



Agriculture and Agri-Food Canada    Agriculture et Agroalimentaire Canada



AGRICULTURAL MARKETING  
PROGRAMS ACT

*(AMPA)*

**ADVANCE PAYMENTS PROGRAM**

**ADMINISTRATION GUIDELINES**

JUNE 1999



q VERSION FRANÇAISE DISPONIBLE SUR DEMANDE.

Canada

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## I M P O R T A N T N O T I C E

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The Agricultural Marketing Programs Act offers two programs to encourage orderly marketing: the Advance Payments Program and the Price Pooling Program.

These administration guidelines are related to The Advance Payments Program only. However, information on the Price Pooling Program can be obtained from the Program Manager.

The objective of this manual is to assist administrators in making an application and in administering the Advance Payments Program under the *Agricultural Marketing Programs Act* (AMPA).

If assistance is required concerning technical or administrative aspects of the Advance Payments Program application, please contact the Program Manager. A complete listing of program staff can be found in [Appendix S](#).

All correspondence concerning the Advance Payments Program should be sent to the address below:

Program Manager, Advance Payments Program  
*Agricultural Marketing Programs Act*  
Agriculture and Agri-Food Canada  
2200 Walkley Road, 2nd Floor  
Ottawa, Ontario  
K1A 0C5  
Telephone: (613) 759-6303  
Facsimile: (613) 759-6315

In administering the Advance Payments Program, it is most important that an administrator exercise the same care in granting an advance as a lending institution would.

In the event of any question of meaning or interpretation of anything in these guidelines the legal interpretation of the Act and the Advance Guarantee Agreement will take precedence.

The information provided relating to the Advance Payments Program is collected for Agriculture and Agri-Food Canada under the authority of the *Agricultural Marketing Programs Act* for the purpose of an efficient management of the program. Any personal information provided to Agriculture and Agri-Food Canada will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank **Agriculture and Agri-Food Canada/PPU-140**. Other information may be accessible or protected as required under the provisions of the *Access to Information Act*.

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## **1. ADVANCE PAYMENTS PROGRAM**

### **1.1 Purpose**

The purpose of the Advance Payments Program is to improve marketing opportunities for crops of eligible producers by guaranteeing the repayment of advances made to them as a means of improving cash-flow at or after harvest.

### **1.2 Program Description**

The Advance Payments Program is a federal loan guarantee program that facilitates access to credit for producers at or after harvest. With the protection of a loan guarantee in place, administrators (producer organizations) are able to negotiate a loan from financial institutions to make cash advances (maximum \$250,000) to the producers. The intended benefit of the Advance Payments Program is for producers to receive a cash advance on their stored crops soon after harvest allowing them to meet their short-term financial obligations. This gives them the flexibility to spread the marketing of their products throughout the year when market conditions are better, thus achieving orderly marketing of the products. The program also provides that the Federal Government will pay the interest on the first \$50,000 of an advance made under the program, thereby further assisting with the producers' cash flow. With the guarantee in place, the administrators are able to negotiate the loans at preferential rates, thereby providing interest savings for producers on the amounts over \$50,000.

As the program is delivered through administrators on behalf of their members, a producer can only receive an advance through an administrator and not directly from Agriculture and Agri-Food Canada.

A producer may receive a total advance of up to \$250,000 for all crops or a lesser amount if set by the Minister in the guarantee agreement with the administrator. The amount of the advance is based on half (50%) of the average farmgate price that, in the Minister's opinion, will be payable to producers of the crop in that area.

As any one person and any one farm unit is limited to \$50,000 of an interest free advance and a total advance of up to \$250,000, applicants for an advance must disclose any applications with other program administrators and their involvement in other producer enterprises (partnership, corporation, cooperative etc.). Failure to provide accurate information on an advance payments application is an offence under AMPA which could result in prosecution.

Producers repay the advance to the administrator as the crop is sold and at the same rate per unit as the advance was issued. The administrator, in turn, repays the loan from which the advances were made. As producers make payments, the portion of the advance on which Agriculture and Agri-Food Canada is paying interest is the first portion

of the advance to be reduced.

Agriculture and Agri-Food Canada makes the interest payments under the program for the advances under \$50,000 directly to the financial institution on behalf of the administrator. These payments are based on monthly statements from the administrator documenting the interest due.

For the first two years of AMPA's operation, the government guaranteed 98% of an advance made under the Advance Payments Program. The administrator retained a liability of 2% of the amount advanced. The amount of the administrator's liability is now calculated based on the organization's default history and will range from 1% to 15%. As the default rate increases, so will the Administrator's liability in future years. The calculation formula will be established through regulations and will be discussed later in this document with an example in [Appendix A-4](#) .

## 2. ELIGIBLE CROPS

A "crop", as defined under Section 2 (1) of the AMPA, is:

- ! a) one or more field crops, or a portion of one or more field crops, grown in Canada, either cultivated or uncultivated, and stored in a non-processed form;
- ! b) maple syrup or honey produced in Canada; or
- ! c) any other agricultural product, grown or produced in Canada, designated by the Governor in Council.

*Processed crops are not eligible under the Advance Payments Program.* A crop is considered to be processed if it has been subjected to a process that changes the state of the product or which goes beyond processing for storage, such as adding sugar to prolong its life or further processing wheat into flour and bran. Greenhouse production is also excluded from the program.

To be eligible the producer of the crop must own it continuously and be responsible for marketing it. Ownership and responsibility for marketing is considered to be lost when the crop is sold, processed or placed in a pool; if someone other than the producer can give all or a part of the crop as security, the crop is considered sold.

Despite the above criteria, producers of horticulture crops, maple syrup and honey who collectively own and market their eligible products will be considered to satisfy the ownership and responsibility for marketing criteria up to the point where the product is sold or placed in a pool for processing.

### **Farm-fed Grain**

Farm-fed grain is included in the program on the basis that the crop is available for sale in a marketable form (ie. it is still in its grain form), and feeding represents one marketing option. An example would be grain corn which can be fed or marketed off the farm. Whole-plant silage or ground ear corn are not traded to any significant degree and therefore do not meet the condition described above. Administrators issuing advances on farm-fed grain must have the producers complete a schedule of feed usage, and must obtain post-dated cheques from the producer to be applied against the advances as the grain is being fed.



### 3. ELIGIBLE ADMINISTRATORS

#### Definition

An "administrator" as defined under Section 2 (1) of the AMPA, means the Canadian Wheat Board or any of the following organizations that has the power to sue and be sued in its own name:

- a) an organization of producers that is involved in marketing a crop; or
- b) any other organization that the Minister considers is supported by producers, and designates as an administrator.

#### Application

**When applying to the Advance Payments Program, the administrator must demonstrate:**

- ! that it represents eligible producers in an area who produce a significant portion of the crop in that area for which the advances will be made;
- ! that the issuing of those advances will improve marketing opportunities for the crops of eligible producers in the area that the administrator represents;
- ! its capacity of meeting its obligation (as outlined in **Section 6** of this document) under the advance guarantee agreement;
- ! its capacity to ensure adequate program control and accountability;
- ! that it is a legal entity capable of suing and of being sued in its own name;
- ! that it has resources to carry on the activities of the program and to support its financial liability in the case of significant default rates among producers.

## 4. ELIGIBLE PRODUCERS

### Definition

"Producer" means a producer of an agricultural product who is:

- a) a Canadian citizen or a permanent resident;
- b) a corporation, a majority of whose voting shares are held by Canadian citizens or permanent residents;
- c) a cooperative, a majority of whose members are Canadian citizens or permanent residents; or
- d) a partnership or other association of persons where partners or members, who are Canadian citizens or permanent residents, are entitled to at least 50% of the profits of the partnership or association.

"Producer" includes a person or entity mentioned above that is entitled to a crop or a share in it as landlord, vendor, mortgagee, or hypothecary creditor on a date specified in the advance guarantee agreement with the administrator. (Defined under Section 2 (1) of AMPA)

## 5. ELIGIBILITY FOR AN ADVANCE

Under AMPA, individuals and independent farming operations, irrespective of the number of partners, members or shareholders, are limited to one \$50,000 interest free advance or no more than \$250,000 in total advances.

In order to accomplish this, AMPA defines “related producers” and establishes how the amounts advanced to related producers will be attributed to the individuals involved and vice versa. It should be noted that under the Act, the term producer may refer to an individual, partnership, corporation or association of producers. For purposes of the Act, producers are considered to be related if they are not operating at arms length. The definition used is the same as that in the Income Tax Act. AMPA further defines a number of scenarios under which producers would be considered to be not operating at arms length and are therefore considered to be related unless proof is provided to the contrary. These scenarios are outlined in [\(Appendix A-2\)](#).

### **General Requirements to be Eligible for an Advance:**

- ! the producer and any related producers must not be in default under a repayment agreement or have any outstanding guaranteed advances for the previous crop year, *(including any advances issued under the Prairie Grain Advance Payments Act (PGAPA) and the Advance Payments for Crops Act (APCA))*;
- ! the producer must not be ineligible, where an advance guarantee agreement provides that a producer continues to be ineligible for a guaranteed advance for any period specified in the agreement, even though the producer has ceased to be in default;
- ! the producer must not have given the crop for which the advance was issued as security ranking in priority to the security interest given to the administrator. The producer demonstrates this by having the producer’s primary lender sign a priority agreement. See [\(Appendix B and Section 6\)](#). The priority ranking ensures that, should the dispersal of the assets be forced, the Administrator is the first to obtain payment.

### **Where the Producer is an Individual; The Applicant:**

- ! must be of the age of majority in the province of the farming operation;
- ! must be principally occupied in that operation, contributing significantly and materially to the production of the crop for which the advance is being made, or be entitled to the crop or a share in it as landlord, vendor, mortgagee, or hypothecary creditor;
- ! have title to the crop for which the advance is made;
- ! must not be a Member of Parliament with any or partial control over the administrator (e.g. Director).

