



# CANADA SMALL BUSINESS FINANCING PROGRAM

## GUIDELINES

April 2024

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# Introduction

The Canada Small Business Financing Act (the [Act](#)) aims to increase the availability of financing to establish, expand and modernize 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 final 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 or a line of credit
- Registration, administration and reporting of CSBF loans
- Realization on CSBF loans and submission of claims
- Annexes

The present guidelines provide information with respect to making, administering and realizing loans based on the current requirements and parameters.

When referencing these guidelines to verify compliance with respect to previously approved loans, lenders need to consider that these loans are subject to the Act and Regulations applicable at the time the loans were approved. The different requirements and parameters that applied to these previous CSBF loans are outlined in the Glossary at the end of this document.

Where a situation is not clearly covered by the Act, Regulations or these Guidelines, loan officers 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.

All correspondence concerning CSBF loans should be forwarded to:

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## Making a CSBF loan

This section outlines the procedures lenders are to follow in making CSBF term loans and line of credit under the *Act* and *Regulations*. 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 borrowers? ([Item 2.4](#))  
**No** ► Maximum available loan is 1\$ Million for CSBF term loans and \$150,000 for CSBF lines of credit ([Item 3.1](#))  
**Yes** ▼
4. Does the potential borrower pass the independent small business test? ([Item 2.4](#))  
**No** ► Maximum term loan or line of credit amounts are reduced by the aggregate outstanding CSBF term loans or lines of credit of the related borrowers.  
**Yes** ▼
5. Will the term loan finance eligible assets? **or**  
Did the borrower confirm that the line of credit will only be used to finance working capital costs by signing the acknowledgement in Registration form ([Item 4](#))  
**No** ► Finance conventionally  
**Yes** ▼
6. Is the maximum term loan \$1 million or less, or the maximum line of credit \$150,000 including amounts outstanding to related borrowers? ([Item 3](#))  
**No** ► Reduce term loan amount or line of credit amount.  
**Yes** ▼
7. Is the term loan amount equal or less than the cost of the eligible assets? ([Item 5](#))  
**No** ► Amend term 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.

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# 1. Due diligence [\[Reqs s.8\]](#)

Lenders are expected to apply the same due diligence requirements as would be applied in respect of a conventional term loan or line of credit 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 term loans or line of credit 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 or 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 the principal(s) of the borrower.

The language used in section 8(b) requires a lender to do a risk assessment of the borrower's ability to repay the term loan or line of credit even if the determination of such an assessment is not part of the lender's normal procedures. The CSBF Program is entitled 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 and realization of CSBF term loans and lines of credit. For example, due diligence is relevant in the release and substitution of assets taken as security. Also, when a loan or line of credit goes into default, lenders are expected to apply the same procedures as in their conventional loans and lines of credit in the collection, realization and legal proceedings of the defaulted loan or line of credit, in addition to complying with CSBF Program requirements.

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## 2. Borrower, small Business, independent small business and related borrower

### 2.1 Borrower [\[Regs s.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).

### 2.2 Eligible small business [\[Act s.2\]](#) [\(previous requirements – small business\)](#)

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 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.
- There are no restrictions as to the principal of a small business. An incorporated small business operating in Canada can be owned by foreign citizens.
- A borrower can operate different small businesses. For example, a person operating a sole proprietor or a partnership whose main activity is farming (an ineligible business as per [section 2.3](#) below) could incorporate a snow removal business and this snow removal small business would be eligible to obtain a CSBF loan to finance assets required to operate its business.
- 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.

**Before June 30, 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.**

**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 by businesses operating in any of these industries are not eligible for financing under the CSBFA. Financing for farm related industries is available under the *Canadian Agricultural Loans Act* program;
  - For loans made prior to June 30, 2021, any business not operating for profit or charitable and religious organizations;
  - Any organization not operating a business (e.g., a private club, only purpose is to collect donations);
  - A holding corporation is not an eligible borrower since it does not operate a business as defined under [section 2.2](#) above. 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;
  - A trust, whether a personal, private, or social trust is not a legal entity and, therefore, does not qualify for a CSBF loan.

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 is 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 while limiting the maximum outstanding term loans to related borrowers to \$1 million, and the authorized amount of all their lines of credit to \$150,000.

### **Independent small business** [[Regs s.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 term loans up to \$1 million in addition to a line of credit of up to \$150,000.

### **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, the total of all their outstanding term loans must not exceed \$1 million in addition to lines of credit limited to \$150,000.

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 a physical person operating as a sole proprietor or in partnership, or a corporation.

For these situations, the related borrowers are, collectively, eligible to have maximum outstanding CSBF term loans of up to \$1 million and authorized lines of credit of up to \$150,000.

**Example:** Three corporations who operate a trucking business, a [mini-storage](#) business and a fast food restaurant in the same premises are considered related. However, if one of these corporations operated from a different premise and did not derive more than 25% of its revenues from the other corporations, it would qualify for term loans up to \$1 million and line of credit of \$150,000, even if it is related to the other two.

### 3. Maximum loan amount [\[Act ss.4\(2\)\(c\)\(d\)\]](#) [Act s.6\(1\)](#)

#### 3.1 Term loans [\(previous requirement - loan\)](#)

A borrower (and related borrowers) can borrow, using **CSBF term loans**, up to the following maximum amounts:

- \$1,000,000 of which a maximum of \$500,000 is for a purpose other than the purchase and improvement of real property of which the borrower is or will become the owner
- Within the maximum limit of \$500,000 mentioned above for leasehold improvements and equipment, a maximum of \$150,000 can be used to finance intangible assets and working capital costs.

The maximum amount that a borrower can have at any time includes the total of outstanding principal balances of all other CSBFA term 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 obtain a CSBF term loan of up to \$1 million for the purchase of real property, including the financing of the registration fee.
- A borrower can finance, using a CSBF term loan, the purchase of a real property for \$700,000 plus \$300,000 to purchase equipment for a total of \$1million, including the financing of the registration fees for each class of loan.
- A borrower has an existing CSBF 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 intangible assets for \$150,000 and obtain an additional \$350,000 in equipment for a maximum of \$500,000, 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 term loans previously made to any of the small businesses that amalgamate

exceeds \$1 million, the term loans held by the new legal entity resulting from the amalgamation continue to be eligible and in compliance with the *CSBF Acts and Regulations*.

