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# **FIMCLA Guidelines**

## **- Introduction -**

### **FIMCLA Guidelines - Introduction**

The **Farm Improvement and Marketing Cooperatives Loans Act (FIMCLA)** is a federal government program designed to increase the availability of loans for the purpose of the improvement and development of farms and the processing, distribution or marketing of farm products by cooperative associations. Under the Act, the Minister is liable to pay to the lender 95% of a loss sustained as a result of a loan made, provided that the requirements of the Act and the Regulations have been met.

The Farm Improvement and Marketing Cooperatives Loans Act Regulations state the procedures to be followed and conditions to be met in the granting and administering of loans as well as submission and substantiation of claims for loss for loans issued under FIMCLA.

The Act and the Regulations collectively are generally referred to as the Farm Improvement and Marketing Cooperative Loans Program. These guidelines have been designed to assist lenders in the interpretation of the Act and the Regulations, and in the delivery of this program. If discrepancy arises over the meaning or interpretation of items under these guidelines, the legal interpretation of the Act and Regulations will take precedence.

These guidelines have been divided into three sections; Section A outlines the eligibility requirements, Section B refers to the administration of a loan including the registration process for loans, while Section C details the required action when a loss is incurred.

Lenders are expected to take the same care in making FIMCLA loans as would be taken in conducting ordinary business. The program has been designed to enable lenders to incorporate its administration into their normal routine of business while providing government guaranteed loans to farmers and farm cooperatives.

The information provided relating to the Farm Improvement and Marketing Cooperatives Loans Act is collected for Agriculture and Agri-Food Canada under the authority of the Farm Improvement and Marketing Cooperatives Loans 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 AGR/P-PU-165. The Collection Registration Number is AGR/POL-465-02960. Other information may be accessible or protected as required under the provisions of the Access to Information Act.

Where loan officers are unsure whether a given situation is covered by the Act, Regulations, or Guidelines, they should seek clarification and direction from their head office, regional office or their central, as the case may be. If, after reading this guide, you need more information, please contact the FIMCLA Administration. Program Officers are available to provide advance rulings on the eligibility of a loan applicant upon receipt of a letter by facsimile or mail describing the circumstances.

All correspondence concerning FIMCLA should be mailed to:

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

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# FIMCLA Guidelines

## - Section A -

### ASSESSING ELIGIBILITY AND REGISTRATION OF FARM IMPROVEMENT AND MARKETING COOPERATIVE LOANS

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

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#### 1. ELIGIBILITY (Act 2, 4[3][b],6[2][b])

##### 1.1 General Requirements

In order to qualify for a Farm Improvement Loan, an applicant must meet the definition of farmer. The individual must be performing a farming activity. An applicant must have already established the farming operation and be actively engaged in farming for the purpose of earning profit in Canada at the time the loan is requested. To be actively engaged in farming, the applicant must either own or have a leasehold interest in the farm land where he/she/it is currently performing a farming activity.

Loans are limited to the maintenance of, or the improvements to, an already existing farming enterprise. Assets of a farming operation, financed with a Farm Improvement Loan, must be used in that operation. Part-time farmers do qualify. Beginning farmers do not qualify. FIMCLA loans are not for the financing of start-up operations. Business enterprises engaged in financing (holding companies) are not eligible, neither are applicants with the intent to farm. A landed immigrant/non-Canadian citizen may be considered for a FIMCLA if the eligibility requirements are met.

**Advance Rulings:** Individual circumstances may warrant an advance ruling. The FIMCLA's Program Officers are available to respond upon receipt of a written enquiry detailing the particulars of a loan application. The advance ruling is a written confirmation that the Administration gives the client concerning the results of a proposed transaction. Time can be saved if clients fax their requests in to the Administration. Refer to Appendix - part III for further information on Advance Rulings.

## 1.2 **Farmer/Farming:**

“**Farmer**” is defined under FIMCLA as an “individual, partnership, corporation or cooperative association that is engaged in farming in Canada”.

“**Farming**” is defined under FIMCLA as “the production of field grown crops, cultivated, uncultivated and horticultural crops; the raising of livestock, poultry and fur-bearing animals; the production of eggs, milk, honey, maple syrup, tobacco, fibre and wood from wood lots.”

An applicant is no longer considered to be working a start-up farm when the lender and the borrower can demonstrate that the farm is established. One way of demonstrating that one is established is to show farming income earned in Canada either on an income tax return or an interim financial statement at the time the loan is being requested. The applicant should already possess the land, buildings and equipment required to perform the activity of farming and merely request the loan for the maintenance or improvement of the farming operation. However, each case is considered on an individual basis.