**Where the Producer is a Partnership, Corporation, Cooperative, or Association (Related Producer):**

- ! must indicate on the advance application if the applicant is a partnership, corporation or cooperative. In all cases, the names of all shareholders and number of shares held, names of all members or names of all partners and the percentage of the profits to which they are entitled are required. Legal documentation should be obtained from the applicant to ensure that all proprietors and their interest in the applicant producer are being disclosed;
- ! all shareholders, members or partners of the company, cooperative or partnership must sign a form (**Appendix B**) to be jointly and severally liable for any liability of the producer. Each partner, member or shareholder, as the case may be, is individually and collectively responsible for all of the outstanding amount of the advance in the case of default and all costs associated with collecting the default. If any of the shareholders, members or partners do not sign the form, no advance may be granted to the producer;
- ! if the corporation is one shareholder, the shareholder must agree in writing to be personally liable to the administrator for any liability of the producer and provide any security for the repayment of the advance that the administrator may require. In all cases a personal guarantee to repay the advance is required and is provided through a personal guarantee form (**Appendix B**);
- ! in the case where there is more than one shareholder, member or partner, at least one of the shareholders; members, or partners, as the case may be, must be of the age of majority in that province, and be principally occupied in the farming operation.

**Attribution**

For purposes of calculating the maximum amount of advance for an individual or entity, amounts advanced to a related producer (**Partnerships, Corporations, Cooperatives, & Associations**) are attributable to the producers and the attributable percentage is:

- ! 100%, if the applicant is a sole proprietor;
- ! the percentage of the voting shares that the producer holds in the related producer, if the related producer is a corporation;
- ! "one divided by the number of members times 100", if the organization is a cooperative;
- ! the percentage of the profits of the partnership or association to which the producer is entitled, if the producer and the related organization are partners or members of the same partnership or other association of persons.

In order for the administrator to apply the attribution rules, the producer(s) will be required to provide the necessary information. The producer(s) must be requested to sign a statement declaring that they are not required by the Income Tax Act to acknowledge involvement in any partnership, corporation, cooperative or association on their income tax statement.

If the producers are not in a position to sign such a statement, they will be required to declare all parties with which they operate their farm business or the organizations in which they are members, shareholders or partners.

The application will clearly state that the producer may be required to substantiate the statements made either through a statement from their accountant or by providing a copy of their income tax statements. Failure to provide such proof will result in the producer not receiving an advance or being declared in default if the advance has been issued. The administrator may rely on the declaration in issuing the advance but should investigate any declaration that it has reason to believe is questionable.

Example of the application of the attribution rules is provided in [Appendix A-2](#).

### **Maximum Advance**

**The maximum amount of advances in any crop year that are eligible for a guarantee under the AMPA:**

- ! for the crop covered by the advance payment guarantee with the administrator, is \$250,000 or a lesser amount specified in the agreement;
- ! for all crops, including amounts that are attributable through any related producer, is the lesser of \$250,000 or an amount specified in the agreement.

### **Calculation of the Advance**

The amount of an eligible advance is calculated by multiplying the number of crop units for which the advance is to be made by the rate per crop unit (*# of units x rate per unit*). The rate per crop unit is specified in the advance guarantee agreement and must not exceed one half of the average price that, in the Minister's opinion, will be payable to producers of the crop in that area.

## 6. OBLIGATION OF ADMINISTRATORS

The administrator is accountable to the Minister for the efficient administration of the program. Officials from the Department will be reviewing administrative procedures and conducting program monitoring to ensure compliance with the Advance Payments Program Agreement and procedures outlined in this Administration Guideline. If the Act or the agreement is breached, the agreement may be cancelled and the Minister may require repayment of any interest payments or default payments made to the lender.

In administering the Advance Payments Program, it is most important that an administrator exercise the same due diligence in granting an advance under AMPA as a lending institution would. The administrator is fully responsible for approving producers' applications and maintaining the operational control of the advance issuance and recovery process. It must be ready to fulfill all required duties related to the management of the program and demonstrate at any given time that it is doing so.

The administrator's responsibilities are specified in the advance guarantee agreement. The agreement should be read thoroughly by the officers within the administering organization.

The officers should ensure that:

- 1) the terms are realistic;
- 2) that the organization is in the position to meet all the terms of the agreement.

### **In general, the principal obligations of an administrator are as follows:**

- ! to make the arrangements for the advances from money borrowed from a lender;
- ! to ensure that the interest rate on the money borrowed will not exceed the rate specified in the advance guarantee agreement;
- ! to make an agreement with any authorized buyers for the forwarding of payment directly to the administrator;
- ! where the administrator is the buyer, to withhold amounts from any payments made to the producer for crop sold;
- ! to repay the money it borrows, together with the interest, within the period specified in the advance guarantee agreement from the amounts the administrator receives as repayment of advances;
- ! to declare any producers in default who do not meet their obligations;
- ! if a producer defaults, to pay the administrator's portion of the liability to the lender and Agriculture & Agri-Food Canada within the required time frame.

## 7. OBLIGATION OF PRODUCERS

The principal obligations of a producer are as follows:

- ! properly complete an application (Appendix B), including a declaration, and submit it to the administrator;
- ! provide all required documents to prove the eligibility requirements (Canadian Citizen/permanent resident, title of crops, etc.);
- ! adequately store the crop so it will remain in good quality until disposed of in accordance with the agreement;
- ! provide a priority agreement for any liens or encumbrances on the crop, signed by the manager of the lender(s) or supplier(s);
- ! sign an agreement to repay the advance and any interest on advances over \$50,000 at the advance rate on a monthly basis;
- ! have all perils insurance on the portion of the crop in storage for the value of the advance if stored in the producers own facility(ies) or provide proof that any commercial storage used has adequate insurance;
- ! complete an authorization for deduction by a buyer or broker that has an agreement with the administrator for this purpose (Appendix C), or agree to repay the advance directly including any interest under any terms established in the Advance Guarantee Agreement, or a combination of both methods;
- ! provide to the administrator any information that it requests for the purpose of applying the AMPA.

***Please Note:* When a producer applies for an advance for a crop (or in the case of farm-fed grain, a portion of the crop) all of the crop of that type is considered to be covered by the advance and on the first sales or disposal of that crop the appropriate portion of the advance must be repaid. A producer cannot designate only part of a crop of a certain type as being under an advance agreement.**

## **8. APPLICATION BY THE ADMINISTRATOR**

### **8.1 Application for Participation**

The administrator must make an application annually to Agriculture and Agri-Food Canada to participate in the Advance Payments Program. The administrator's completed application must be received by Agriculture and Agri-Food Canada at least **six to eight (6 - 8)** weeks prior to the agreement being required. Please follow the instructions (as outlined in [Appendix A-1](#)) for completing an application.

### **8.2 Approval of Application**

In assessing the application, the Department must ensure that the administrator has the capability to properly administer the program. An appropriate advance rate, which will not exceed 50% of the price the producer is expecting to receive, will be established based on the information provided by the administrator and an analysis of the markets.

If the application is approved, four copies of an agreement between the Department, the administrator and the lender, will be prepared and sent to the administrator for signature. The administrator will take the agreement to the lender to finalize the financing and obtain the lenders signature at that time.

#### **Upon receipt of the agreement, the administrator should:**

- ! review the contents of the agreement to ensure that its Officers fully understand and agree to all provisions of the agreement;
- ! have two authorized representatives sign the agreement in the designated area;
- ! obtain the signature of the lender;
- ! return two signed copies to Agriculture and Agri-Food Canada.



## 9. ADMINISTRATION OF THE PROGRAM

### 9.1 Producer's Application

A sample producer application is attached ([Appendix B](#)). If the administrator chooses not to use the sample, it should ensure that, as a minimum, the requirements in the sample are included.

For all advances that are issued in the province of Alberta, the administrator must include as a term of its agreement with the producer the following clause:

“ A clause providing that the producer agrees, pursuant to Section 7 of the Limitations Act of Alberta, to the extension of the limitation period for seeking remedial order for claims arising from this agreement to six years from the date the administrator knew, or in the circumstances ought to have known, of the claim.”

### 9.2 Approval of Producer's Application

It is essential that the administrator establishes an effective system for evaluating producer applications that will result in an unbiased, accurate assessment. One approach may be to have a formal Review Board made up of officers within the administering organization as well as the Secretary/Manager to review applications prior to issuing advances.

#### Prior to Issuing an Advance Payment

##### **The administrator must do the following:**

- ! take steps, in accordance with the terms and conditions of the advance guarantee agreement, to ensure that the crop is harvested, is of marketable quality and is adequately stored by the producer so as to remain of marketable quality until disposed of in accordance with the repayment agreement, (see [Section 10.2](#) of this document - Crop Inspections);
- ! ensure that the crop's and producer's eligibility requirements are met, (see [Section 2 and 4](#) of this document);
- ! evaluate the producer's credit, (see [Section 10.1](#) of this document);
- ! keep records of those applications approved and not approved along with the supporting documentation;
- ! obtain a signed declaration from the producer including all of the statements included in [Appendix B](#);

- ! ensure that all agreements are completed in full and signed by officers that have designated signing authority;
  - Agreement Between Administrator and Producer (Appendix D)
  - Joint & Several Guarantee (Appendix B )
  - Personal Guarantee (Appendix B )
  - Buyer Authorization (Appendix C)
  - Buyer Agreement (Appendix E)
- ! ensure that a priority agreement form (Appendix B) for any liens or encumbrances on the crop are signed by the lender(s) or supplier(s). If there are no liens or encumbrances, at least one priority agreement should be attained stating this for the producers main lender.
- ! ensure that all required documents, such as insurance coverage, priority agreements, etc. are maintained for each producer on each producer's file;

### **Priority Agreement:**

AMPA provides that the administrator have a security interest on any crop on which an advance is issued. The legislation further requires that the producer has not given the crop as security ranking in priority to that of the administrator. This means that should the administration need to seize the crop, it would be the first to be paid from the proceeds. The priority agreement waives any right of the producer's lender to take precedence over the administrator with respect to the crop pledged as security for the advance payment. Prior to issuing an advance payment, a priority agreement must be completed by the lender(s) of each party entitled to a share in the crop identified in the advance application. If a producer deals with more than one lender, separate priority agreements must be completed by each lender. (The administrator must ensure that the priority agreement is completed properly, signed and dated.)