**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 \$500,000 and \$150,000, as set out above.

Example of maximum loan amounts applicable to term loans:

Equipment and/or Leasehold Improvements	Real Property	Intangible Assets Working Capital	Registration Fee	Total Assets and Registration Fee Financed
	\$700,000		\$14,000	\$700,000 + \$14,000 = <b>\$714,000</b>
<b>\$300,000</b>		\$100,000	\$6,000 (\$300,000 x 2%) \$2,000 (\$100,000 x 2%)	\$300,000 + \$6,000 + \$100,000 + \$2,000 = <b>\$408,000</b>
<b>\$500,000</b>			\$10,000* (\$500,000 x 2%)	<b>\$500,000</b>
<b>\$450,000</b>	\$450,000		\$9,000 (\$450,000 x 2%) \$9,000 (\$450,000 x 2%)	\$450,000 + \$9,000 + \$450,000 + \$9,000 = <b>\$918,000</b>
<b>\$350,000</b>	\$300,000	\$150,000	\$7,000* (\$350,000 x 2%) \$6,000 (\$300,000 x 2%) \$3,000* (\$150,000 x 2%)	\$350,000 + \$300,000 + \$6,000 + \$150,000 = <b>\$806,000</b>
<b>\$350,000</b>	\$650,000		\$7,000** (\$350,000 x 2%) \$13,000** (\$650,000 x 2%)	\$350,000 + \$650,000 = <b>\$1,000,000</b>

\* Registration fees cannot be financed since the maximum loan amount for this loan class has been reached.

\*\* Registration fees cannot be financed since the maximum loan amount applicable to all term loans has been reached.

Alternatively, the lender could reduce the amount of the assets financed if the borrower needs to finance the registration fees.

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## 3.2 Line of credit

On July 4<sup>th</sup> 2022, the Program introduced a line of credit option for the financing of working capital costs. The maximum loan amount of a CSBF line of credit is \$150,000 over and above the maximum loan amount of \$1,000,000 applicable to CSBF term loans.

If two or more borrowers amalgamate and at the time of an amalgamation the aggregate balance outstanding of all CSBFA lines of credit previously made to any of the small businesses that amalgamate exceeds \$150,000, the authorized amount of the line of credit held by the new legal entity resulting from the amalgamation cannot exceed \$150,000.

## 4. Loan classes [\[Reqs s.5\(1\)\]](#)

### 4.1 Term Loans

A CSBF term loan may be used to finance:

- real property;
- leasehold improvements;
- equipment;
- intangible assets ([new requirement – intangible assets](#));
- working capital costs ([new requirement – working capital costs](#)) and
- 2% registration fees.

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

#### 4.1.1. Real property [\[Reqs ss.5\(1\)\(a\)\(2\) and s.1\(1\)\]](#)

Throughout these Guidelines, the term "real property" used in the context of the Common Law also means "immovables", the term used in the context of the *Civil Code of Quebec*.

This type of term loan is made when:

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

Loans to finance real property are subject to certain limitations:

- **The 50% rule:** Lenders can finance the eligible cost of real property, 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.

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Any subsequent improvements, whether for the benefit of the entire building (e.g., 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. 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 – Accommodation Industries.

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, therefore, the doctor, for the purpose of this transaction, is in the business of leasing commercial property rather than the [health care industry](#).

However, if the doctor purchases a building for the operation of a nursing home, he could be eligible for a CSBF loan because a nursing home qualifies as a small business under the Program.

**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 [Reqs s.5(3)]:** Decontamination costs of real property are eligible provided:
  - they are made in conjunction with the purchase of real property 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.

Real property and improvements to real property include but are not limited to :

- Access sidewalks
- Architectural, engineering and building design fees
- Fences
- Landscaping (e.g., trees, plants, stone walks, benches, outdoor lighting)
- Paving of parking areas
- Sand and gravel pits
- Water supplies and drainage systems
- Wood lot (timber must be capitalized)

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#### 4.1.2 Leasehold improvements [[Regs ss.5\(1\)\(b\), \(4\)](#)]

This type of term loan is made when:

- the borrower is or will become the tenant of real property; 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 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).

**3-year rule** [[Regs s.5\(4\)](#)]: A term 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– Accommodation Industries.

**Note:**

Leasehold improvements are not improvements to real property. If the borrower rents the real property, the improvements are leasehold improvements not improvements to real property since the property is not owned by the borrower. If such a loan is treated by a lender as a real property term loan, a subsequent claim may be affected since the maximum loan amount for leasehold improvements (\$500,000) may be exceeded, resulting in an adjustment to the eligible amount of the loan.

Leasehold improvements to a leased building, include but are not limited to:

- Fences
- Landscaping (e.g., trees, plants, stone walks, benches, outdoor lighting) provided it is necessary to operate the small business
- Walls, partitions added to a rented property necessary to operate the business.
- Air conditioning or heating unit that becomes an integral part of the premises.

#### 4.1.3 Equipment [[Regs ss.5\(1\)\(c\)](#)] and [s.1\(1\)](#)]

An asset falls into this class if the term 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.

Equipment and improvements to equipment include but are not limited to:

- Motor vehicles and major repairs
- Computers, servers and printers
- Tables, chairs, cabinets
- Display cases
- Molds used for production

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#### 4.1.3.1 Computer software and websites [\[Regs s.1\(1\)\]](#)

Computer software includes:

- off-the-shelf software;
- the purchase of a custom-made software
- mobile applications

Web site and software development costs include:

- software and equipment necessary to operate a website;
- developing the infrastructure and programming the web site;
- adding new functions to the web site;
- improvements of the capacity or performance of the web site (programming);
- Initial graphic design.

Computer software and website development costs are eligible provided that:

- they 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
- will result in the borrower acquiring ownership or a license for the use of the computer software or website.

Note: Other costs, such as costs to create or develop content for websites or work performed by borrower's employees can be financed using the working capital costs portion of the CSBF term loan or a CSBF line of credit ([refer to item 4.2 below](#))

#### 4.1.4 Intangible assets and working capital costs [\[Regs ss.5\(1\)\(d\) and s.1\(1\)\]](#)

Since July 4<sup>th</sup> 2022, a CSBF term loan can be made to finance intangible assets and working capital costs.

Intangible Assets are defined as non-monetary assets without physical substance that can be sold, transferred, licensed, rented or exchanged or that arises from a contractual or legal right. Such an asset is identifiable when it is separable, or when it arises from contractual or other legal rights. Separable assets can be sold, transferred, licensed, rented or exchanged.

**Intangible assets** include but are not limited to:

- Franchise fees
- Goodwill if part of a going concern purchase
- Incorporation costs
- Permits and licenses used in the operation of eligible assets
- Capitalized Research/ development costs

Working capital costs means funds necessary to cover day-to day operating expenses of a business.

**Working capital costs** include but are not limited to:

- Inventory
- Expenses related to the creation and development of software and websites not included in [section 4.1.3.1](#), above

- 
- Printed materials (brochures, flyers, business cards, menus, photocopies)
  - Professional fees (e.g., legal, accounting, appraisal,)
  - Research/ development costs
  - Payroll, rent

It can also be used to finance the development of a web site **made by the borrower**.

As explained in section 4.2 below, working capital costs can also be financed with a CSBF line of credit

#### 4.1.5 Registration fees [[Regs ss.5\(1\)\(f\)](#)] and [s.4\(1\)](#)]

All or part of the 2% registration fee may be financed as part of a CSBF term loan. For CSBF term loans, the registration fee is calculated on the total disbursed to finance real property, leasehold improvements, equipment, intangible assets and/or working capital costs, as described in Items [4.1.1](#) to [4.1.4](#) of these Guidelines.

