payment of salaries to the borrower's employees is not an eligible cost.	Payment of employees' salaries, to operate a business in order to maximize realization of the security, is an eligible cost.
Rent	If a landlord seizes financed assets or if the assets are included in a negotiated settlement, payment of rent in arrears is an eligible cost only if the premises contain realizable assets that secure the loan, and the appraised value of the assets is greater than the rent arrears.	If assets must be kept on rented premises to maximize realization, the rent is an eligible cost, provided it is not more than the appraised value of the assets.

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

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

Legal Fees and Disbursements incurred before default	Legal Fees and Disbursements incurred after default
<ul style="list-style-type: none"> Costs not related to recovering the loan, such as costs to correct loan or security documents, or to obtain financial information in order to assess risk, are not eligible costs. Costs incurred for an action against the borrower or the guarantor or surety in order to realize on asset security or on the guarantee are eligible costs. Costs incurred by lenders to defend an action that is not related to the realization of security are not eligible. 	<ul style="list-style-type: none"> Costs incurred to take action against the borrower or the guarantor or surety in order to recover the loan, are eligible. Costs paid by the lender on behalf of the borrower, such as the costs for incorporation or services not related to recovering or attempting to recover from the borrower or the guarantor or surety, are not eligible. Costs incurred by lenders to defend an action that is not related to the realization of security are not eligible (e.g., an error made by a lender in the making of or the administration of the loan is not eligible) .

NOTE: Costs incurred by lenders to defend an action that is not related to the realization of the security on the assets or the guarantee or suretyship are not eligible.

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

Interest: Even though the time limit for claim submission may be extended beyond the applicable 60 months, the Regulations do not provide for payment of interest beyond the 24-month period as described in [Item 26.1](#) above. In the case of an interim claim, when a final claim is submitted, interest is based on the holdback amount and calculated as follows (whichever comes first):

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

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

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

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

27. Subrogation and Post-Claim Receipts of Proceeds [\[Regs s.40\]](#)

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

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

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

Bankruptcy

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

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

In cases where the documents received in a claim submission substantiate that the borrower or guarantor has filed an assignment in bankruptcy, the SBF Directorate has implemented a procedure to reduce the need for the lender to monitor the bankruptcy with the Trustee in bankruptcy. The SBF Directorate will advise the lender in appropriate cases that it will communicate with and advise the Trustee that:

- Innovation, Science and Economic Development Canada is subrogated to the rights of the lender for the loss arising as a result of a loan registered under the *CSBF Act*.
- The rights and interests of the lender in the bankruptcy, as detailed in the Proof of Claim filed by the lender, are assigned to Innovation, Science and Economic Development Canada.
- The amount of Innovation, Science and Economic Development Canada's subrogated claim is 85% of that submitted by the lender and that the lender is entitled to the balance of the claim.
- The dividends, if any, should be calculated on the aforementioned amounts and payable to the Receiver General for Canada and the lender.

The SBF Directorate will file Innovation, Science and Economic Development Canada's proof of claim for its subrogated claim. The Trustee will be further advised that the SBF Directorate will monitor the progress of the bankruptcy as it pertains to its subrogated claim.

NOTE [[Regs s.40\(3\)](#)]: Monies received from a lender after the payment of the final claim will be applied to reduce the total value of claims paid to that lender in the calculation of the lender's Minister's liability as set out in Item 9 of these Guidelines.

Annex, Forms and Glossary

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

Forms for Lenders:

- [Loan Registration Form](#)
- [Request for the Transfer of a Loan Between Lenders](#)
- [Request for Extension of Claim Submission Date](#)
- [Claim for Loss](#)
- [Summary of Eligible Costs](#)
- [Site Visit Suggested Checklist](#)

Glossary

Section 251 of the *Income Tax Act*

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

251(1) For the purposes of this Act,

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

Definition of "related persons"

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

Corporations related through a third corporation

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

Relation where amalgamation or merger

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

Amalgamation of related corporations

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

Definitions concerning groups

4. In this Act,
- "related group" « groupe lié »
 - "related group" means a group of persons each member of which is related to every other member of the group;
 - "unrelated group" « groupe non lié »
 - "unrelated group" means a group of persons that is not a related group.

Control by related groups, options, etc.

5. For the purposes of subsection 251(2) and the definition "Canadian-controlled private corporation" in subsection 125(7),
- a. where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by which the corporation is in fact controlled;
 - b. where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently,
 - i. to, or to acquire, shares of the capital stock of a corporation or to control the voting rights of such shares, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the person owned the shares at that time,
 - ii. to cause a corporation to redeem, acquire or cancel any shares of its capital stock owned by other shareholders of the corporation, the person shall, except where the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual, be deemed to have the same position in relation to the control of the corporation as if the shares were so redeemed, acquired or cancelled by the corporation at that time;

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

Blood relationship, etc.