Crop suppliers may also have a security interest in a crop and the administrator must ensure that a priority agreement for these encumbrances is obtained. In such cases A priority agreement specifically for crop suppliers is available as Appendix B. The administrator may use the signed priority agreement to register Personal Property Security for all or only the larger advances. Also, the administrator may register Personal Property Security as soon as it receives any indication that a producer might be experiencing some financial difficulties.

The administrator is responsible for ensuring that the lender is respecting the terms of the priority agreement; any difficulty in this respect should be reported to the program administrator.

### 9.3 Producer's Repayment Agreement

All producers receiving an advance must complete and sign an agreement with the administrator agreeing to repay the advance ([Appendix D](#)). The agreement provided is general in nature and may not meet the needs of all organizations. Should the administrator choose not to use the sample, the agreement used must contain the following provisions as per Section 10(2) of AMPA:

- ! the repayment of the advance either through authorized buyers or directly;
- ! keeping the crop adequately stored;
- ! the compliance with the other provisions of the agreement including:
  - ! terms and conditions governing the delivery of the crop and the payment of interest, both before and after any default;
  - ! a requirement that, in the case of default, the producer pays all costs associated with the recovery of the amount outstanding as well as the interest paid on the producer's behalf by the Department.

### 9.4 Repayment Options

An eligible producer must make and sign a repayment agreement with the administrator specifying the repayment terms and conditions. In all cases, repayment of the advance is from the first crop sold of the type with respect to which the advance was issued.

**Repayments are applied first to the principal portion of the advance on which the Minister is paying interest.**

Two different types of repayment methods are available to the producers:

#### 1) Repayments through authorized buyers

- ! The producer repays by selling the crop to a buyer that has been authorized by the administrator to make deductions on the proceeds of sale (at the same rate per unit as the advance was made) and submits it directly to the administrator in repayment of the advance (see [Section 9.5](#) of this document).

#### 2) Direct repayments

- ! Where it is impractical for the producer to sell through an authorized buyer (e.g. farm to farm sales), the administrator may authorize the direct repayment option in the application form;
- ! The producer repays directly to the administrator within **seven (7) days** of receipt of payment or a maximum of **forty-five (45) days** from delivery to the buyer, whichever is earlier. The repayment is at the same rate per unit as the advance was made. Exceptions to the required amount of repayment days (as above) may be granted on export sales;
- ! The administrator should require the producer to substantiate the date of

sale by providing proof of sale and bills of lading. However, Section 10(2) of AMPA provides that the administration may allow producers to pay without proof up to an amount specified by the regulations.

The regulations state a producer may pay the following amounts without proof of sale:

- ! the greater of \$500 or a percentage not to exceed 10% of the total amount advanced, the exact percentage to be specified in the advance guarantee agreement, for all subsequent crop years.

Although there are provisions for cash repayment, nothing in the regulations removes the obligation of a producer to have enough crop in storage to cover the amount of the advance. The cash repayment provision is intended to allow for dockage, bin audit shortages and shrinkage, it is not intended to allow for spoilage. Should an inspection reveal that a producer does not have sufficient crop to cover the remaining amount of the advance, it is the responsibility of the administrator to declare the producer in default and advise the Department accordingly.

**Please note:** Some administrators have used a system of post-dated cheques to facilitate repayment. When the advance is issued, the producer provides the post dated cheques based on an anticipated sales schedule. The producer is responsible for reporting any variation from the schedule and providing the necessary cheques to substantiate the variation. This system is also used for farm fed grain.

## 9.5 Buyer Agreement

In order to facilitate the repayment of advances, an administrator may designate “authorized buyers”. An agreement is negotiated with each authorized buyer to deduct from the proceeds of sale an amount per unit of crop equal to the rate per unit to the advance and to forward the payment directly to the administrator to repay that portion of the advance. The producer signs an authorization to the buyer to make the deductions ([Appendix C](#)). The agreement with all designated buyers should be completed prior to the distribution of applications in order to provide to the producers a list of all authorized buyers. Should a producer identify a buyer that is not on the list, the administrator can either negotiate an agreement with the buyer or ask the producer to make direct repayments in accordance with the repayment schedule agreed to prior to issuing the advance to the producer. Please refer to [Appendix E](#) for a sample of an agreement between an administrator and a buyer. This is a general agreement that may need to be amended to meet the specific needs of an administrator.

Particular attention should be paid to the following four (4) points included in the Buyer Agreement:

1. The buyer shall withhold from the amount owing to a producer amounts based on the same rate per unit as the advance was made as stipulated in the repayment schedule agreed to by the buyer and the administrator.

2. The buyer shall remit to the administrator any amounts withheld under (1) above within **thirty (30) days** from date of delivery of the crop. Exceptions may be granted on export sales.
3. The buyer shall not credit any amount of money specified in number one (1) to any account which the producer may have with the buyer, to the buyer's own account or to the producer's account, until the advance is repaid.
4. In the event that the buyer does not comply with this agreement, the buyer shall be liable for the full amount not remitted to the administrator, the related interest and any costs directly associated with collection from the date the buyer received that unit of crop from the producer.

Naming authorized buyers is beneficial to both the administrator and the buyers. For the administrator, deductions from the source of the sale tends to be a more secure means of obtaining payment. The buyers benefit from the fact that producers become more aware that the buyer is wanting to purchase their crops.

## 9.6 Issuing the Cheque

An advance payment can only be made once the producer's agreement with the administrator is signed by both parties. The agreement is only signed by the administrator once all required application forms are signed, witnessed, and sealed.

Once the administrator is ready to make an advance payment, it must ensure that:

- ! the advance payment cheque is made payable to the "producer's name" appearing on the application. If an Officer of a corporation, partnership or cooperative completes the application, the cheque must be made payable to the "corporation, partnership or cooperative";
- ! **where the lender has a lien on the crop, the lender may request that the cheque be made payable to both the "producer and the lender".** This requirement is outlined in the Priority Agreement ([Appendix B](#)).

Prior to releasing the advance payment cheque, the administrator should consider whether market conditions have changed in such a way that it could impact upon the producer's ability to repay the advance at the same rate as the producer received the advance (e.g. decrease in expected market price). If this situation arises, please contact the Program Manager to discuss the appropriate course of action.

### 9.7 Emergency Advances (Section 7(1) & (2) of AMPA)

AMPA has provisions for emergency advances to be made in cases in which an eligible producer has difficulty harvesting a crop because of unusual weather conditions and where there is a reasonable expectation that the producer will harvest the crop in a marketable condition. The Minister may enter into an agreement with the administrator authorizing that a portion of an advance be paid as an emergency advance. The maximum amount of the emergency advance is the lesser of \$25,000 or 50% of the advance that the administrator expects to make to the producer on the basis of the amount of the crop that is expected to be harvested.

The Minister is not required to pay the interest on an emergency advance, unless the advance guarantee with the administrator provides for its payment.

All terms and conditions in the advance guarantee agreement relating to emergency advances must be included in the repayment agreement of the producer receiving these advances.

### 9.8 Declaration

After making an advance to a producer, the administrator must forward a declaration to Agriculture and Agri-Food Canada within **two (2) weeks** of the issuance of the advance. The signed "Declaration by the Administrator" ([Appendix F-1](#)) must be completed and forwarded along with each "Producer Declaration List" ([Appendix F-2](#)). Under the declaration, the administrator is to make the statement that all of the advances listed were made in accordance with the guarantee agreement and the Act.

The Producer Declaration List must indicate the following:

- name, address and telephone number of the producer;
- if the producer is a partnership, corporation or association, the name and address of all individuals involved;
- the amount advanced to each producer for the period and the total to date;
- the date of the advance;
- type of commodity;
- cumulative total of producers and the amount advanced up-to-date under \$50,000.00;
- cumulative total of producers and the total amount advanced up- to-date over \$50,000.00.

These declarations can be sent by normal mail or by facsimile at 1-613-759-6315.

***It should be noted that the Department will not pay interest on any amounts in excess of that for which declarations have been received.***

## 9.9 Recovering Administration Costs

The administrator may charge fees to producers for administrative services, including fees for receiving and dealing with applications for advances and for administering advances. The fees may be charged only for the purpose of recovering administrative costs under the Advance Payments Program and are subject to any terms and conditions of the Advance Guarantee Agreement. Should an inquiry arise from the producers served by the administrator, the administrator should be prepared to document that the fees are only covering administrative costs. The following are options the administrator may wish to consider:

- ! Charge a flat fee for each producer.
- ! Charge a percentage of the total advance amount.
- ! Charge a flat fee for the application and charge the direct costs of other activities such as inspections, credit check, etc.

Administration fees may be deducted from the advance provided that a clause is included in the producer's agreement with the administrator. Otherwise, a separate cheque could be requested from the producer.

## 9.10 Record Keeping

The administrator is fully responsible for maintaining the operational control of the advance issuing and recovery process. Maintenance of accurate and up-to-date records are critical for ensuring effective management. It is important that the administrator keep current and complete files. These files will be reviewed during any monitoring done by the Program Manager. The following [Sections 9.11 to 9.14](#) are an outline of the files that should be kept.