As explained in section 3 above, if the registration fee is financed, the maximum term loan amount for each asset class must include the registration fee associated with those assets. That is, the maximum loan amount is \$500,000 for equipment and leasehold improvements, which include a maximum loan amount of \$ 150,000 for intangible assets and working capital costs (if financed with a term loan) and their respective registration fee, and \$1 million including real property and its registration fee.

## 4.2 Line of credit

Since July 4<sup>th</sup> 2022, a CSBF line of credit may be made to finance working capital costs necessary to cover day-to-day operating expenses of a business.

As explained in section 4.1.4 above, working capital costs can also be financed with a CSBF term loan.

The initial registration fee for a CSBF line of credit is based on the authorized amount of the line of credit and can be covered using the line of credit.

Working capital costs include but are not limited to:

- Inventory
- Expenses related to the creation and development of software and websites not included in section [4.1.3.1](#), above
- Printed materials (brochures, flyers, business cards, menus, photocopies)
- Professional fees (e.g., legal, accounting, appraisal,)
- Research/ development costs
- Payroll, rent



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## 5. Eligibility of a term loan

### 5.1 Eligible expenditures [\[Reqs s.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 term 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 to calculate the [eligible cost](#), e.g., purchase price of a vehicle, irrespective of the value of the trade-in,
- **Transportation and installation:** Freight and installation, related to the asset being financed, may be included.
- **Non-refundable taxes [\[Reqs s.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.
- **365-day rule [\[Reqs s.6\(1\)\]](#):** Since July 4<sup>th</sup> 2022, when determining the total cost of a project, a lender may include expenditures or commitments made within 365 days (previously 180 days) prior to the earliest of the date on which the term 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.
- **Undivided share of an eligible asset** that is required for the operation of the 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 are eligible. 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, a person owning property as a tenant in common would have an undivided share of the property.

The table below outlines the various scenarios for the 365-day rule applicable to CSBF term loans:

Transaction prior to 365 days from date of loan approval	Transaction within 365 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

## 5.2 Ineligible expenditures

- **Borrower's labor** [[Regs s.5\(5\)](#)]: For leasehold improvement loans and equipment, 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 s.6\(1\)](#)]: Expenditures or commitments currently or previously financed by the lender on a conventional term loan or line of credit are ineligible. The Directorate defines a term loan made by the same lender as any loan with regularly scheduled payments. Bridge financing, a line of credit and a conditional sales contract are not considered term loans.
- **Pre-existing line of credit** [[Regs s.6\(1\)](#)]: A CSBF line of credit cannot be used to repay an existing conventional line of credit.
- **Shares**: In the acquisition of shares, the loan is advanced to a shareholder for the purpose of acquiring shares in the corporation, not to a small business eligible under the CSBFA to finance eligible assets. The acquisition of shares is therefore 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

- Improvements to real property, where the vendor, as the owner of that real property, is selling those improvements.
- Improvements to a family dwelling for non-commercial purposes.
- Vehicles for personal use.

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### 5.3 Proof of purchase and proof of payment [\[Regs s.38\(4\)\(a\)\]](#)

For CSBF term loans, 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 drawn on the borrower's account or line of credit, made payable to the supplier and accompanied by the invoice.
- **Debit/Credit Card, Line of Credit:** ( A receipt of payment by debit or credit card 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, an attestation or a statement 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.
- **Wire transfer:** Evidence a wire transfer was sent on behalf of the borrower to the supplier is an acceptable proof of payment providing that the documentation clearly demonstrate that the transaction was finalized.
- **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 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 the transaction does not create a financing need.

For a **CSBF line of credit**, the borrower needs to sign an attestation indicating that:

- the line of credit will only be used to pay for working capital costs; and

- the working capital costs paid through the line of credit were not incurred more than 365 days prior to date the line of credit was authorized.

## 5.4 Determining the eligible term loan amount [\[Regs s.38\(4\)\]](#)

To determine the eligible amount of a term loan, the cost and proof of payment for each loan class (equipment, real property, leasehold improvements, intangible assets, working capital needs) 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.

### 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	\$108,000	\$115,000	\$108,000
Equipment	\$324,000	\$200,000	\$200,000
<b>Total Eligible Equipment</b>	<b>\$432,000</b>	<b>\$315,000</b>	<b>\$308,000</b>
Leasehold Improvements	\$166,000	\$300,000	\$166,000
Leasehold Improvements	\$0	\$100,000	\$0
<b>Total Eligible Leasehold Improvements</b>	<b>\$166,000</b>	<b>\$400,000</b>	<b>\$166,000</b>
<b>Eligible amount of loan</b>			<b>\$474,000</b>

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**Summary of eligible costs form:** The CSBF Program [Summary of Eligible Costs form](#) (available on the website) can assist lenders in calculating the eligible amount of the loan.

For claims with a last payment of principal and/or interest on or after July 4, 2022, the lender needs only submit the proof of purchase and payment for 75% of the principal amount outstanding on the loan as of the day of the last payment of principal and/or interest. If the last payment of principal and/or interest is before the date mentioned above, the lender needs to submit the proof of purchase and payment for the principal amount outstanding on the loan as of the day of the last payment of principal and/or interest.

## 5.5 Appraisal [[Reqs s.9](#)] ([previous requirement - appraisal](#))

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 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 365 days of the date the loan is approved.

### **Purchases all or substantially all of the assets of a going concern [[Reqs s.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 the 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.

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, intangible assets, leasehold improvements, inventory, goodwill, , telephone, etc.). The Agreement should set out the allocation of the purchase price for each of the assets

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listed in the agreement. This is necessary to substantiate that only eligible assets are financed up to the maximum amount of each loan class.

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 from the same lender.**

### 5.5.1 Determining eligible cost when an appraisal is required [\[Reqs s.9\(4\)\]](#)

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

- the cost of purchasing the asset, or services to improve 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 [\[Reqs ss.9\(1\)\(2\)\]](#) [\(previous requirement - appraisal\)](#)

The appraisal must be:

- received by the lender before the disbursement of the loan funds for the corresponding expenditure. 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 365 days before the CSBF loan first disbursement date. In the event the appraisal is made more than the 365 days, the SBF Directorate may accept an update to the appraisal from the same appraiser provided the update is made within 365 days before the date of the loan first disbursement, and
- made by an appraiser who is a member of a professional association who is **at arm's length** from the borrower when the term loan is used to finance real property;
- conducted in person or virtually via a virtual application such as MS Teams, Skype, Facetime, etc., provided that the appraiser is able to identify the equipment, leasehold improvements, or improvements to real property in order to compare them to the invoices on file. Ideally, the lender should retain a copy of the video and/or photos in case of a claim;
- 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.