### **NATURE OF INTEREST OF THE BORROWER IN FARMING OPERATION**

#### **Owner**

In the case of a loan in respect of an item that forms part of, or is affixed to, real or immovable property, the borrower shall own the real or immovable property. In the case of a loan in respect of an item that does not form part of, or is not affixed to, real or immovable property, the borrower shall own the item outright or have purchased it under a conditional sales contract.

#### **Tenant**

A loan may be financed under FIMCLA to an eligible farmer who leases the land. If the loan purpose is for items that are affixed to the property being leased, the farmer must have a leasehold interest in the property that extends at least two years beyond the repayment term of the loan.

**NOTE: A number of scenarios under which an applicant may or may not be eligible are outlined in the Appendix -part II.**

In all cases, each person who wishes to obtain a loan under the program must qualify on their own and must meet the criteria of “farmer” and “farming”.

### 1.3 **Marketing Cooperatives** (Act, Section 6)

- 1.3.1 **“Farm Products Marketing Cooperative”** is defined under FIMCLA as a “cooperative association” incorporated under the laws of Canada or a province for the purpose of processing, distributing or marketing on a cooperative basis, the products of farming, of which, each member or shareholder is a farmer.

**Shareholders** or members of the cooperative, as individual farmers/farm partners are not prevented from applying for a FIMCLA if they qualify on **separate** farming operations, and may be eligible for guaranteed loans of up to \$250,000 for these distinct operations. The \$250,000 maximum per individual could be comprised of a combination of individual or joint (partnership) loans.

**For maximum loan amount for loans to Cooperatives, refer to Subsection 2.6 of these Guidelines.**

- 1.3.2 **Section 6 of the Act** specifies the requirements for obtaining a loan guarantee and stipulates the exact documentation that must be submitted with a cooperative loan application. The application review process will not commence until all of this documentation has been received by the Administration. Once the documents are in hand, we anticipate a 6 week time frame to process the application. Failure to provide information on any area outlined in the application procedures may delay the evaluation of the application.
- 1.3.3 **The following documentation must be submitted by the lender to the Administration:**
- a) The applicant (Cooperative) must provide a written request for a FIMCLA guarantee to the Administration setting out the intent of the project and a letter from the lender supporting the request. The lender’s credit report must be included with the request.
  - b) Either the applicant or the lender must provide a copy of the draft lending agreement showing details of the total lending package including repayment terms, other financial assistance being sought, and details regarding loan security.
  - c) The applicant must provide a letter from its legal counsel stating that the Cooperative is incorporated under the laws of Canada or of a province for the purpose of processing, distributing or marketing its members’ commodities. The letter must indicate that each member of the Cooperative is an established farmer and therefore would be eligible for a loan under FIMCLA as an individual farmer.
  - d) Copies of all appraisals used to substantiate the value of the security or the estimated cost of invoices for the new project, must be submitted.

- e) The applicant must provide copies of past marketing plans and financial statements for the last 3 years. Actual and medium term (next three years) business plans and financial forecasts must also be provided.
- f) Included in the lending agreement, the Cooperative must agree to submit yearly operating/financial reports or as may be requested by the Administration.
- g) In addition to the agreement on loan payments, the Cooperative Association and the lender must agree that 25% of excess revenue, over annual costs, must be applied toward the guaranteed loan or held in reserve, in order to increase the equity in the Cooperative Association.

**NOTE:** The lender must maintain a complete, up to date progress report of the Marketing Cooperative which includes yearly financial statements and relevant correspondence pertaining to the loan in the event of a Claim for Loss.

#### 1.3.4 **Shareholders:**

The shareholder members equity in the Cooperative must always represent a minimum of 20% of the cooperative's total assets. Shareholder equity is calculated by assessing the current value of assets and subtracting all encumbrances against those assets and all government assistance obtained to purchase the same. Shareholder loans may be considered as equity if they are subordinate to the Cooperative's other creditors. Details should be provided with the Cooperative's financial statement.

Each shareholder member must sign a contract with the Cooperative to sell his/her crop to the Cooperative. The Cooperative must provide a sample copy of an agreement. The Cooperative must also outline its pricing policies and explain how members are paid and dividends issued.

- 1.3.5 The project will be assessed as to its viability, regional impact and market accessibility. The Administration will confirm its willingness to offer a guarantee subject to the following conditions:

- The Cooperative must demonstrate that it possesses the managerial, technical, financial and marketing expertise required to manage effectively. Resumes of key personnel, either employed by the Cooperative or hired on a contract basis, may satisfy this requirement.
- The Cooperative must prove that it is covered by adequate business interruption insurance and that the asset being purchased under FIMCLA is also insured.
- Receipt of the Loan Registration Request and Fee Submission (Schedule 1) in accordance with Sections 16 and 17 of the Regulations.

- Provision of annual reports to the Administration and a lender report providing details of the annual progress.