## 9.11 Program File

The administrator must maintain a program file with, as a minimum, copies of the following documentation:

- ! application submitted to the Department and a copy of the Advance Payments Program agreement under the AMPA;
- ! agreements with all authorized buyers;
- ! agreement with lender;
- ! copies of monthly declarations submitted to the Department;
- ! documentation of any decisions dealing with the administration of the program;
- ! approval of each buyer;
- ! list of approved producers and total amounts advanced;
- ! all correspondence related to the program, including correspondence with the Department.

### 9.12 Lender & Reconciliation File

The administrator must maintain a lender reconciliation file with, as a minimum, copies of the following documentation:

- ! Duplicate deposit book;
- ! Monthly lender's statement;
- ! Monthly reconciliation of the lender's statement;
- ! Copies of Appendix I;
- ! Diary of actions taken to rectify any discrepancies between the lender's records and the administrator's records.

### 9.13 Producer File

An administrator must maintain a separate file for each producer that receives an advance payment. A copy of the contents in the producer's file must be submitted to the Department if the producer is declared in default and the administrator requests the Department to honour the guarantee .

These files must contain the following documents and information where applicable:

- ! application for an advance payment;
- ! application declaration (Appendix B);
- ! list of all related producers, shareholders, members or partners with the attributable percentage, person or entity entitled to the crop or a share of it as landlord, vendor, mortgagee or hypothecary creditor;
- ! Repayment Agreement between defaulted producer and the administrator (Appendix L);
- ! Priority Agreement (re: lender's security) (Appendix B);
- ! Personal Guarantee (if applicable) (Appendix B);
- ! In the case of a partnership or corporation/co-operative application, a Joint & Several Liability Agreement (Appendix B);
- ! partnership agreement, registered or unregistered together with the names of all shareholders, members or partners;
- ! the assessment of the producer's credit worthiness performed prior to the issuance of the advance and after being declared in default (credit checks, financial statements, etc.);
- ! authorization for deduction by a buyer (Appendix C);
- ! bin inspection reports or other documents establishing the volume of crop in storage (e.g. crop insurance report, etc) (Appendix G);
- ! reconciliations of the producer's repayment to each inspection;
- ! copy of the producer repayment schedule if the producer is repaying on a schedule;
- ! proof of all perils insurance coverage;
- ! documentation of the approval of the application;
- ! notification by producer of any difficulties with the repayment



- arrangements;
- ! ledger cards reflecting advances, payments, collections and collecting methods;
- ! cancelled cheques as evidence of an advance being made to the applicant;
- ! documentation of repayment: cash payments, interest payments, remittances, etc.;
- ! any sales information used to verify the timeliness of payments;
- ! analysis of sales information results;
- ! analysis of the producer's potential for default;
- ! a detailed account of action taken on individual producers in default;
- ! all follow up correspondence pertaining to legal procedures or other collection efforts including any notices filed to a trustee in the case of a bankruptcy or estate;
- ! a copy of any correspondence with judicial authorities pertaining to any potential offences under AMPA.

#### **9.14 Accounting Files**

To ensure the minimum in accounting standards, the following records should be maintained.

##### **Disbursement Journal:**

This journal will be a permanent record of all advances issued. It may be replaced by a cheque register which would include the following:

- ! cheque number and the date the cheque was issued;
- ! name of payee;
- ! amount of advance (cheque);

At month's end, a calculation to total all disbursements should be made and posted to the General Ledger Control.

##### **Receipts Journal:**

This journal will be a permanent record of all repayments. It may be replaced by a bank deposit register which would include the following:

- ! enter date of deposit and the producer's name;
- ! amount of receipt;
- ! source of receipt (ie. producer, collection agency or lawyer);

At month end, the total of all receipts should be calculated and posted to the General Ledger Control.

##### **Individual Producer Ledger Cards:**

This ledger should be continually updated to reflect the producer's outstanding balance and to prepare the producer's statement of account. A copy should be kept in the producer's file.

There should be one ledger card for each producer and it should include the following

information:

- ! producer's name, address, file number and amount advanced;
- ! amounts repaid by producer and/or buyer, or collection agency;
- ! dates cheques were issued (disbursements) or received (deposits);
- ! dates cheques cleared the AMPA bank account;
- ! dates of producer reimbursement and source of funds received (from producer and/or buyer, collection agency);

The ledger cards must balance with the general ledger control on a monthly basis.

### **General Ledger Control:**

This ledger will summarize the journals on a monthly basis and will include:

- ! totals from disbursement journal;
- ! totals from receipts journal;
- ! reconciliations with total of individual producer ledger cards on a monthly basis;
- ! reconciliations to lender statement on a monthly basis.

## **10. ENSURING REPAYMENTS**

Under AMPA, the administrator's liability can range from 1% to 15%, depending on the organization's default history. Consequently, it is in the Administrator's best interest to implement procedures that will minimize defaults in order to limit its liability. Two factors that have proven to be effective in achieving a low default rate are the evaluation of the producers' credit worthiness and the steps taken to ensure that the crop is harvested, is of marketable quality and is adequately stored by the producer. In their applications, the administrators are requested to indicate their proposed approaches related to these two items. If the approach is considered to be sufficient for limiting the Government's risk, the approach will be included in the advance guarantee agreement. If program officials determine that additional elements are needed in the approach, the administrator will be contacted to discuss the options before the agreement is drafted.

### **10.1 Credit Evaluation**

There are a number of means by which an administrator can evaluate a producer's credit worthiness. There are two elements to the evaluation; the producer's solvency (financial statements) and the producer's credit history. The following are a number of options that have been used in the past. The administrator should not feel limited to any one of the items listed, as any combination of the following or any other proposal will be considered.

The credit options for consideration are as follows:

- ! a credit check conducted by a qualified organization;
- ! a credit check conducted by the administrator through contacting the producer's known creditors, lender and suppliers of agricultural inputs;
- ! a review of the producer's financial statements;
- ! a review of the producer's credit history with the organization;
- ! ensuring that the producer's line of credit with a lender is greater than the advance and establishing a priority agreement with the institution if the lender has a lien on the crop. If the lender does not have a lien on the crop, a lien could be registered through the Personal Property Security Act. Although Section 12 of AMPA gives the administrator security on the crop, the security interest would have to be registered in order to be effective. In most cases in which the lender has security on the crop, the lender will request that the advance cheque be made payable to the "producer and the lender" so that the proceeds are applied against the line of credit.

In order to limit administration costs, the administrator may want to have a graduated evaluation depending upon the number of years a producer has been in the program and the payment history of the producer.

In all cases, the administrator is liable for the cost of the credit assessment; however, this can be charged to the producer as an administrative fee. The assessment done on a producer must be documented in the producer's file and if the advance is issued, **must warrant** the issuance of the advance. In addition, the application for an advance must provide a statement that the administrator has the authority to conduct a credit evaluation at any time while the advance is outstanding.

It should be noted that when the administrator has possession of the crop and receives all repayments directly from authorized buyers, consideration will be given to waiving the need for credit evaluation. Under such a system, there are limited opportunities for the producer to default and therefore a credit evaluation may not be warranted.

## 10.2 Crop Inspection

Although 100% inspection is preferred, some administrators will be in a situation in which this is not practical or feasible. In developing an alternative system aimed at achieving the same goals, the administrators should consider, among others, the following issues:

- ! the availability and accuracy of documentation from other sources that may assist in establishing the volume of crop a producer has in storage;
- ! the control the administrator has on a marketing system (e.g. there are limited opportunities to sell wheat in Canadian Wheat Board designated areas without the knowledge and cooperation of the Board);
- ! if the producer sells through authorized buyers;
- ! if the crop is in commercial storage;
- ! if the crop is in storage controlled by the administrator.

The following are a number of options that could be considered by administrators as the inspection approach:

- ! Where the crop is either stored on the farm or commercially stored, one inspection prior to the issuance of an advance, then additional inspections during the crop year as needed. Third party inspections (storage reports) could be used in lieu of direct inspections in the case of commercial storage.
- ! Where the crop is stored in the administrator's facilities, one inspection upon the delivery of the product to the facilities prior to the issuance of an advance. Thereafter, normal verification done by the administrator's staff to verify the condition of the crop may be sufficient.
- ! A review of inspection reports from other programs such as the market revenue or crop insurance could be used in lieu of an inspection by or on behalf of the administrator.
- ! A review of land use and provincial yield potential information to establish if the claims on a producer's application are reasonable. Inspections could be conducted on a monitoring basis after the advance. Any producers found not to be in compliance could be penalized to the extent allowable under the advance guarantee agreement and the Act.
- ! A combination of the above, based on a producer's history in the program. For example, if a producer has been in the program for three years and has been in compliance with the repayment agreement during audits in each of these years, only a minimal inspection requirement would be considered necessary.

### 10.3 Inspection Process

The advance application form should clearly indicate that the administrator has the right to inspect before the advance is issued or at any time during the crop year.

In order to ensure that the producer accepts the results of the inspection done on the crop, the following should be considered:

- ! An inspection report should be completed and filed for each inspection (see [Appendix G](#));
- ! All areas of the report should be completed. It is important to identify the estimated amount of cullage, shrinkage and spoilage in order to determine the remaining amount available for sale. Where not applicable, "N/A" should be marked in the blank;

- ! Both the producer and the inspector should sign and date the inspection form;
- ! The inspector should note in the "Comments" section any concerns with the quality and/or condition of the crop and the adequacy of the storage facility;
- ! A clear breakdown by producer should be provided, if producers are jointly storing crop.

When an inspection is conducted during the crop year, the administrator should reconcile the difference between the quantity of crop on which the advance was received and the quantity of crop on hand, as per the inspection report, with the repayments received. If it is determined that the producer has not been repaying in accordance with the repayment agreement, the action outlined in [Section 10.5](#) of this document should be taken.