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- for intangible assets or a working capital loan, an appraisal can be made by an appraiser that has experience in evaluating such assets, such as a chartered accountant or a chartered business valuator.

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, how and when the appraisal was made;
- that the assets were physically or virtually 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, as described in the financial statements;
- the value assessed by a municipality or other level of government for tax purposes.

**Note:** Appraisal costs are typically the responsibility of the borrower. The borrower may opt to finance the cost of the appraisal with a CSBF line of credit (*refer to section 4.2*), or as part of a term loan made to finance working capital (*refer to section 4.1.4*).

## 6. Repayment terms, rate of interest, other fees and charges

For a CSBF term loan, on or before the day of the first disbursement of the CSBF term loan funds, the borrower and the lender must sign a document setting out the principal amount of the loan, the rate of interest. The document should also determine 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.

For a CSBF line of credit, before the opening of the line of credit, the lender and the borrower must sign a document setting out, the authorized amount of the line of credit, the rate of interest and the terms of the line of credit.

These documents can be in the form of a promissory Note, a loan agreement, a bank contract or any other document that the lender uses to secure the repayment of a term loan or line of credit.

### 6.1 Repayment terms [[Regs ss.10\(1\)\(2\) and s.6\(2\)](#)] (*previous requirement – maximum term*)

#### **Maximum term:**

Since July 4th 2022, the maximum term (length of government coverage) applicable to a CSBF term loan is 15 years for all loan classes.

CSBF term loan: The repayment of the term loan can be amortized over a period longer than 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 15-year period from the date of the first scheduled payment must be converted to a conventional loan.

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To calculate the maximum loan term of 15 years, the first 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.

CSBF line of credit: For a CSBF line of credit, the maximum loan term is 5 years (length of government coverage), beginning on day the line of credit is opened by the lender. Before the end of the five years from the date the line of credit is opened, the line of credit can be:

- re-registered for a new period of 5 years;
- converted to a CSBF term loan with a maximum 10-year coverage, that meets the other applicable requirements of a CSBF term loan ([see section 11.2](#));
- repaid using the proceeds of a conventional term loan or line of credit
- repaid completely and closed.

### **Payments:**

Payments may be adapted to a borrower's needs (i.e., blended, seasonal or escalating). For a CSBF term 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** ([Reqs s.12](#))

For a **CSBF term loan**:

- 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.

For a **CSBF line of credit**

- The maximum floating rate is the lender's prime rate in effect on each day the line of credit is open plus 5%. (including the 1.25% annual administration fee).
- The interest rate, calculated above, also applies to credit line that has been converted to an exit term loan

Lenders may charge interest rates lower than the regulated maximums.



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### 6.3 Other fees and charges [\[Act s.10; Regs s.13\]](#)

The lender can request from the borrower fees, service fees, and/or charge of any kind that are equal to or less than the amount typically charged for similar conventional loans or line of credit.

These fees and cost may include:

- Fees related to the approval and renewal of a term loan or line of credit;
- A charge for preparing and registering the security document.
- Premiums for life and/or disability insurance: 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 capitalized and added on the loan.
- Conversion and prepayment charges
- The lender may require the borrower to pay any other cost that a lender charges for a conventional loan of the same amount.
- Monthly maintenance or management fees for a line of credit

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

The types of security for CSBF loans are as follows:

- primary security;
- additional security; and
- [guarantees](#) (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.

### **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, lenders 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;

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- 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.

Obtaining proper security on leasehold improvements, computer software, intangible assets and/or working capital can be problematic. For loans made on or after July 4th 2022, the lender must, in accordance with ss. 14(3) of the CSBF Regulations take security on any other asset(s) of the small business as security when financing these type of assets.

**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\(1\)\(3\)](#)]

When a CSBF term loan is made to finance the purchase of real property 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.

Since July 4th, 2022, if a CSBF term loan is made to finance the purchase of computer software, leasehold improvements, intangible assets and/or working capital costs, the lender **must take security** (e.g., General Security Agreement) on any assets of the small business.

The same requirement applies to taking security for a CSBF line of credit.

A loan that finances real property 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, such that the property can be realized upon in the same manner as if it had been secured by a mortgage.

### Alternate security [[Reqs s.14\(3\)](#)]

If a CSBF loan finances leasehold improvements, computer software, intangible assets and or working capital costs, the lender must take security on other business assets, even if these other assets are already subject to prior charges.

Other assets of the small business may include account receivables, inventory, equipment, real property, investments or liquidities of the borrowing business

**Note: Alternate security, once taken, becomes the primary security and the assets taken as security must be treated as a primary security, not as an additional security.**

### Equal ranking security [[Reqs s.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 term loan and the CSBF term loan) must be equal in rank.

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### 30 days equal ranking [\[Reqs s.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 term loan, the same 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 term loan will become equal in ranking and in proportion to the total financing.

With respect to a CSBF line of credit, if within 30 days (before or after) the date the line of credit is opened, the same lender makes a disbursement under a conventional line of credit to finance assets that would have been CSBF-eligible, all security taken for the conventional line of credit and the CSBF line of credit will become equal in ranking and in proportion to the total financing.

**Example:** A lender makes the first disbursement on a CSBF loan of \$100,000 for leasehold improvements on June 5. On July 3, the lender makes the initial disbursement to the same borrower on a conventional loan of \$300,000 for equipment, secured by the equipment. In realization, the proceeds from the security on the leasehold improvements and the equipment taken for the two loans would be shared based on the outstanding loan balances.

**Highest available rank [\[Reqs s.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 [\[Reqs s.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*.

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## Borrower and landlord not at arm's length

Where a lender is financing leasehold improvements and the borrower and the landlord are not at arm's length, the lender must take an alternate security on other assets of the borrowing small business. Although the lender may also choose to take an additional security on the landlord real property, this lender must be careful not to cause a non-compliance to the unsecured personal guarantee requirement outlined below.

The lender can take the landlord's property as security if the landlord is a legal person (corporation) with a mortgage on the real property or with a secured corporate guarantee.

Where a borrower conducts its business on personal premises and requests a loan to finance improvements to the real property, the lender must take the real property 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.

In some jurisdictions the only way the lender can secure a mortgage from a real person (individual), is to take a personal guarantee secured with a collateral mortgage on the property for the same amount. In such situations, the lender must clearly document that the personal guarantee is taken only for the benefit of securing an asset of the small business.

## 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

Throughout these guidelines, the term "guarantee" used in the context of the Common Law, also means "suretyship", the terminology used in the context of the Civil Code of Quebec.

A lender may wish to further secure a CSBF loan by way of a personal or corporate guarantee.

**Personal guarantees [\[Regs s.19\(1\)\]](#):** A lender can take **unsecured** personal guarantees 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. 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 that is secured by collateral assets.

Unless clearly indicated on the document, a personal guarantee 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 the date of the last payment of principal or interest.

When personal guarantees 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. [\[Regs s.19\]](#)

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A personal guarantee 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 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 partner's liability 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 Guarantees:** The lender may take **secured or unsecured** corporate guarantees. There is no limit on the amount of the corporate guarantee.