## 2. **MAXIMUM LOAN AMOUNT** (Act 4[1][i], 4[3][c], 5, 6[2][c], 6[3] & 9, Regs. 6 )

### 2.1 **Individual, partnership, corporation or cooperative:**

The amount of the loan is dependent upon the legal status of the applicant. The maximum amount a **farmer** can get in total loans is **\$250,000**. A farmer may have one or more loans at any one time, but the total cannot exceed the maximum. For loans granted for the purpose of consolidation/refinancing, the amount to be consolidated is the total of the outstanding principal balances of the loans to be consolidated to the maximum of \$250,000. A **farmer-owned cooperative** may have one or more loans outstanding to a combined maximum of **\$3 million**.

### 2.2 **Individual:**

The amount of the loan being made, plus any outstanding balance of principal owed by the borrower on loans previously obtained under the Act, cannot exceed \$250,000.

### 2.3 **Partnership:**

The maximum of \$250,000 is allowed under FIMCLA to a partnership.

2.4 **Subsection 5(1) of FIMCLA** states in part **A...the principal amount of the loan shall, where the loan was made jointly to two or more farmers each of whom held a prescribed interest in separate farms, and the principal amount of the loan did not exceed two hundred and fifty thousand dollars, be deemed to be, in respect of each of those farmers, an amount equal to the amount obtained by dividing the principal amount of the loan by the number of farmers...".** A FIMCLA loan, to the partners as individuals in their own right, for the difference between their pro-rated share of the partnership to the maximum loan, is permitted. For example, assuming two farmers form a "partnership" and funds in the amount of \$250,000 is advanced, the amount of the loan prorated between the partners would be \$125,000. Each partner would be eligible for another \$125,000 as an individual farmer.

### 2.5 **Corporations:**

**A corporation** is a **separate** legal entity on its own which qualifies for individual financing under the Act for a maximum loan amount not exceeding \$250,000.

### 2.6 **Cooperative Association:**

Applications for loans from Cooperative Associations between \$250,000 and \$3,000,000 must be approved by the Minister prior to the lender issuing the funds. Loans under \$250,000 do not require prior approval of the Minister. Refer to Subsection 1.3.2 of these Guidelines for application instructions.

## **ELIGIBLE AMOUNT OF THE LOAN (Act 9, Regs. 4, 6 & 8):**

### **2.7 80%:**

With the exception of consolidation/refinancing, loans must not exceed the lesser of 80 % of the appraised value of the property for which the loan was made, or the purchase price as evidenced by an invoice, a deed of sale, or a purchase contract, etc. The registration fees and lender's charges do not need to be considered in determining the limit regarding the 80% rule. Refer to Subsection 9.5 for more information on the registration and charges.

Consolidation/refinancing loans may be issued at 100% of the outstanding **principal balance**. Refer to Subsection 4.5 of these Guidelines for further information on consolidation/refinancing loans.

### **2.8 60 days:**

When assessing the total eligible amount of the project, a lender may include expenditures made within 60 days before the day on which the loan is disbursed. Any application made beyond this 60 day time-frame is considered to be a refinance.

### **2.9 Appraisals:**

The lender must request an independent appraisal to be performed where the borrower is purchasing the assets from a person **not at arm's length**, within the meaning of that term in the Income Tax Act. A lender may make its own appraisal where it would have done so in the normal course of its own business. In cases where the lender would have obtained an independent appraisal from a person qualified in the field relevant to the property being taken as security, then they should do so. The amount of the loan must be based upon the lesser of the current market value, as reflected in the independent appraisal or the cost of purchasing the asset(s) (bill of sale) subject to the 80% rule described in paragraph 2.7.

Both types of appraisals must be documented and retained on file in the event of a claim for loss.

**Costs** include transportation, freight and installation costs. It includes all costs of improvements as long as they are or will be classified as capital assets.

2.10 Where the loan is for the purchase of **farm real estate**, all buildings, including home, should be included in the appraised value of the property. The loan guarantee however, is always based on 80% of the purchase price or the appraised value, whichever is the lesser of the two. Refer to Subsection 4.3 of these Guidelines for information on family dwellings.

2.11 **Trade-in** values are acceptable and may be included as all or part of the borrowers 20% equity.

### 2.12 **Non-Refundable Taxes:**

The cost of the items being financed is the net cost to the borrower. Where, at the time of making a loan, the lender is aware that a grant, discount, reimbursement, or any credit directly related to the item purchased is to be received by the borrower at the time of the purchase or subsequently thereafter and should be deducted from the original cost for the item for the purpose of establishing the amount of the loan. It is the lender's responsibility to inform itself of the non-refundable nature of taxes (GST, PST) or custom duties that apply to assets financed.

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

### 3. **MAXIMUM INTEREST RATE** (Act 4[3][e][iii], Regulation 14)

3.1 The rate of interest can be either floating or fixed. At any time during the repayment period of a loan, the lender and the borrower may agree to change from a floating interest rate to a fixed interest rate, and vice-versa. Although FIMCLA provides a maximum rate of interest, lenders may charge interest rates lower than the maximum interest rates indicated below.