***It should be noted that repayment must be from the first crop sold of the type on which the advance was issued. A producer may not specify bins as being not under the program.***

#### **10.4 Sales Information**

The administrator should verify that the repayment by both the buyer and the producer is prompt by ensuring that the remittance is made within the time frame allowed for repayment in the administrator agreement. Any delay in repayment should be investigated and corrective action taken.

The administrator should also verify that the advance is being repaid at the same rate per unit as the advance was given. Any significant discrepancies should be investigated and appropriate action taken to rectify the situation.

In order to verify the timeliness of repayments, the administrator could request the following information:

- ! For direct repayments, the producer could provide the following with all repayments: copies of sales slips, bills of lading or cash tickets, etc., which identify the date of sale, the quantity of goods sold and the amount of the sale. However, as outlined in [Section 9.4](#) of this document, AMPA does allow for some repayment without proof of sale.
- ! For sales through an authorized buyer, the buyer should be required to remit with repayments: the identification of the date of sale, the quantity of goods sold and the amount of the sale.

Where the buyer is not remitting promptly the administrator could consider cancelling the designation of the buyer.

It should be noted that the producer is ultimately responsible for the repayment of the advances including any interest charges resulting from late repayment or insufficient

repayment as per Section 3 of the producer agreement whether caused by the producer or the buyer.

### 10.5 Follow-up on Inspections and Sales Information

If the producer does not have sufficient crop in storage for the remaining balance of the advance, the administrator should:

- ! determine if a cheque has subsequently been received for a recent sale (within the time frame allowed by the administrator's agreement) which equals the discrepancy;
- ! determine if a recent sale has been made and repayment is forthcoming;
- ! send the producer a letter demanding payment within **twenty (20) days** and indicating that if payment is not received, the producer will be declared in default;
- ! if it is determined that the producer has not respected the terms of the repayment agreement, the administrator must declare the producer in default and inform the Department within the period specified in the advance payment guarantee with the administrator.

## 11. BANKING ARRANGEMENTS

Any lender that meets the definition of a lender under AMPA may provide the financing for advances. A lender means a financial institution, as defined in Section 2 of the Bank Act, or any other legal entity that the Minister of Finance may designate on the application of that entity.

If the administrator wishes to use a lender that would not fall under Section 2 of the Bank Act, the lender must make an application to the Minister of Finance.

### 11.1 Bank Accounts

In administering the program, each administrator should have a:

#### Loan Account

These accounts are used exclusively for the issuance and repayment of advances for the crop year. Two loan accounts must be opened each year: one for advances of up to \$50,000 and the second account for advances of over \$50,000. The separate account for the up to \$50,000 will facilitate the calculation of the interest payable by Agriculture and Agri-Food Canada.

#### Interest Suspense Account

Each administrator may need an interest suspense account. If the administrator does not pay the interest on the loan account under \$50,000 as it comes due, the interest charges can be applied to the suspense account. The interest cheque

from the government can then be applied to this account. This is needed as the government does not pay compound interest on the loan account under \$50,000.

#### Default Account

If there are defaults during a crop year, the outstanding advances for those producers shall be maintained in a default account. As it is a separate account, the default account will facilitate the interest calculations for the producers in default which must be paid by the administrator and charged back to the defaulted producer.

#### Trust Account

If the administrator is using holdbacks to cover its portion of the liability, it should have a trust account. The lending arrangements should clearly indicate that such an account is held in trust for the producers and may be used to cover the administrator's liability on the default of a producer.

### 11.2 Bank Agreements

Each administrator will have an agreement with its lender. This agreement must identify the interest rate to be charged, account numbers to be used and any special arrangements (ie. direct deposit) taken. The Advance Payment Agreement with the administrator and the lender states that the interest rate cannot exceed the rate specified in the agreement. This provision limits the cost to Agriculture and Agri-Food Canada for the interest free provision of AMPA and limits the liability in the case of defaults.

If there are special arrangements for making payments to the lender, such as all interest payments being directed to a central branch, Agriculture and Agri-Food Canada program officials should be made aware so the interest payments can be directed appropriately.

### 11.3 Other Methods of Financing

There are methods of financing available on the market other than the line of credit established by the administrator through a lender that may be available at a lower interest rate.

The benefits of these methods are as follows:

- ! reduction of the interest cost for Agriculture and Agri-Food Canada, thereby reducing overall program costs and/or making the availability of the program to a broader section of the industry, and;
- ! reduction of interest paid by the producer for advances over \$50,000.

The most common method used by Administrators under the program are Bankers'

Acceptance. Bankers' Acceptances are money market instruments that link those with short term cash surpluses with those with short term cash needs, such as administrators of this program. With these instruments, the financing rate obtained by the administrator is considerably better than would be offered on a line of credit. Any administrator with advances in excess of two million dollars (\$2,000,000), should have discussions with its lending institution on the use of Bankers' Acceptances.

#### **11.4 Assignment of Guarantee**

With the amendment to the Act allowing Lenders to request a tripartite agreement with the Department and the Administrator, it is unlikely that Lenders will require an Assignment of Crown Debt. However, some lenders may request an assignment of the rights and privileges under the Guarantee Agreement. The assignments are done through the Department of Supply and Services Canada and are a means of the lender ensuring that all payments from the Government under the guarantee agreement are directed to the lender. If the lender requires an assignment, this should be indicated in the application.

#### **11.5 Interest Claims and Bank Reconciliations**

##### **Interest Claims**

The Department pays directly to the lender designated by the administrator the interest costs on advances of up to \$50,000. The administrator must provide a request for payment of the interest within **fifteen (15) days** of the end of the month. Such request shall include a statement (**Appendix I**) reconciled with the lender's invoice showing the eligible interest charged on advances to producers. The administrator is also responsible for ensuring that a copy of the lender's invoice is provided within the same time frame. From these documents, the eligible payment to the lender will be determined. To ensure proper reconciliation, it is recommended that the lending institution forward their statement directly to the administrator. Once the administrator reconciles the bank statement against their records, Appendix I should be completed and faxed along with the bank statement to our office at 1-613-759-6315.

It should be noted that interest claims will not be paid until the statement of account from the lender and the statement from the administrator have been received by Agriculture and Agri-Food Canada. A cheque for payment of interest claims will be forwarded by Agriculture and Agri-Food Canada to the lender within **thirty (30) days** of receipt of the required documentation.

The interest on the portion of advances greater than \$50,000 must be paid by the administrator directly to the lender and recovered from the producer.

##### **Bank Reconciliations**

It is the administrator's responsibility to reconcile the lender's interest claim for the monthly interest charges. This reconciliation is mandatory and must respect normal accounting procedures.



If the calculations do not match the lender's calculations (e.g. charges have been made against the account for which there appears no justification, or, deposits have not been credited to the account), it is the administrator's responsibility to deal with the bank directly to rectify these problems.

The administrator should amend the Disbursement and/or Receipts Journal for any inconsistencies uncovered through the bank reconciliation process.

## 11.6 Monthly Outstanding Advances

A monthly report stating the outstanding balance of advances issued, both up to \$50,000, and over \$50,000, must be sent to Agriculture and Agri-Food Canada within **fifteen (15) calendar days** of the month end. To limit the number of statements the administrators must provide, this statement is included on the claim for interest form as outlined in [Appendix I](#).

## 12. DEFAULTS

### 12.1 Defining a Default

The administrator shall declare a producer in default and immediately inform the producer of the same, if:

- ! Any of the producer's obligations under the producer's agreement with the administrator has not been discharged within **twenty (20) days** after the day on which the administrator mails or delivers a notice to the producer stating that the producer has had, in the opinion of the administrator, adequate opportunity to discharge that obligation and requesting the producer to discharge that obligation;
- ! Any of the producer's obligations under the producer's agreement has not been discharged at the end of the crop year during which the advance was made;
- ! Any of the producer's obligations under the agreement have not been discharged on the day on which the producer files an assignment under the *Bankruptcy and Insolvency Act* or a receiving order under that Act is made against the producer; or
- ! The producer breaches, at any time, any of the producer's obligations under the agreement.

### 12.2 Default Rate of Interest

The provisions of the Advance Payments Program allow an administrator to charge a higher rate of interest on the balance of a defaulted account. The intent of these provisions is to further discourage producers from going into default. If the rate of interest charged on default is the commercial rate, the incentive for a producer to deliberately default because of the financial benefit is removed. If the administrator

chooses to have a higher rate of interest for defaults, the higher rate must be specified with the repayment agreements with the producers. As the intent is not for the administrators to make money on the default interest, the higher rate should be limited to what a producer could reasonably receive by going to a lender directly.

It should be noted that the Minister's guarantee applies to the rate of interest charged by the lender on the advanced amounts and not the default interest rate charged by the administrator to the producer. Consequently, although an administrator may charge a producer in default prime plus 2%, if a claim is submitted on the guarantee, the Department will pay the rate charged by the lender, which is usually prime minus one quarter of one percentage point.

### 12.3 Ineligibility Period

Section 21(4) of AMPA states that the advance guarantee agreement may provide that a producer continues to be ineligible for an advance for a specified period even though the producer ceases to be in default. When making its application, an administrator should indicate if it wishes to have an ineligibility period and, if so, the length of the period.

### 12.4 Administrator's Collection Activity

At the first indication that repayment from a producer may be delayed, the administrator should attempt to establish the producer's ability to repay. If the likelihood of repayment is questionable, the crop has not been sold, and the administrator has not already done so, the administrator should register its security under the Personal Property Security Act. As each province has its own legislation, the administrator will have to contact the provincial authorities to determine the steps that need to be taken.

In all cases, the administrator should be attempting to get the producer to acknowledge the debt and to sign a repayment agreement.