## 8. Checklist

Lenders may find the following checklist useful in assessing a CSBF term loan or line of credit 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; ([see item 2](#)).
- Aggregate of the outstanding term loan balances to the borrower and related borrowers is not greater than \$1 million of which the maximum amount of \$500,000 can be used to finance assets other than the purchase of a real property, and of that \$500,000 a maximum of \$150,000 is used to finance intangible assets or working capital costs. or

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- The authorized amount of the CSBF line of credit and other CSBF lines of credit authorized to related borrowers does not exceed \$150,000. (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](#));
  - For a CSBF term loan, the date of purchase or commitment to purchase the assets is within 365 days before the day the loan is approved (see [Item 5.1](#));
  - For a CSBF term loan, expenditures or commitments were not previously financed by the borrower on a conventional term loan.
  - For a CSBF line of credit, the line of credit will not be used to repay the outstanding balance of a conventional line of credit (see [Item 5.2](#));
  - Appraisals and updates to appraisal, if applicable, have been made and received, where applicable (see [Item 5.5](#));
  - For a CSBF term loan, evidence is on file to support the cost of assets financed (e.g., Invoices, contracts, purchase and sale agreements, etc.) (see [Item 5.4](#));
  - For a CSBF term loan, 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](#));
  - For a CSBF term loan, the 50% rule has been observed, where applicable (see [Item 4.1](#));
  - For a CSBF term loan, the three-year rule has been observed, where applicable (see [Item 4.1](#));
  - For a CSBF term loan, the 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](#));
  - For a CSBF term loan, the rate of interest does not exceed the 3% above the prime rate or the posted single family residential mortgage rate
  - For CSBF line of credit, the rate does not exceed the lender's prime rate plus 5% (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](#));

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# Registration, administration and reporting

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

## 9. CSBF loan registration [\[Regs s.2\(1\) and s.3\(1\)\]](#)

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

- the first disbursement on the loan must have been made or the line of credit must have been opened;
- Since July 4<sup>th</sup> 2022, a CSBF loan can be registered within 6 months after the first disbursement on the loan (previously 3 months) or the day the line of credit was opened;
- The registration request must be postmarked no later than 6 months after the date of the first disbursement of the term loan funds or the opening date of the line of credit;
- the loan registration form 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 1:** For a line of credit registration, the registration form is used to obtain evidence of the attestation of the borrower confirming that the line of credit will only be used to finance working capital costs that were not incurred more than 365 days before the line of credit was authorized.

**Note 2:** 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.

Where a lender finances two or more classes of assets (e.g., equipment and leasehold improvements) involving the same project and the same term 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 term loan amount can be increased without completing a new registration form.

A separate registration form must be submitted for a line of credit. A CSBF line of credit can be renewed provided that a new registration form and additional 2% registration fee is submitted prior to the expiry of the 5-year period.

### 9.1 Electronic loan registration [\[Regs. ss.3\(2\)\(3\)\(4\)\]](#)

Lenders can register term loans or lines of credit in the CSBF Loan Application, a secure web-based environment, which allows lenders to electronically:

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

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## 9.2 Modification of term loan classes and amounts

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

In the event of a cost overrun (e.g., purchase of equipment costlier than anticipated or an essential component of the project has been overlooked), the term 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 term 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 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 s.4\(1\)](#)]

- the registration fee is 2% of the total amount of the CSBF term loan;
- for a CSBF line of credit, the registration fee is 2% of the authorized line of credit amount;
- a CSBF line of credit can be renewed for an additional 5-year period provided that a new registration form is submitted and an additional 2% registration fee is paid on the renewed authorized amount. See paragraph 11.2 below for information on renewing a line of credit.
- 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 term loan ([Item 4.4](#) of these Guidelines) or paid using a CSBF line of credit.



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## 10.2 Administration fee [\[Act s. 12; Regs ss.4\(2\)\(9\)\]](#)

- for CSBF term loans, the annual administration fee of 1.25% is calculated on the end-of-month loan balances;
- for CSBF lines of credit, the annual administration fee of 1.25% is calculated on the daily outstanding balance;
- administration fees must be paid on all term loans and lines of credit 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.

## 10.3 Refund of registration fee and/or administration fee [\[Regs ss. 4\(10\)\(a\)\(b\)\]](#)

For a CSBF term loan:

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 the loan funds:

- **Partial refund:** If the total funds disbursed are less than the registered amount of a term loan:
  - the lender will provide details of the revised amount for each term loan class;
  - refund of the 2% fee will apply to the undisbursed portion of the registered term loan.
- **Full refund:** If the lender determines a term loan is ineligible:
  - a full refund of registration and administration fees may be requested;
  - a detailed explanation why the term 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.

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

For a CSBF line of credit:

A written request for a refund of registration and administration fees must be made by the lender (not the borrower) within one year following the date the line of credit was opened:

- **Partial refund:** If the amount of the line of credit made available to the borrower is less than the registered amount of the line of credit:
  - the lender will provide documentation evidencing the amount of the line of credit made available to the borrower;
  - refund of the 2% fee will apply to the difference between the amount made available to borrower and the registered line of credit.
- **Full refund:** If the lender determines a line of credit is ineligible:
  - a full refund of registration and administration fees may be requested;

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- a detailed explanation why the line of credit is ineligible and proof that the administration fee was paid, are required.

Upon refund, the amount of the term loan or line of credit will be deducted or erased from the program's loan records.

## 11. Renewal and amendment of terms

### 11.1 CSBF term loan

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

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

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

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.

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.

### 11.2 CSBF line of credit

Before the end of the maximum loan term of 5 years, a CSBF line of credit can be renewed for an additional 5-year period provided that a new registration form and an additional 2% registration fee is submitted prior to the expiry of the initial 5-year period.

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The authorized amount of a line of credit may be increased up to the \$150,000 maximum applicable to a line of credit. If the increase is authorized prior to the expiry of the 5-year period following the date the line of credit is initially opened, the borrower may:

- Pay a 2% registration fee on the difference between the newly authorized amount and the amount initially authorized. The initial expiry date of the line of credit will remain unchanged; or
- Pay a 2% registration on the totality of the newly authorized amount. The line of credit will then be renewed for a period of 5 years following the day the increased line of credit is made available to the borrower.

#### **Conversion of the CSBF line of credit to a CSBFP exit term loan [Regs s.10(6)]**

If at the end of the maximum 5-year term, the lender converts the CSBF line of credit to a CSBF exit term loan with a maximum term of 10 years, the following requirements, applicable to CSBF term loans, applies:

- The interest rate must not be greater than the prescribed maximum rate (lender's prime rate plus 5%);
- The terms of the exit term 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 conversion;
- 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;
- The lender must pay the administration fee of 1,25% on all CSBF term loans and line of credit;
- Once the CSBF line of credit converted into a CSBFP exit term loan, the outstanding amount counts for the calculation of the maximum amount allowed under the line of credit category (maximum of \$150,000).