3.2 **Maximum floating rate**, equal to the calculated prime rate of **the lender**, plus a maximum of 1%, as that rate is fixed daily during the term of the loan (Regulation 14 [1] [a]).

3.3 **Maximum fixed rate**, equal to the published residential mortgage loan rate **of the lender** for a comparable term plus a maximum of 1%, as that rate is fixed on the date the funds are disbursed or on an earlier date agreed to in writing by the lender and the borrower. (Regulation 14 [1] [b])

3.4 If a loan with a fixed rate of interest is to be extended before the expiry of its term, the interest rate on the loan may be blended, merged or combined with the interest rate fixed on the day of extension for the balance of the proposed term in accordance with the lender's current practice for that type of loan. (Regulation 14 [2] )

3.5 Full or partial prepayment of a loan shall be made in accordance with the Bank Act.

**NOTE:** Loans being renewed which were granted prior to the May 1, 1999 revisions to the Regulations are governed by these new Regulations.

#### 4. **PURPOSES UNDER FIMCLA (Act 4 & 6, Regs. 2 & 5[3])**

Only loans granted to farmers for the purpose of improving and developing an existing operation qualify under FIMCLA. Assets of a farming operation financed with a Farm Improvement Loan must be used in that farming operation that is carried on in Canada.

##### **Summary of the Eligible Expenditures**

- Equipment Loans (Refer to paragraph 4.1);
- Building/Construction Loans (Refer to paragraph 4.2);
- Additional Land Loans (Refer to paragraph 4.3);
- Livestock Loans (Refer to paragraph 4.4);
- Consolidation/Refinancing Loans (Refer to paragraph 4.5);
- Cooperative Loans (Refer to paragraph 1.3).

**NOTE:** A loan can be financed for a small business on a farm as long as it is an improvement to the existing operation. For example a dairy farmer sells cheese and ice cream from the farm property, the equipment required to produce the products would qualify. If the producer wants to sell from an area off farm, the project would not be eligible as a FIMCLA, but rather a small business project and may be eligible for the Canada Small Business Financing Act.

##### **Detailed list of items that can be financed using FIMCLA (Regs. 2)**

The following list of additional **eligible** loan purposes is not exhaustive. Some items are found in the Act or Regulations; others have been determined to be eligible through policy decisions rendered by the department. When in doubt, loan officers should contact their head office, regional office or the central, as the case may be, for advice.

- the clearing, breaking, irrigation and reclaiming of land;
- the conservation of soil and the prevention of soil erosion by the planting of trees and shelter belts;
- the purchase, movement to and installation on a farm of complete or partially complete structures and, if necessary, the completion of the installed structures;
- if the cost is \$2,000 or more, a repair or overhaul of fencing;
- if the cost is \$2,000 or more, the purchase and the planting of maple trees for maple syrup production and the purchase and planting of fruit trees, Christmas trees and ginseng;
- the construction of a road or driveway on a farm;
- the costs of land transfer taxes and survey, appraisal and legal costs relating to the purchase of additional land;
- the purchase of a crop storage condominium;
- the cost of obtaining security on existing assets (including premiums for life and/or disability insurance); and

- the costs of a fee or charge referred to in section 17 of the Regulations.

**NOTE:** In terms of eligible forestry purposes under FIMCLA, farming includes the production of wood from wood lots. Wood lot operators are eligible provided that they plant trees, and/or produce agricultural commodities (animals, plants and products).

### **Examples of some of the Ineligible Expenditures:**

The following list of **ineligible** items under the Program is not exhaustive. When in doubt, loan officers should contact their head office, regional office or the central, as the case may be, for advice.

- Borrower's labor
- Refundable Taxes i.e. GST, PST or Custom Duties
- Equipment for the sole use of custom work
- Recreational vehicles
- Quota purchases of all kinds
- Operating loans
- Loans for the purchase of short-term feeder livestock
- Stock in trade
- Improvements to or the construction of a family dwelling
- Share purchases
- Permits & licenses
- Goodwill
- Vehicles for personal uses
- Labor or services provided by the borrower/proprietor
- Intangibles such as research and development costs or prepaid expenses
- Working capital
- Construction of equipment
- Lease agreement
- Cut flowers for the retail market

- 4.1 **Equipment Loans:** Made to the proprietor of a farming operation for the purpose of financing the purchase, installation, renovation, improvement or modernization of equipment, necessary for the operation of the farm, **excluding the labor cost attributed to the proprietor.**

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

4.2 **Building Loans:** Made to the proprietor of a farming operation who is, or is to become, the owner of the building through construction or purchase; is, or is to become, the owner or the tenant of the building and the loan is made for the purpose of financing the renovation, improvement or modernization necessary to the farming operation, **excluding the labor cost attributed to the proprietor.**

**Building Loans involve:**

- the purchase, movement to, and installation on a farm of complete or partially complete structures and, if necessary, the completion of the initial structures;
- the repair or overhaul of fencing if the cost exceeds \$2,000;
- the construction of a road or driveway on a farm.