**The administrator must take the following collection action on a default before making an application for the Minister to honour the guarantee under the guarantee agreement:**

- ! send three letters, that have been approved by the Department to the producer, requesting payment with one direct contact by phone or personal visit prior to the final letter to discuss the situation and attempt to negotiate a repayment. The third letter should be sent "REGISTERED MAIL" and a carbon copy sent to all partners, shareholders and members (see [Appendix B](#)). Please refer to [Appendix M, N, O and P](#) for sample wording of a series of four (4) letters that could be used starting with a letter that could be sent at least **two (2) months** prior to crop year end;
- ! in the case of a bankrupt producer, the administrator must file notice with the receiver that the administrator is a creditor;

- ! in the case of an estate, the administrator must file notice with the executor of the estate that the administrator has an interest;
- ! where the administrator believes that an offence has been committed under AMPA, the appropriate judicial authority must be requested to take the necessary action in view of the offence and all necessary information must be provided to that authority.

An administrator may wish to take further collection actions on its own in order to recover delinquent accounts and to thereby reduce its liability in future years. This action could range from hiring a collection agency to obtaining judgement and a writ of seizure. The costs of such action must be charged back to the defaulted producer.

The administrator may consider obtaining judgement which involves a suit against the producer. In all cases, the administrator and the Department should be listed as joint plaintiffs.

**Judgement should only be initiated when:**

- ! the financial statements show assets but the producer is experiencing cash flow problems;
- ! the producer is likely to repay the advance but not until sometime in the future;
- ! the producer is solvent but does not agree to repayment terms with the organization.

Before taking any action with respect to a defaulting producer, it should be determined whether or not the producer is insolvent. A producer is insolvent if liabilities exceed assets and the producer will not be able to meet financial obligations in the near future. Should an administrator decide to take legal action against a producer to recover a debt, it should be noted that only those legal expenses incurred by administrators in collection attempts of advances are eligible for payment by the Department and eventual charging back to the producer. Legal fees must be approved by the Minister under the provision of Section 22 (c) of AMPA. The acceptable hourly rates are established based on the number of years a lawyer has been in practice and can change without notice. Please contact the Program Manager for actual rates as required.

## **12.5 Producer's Liability**

Once in default, the producer becomes liable to the administrator for:

- 1) the amount of the advance outstanding;
- 2) the interest on the outstanding advance from the date of the original advance at the default rate of interest; and
- 3) costs incurred by the administrator to recover the amounts mentioned in 1) and 2).

It is important to note that in element 2, the interest is charged back to the date of the advance. This means that all producers declared in default lose the interest free benefit of the program.

The producer remains in a default position until all debts under the Advance Payments Program are paid in full, pursuant to Subparagraph 21(3) of the Act.

The producer should be made aware that crop spoilage, shrinkage or a bankrupt buyer does not release the producer from his or her obligation to repay the advance.

## 12.6 Administrator's Liability

The administrator's liability is from 1% to 15% and is calculated based on the administrator's default history and success with repayment agreements on the default accounts. A full description of the formula used to establish the administrator's liability and a sample calculation is provided in [Appendix A-4](#).

### 12.6.1 Payment of Administrator's Liability

Each administrator must reimburse its liability (principal and interest) within **five (5) working days** following the day the administrator declares a producer in default.

#### Principal

- 1) The administrator must deposit an amount equal to its liability percentage, as outlined in the advance guarantee agreement, of the outstanding defaulted principal amount in the default loan account, as discussed in [Section 11.1](#);
- 2) Proof of payment must be forwarded to the Department along with a breakdown, by producer, of the amount and the date paid.

#### Interest

- 1) As Agriculture and Agri-Food Canada has already paid the interest on the first \$50,000 of each advance, the administrator must pay its liability portion of the interest to the "Receiver General for Canada" and forward the cheque to the Program Manager;
- 2) For the portion of the advance over \$50,000, the administrator's portion of the liability for the interest incurred on the advance must be forwarded to the lender for deposit into the default account, if the interest has not been paid on an ongoing basis.

### 12.6.2 Other Liability

The administrator is also liable to pay to the Minister for any additional interest resulting from:

- ! its failure to reimburse the loan on the next working day following the day

- on which the administrator receives payment, in whole or in part, of those advances;
- ! its failure to reimburse its liability within **five (5) working days** following the day the organization learns of a producer defaulting.

## 12.7 Notice of Default and Monthly Default Reports

### Notice of Default

Within **fifteen (15) days** of declaring a producer in default, the administrator must complete and submit to Agriculture and Agri-Food Canada the "Original Notice of Default" form (see [Appendix J](#)). This form notifies the Department of the default and assists in identifying the producer's capability to repay the loan. The administrator must also document all of the following actions as they will be required should a request to honour the guarantee be made:

- ! collection efforts;
- ! calls to producers and lawyers
- ! copies of letters sent to producers;
- ! details of any other action taken;
- ! farm visits and the status of the crop.

### Default Report

When an administrator has defaults for which Agriculture and Agri-Food Canada has not yet honoured the guarantee, the administrator must complete a "Monthly Default Report" (see [Appendix K](#)) and submit it to the Department on a monthly basis. This reports the status of each defaulting producer, per crop year, per commodity, outlining collection attempts, repayments, if any, and other required information. These monthly reports must be received by Agriculture and Agri-Food Canada within **fifteen (15) days** of the month end.

## 12.8 Repayment Agreement with the Administrator

The administrator may enter into a repayment agreement with a defaulted producer but all such agreements must be approved by the Department within the established guidelines.

As outlined in [Appendix A-4](#), when calculating the administrator's liability, a reduction in the liability is given where an administrator has established a valid repayment agreement with a defaulted producer. Consequently, it is in the administrator's best interest to establish repayment agreements with the defaulted producers. However, should the producer default on the repayment agreement the default would be considered in the liability calculation in future years.

**The repayment agreement ([Appendix L](#)) should include the following:**

- ! date of the original agreement between the producer and the administrator;
- ! crop year and the crop covered;

- ! original advance amount and the outstanding balance due;
- ! acknowledgement of the debt by the producer;
- ! agreement to default judgement under provincial legislation where applicable;
- ! confirmation that payments of post crop year interest on the bank loan will be paid by the producer in default on a monthly basis;
- ! outline of the method of repayment whether, by monthly payments or deductions from new crop year, until principal, interest and costs are fully repaid;
- ! the administrator should obtain additional security for the value of the outstanding amount, especially for larger defaults. This can be released upon payment in full;
- ! confirmation that costs for collection attempts, legal and otherwise, will be charged to the producer in default.

### **Compromise Settlements**

All offers of settlement that do not fully satisfy the debt, whether made by an individual or through the Farm Debt Mediation Board, must be approved by the Minister of Justice before acceptance. If an Administrator does not request such approval through the Program Manager, it could be held liable for the difference between the settlement offer and the full debt.

## **12.9 Payments Received from Defaulted Producers**

**After default, payments received by administrators on behalf of defaulted producers will be applied in the following manner:**

- ! all funds will be applied first to reduce all outstanding interest with the lender on the advance, and secondly to all collection costs including legal costs.
- ! any additional funds will be used to reimburse the outstanding principal of the advance.
- ! interest from the date of default back to the date of issuance may be the last to be retired.

## **12.10 Claim for Transfer of Debt**

Once the organization has complied with the collection attempts outlined in [Section 12.4](#) of this document, a letter requesting the Minister to honour the guarantee under the Advance Payments Program may be submitted to the Department along with the following:

- ! an updated "Default Report";
- ! a copy of the producer's file (duly completed as per the list under [Section 9.13](#) of this document);
- ! an updated financial history and collection activity report from the collection agency (if applicable).

If the administrator has not made a request for payment within 10 months of the end of the crop year, the lender may make a request for payment directly to the Minister for the principal and interest outstanding.

## **13. HONOURING THE GUARANTEE**

### **13.1 Applicable Conditions**

The Department of Agriculture and Agri-Food Canada will consider honouring its guarantee after it receives the defaulted producer's completed file (as specified under [Section 9.13](#) of this document) from the administrator together with the claim for transfer of debt. The completeness of the documentation will determine how fast the guarantee is honoured.

**Before honouring its guarantee, the Department will determine if:**

- ! the administrator has met its requirements as specified in its agreement with the Department and the Administrator's Guidelines;
- ! the administrator has completed, at a minimum, the collection action outlined in [Section 12.4](#) of this document.

### **13.2 Payment of Principal and Interest**

To honour the guarantee, the Department sends directly to the lender or to the administrator, as specified in the agreement, the amount for which the Minister is liable under the Advance Guarantee Agreement. In most cases, the amount will be directed to the lender, unless the administrator has requested otherwise, at the time the agreement was entered into.

The administrator will receive notice from the Department that payment of principal is being processed. Once the cheque is deposited against the defaulted producer's account, the administrator must prepare an invoice (reconciled with the lender) for interest reimbursement. The interest invoice must include the interest incurred up to the date that the principal cheque is deposited in the account and a statement showing the interest which the Department paid on the outstanding balance during the crop year. This must be forwarded to the Department ([Appendix Q](#)) for payment of interest.

### **13.3 Collection of the Debt by Agriculture and Agri-Food Canada**

Once the claim to honour a guarantee has been approved by the Department, the Program Manager will forward the producer's file to Corporate Services Branch within Agriculture and Agri-Food Canada which will undertake any collection action required to collect the debt owing to the Department.

The Department will attempt to collect the amount outstanding under the Advance Payments Program through such means as the use of collection agencies, recovery from amount owed to the producer from other governmental programs such as NISA and any other safety net program, and any other methods deemed appropriate.

***It should be noted that the defaulted producer will be charged interest by the Department at the monthly rate set by the Bank of Canada.***

When possible, the administrator should assist the Department in the collection of the amount outstanding after the Department honours the guarantee. Any amounts collected/received by the administrators on behalf of defaulted producers should be made payable to the "Receiver General for Canada" and forwarded to the Department, within ***five (5) working days*** of reception.