#### **Conversion of a CSBF line of credit to a conventional term loan or line of credit**

The lender may opt to convert a CSBF term loan or line of credit to a conventional loan or line of credit at any time.

The lenders records must clearly demonstrate that the loan or line of credit is now considered as a conventional loan or line of credit. 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.

## **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.

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## 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 [\[Reqs s.22\]](#):

The lender can substitute additional assets or guarantees for any other assets or guarantees, provided the value of the replacement security, guarantees 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.

### 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 [\[Reqs ss.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; [\[Reqs s.16\(1\)\]](#)
- when an asset is being sold by the borrower to a party in an arm's length transaction and , all the sale proceeds are applied to the loan or; [\[Reqs s.16\(2\)\(a\)\]](#)
- when an asset is being sold by the borrower to a party in a non-arm's length transaction, an appraisal of the asset (made within 365 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 [\[Reqs s.18\]](#)

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

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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 [\[Reqs s.21\]](#)

Guarantors and guarantees may be released or reduced if the loan is in good standing.

**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 or line of credit, the lender may grant a postponement of the CSBF security position on the asset being financed under the conventional term loan.

**Assets not financed by the CSBF loan:** Where a postponement is sought for assets not financed by a CSBF term 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 allowed when these other assets are held as alternate security for a term loan made to finance leasehold improvements, software, intangible asset or working capital needs 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 (e.g., 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 (e.g., 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.

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## 15. Transfer of loans or line of credit between borrowers

[Reqs. [s.33](#) and [s.37\(4\)\(a\)](#)]

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 more than \$1 million of which a maximum of \$500,000 is used to finance the purchase or improvement of equipment or the purchase of leasehold improvements, and of this \$500,000 not more than \$150,000 is used to finance intangibles and working capital costs;
- The authorized amount of the CSBF line of credit and other CSBF line of credit authorized to related borrowers does not exceed \$150,000;
- the new or remaining security is of the same rank in the assets secured by the loan or the line of credit; and
- any existing guarantee 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. 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 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, he 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 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](#).

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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 term loans or line of credit between lenders

### 16.1 Transfer of loan at the request of the borrower [[Regs s.29 and s.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 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 [s.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:** For Program purposes, 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

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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 accepting 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).

## 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



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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.

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## 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 for term loans and lines of credit using separate reports, 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 s.34\(1\)](#)]

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

- the registration number;
- the borrower's name;
- for term loans, the principal outstanding and not yet due and payable as of March 31,
- the outstanding amount due on the line of credit as of March 31, and;
- the outstanding principal and interest that was due and payable as of March 31 for all term loans and lines of credit 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 the last payment of principal and interest.

**Note:** Lenders should ensure that all outstanding term loans and line of credit are reported. If a previously reported term loan or line of credit no longer appears on the report, or if a balance of \$0 is shown in the report, the SBF Directorate will consider that the term 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.

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## 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 term loan or line of credit. 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 and lines of credit provides a cap on the exposure of the Government of Canada.

For CSBF term loan:

The liability for term loans 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.

For CSBF lines of credit:

The liability for lines of credit is calculated on the total of lines of credit authorized amounts and registered for each five-year lending period\*, by lender, as follows:

- 15% of the total amount authorized for all lines of credit;

\*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 [s.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 C6: April 1, 2024 to March 31, 2029
- 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

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 term loan or a line of credit. Payments on claims are deducted from the calculated total for the 5-year period in which the loan was disbursed or, in the case of a line of credit, was authorized.

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 @ 50%= \$125 \$1,500 @ 12%= \$180 TOTAL \$530	\$100	85%	\$85	\$530 - \$85 = \$445
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
<b>Note: Minister's liability accumulates in 5-year program periods. Year 6 begins a new period.</b>						
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. s.40(3)] See also [Item 27](#).

## 20. Offences and punishments [\[Act s.16\]](#)

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 term loan or line of credit;
- a borrower fraudulently using the proceeds for the CSBF loan or a line a credit for a purpose other than acquiring the assets for which the term loan or line of credit was approved.

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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**

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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. Lenders may find the decision table below useful.

1. Is the term loan or line of credit in default? ([Item 21](#))

**No**  Continue to administer the term loan or the line of credit.

**Yes** ▼

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

**Yes**  Work with borrower to remedy.

**No** ▼

May issue a Demand for Payment requesting payment by a specified date.

▼

2. Does borrower remedy default within period specified?

**Yes**  Continue to administer the term loan or the line of credit.

**No** ▼

Applicable 60-month period for submitting a claim for loss or request for extension begins the day after the last payment of principal and interest ([Item 21.2](#))

▼

3. Realize on assets using normal procedures.

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

**Yes**  No further action required.

**No** ▼

5. Is the term loan or line of credit secured by guarantees?

**No**  Submit final claim ([Item 25](#)) Go to question 9

**Yes** ▼

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

▼

7. Is realization on guarantees complete prior to established date of final submission of claim?

**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](#))

▼

8. Is additional information requested?

**No**  No further action required.

**Yes** ▼

Comply with requests.

9. 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**

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## 21. Default and demand for repayment

### 21.1 Default and required procedures [\[Reqs s.36 and s.37 \(2\)\]](#)

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 term loan payments or interest payments on a line of credit 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 realization practice in taking action against the borrower.

**Demand for repayment:** 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 demand for repayment to the borrower requesting that he complies with the conditions specified in the demand within a specified period of time.

### 21.2 Time limitation for claim submission [\[Reqs s.38\(2\) and s.\(3\)\]](#)

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 term loan or a line of credit 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" form 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.

**21.3 Time limitation for additional claim** [\[Reqs ss.38 \(1\)\(2\)\]](#)

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** [\[Reqs s.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;
- 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;
- 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.



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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 ss.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. In reviewing a claim for loss, the SBF Directorate will expect documentation of the reasonableness of any decision, including the relative value of the lump sum to the obligation, the prospects for realization by other conventional methods, and justification for abandoning recovery against guarantors.

**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 (personal or corporate)

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

If a lender has personal or corporate 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).

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**Note:** Lenders are encouraged to settle out-of-court on any guarantees and to resort to a legal judgement only when it is cost effective. Abandoning procedures against guarantees 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 when a claim for loss is submitted.