4.3 **Additional Land Loans:**

**Made to the proprietor of a farming operation who:** is to become the owner of additional land necessary for the farming operation for the purpose of financing the purchase of additional land including any building or structures. If the additional land parcel has a house on it, see reference to the Act Section 4 (Section E of these Guidelines), described below. In order to meet requirements of FIMCLA for additional land, the applicant must be either the owner of or have a leasehold interest in the land which the applicant is presently farming and the purchase would be in addition to this land, hence “additional land”.

**FAMILY DWELLING: (Act 4.)**

**Subsection 4 (2) of the Act** makes it clear that loan monies cannot be used for the purpose of financing improvements to a private dwelling. However, if a private dwelling or other structure is situated on the **additional land** being purchased, and otherwise meets the requirements for a loan under the Act, the dwelling or other structure in law, is considered part of that land or property. The appraised value of the property in respect of which the loan is made, would include the value of the private dwelling or other structure located on that land.

This would also apply to a situation when a lender would use property with structure(s) on it for security for a loan under the Act, the value of the structure(s) would be included to determine if the loan was properly secured.

The lender should obtain the proper waivers prior to granting the loan. A declaration should be signed by the applicant stating that at the time of financing this property was not his home-quarter and will not use the home-quarter clause in the future to declare this property as exempt from seizure and/or foreclosure.

If the above conditions can be met, then the financing of this purchase can be made at a maximum of 80% of the value of the property or the purchase price, whichever is the lessor of the two.

#### 4.4 **Livestock Loans:**

The purchase of livestock, including:

cattle, sheep, goats, and other ruminants, swine, poultry, bees and fur bearing animals, other prescribed animals such as deer (including the white-tailed deer), elk, bison, alpaca, lama, game birds, and rhea.

**NOTE:** Short term feeder livestock **are not eligible**, horses are eligible for breeding purposes only, not for riding stables, sport, or pets.

#### 4.5 **Consolidation/Refinancing Loans:**

- a) Only loans originally made to an eligible applicant for an eligible purpose under the Act or Regulations can be consolidated/refinanced.
- b) The consolidated/refinanced amount is the total of the outstanding principal balances of the loans to be consolidated/refinanced to the maximum amount of \$250,000.
- c) Loans that are more than 1 year in arrears or more than 6 months in arrears, where payments are made more frequently than annually, may not be consolidated/refinanced.
- d) Only loans granted under FIMCLA may be consolidated/refinanced by the lending institution where loans originated (Reg. 4[3]). Consolidation/refinancing of a lender's ordinary loans, (loans other than those granted under FIMCLA, but coming within the purposes of FIMCLA) must be referred to another lender. [Reg. 4[3]].
- e) Loans by a third party, originally made for the purposes eligible under FIMCLA (e.g. another financial institution, implement dealer, contractor), can be consolidated/refinanced under FIMCLA.

**When consolidating/refinancing loans granted by a third party for the acquisition of additional land, the term cannot exceed ten years.**

- f) Care and prudence (Act 4[3][i]) may require that an appraisal be obtained at the time of the consolidation/refinancing to determine that the loan will not exceed the 80% of the current market value of the property being provided as security. (See appendix, part I - Care & Prudence in Granting FIMCLA Loans)
- g) Terms of repayment should ensure that sufficient security will be available over the term of the loan to maintain the 80% security requirement.
- h) Consolidation of a FIMCLA loan must remain within the prescribed amortization periods.

- i) All of the original loan documents for the loans to be consolidated/refinanced must be retained on file and submitted with the Claim for Loss if a claim is eventually made. Where loans are being refinanced by a different lending institution, the lending institution refinancing the loan **must** obtain the original loan documents from the lending institution which granted the original loan.

4.6 **Other Purposes:** includes: land transfer tax, survey costs, appraisal costs, legal fees relating to the purchase of additional land and crop storage condominiums.

**5. REPAYMENT TERMS** (Act 4[3][d], Act 6[2][d][I][ii], Reg. 7 to 11)

5.1 With the exception of loans to finance the purchase of additional land which may be repaid over up to 15 years, the maximum repayment period for all purposes, including all loans extended for consolidation/refinance, is 10 years. The repayment period commences on the date of the first scheduled principal instalment under the loan. If the loan is amortized over more than 10 years or 15 years on an additional land purchase, a balloon payment must be scheduled no later than the end of the 10/15 year maximum period. Refer to Section 15 of these Guidelines for the amending the repayment terms.