ADVANCE PAYMENTS PROGRAM  
**APPLICATION PROCESS**

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**NOTE: No preprinted application form is available. Please present the following information in a letter format. Failure to provide information on all the areas outlined below may delay the evaluation of your application.**

When applying to the Advance Payments Program, administrators must be capable of properly administering the program as outlined in the Administration Guidelines and the Act. For complete details of the responsibilities of an administrator, please consult [Section 6](#) (Obligation of Administrators) of the Administration Guidelines.

The following areas must be detailed in your application :

ORGANIZATION INFORMATION

Part of the assessment of your application will be an evaluation of the organization's ability to administer the program. Therefore, please include details on:

- ! name, address, phone and facsimile numbers of the organization;
- ! name of the person in your organization that will be administering the Advance Payments Program (and a contact person, if different from the Administrator) and this person's position;
- ! Description of the management structure, including name and title of organization's Officers identifying those Officers with signing authority for the Advance Payments Program;
- ! list of staff members with a description of their duties relative to the program and their reporting relationships;
- ! explanation of the organization's proposed process of decision making or application approval for this program;
- ! description of proposed method to perform assessment of producer's credit worthiness prior to the issuance of advances;
- ! description of steps that will be taken to ensure that the crop is of marketable quality and adequately stored;
- ! determination of repayment requirements and procedures for repayment of advances that your organization proposes to use (direct from buyer, producer, combination of both, buyer agreements);
- ! identification of crop storage (organization's facility, producer's farm, other);
- ! narrative of any other steps considered necessary for the proper administration of the Advance Payments Program.

## BACKGROUND INFORMATION

Information must be provided concerning the organization such as:

- ! when was the organization formed;
- ! the year the organization first participated in the Advance Payments for Crops Act, if applicable; or the AMPA-APP ;
- ! identify the geographical territory covered by the organization;
- ! describe the structure of your organization (cooperative, marketing board, etc.);
- ! describe its goals and objectives (preprinted documents are acceptable);
- ! describe how the administrator operates relative to the production and marketing of crops for which the application pertains (for instance, negotiating or setting of selling prices);
- ! the organization's audited financial statements for the last 3 years. If past statements have been provided with previous applications, only the latest statement need be provided;

## EXPECTED PROGRAM BENEFITS

- ! the number of producers who are members of the organization, the number of members expected to participate in the Advance Payments Program this crop year and the estimated total number of producers (members or non members) in the area represented by the organization;
- ! the estimated amount of production the members are expected to produce in proportion to the total expected production of each crop for the entire region;
- ! describe how participation in the Advance Payments Program will improve the marketing options for producers over what would occur without the Advance Payments Program.

## FINANCIAL INFORMATION

Please provide the following information:

- ! the name, address, phone and facsimile numbers and contact person of the lender from which financing is to be obtained;
- ! expected interest rate with the loan guarantee (prime, less than prime or money market rate);
- ! the interest rate the administrator wishes to charge on default accounts;
- ! if the organization wants to establish an ineligibility period for producers who have gone into default, and if so, the time period; and
- ! if the administrator does not want the default payments to go directly to its bank, an explanation as to why.

## ADVANCE REQUEST

The administrator must estimate an average farm gate selling price for the entire crop year. It should illustrate that this selling price is reasonable considering the producers' markets. The advance rate must not exceed the maximum allowable amount per unit, defined in the Act as 50% of the average farm gate selling price. Please outline the following:

- ! name of crop, the varieties and grades, if applicable;
- ! the beginning date and the end date of the crop year for which this application pertains (not to exceed 12 months);
- ! anticipated volume of production and sales;
- ! the requested advance rate for each crop;
- ! the expected price to be received by producers for each crop;
- ! any substantiation of prices by providing documentation (ie. industry journals, commodity or market reports, contacts) would be helpful;
- ! historical (past 3 years) average prices paid to producers, if available;
- ! total guarantee requested, to make advance payments, in dollars;
- ! the organization should provide the rationale for any plan to limit advances per crop and per producer to less than the maximum of \$250,000 under the program;
- ! explain how the organization will cover its portion of the liability for any default amount.

## DECLARATION

Please add statements as follows, to a letter prepared on behalf of the organization, signed by the President or Secretary-Manager (or equivalent), confirming that:

- I) the organization can sue and be sued in its own name;
- ii) the organization is in compliance with federal, provincial and municipal environmental requirements;
- iii) there are no conflict of interest situations either with producers or within the organization relative to the Advance Payments Program;
- iv) it is understood an audit of the organization may be undertaken at any reasonable time for current or past crop years by, or on behalf of, Agriculture & Agri-Food Canada;
- v) the information provided is true and accurate based on knowledge at the time of the application.

### **Related Producers**

This section describes who are considered to be related producers for the purpose of determining the eligibility for an advance and for the interest free portion of the program. The attribution of an advance is defined in **Section 3(1) and (2)** of AMPA.

Producers are related for the purposes of AMPA, if they do not deal with each other at arms length.

In the absence of proof to the contrary, producers are presumed not to deal with each other at arms length if they are related as follows:

- a) individuals who are cohabiting or are connected by
  - i) blood relationship, in the sense that one is the child or other descendant of the other or one is the brother or sister of the other,
  - ii) marriage, in the sense that one is married to the other or to a person who is connected with the other by blood relationship, or
  - iii) adoption, in the sense that one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected with the other by blood relationship, otherwise than as a brother or sister;
- b) a corporation and a person who
  - i) holds shares in the corporation,
  - ii) is a member of a group of persons that holds shares in the corporation, or
  - iii) is related, as described elsewhere in this section, to a person who hold shares in the corporation or to the member of the group;
- c) any two corporations if
  - i) one person or group of persons holds shares in both corporations,
  - ii) a person who holds shares in one of the corporations is related, as described elsewhere in this subsection, to a person who holds shares in the other corporation,
  - iii) a person who holds shares in one of the corporations is related, as described elsewhere in this subsection, to a member of a group of persons that hold shares in the other corporation, or
  - iv) they are both related, as described in paragraph (b) or subparagraph (i), (ii) or (iii), to a third corporation;
- d) members of the same groups of persons; or
- e) persons related, as described in paragraphs (a) to (c), to members of the same groups of persons.

"Groups of persons" means a producer that is a partnership, cooperative, or other association of persons.

**Interpretation of Sub-Sections 9 (2) & 20 (2) of AMPA**

The intent of the attribution rules in AMPA is to limit the benefit, direct or indirect, of the interest-free portion of advances to \$50,000 per producer and to limit the overall maximum amount of advances to \$250,000 per producer whether obtained as an individual or indirectly through participation in a partnership, corporation, cooperative, or other association of persons. This intent, when combined with the provision in section 3 that producers are related only if they do not deal with each other at arms length, is met if the \$50,000 and \$250,000 limits are satisfied for each individual producer.

Accordingly, attribution will apply in accordance with the rules set out in subsection 9(2) from partnerships, corporations, cooperatives, and other groups of persons to the partners, shareholders or members as the case may be. In order to ensure that the \$50,000 and \$250,000 limits are not exceeded, adjustments may have to be made to the interest-free portion of advances already given and the portion of an advance over \$250,000 will have to be repaid immediately.

Therefore, the process, which is independent of the order of application, would be as follows:

- C in calculating an individual producer's entitlement to an advance (maximum \$250K), any amounts advanced to related producers must be considered (attributed) in determining how much additional advance the individual producer can get and still remain within the limits of the program.
- C in calculating the entitlement to an advance for a partnership, corporation, or cooperative (maximum \$250K), the amount of remaining eligibility of each of the partners, shareholders, or members must be considered. The amount of the advance would then be the amount that, when attributed to the individuals, would not put any one of the partners, shareholders, or members over the \$250K limit.
- C in order to ensure equitable sharing of program benefits, it is recommended that, in calculating the interest-free benefit, the partnership, corporation, or cooperative be calculated first giving the maximum interest-free benefit warranted (unless all partners, shareholders, or members agreed to have this calculated in the reverse order). The amounts of the interest-free benefits that are attributable to each partner, shareholder, or member would determine how much additional interest-free advance each individual could receive within the \$50K limit. The administrator may, however, calculate this benefit in any other order that satisfies the requirements of the Act.

Amounts attributed from a related producer to the individual must be according to the share of the profits, number of shares held, etc. The amount cannot arbitrarily be set to other values.

Where individuals apply for an advance prior to the related producer, some situations may arise where part of the advance that an individual producer has already received will become interest bearing due to the advance that the related producer has received. Producers should be made aware of this and advised to ensure that the related producer applies first to avoid such situations.

In this approach it is important to focus on keeping the advance amounts within the \$250,000 limit and not focus on the interest-free portion until the calculation is made for the amount of interest benefit the Minister must pay on behalf of each producer.

The following are some examples of how this would work. The ordering of the advances are in the order listed.

**Example 1**

Producer A - \$50,000 advance

Producer B - \$50,000 advance

Partnership AB - requests \$50,000 advance

Total advance = \$150,000

Since A & B are eligible for another \$200,000 of an advance, AB can get the \$50,000 advance requested.

Interest-free

- The partnership is calculated first and is eligible for \$50,000 interest-free.
- \$25,000 is attributed to each of A & B.
- A & B can get interest-free benefits on \$25,000 of their \$50,000 advances.
- The other \$25,000 will become interest bearing from the date AB is issued the advance.

Total Interest-free - \$100,000 (equivalent to \$50,000 each)

**Example 2**

Producer A - \$125,000 advance

Producer B - \$125,000 advance

Partnership AB - eligible for \$250,000 as A & B have remaining \$ 125,000 each from above

Total advance = \$500,000

Amount must not exceed the individuals' interest-free limit

- (calculation partnership first) - Partnership eligible for \$50,000 - \$25,000 being attributed each of A & B.
- As they are being attributed \$25,000 from AB interest-free.
- A & B are each entitled to \$25,000 interest-free, the rest being interest bearing from the date AB received the advance.