### 22.3 Liability of sole proprietors and partners [[Reqs s.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 [s.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 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 based on the financial situations of the obligants when realizing on guarantees or on the personal assets of sole proprietors or partners by virtue of their personal responsibility. 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

[[Reqs s.38\(7\)\(d\)](#)]

A lender should apply proceeds and costs to a CSBF term loan or line of credit 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 or lines of credit, 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 of the last payment of principal and interest ([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;

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- where collection relates to personal guarantees 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 at the date of the last payment of principal and interest ([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 such as the purchase of a vehicle for a personal use or a property not intended to be used for the operation of the small business)
- 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 365 days (180 days for loans made prior to July 4<sup>th</sup> 2022) 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
<b>Loan class conditions</b>	
<ul style="list-style-type: none"> <li>• 50% rule requirement</li> <li>• The 3-year rule requirement</li> <li>• Decontamination costs requirement</li> </ul> <p><u>[Regs s.24]</u></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>
<b>Proof of purchase and payment for term loans</b>	
<ul style="list-style-type: none"> <li>• Missing proof of purchase and payment documents in the claim for loss</li> <li>• Ineligible assets financed</li> <li>• Expenditures made more than 365 days (or 180 days for loans made prior to July 4<sup>th</sup>, 2022 2022) before approval date</li> <li>• Assets previously secured by a term loan by the same lender</li> <li>• Ineligible decontamination costs</li> </ul> <p><u>[Regs s.25]</u></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>
<b>Appraisal (<u>previous requirement - appraisal</u>)</b>	
<p>Appraisal requirements not met</p> <p><u>[Regs s.25.1]</u></p>	<p>In the case of term loan for equipment, leasehold improvement, intangible assets and working capital costs, the lender must provide documentation substantiating the value of the asset during the period of 365 days before the date the loan is disbursed. This documentation may be dated before the date the loan is disbursed (maximum of 365 days) or may be dated at any time after the date the loan is disbursed. 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 <b>will not be accepted.</b></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 365 days before the loan is approved.</p>

	If an appraisal is not provided, the proof of purchase and payment for that asset will be ineligible.
<b>Loan agreement</b>	
<b>Loan agreement does not contain all of the terms</b> <u>[Regs s.25.2]</u>	In the event the term loan or line of credit agreement signed by the borrower and the lender does not contain all of the term loan or line of credit terms and conditions, the lender can provide documentation substantiating those terms (e.g., any documentation signed or acknowledgment by the borrower).
<b>Security</b>	
<b>Security requirements have not been met</b> <u>[Regs s.25]</u>	<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 <u>s. 25.3</u> 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 <i>CSBFR</i> 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>
<b>Enforceable security requirement has not been met</b> <u>[Regs s.25.3]</u>	<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"> <li>• the non-compliance was inadvertent;</li> <li>• the funds for the loan have been advanced by the lender to the borrower;</li> <li>• there is a security agreement signed by the borrower containing a description which identifies the collateral;</li> <li>• the lender's security interest or charge over the financed assets has been registered in the appropriate provincial registry system and the security complies with s. 14 of the CSBF Regulations;</li> <li>• the lender provides documentation substantiating that: <ul style="list-style-type: none"> <li>○ the lender or its agent performed a site visit of the borrower's small business premises</li> </ul> </li> </ul>

	<p>during the period beginning 30 days before the date that the loan was approved and 90 days after the final disbursement under the loan agreement.</p> <ul style="list-style-type: none"> <li>○ 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.</li> </ul> <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>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>The CSBF's <u>Site Visit Suggested Checklist</u> form clarifies the type of information which should be verified during a site visit. It is recommended that lenders refer to this form for the wording and content.</p>
<b>Maximum loan amount</b>	
<p><b>Maximum loan amount exceeded for a borrower</b>  <u>[Regs s.25.4]</u></p>	<p>Only the maximum term 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.</p> <p>For a line of credit, the registered amount would be used for the claim eligibility calculation.</p>
<b>Guarantees</b>	
<p><b>Requirements for guarantees not satisfied</b>  <u>[Regs s.26]</u></p>	<p>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 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.</p>
<b>Fees and interest rate</b>	
<ul style="list-style-type: none"> <li>• Interest rate in excess of maximum</li> <li>• 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.</li> </ul>	<p>Claim will be paid if:</p> <ul style="list-style-type: none"> <li>• the loss was not affected by the non-compliance, and</li> <li>• 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</li> </ul>

<ul style="list-style-type: none"> <li>• Allowable fees overcharged to the borrower</li> </ul> <p><u>[Regs s.26]</u></p>	<p>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.</p>
<p><b>Administration fee</b></p>	
<p>Non-payment of the administration fee</p> <p><u>[Regs s.23]</u></p>	<p>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.</p> <p>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.</p>
<p><b>Outstanding loan balance report</b></p>	
<p>Failure to file the Outstanding Loan Balance Report</p> <p><u>[Regs s.28]</u></p>	<p>Claims will only be paid when report is received</p>
<p><b>Maximum loan term <u>[Regs s.28.1]</u> (<i>previous requirement – maximum term for a term loan</i>)</b></p>	
<p>15-year repayment term exceeded for a CSBF term loan</p>	<p>In the event the 15-year term is exceeded (whether on the original loan agreement, any amendments or renewals), the claim will be paid only if the last payment of principal and/or interest occurred before the expiry of the 15 years calculated from the date of the first payment of principal and interest is due.</p>
<p>5 year repayment term exceeded for a CSFB line of credit</p>	<p>In the event the 5-year term is exceeded (whether on the original loan agreement, any amendments or renewals), the claim will be paid only if the last payment of principal and/or interest occurred before the expiry of the 5 years calculated from the date the line of credit is opened by the lender or before the expiry of any renewal agreement referred to in section 11.2 above.</p>

### 24.3 Inadvertent errors

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

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<b>Inadvertent error</b>	<b>Remedies and conditions for claim payment</b>
<b>Renewal of fixed rate loan term not made when scheduled.</b>	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.
<b>Lender error increased the loss on a loan</b>	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.
<b>Proof of claim not filed with the Trustee before the final distribution of dividends.</b>	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.



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## 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 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. In such a case, it is important to note that the applicable 60-month claim submission limitation continues to run and the completed claim 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 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 [[Reqs s.39\(1\) and s.39\(5\)](#)]

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 the 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 process is 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 and/or on the personal liability of sole proprietors or partners.

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

- fully recovering the amount owing under a guarantee and/or a personal liability;
- negotiating and fully settling a compromise agreement;
- demonstrating that the realization of the guarantee, 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 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

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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 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 s.39\(4\) and s.39\(5\)\]](#)**

If the lender has advised when a compromise settlement will be fully implemented, or a guarantee, 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. The lender needs to provide 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**

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Where there is missing information or documentation needed to process the claim payment, the SBF Directorate will notify the lender by e-mail 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 term loan or line of credit
- The loan document (i.e., promissory Note or equivalent) and any renewal documents;
- In the case of fixed rate term loan, 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 term loan account;

On or after July 4<sup>th</sup> 2022, for term loans, the cost and proof of payment of the eligible assets for up to 75% of the outstanding principal amount of the loan as at the date of the last payment of principal or interest. If the last payment of principal and interest is before the date above, the lender needs to submit the proof of purchase and payment for the principal amount outstanding on the loan as of the day of the last payment of principal and interest. 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 a CSBF line of credit an attestation signed by the borrower confirming that the line of credit was only used for eligible purposes (duly signed registration form);
- 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 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;
- Site Visit Suggested Checklist, if applicable
- The Demand for Payment documents sent to the borrower and other obligants;
- Documents evidencing the landlord's seizure of loan security, if applicable, or details of the seizure;

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- 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 and/or personal liability of the sole proprietor or partner(s);
  - Documents supporting any settlement with the borrower or third parties, including guarantors;
  - 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
    - 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);
    - the original and any revised proof of claim together with all annexes;
    - 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.