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

**For Cooperative Loans,** the maximum term is 20 years for purchase of land or the construction of any building or structure and 10 years for all other purposes.

5.2 Repayment of the loan principal must be scheduled at least annually. The first instalment of principal must be scheduled no later than 12 months from the date of the first disbursement.

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

**NOTE:** A bank contract or a loan agreement that meets the legal requirements of a "promissory note" as set out in the Bills of Exchange Act, regardless of the name given, is considered a "promissory note".

5.3 **Full or Partial Repayment :** A borrower may prepay a loan in full or in part prior to the expiry of its term in accordance with the Bank Act but in the case of a fixed rate loan, the lender may charge a compensation fee representing any loss of interest.

## 6. LOAN DOCUMENT & SECURITY (Reg. 15)

At the time of making a loan, the lender and the applicant must complete and sign the appropriate documents as required :

- Loan amount
- Rate of interest
- Repayment terms
- Frequency of principal payments
- Date of first principal payment

Such a document can be in the form of a promissory note, loan agreement, bank contract or any other document that the lender registers to secure the repayment of the loan.

Lenders may use their own loan-related documentation (e.g. application form, loan document, etc.) except in cases where FIMCLA's schedules are required (e.g. Registration, Revision of Terms, Default Reports and Claim for Loss forms).

- 6.1 At the time the loan is made, the lender must take a security interest in accordance with normal lending practice, whichever security listed in subsection 6.2 below is the most appropriate. The lender should maintain adequate security throughout the term of the loan.

Security is to be registered in the appropriate registry system so that the ranking is not compromised and realization procedures, if required, can be enforced against the secured assets.

### **The security can be:**

- under section 427 of the Bank Act;
- by way of registering security in accordance with the applicable personal or moveable property as per the legislation in the province;
- by commercial pledge;
- by way of a mortgage or hypothec on real or immovable property; or
- by way of an assignment of any rights and interest of the borrower under an agreement for sale.

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

- 6.3 **EQUAL RANKING SECURITY:** Where the loan is one of two or more sources of financing of the asset(s) being acquired (apart from the funds provided by the borrower), the lender's security for the loan must be

a fixed charge ranking pari passu with the other sources of financing provided for the asset(s).

**6.4 HIGHEST RANKING SECURITY:**

Every effort must be taken by the lender to obtain a sole first fixed or pari passu first fixed charge. However, if at the time the loan is made, prior charges exist in favor of the lender, other financial institutions or other secured creditors, the lender's security shall be a fixed charge of the highest available rank. As a general rule, this situation will arise when the loan is made for improvements to an asset.

6.5 If a lender is unable to obtain a sole first fixed or pari passu first fixed charge, the lender should be able to justify the reasons for taking a lower charge, in the event a claim for loss, respecting the loan, is submitted.

**6.6 AFTER ACQUIRED CLAUSE:**

If the prior charge flows from an after acquired clause included in security held by the lender, or another creditor, the lender is required to exempt, or cause to be exempted, the asset being financed by the FIMCLA from the after acquired provision thus allowing the FIMCLA to be covered by a first fixed charge on the new asset.

**6.61 ADDITIONAL SECURITY:**

Wherever appropriate, the lender may wish to further secure the FIMCLA loan and take additional security on other assets of the farm or by way of a guarantee or surety ship, personal or corporate.

**NOTE:** A lender may take secured or unsecured corporate guarantees for the full amount of the FIMCLA.

6.7 Regardless of whether a loan is taken by a sole proprietor or by a partnership, each individual involved is equally liable for the full amount of the loan.

**7. LENDER'S APPROVAL CHECKLIST**

When assessing the eligibility of a loan, lender's loan officers may find the following checklist useful:

- ▶ borrower is eligible (e.g. actively engaged in farming at the time of loan negotiations);
- ▶ purpose of loan is eligible;
- ▶ percentage of assets financed does not exceed the lesser of 80% of the appraised value or cost;
- ▶ term of loan is not greater than 10 years, except for additional land where it may be up to 15 years;

- ▶ first scheduled repayment of principal is within a maximum of one year of the initial disbursement date and at least annually thereafter;
- ▶ aggregate of the borrower's FIMCLA outstanding loans is not greater than \$250,000;
- ▶ required security has been/will be taken;
- ▶ insurance is held over assets pledged if applicable;
- ▶ rate of interest does not exceed 1% above the prime rate or the residential mortgage rate over the term of the loan;
- ▶ evidence on file to support the cost of assets financed (e.g. invoices, contracts, purchase and sale agreements, etc.);
- ▶ date of purchase is not more than 60 days prior to the day the loan is disbursed;
- ▶ evidence on file to support that the assets financed by the loan were paid by the borrower (e.g. canceled cheques, vendor's receipted invoice, or vendor's declaration);
- ▶ independent appraisal is on file for non-arm's length transactions;
- ▶ no fees, service charge, or charge of any kind is, by the terms of the loan, payable to the lender by the borrower (as long as the loan is not in default) and no fees, service charge, or charge of any kind have been charged to the borrower for the loan (as long as the loan is not in default), other than those indicated in section 17 of the regulation;
- ▶ and loan registration form submitted with 0.85% fee to the Administration.