Total Interest-free = \$100,000 (equivalent to \$50,000 each)

### **Example 3**

Producer A - \$40,000 advance

Producer B - \$30,000 advance

Producer C - \$20,000 advance

(All equal shareholders of corporation ABC)

Corporation ABC - applies for \$50,000

Remaining eligibility:

Producer A - \$210,000

Producer B - \$220,000

Producer C - \$230,000

Therefore, Corporation ABC - can get the \$50,000

Total Advance - \$140,000

- Interest-free - A, B & C can initially get their advance interest-free.
- ABC, the \$50,000 advance is attributed 1/3 each (\$16,666) to A,B & C.

When the interest-free calculation is done

- ABC - \$50,000

- A - \$40,000 + \$16,666 = \$56,666

- B - \$30,000 + \$16,666 = \$46,666

- C - \$20,000 + \$16,666 = \$36,666

for A \$6,666 of the original advance becomes interest bearing

Total Interest-free = \$133,333.

**Example 4**

- Corporation ABC advanced \$50,000
- Shareholder A, B & C are attributed 1/3 each = \$16,666
- A, B & C can each get an advance up to \$233,333 individual operations - being the remaining amount left within the \$250,000 limit
- For ABC the \$50,000 will be interest-free
- A, B & C will be eligible for \$33,333 interest-free for their individual operation as the remaining entitlement to stay within the \$50,000 limit
- Total Interest-free = \$150,000 (equivalent to \$50,000 each)

**Example 5**

Producer A - \$200,000

Producer B - \$50,000

Producer AB = applies for \$250,000, however, AB is only entitled to an advance of \$100,000 since this would result in \$50,000 being attributed back to each of A & B and would put A at the \$250,000 maximum

Total Advance = \$350,000

Interest-free

- Interest-free - AB would be entitled to \$50,000, \$25,000 being attributed to each of A & B
- Individually both A & B would be eligible for an additional \$25,000 Interest-free each



### Administrator's Liability

The administrator's liability is calculated as follows:

- (a) *In the 2000-2001 crop year*, the administrator's liability percentage will be the average default rate for the previous two crop years, as determined by a date specified in the advance guarantee agreement which does not exceed nine months following the end of the crop year, minus credit for default repayment agreements, divided by the total dollar value of all advances issued in the same crop years.
- (b) *For the 1999-2000 crop year*, the formula in (a) will be used but for only one completed crop year being the 1997-98 crop year. In addition, any administrator that will experience an increase in liability from the previous year as a result of applying the formula will be limited to 50% of the increase for the 1999-2000 crop year since only one year will be taken into consideration.
- (c) For the purpose of calculating the administrator's liability, a percentage of the outstanding repayment agreements that are still compliant will be credited. The calculation is as follows:

$$\frac{(\text{amount repaid under repayment agreements} + \text{balance of compliant agreements})}{(\text{total amount from repayment agreements entered into})} \times 100$$

The Minister's liability percentage will be determined by subtracting the administrator's liability from 100.

#### Example:

***For the 2000-2001 crop year***, the defaults and repayment agreements from the 1997-1998 and 1998-1999 crop years are taken into consideration.

The crop year of the administrator is from August 1 to July 31. The date stated in the 1997-1998 and the 1998-1999 crop year agreements for establishing the defaults and repayments was April 30.

#### Total amount advanced by the administrator:

! \$400,000 (A) in 1997-1998

! \$500,000 (A) in 1998-1999

**From the 1997-1998 crop year**, on April 30, 1999 the administrator had:

- ! \$20,000 (B) of outstanding principal,
- ! \$5,000 (C) entered into repayment agreements
- ! The \$5,000 repayment agreements were divided as follow:
  - S Payments of \$1,000 (D) were received
  - S \$2,000 (E) was still compliant under repayment agreements
  - S \$2,000 went back in default.

**From the 1998-1999 crop year**, on April 30, 2000 the administrator had:

- ! \$12,000 (B) of outstanding principal,
- ! \$10,000 (C) entered into repayment agreements
- ! The \$10,000 repayment agreements were divided as follow:
  - S Payments of \$2,000 (D) were received
  - S \$5,000 (E) was still compliant under repayment agreements
  - S \$3,000 went back into default.

**Credit calculation:**

Before making the liability calculation, the credit calculation must be completed as follow:

**Credit formula:**

**Part 1:**

$$\frac{(\text{amount repaid under repayment agreements(D)} + \text{balance of compliant agreements(E)})}{(\text{total amount from repayment agreements entered into (C)})} \times 100$$

$$\frac{(\$1,000 + \$2,000 (D)) + (\$2,000 + \$5,000 (E))}{(\$5,000 + \$10,000 (C))} \times 100 =$$

**66.66% (F) = Percentage of compliant agreements credited**

**Part 2:**

Percentage obtained in Part 1 (F) X Balance of compliant agreements =

$$66.66\% \times \$7,000 =$$

**\$4,666.00 (G) = Amount deducted from outstanding default**

**Liability calculation:**

**Administrator's Liability =**

$$\frac{(1997-1998 + 1998-1999 \text{ default balances (B)}) - (\text{amount from Credit calculation (G)})}{(1997-1998 + 1998-1999 \text{ total advances (A)})} =$$

$$\frac{(\$12,000 + \$20,000 \text{ (B)}) - (\$4,666.00 \text{ (G)})}{(\$400,000 + \$500,000 \text{ (A)})} =$$

**0.03 to 3% = Administrators liability for the 2000-2001 crop year.**

**First Letter Prior to Default**

Should be sent at least 45-60 days prior to crop year end

This is to remind you that you have an advance outstanding in the amount of \$ \_\_\_\_\_ under the Advance Payments Program and that you agreed to pay this on or before (date specified in the agreement).

We are looking forward to receiving your payment by the above noted date. Cheques should be made payable to (name of Administrator) and forwarded in the enclosed envelope. Please be advised that if you do not repay the advance by (date) you will be responsible for the interest on the outstanding balance of the advance from the date of the original advance. As well, (you will not be eligible for a future advance until this balance is cleared.) or (you will be ineligible for an advance for a period of \_\_\_\_.)

If you have any further questions, please call me at \_\_\_\_\_.

Thank you in advance for your cooperation.

Yours truly,

**Second Default Letter**

Should be sent no later than 15 days after crop year end

You obtained an advance on your (crop year) crop which was to be repaid by \_\_\_\_\_ (end of crop year). As you have not met this commitment, you are now in default under the Advance Payments Program.

As mentioned in my last letter, you are now required to repay your advance plus the interest on your outstanding balance from the day you received the advance. Currently you owe \$ \_\_\_\_\_ in principal plus interest to date in the amount of \$ \_\_\_\_\_.

Please contact me as soon as possible to discuss arrangements for repaying this outstanding advance. As you have been advised (you will be unable to obtain any future advances until this outstanding advance and related interest is completely repaid) or (you will remain ineligible after the advance is repaid for a period of \_\_\_\_). I must also advise you that under the Act you are required to pay all collection costs related to this defaulted advance, including any necessary legal costs.

I strongly encourage you to contact me directly at the above address or by phone at \_\_\_\_\_ within the *next business day* of receiving this letter.

Yours truly,

**Third Default Letter**

Should be sent no later than 20 days after the letter number two

**“REGISTERED MAIL”**

This is further to my first letter of (date) reminding you of your outstanding advance and my second letter of (date) in which I advised you that you are in default under the Advance Payments Program for \$ \_\_\_\_\_ plus interest accruing back to the date of the original advance.

In my last letter I requested that you contact me to arrange for repayment. To date you have not responded.

Please be advised that if a suitable repayment arrangement cannot be reached by (date 2-3 weeks), the (PO name) will have no choice but to request Agriculture and Agri-Food Canada to honour its guarantee. Once the guarantee has been honoured, your defaulted advance will become a debt owed to the Crown and subject to the various collection methods used by the federal government to recover taxpayer money. These methods may include withholding of future federal government payments, placing the debt with a private collection agency or taking legal action.

It is clearly to your advantage to establish an acceptable repayment agreement now while the (PO name) is able to mediate on your behalf.

We look forward to hearing from you prior to the ( above date).

Yours sincerely,

**cc: All partners, shareholders and members** who have signed the Joint and Several Guarantee.

**Fourth Default Letter**

Should be sent no later than 30 days after letter number three

As a follow up to my earlier letters of (date),(date) and (date), this is to inform you that we have requested Agriculture and Agri-Food Canada to honour the guarantee of your advance under the Advance Payments Program. As a result, your outstanding advance is now a debt owed to the Crown.

You can expect to be contacted in the near future by a representative of the federal government regarding the debt. If you are unable to make an acceptable arrangement to repay the debt, further action by the government may involve, among other methods, the use of collection agencies.

Under the Act, you must now repay the advance plus all the interest on your outstanding advance since the day you received the advance as well as all costs incurred in trying to collect the advance including legal costs. As an example, the cost of using a collection agency could increase your debt to the Crown by 20-25%. Also, any federal payments to you could be withheld and applied against your debt.

We regret that you were unable to make arrangements for the repayment of this outstanding advance with us. As stated in the Advance Payments Program you are ineligible for any future advance payments until this debt is completely repaid.

If we can be of any further assistance to you in this matter please feel free to contact us.

Yours truly,

**Advance Payments Program Staff**

Clavel, Wendy, Financial Clerk	(613)759-6298
Crevier, Martin, Program Officer	(613)759-6258
Jerome, Jaclyn, Finance Manager	(613)759-6299
Lloyd, Rosser, APP Program Manager	(613)759-6303
MacDonald, Jodi, Program Officer	(613)759-6304
Mess, Andrew, Program Officer	(613)759-6292
Smith, Robert, CWB Liaison	(613)759-6296