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## 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 on the day of the last payment of principal or interest;

**Less**

- proceeds of security realization, payments by guarantors, 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 provide details:

	Costs incurred before default	Costs incurred after default
<b>Utilities</b>	Payment of utilities to help a borrower continue its operation is not an eligible cost	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.
<b>Municipal taxes</b>	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.
<b>Suppliers</b>	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.
<b>Insurance</b>	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.
<b>Salaries</b>	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.
<b>Rent</b>	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
<p>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.</p>	<p>Costs incurred to take action against the borrower or the guarantor in order to recover the loan, are eligible.</p>
<p>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.</p>	<p>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, are not eligible.</p>
<p>Costs incurred by lenders to defend an action that is not related to the realization of security are not eligible.</p>	<p>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) .</p>

**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 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 is smaller than the amount reversed is made, the difference between the amount reversed and the amount applied will be disallowed.

**Note:** [\[Act s.8\]](#): 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

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submitted. For example, if a lender obtained a judgment and registered a lien on the borrower's or guarantor'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.



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## 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 subclauses 248(25)(b)(iii)(A)(II) to (IV); and
- (c) in any other case, 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

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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** means a group of persons each member of which is related to every other member of the group; (*groupe lié*)

**unrelated group** means a group of persons that is not a related group. (*groupe non lié*)

### **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;
  - 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

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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;

(b.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.

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## Glossary

<a href="#">A</a>	<a href="#">B</a>	<a href="#">C</a>	<a href="#">D</a>	<a href="#">E</a>	<a href="#">F</a>	<a href="#">G</a>	<a href="#">H</a>	<a href="#">I</a>	<a href="#">L</a>	<a href="#">M</a>	<a href="#">P</a>	<a href="#">R</a>	<a href="#">S</a>	<a href="#">U</a>	<a href="#">W</a>
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### A

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- **Annual**  
Periods of 365 or 366 days fixed by calendar dates (e.g., July 5, 2020 to July 4, 2021). [Reqs par.10\(5\)\(b\)](#)
- **Appraisal**  
Determination of the value of the assets financed performed by an appraiser meeting the requirements of [section 9\(1\) of the Regulations](#), made any time within 365 days of the day the term loan was disbursed.  
Prior to July 4<sup>th</sup>, 2022, the appraisal needed to be made any time within 180 days of the day the term loan was approved.

### B

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- **Borrower**  
Since 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. [Reqs ss.1\(1\)](#)
- **Business carried on in Canada**  
A business with a place of business in Canada and assets for operating business held in Canada. [\[Act s.2\]](#)

### C

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- **Cancelled cheque**  
A cheque that has been negotiated or cleared by the borrower and a vendor's financial institution.
- **Conventional loan or line of credit**  
A term loan or a line of credit that is not subject to the *CSBFA*. [Reqs 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. [Reqs s.20](#)
- **CSBFA**  
[Canada Small Business Financing Act](#) (Act)
- **CSBFR**  
[Canada Small Business Financing Regulations](#) (Regulations)

### D

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- **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 [Reqs s.36](#)

### E

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- **Eligible cost**  
Amount indicated on a paid invoice or purchase contract, less any directly related refundable taxes, grants or discounts.
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- **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 water supply systems. It does not include inventory of the small business except inventory that is leased by the borrower to the borrower's customers. [Reqs ss.1\(1\)](#)

## F

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- **Farming**

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

## G

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- **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. [Reqs 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*) [Reqs s.19](#) and [s.20](#)

## H

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- **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. [Reqs 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. [Reqs ss.1\(1\)](#)

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## 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\(5\)\(b\)](#)
- **Intangible assets**  
Means a non-monetary asset without physical substance that can be sold, transferred, licensed, rented or exchanged or that arises from a contractual or other legal right.  
Since July 4th 2022, intangible assets can be financed up to \$150,000 under the loan class described in [section 4.1.4](#) above.
- **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 [Act ss.6\(1\)](#)
  - Period C6: April 1, 2024 to March 31, 2029
  - 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 term loan or a line of credit 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. [Act s.2](#)
- **Line of credit**  
A CSBF line of credit may be made to finance working capital costs necessary to cover day-to day operating expenses of a business.
- **Loss sharing ratio**  
The relative percentages of loss for which the minister and lender are responsible. The current loss sharing ratio is 85/15. [Act s.8](#)

## M

- **Maximum term loan size**  
For CSBF term loans approved on or after July 4<sup>th</sup> 2022, \$1 million of which the maximum of \$500,000 can be used to finance the purchase or improvement of equipment and the purchase of leasehold improvements, of which a maximum of \$150,000 can be used to finance the purchase of intangible assets and working capital costs. [\[Regs s. 6.1\]](#)  
For CSBF term loans approved before July 4<sup>th</sup> 2022, \$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 [\[Act s.7\]](#)

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- **Maximum term for a term loan**  
Since July 4<sup>th</sup>, 2022, the maximum term (length of government coverage) the CSBF Program can apply to a loan to finance leasehold improvements, equipment, intangible assets, working capital costs and real property is 15 years.
  - **Maximum term for a line of credit**  
A period of 5 years beginning on the day on which the line of credit is opened. A line of credit can be renewed for an additional period of 5 years provided that the request is submitted prior to the expiry of the initial five year term and an additional 2% registration fee is paid.
  - **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\(1\)](#)]
  - **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\(2\)](#)]

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## P

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- **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.

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## R

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- **Related borrowers**

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

- Located at the same premises;
- Derives more than 25% of their actual or projected revenues from the other;
- Shares administration/management services, equipment, facilities, or overhead expenses with the other borrower but not in partnership with the borrower. [Regs ss.1.1](#)

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 \$500,000 can be used for a purpose other than the purchase and improvement of real property of which the borrower will become the owner, and Of that \$500,000, a maximum of \$150,000 can be used to finance intangible assets an working capital costs.

## S

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

Before June 30 2021, charitable, religious, 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. Since June 30, 2021 the definition of “small business” does not exclude not for profit, charitable and religious organizations provide they carry on a small business.

- **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 and 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 and s. 20](#)

## U

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- **Universal movable hypothec**

Civil Code of Quebec term for a General Security Agreement.

## W

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- **Working capital costs**

Means cost to fund the day-to-day operating expenses of a business

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Since July 4<sup>th</sup>, 2022, working capital costs can be financed up to \$150,000 with a CSBF term loan under the loan class described in section 4.1.4 above or with a line of credit authorized for an amount no greater than \$150,000.