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

Glossary



A

- **Annual**
Periods of 365 or 366 days fixed by calendar dates (e.g. July 5, 2008 to July 4, 2009). [Regs par.10\(5\)\(b\)](#)

B

- **Borrower**
A person who carries on or is about to carry on a small business and to whom a loan has been made under the *Canada Small Business Financing Act*. The business can be a sole proprietorship, partnership, or corporation. [Regs ss.1\(1\)](#)
- **Business carried on in Canada**
A business with a place of business in Canada and assets for operating the business held in Canada. [\[Acts.2\]](#)

C

- **Cancelled cheque**
A cheque that has been negotiated or cleared by the borrower and a vendor's financial institution.
- **Conventional loan**
A loan that is not subject to the CSBFA. [Regs ss.1\(1\)](#)
- **Corporate guarantee**
A pledge given by a corporation, other than the borrower, to repay part or all of a borrower's debt in case of default. [Regs s.20](#)
- **CSBFA**
[Canada Small Business Financing Act](#) (Act)
- **CSBFR**
[Canada Small Business Financing Regulations](#) (Regulations)

D

- **Default**
A borrower's failure to comply with a material condition of the CSBF loan agreement, including any amendments to the loan agreement, a deed of hypothec, or any other document signed by the borrower and the lender. Such a condition must be material to the loan such that it would affect the collection of the loan [Regs s.36](#)

E

- **Eligible cost**
Amount indicated on a paid invoice or purchase contract, less any directly related refundable taxes, grants or discounts.
- **Eligible loan amount**
the sum of the registration fee, if financed, plus the lesser of the cost of purchasing the eligible assets and the eligible proof of payment.
- **Equipment**
Equipment used or to be used in the course of carrying on the small business, and includes computer software, any ship, boat, or other vessel used or to be used in navigation and watersupply systems. It does not include inventory of the small business except inventory that is leased by the borrower to the borrower's customers. [Regs ss.1\(1\)](#)

F

- **Farming**
A business classified under Major Group 01 - *Agricultural Industries*, of the *Standard Industrial Classification, 1980*, published by Statistics Canada.

G

- **General Security Agreement**
A charge on all the assets of a business, including assets acquired after the agreement is made. Also called a GSA. Universal Movable Hypothec under the *Civil Code of Quebec*.
- **Going concern**
A business that has carried on operations at any time within 60 days prior to being purchased. If a seasonal business, one that operated during the season prior to purchase. [Regs ss.1\(1\)](#)
- **Guarantee**
In Common Law, a pledge given by one legal entity to answer for the all or part of the debt of the borrower. (Suretyship in the *Civil Code of Quebec*) [Regs s.19](#) & [s.20](#)

H

- **Health care industry**
A business enterprise classified under the Major Group 86-*Health and Social Service Industries* of the *Standard Industrial Classification, 1980*, published by Statistics Canada. [Regs ss.1\(1\)](#)
 - **Holdback**
The amount retained from an interim claim payment. For CSBF claims, the Minister holds back its 85% share of any unrealized outstanding liability of the borrower or guarantor(s).
 - **Hospitality industry**
A business enterprise classified under the headings:
Major Group 91-*Accommodation Service Industries* or
Major Group 92-*Food and Beverage Service Industries*.
of the *Standard Industrial Classification, 1980*, published by Statistics Canada. [Regs ss.1\(1\)](#)
-

I

- **Improvement**

Includes construction, renovation and modernization, and, with respect to equipment, installation.

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

- **Independent Small Businesses**

The business enterprises carried on by related borrowers:

- that are operating separate small businesses at different premises; and
- where neither business derives more than 25% of its actual or projected gross revenues from the other. [Regs ss.1.1\(4\)](#)

- **Instalment**

One of a series of payments required to pay off a CSBF loan. At least one principal and interest payment must be scheduled annually and the first principal and interest payment must be scheduled no later than one year from the date of the first disbursement of the loan funds. [Regs par.10\(5\)\(b\)](#)

- **Interim Claim**

A claim for loss that is submitted once realization is complete on all business assets but before a guarantee and a compromise settlement has been finalized. [Regs s.39](#).