## **8. ENVIRONMENTAL CONSIDERATION**

Where there is an existing or potential environmental risk, lenders should apply the same policies and procedures used in the normal assessment of a loan application.



# FIMCLA Guidelines

## - Section B -

### ADMINISTERING FARM IMPROVEMENT LOANS

*This section provides lenders with the procedures involved to obtain the guarantee under the FIMCLA, the authorized changes that can be made to the loan and the procedures lenders must follow to maintain the guarantee.*

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#### 9. LOAN REGISTRATION AND CHARGES (Regs. 8, 16 & 17)

The lender must scrutinize and ensure that the loan qualifies under the program prior to submitting the Schedule 1 and Fee Submission. The acknowledgment of the Schedule 1 and Fee Submission by the Administration is not a confirmation that the loan is eligible for the guarantee. When lenders are unsure of the eligibility of a potential borrower, he/she should contact the Department and seek clarification for an advanced ruling. Refer to Section 1 of these Guidelines for eligibility and advance rulings.

##### 9.1 Loan Registration and Payment of Fee

- ▶ a FIMCLA loan must be registered within **60 days** from the date on which the first disbursement is advanced for all purposes, excluding a loan for the purpose of construction;
- ▶ a construction loan must be registered within **180 days** from the date on which the first disbursement is advanced;
- ▶ the **Loan Registration form**, Schedule 1, (Section D of these Guidelines) must be signed by a responsible officer of the lender and by the borrower;
- ▶ the **government guarantee** is limited to the amount of the FIMCLA registered;
- ▶ a **cheque or draft**, payable to the Receiver General for Canada in the amount of **0.85% of the total loan amount** must accompany the form;
- ▶ once the loan has been registered by the FIMCLA, a Loan Registration and Fee Receipt Acknowledgment will be sent to the lender;
- ▶ a FIMCLA loan can include assets from all purposes without submitting a separate form for each purpose.

**An incomplete Schedule 1 may result in the return and/or delay in the registration of a loan. A request will be sent to the lender to complete the missing information. A reference number will be issued until the information is submitted. See the Appendix, part V for instructions relating to the registration of loans. The loan will be registered when all missing information is accepted by FIMCLA Administration. Although a loan may be registered, this does not mean that the loan is eligible under FIMCLA. Lenders should ensure that borrowers meet all the eligibility criteria.**

- 9.2 Loan registration forms sent to the Administration must be completed and signed according to the instructions attached to the registration form. Loan registration forms should be accompanied by the lender's cheque/draft for the correct amount. Refer to the Appendix - part V for further instructions for the registration of loans.

The Administration defines the amount of the loans to be the total amount ultimately disbursed by the lender to the borrower. If this amount is lower than the original amount of the loan, the Administration would normally expect the lender to have the original registered loan amount modified by submitting a loan registration modification acknowledge form.

- 9.3 The borrower is considered to be the sole proprietor, in the case of a sole proprietorship, the partners, in the case of a partnership, and the incorporated body, in the case of an incorporated company. Therefore, loans will be registered in the name of the sole proprietor, the names of the partners of a partnership, or the name of the incorporated company, as the case may be.

#### 9.4 **Late Registration**

If the Administration believes that failure to register within the prescribed period was inadvertent, then the Administration may extend the registration period. In this situation, the lender must provide a full explanation of the inadvertence in writing to the Administration. A decision by the Administration will be returned in writing to the lender.

#### 9.5 **Fees and Charges**

The 0.85% FIMCLA registration fee and lender's Administration charges as per section 17 of the regulations may be added to the loan, provided the total amount of the loan including the 0.85% fee and the lender's charges as per section 17 of the regulation, does not exceed \$250,000. When completing Schedule 1, it is not mandatory to add the 0.85% fee and the lender's charges to the amount of the loan. The FIMCLA registration fee of 0.85% is calculated on the principal amount of the loan only. The fees and charges do not need to be considered in determining the limit regarding eighty percent of the appraised value or cost of the property of which the loan is made. Refer to Subsection 2.7 for more information on the 80% rule.

## 9.6 Fee Reimbursement

Within one year from the date of the first disbursement of the loan funds, the lender may apply for a partial or total refund of the fee paid under the following circumstances:

- ▶ **Partial refund:** Where the lender advanced less than 3/4 of the amount of the loan registered, the Administration will, upon request in writing by the lender, issue a cheque for the fee applicable to the remaining portion of the registered loan.
- ▶ **Total refund:** Where the lender determines that the loan is not a guaranteed farm improvement loan, the Administration will, upon request in writing by the lender issue a cheque for the amount of the fee paid and delete the loan from its records.