L

- **Lending Period**

One of a series of 5-year periods in which the Minister of Innovation, Science and Economic Development Canada has a liability to pay claims for eligible losses to lenders under the [CSBFA ss.6\(1\)](#)

- Period C5: April 1, 2019 to March 31, 2024
- Period C4: April 1, 2014 to March 31, 2019
- Period C3: April 1, 2009 to March 31, 2014

- **Loan**

A loan that meets the conditions regarding the eligibility of the lender, borrower and small business. The loan must also be made for expenditure or a commitment that falls within the scope of one or more of the prescribed classes of loan and the financed cost of these expenditures or commitment must not exceed the prescribed limits. [Acts.2](#)

- **Loan term**

Period set out in a loan agreement for repayment of the total amount of the loan. The maximum term (length of government coverage) the CSBF Program can apply to a loan is as follows:

- For loans made before February 19, 2016, 10 years to finance leasehold improvements, equipment or real property;
- For loans made after February 18, 2016, 10 years to finance leasehold improvements and equipment and 15 years for real property.

The repayment of the loan can be amortized over a period longer than 10 or 15 years.

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

- **Loss sharing ratio**

The relative percentages of loss for which the minister and lender are responsible. The current loss sharing ratio is 85/15. [Acts.8](#)

M

- **Maximum loan size**
\$1 million of which the maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements. [\[Act s.7\]](#)
- **Minister**
The Minister of Innovation, Science and Economic Development Canada is designated as the Minister for the purpose of this Act. [\[Act s.2\]](#)
- **Mini-storage industry**
A business enterprise classified under the heading 479-Other Storage and Warehousing Industries of the *Standard Industrial Classification, 1980*, published by Statistics Canada. [Regs ss.1\(1\)](#)

N

- **Non-arm's length transaction**
Transaction made between related parties as described in section 251 of the *Income Tax Act* which defines related persons as individuals connected by blood relationship, marriage or adoption and any situation involving different degrees of control by these persons or corporations. Control is not defined by a specific percentage and can be a question of facts, even between two non-related parties. [Regs ss.1\(2\)](#)

P

- **Personal Guarantee**
A pledge given by an individual person to answer for the all or part of the debt of the borrower. [Regs s.19](#)
- **Program liability ceiling**
Maximum amount of the Minister's aggregate contingent liability in respect to the aggregate principal of loans made by all lenders for a 5-year lending period. The liability ceiling is currently \$1.5 billion. [Act s.6](#)
- **Proof of payment**
Documentation justifying the payment of the purchase of the assets and used to calculate the eligible cost. Examples include cancelled cheques, debit card or credit cards transactions, attestation and formally executed sales contracts.
- **Proof of purchase**
Documentation supporting expenditures that are the subject of financing under the program. Examples are deeds of sale, invoices, and purchase agreements.

R

- **Related Borrowers**

Two or more borrowers are deemed to be related where one borrower:

- controls, directly or indirectly, the other borrower;
- is controlled, directly or indirectly, by the same person or group of persons as the other borrower
- carries on a small business in partnership with the other borrower;
- shares administration/management services, equipment, facilities, or overhead expenses with the other borrower but not in partnership with the borrower. In this case, the two businesses are deemed to be one small business entity and are, collectively, eligible for a maximum loan of \$1 million for loans made (of which a maximum of \$350,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements). [Regs ss.1.1](#)

S

- **SBF Directorate**

The Small Business Financing Program Directorate, the branch of Innovation, Science and Economic Development Canada responsible for administering CSBF loans.

- **Small business**

A business being carried on or about to be carried on in Canada, with estimated gross annual revenue of not more than \$10 million. It does not include the business of farming. It also excludes, for loans made prior to June 30, 2021, any business not operating for profit, charitable or religious organization..

- [\[Act s.2\]](#)

Substantially all

In analyzing a specific transaction to assess whether the sale involves "substantially all" of the assets of a going concern, lenders should consider the percentage of total assets being sold, whether the transaction would fundamentally change the nature of the business, and ~~whether the vendor can~~

- continue its normal business activities without the assets that are being sold. [Regs par.9\(1\)\(b\)](#)

Surety

Civil Code of Quebec terminology for the person, other than the borrower, that makes a pledge to pay part or all of the borrower's debt if the borrower defaults on its loan. (Equivalent to "guarantor" in

- Common Law) [Regs s.19 & s. 20](#)

Suretyship

Civil Code of Quebec terminology for the pledge given ~~by someone to answer~~ for all or part of the debt of another. (Equivalent to "guarantee" in Common Law.) [Regs s.19 & s. 20](#)

U

- **Universal Movable Hypothec**

Civil Code of Quebec term for a General Security Agreement.