9.7 **Charges:** A lender may charge a borrower an administration charge in respect of a loan up to a maximum of:

- ▶ the lesser of 0.25% of the loan principal or \$250 if the loan is for less than \$250,000;  
or
- ▶ 0.1% of the loan principal, if the loan is for \$250,000 or more.

**NOTE:** If a fee is charged outside of the limitations indicated above, a claim will be disqualified.

## 10. LOAN IDENTIFICATION

Once the Administration acknowledges its registration of a loan by returning to the lender the Loan Registration and Fee Receipt Acknowledgment Form, the involvement of the Administration with respect to that loan is, by and large, completed.

While there are actually very few instances where correspondence is needed, the lender may encounter situations that should be reported to the Administration (eg. Inquiry regarding eligibility, revisions of terms, default reports, claims). Where this occurs, it is important that any letter or other contact concerning a loan identify the loan registration number indicated on the Loan Registration and Fee Receipt Acknowledgment Form, the 8-digit transit number of the lender's branch that granted the loan and the full name of the borrower as it appears on the Loan Registration and Fee Receipt Acknowledgment Form.

## 11. CHANGE OF LENDER

An individual loan **cannot** be **transferred** from one **lender** to another. An individual loan may be transferred within the same lending institution. Please see Subsection 4.5 of these Guidelines, refinancing/consolidating a loan, for further details.

## 12. CHANGE OF BORROWER'S NAME

When a borrower changes the name under which it operates but retains the same legal status (e.g. sole proprietorship, partnership of individuals or corporation), it is important that the lender obtain from the borrower a formal notice and a copy of the pertinent legal documents such as registration, articles of amendment, letters patent, marital license, etc. In the event of a claim for loss, these documents will be required. It is not necessary for the lender to inform the Administration of the borrower's change of name.

## 13. SALE OF THE BORROWER'S FARM/CHANGE OF PROPRIETOR

In this case there will be a change of proprietor of the farming operation. One frequent instance is where the sole proprietor or a partnership of individuals decides to incorporate. Ideally, in the case where the assets of a business change hands, the loan should be repaid entirely. However, the lender may choose to continue to carry the loan in its present form, that is, in the name of the original borrower and under the original terms of repayment. This would be on the condition that the original borrower remains obligated on the debt and the lender's security is maintained.

**In most cases FIMCLA loans may not be assumed and the new corporation is not eligible to borrow as it is classed as a start-up.**

This does not preclude the lender to, subsequently, apply any provisions of Section 14 of the Guidelines. The assumption of the loan by the new proprietor is an agreement between the new proprietor and the borrower. In the case of a corporate borrower whose shareholders sell the shares to other parties, the loan is not affected as there is no change in the borrower. The lender need not inform the Administration of such transactions at the time they occur, but will be required to provide details upon the event of a claim for loss.

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

## 14. CHANGE IN SECURITY

### 14.1 Maintenance/Substitution

The Administration's approval, in the form of a Schedule 2 (Revision of Terms), must be sought when there is a change in the security that was originally registered at the time the loan was approved in order to maintain the Minister's guarantee. Any substitution should be properly recorded, documented and details kept in the borrower's file. Refer to Section 15 for more information on Revision of Terms.

As a principle, lenders are expected to evaluate the worth and realization potential of the replacing asset/guarantee using the same care and criteria used for the non-FIMCLA's. The substitution of any asset/guarantee should not result in a decreased ability of the lender to realize the full amount of the security such that any loss on the loan would be increased.

**The Administration may approve the following:**

- a) any security with any other security referred to in Subsection 6.2 of these Guidelines;
- b) any assets held as security for the loan by any other business assets provided that the value of the substituted assets is not less than the value of the assets that are released from the security;
- c) a personal guarantee by any other personal or corporate guarantee or by any other security referred to in Subsection 6.2 of these Guidelines; and
- d) a corporate guarantee by any other corporate or personal guarantee (see subsection 6.7 of these Guidelines) or by any other security referred to in Subsection 6.2 of these Guidelines.

**NOTE:** In line with the above-noted principle, it is not the intent of the Administration to allow security supported with assets to be substituted by security which has no supporting assets. For instance, a GSA/chattel mortgage on equipment or a mortgage on a property should not be substituted by a personal guarantee or an unsecured corporate guarantee.

**A claim for loss submitted where any such substitution has occurred, will be subject to added scrutiny by the Administration.**

**NOTE:** The Administration may approve any security taken in accordance with the Act for any other security referred to in any of those subsections and may substitute for assets secured thereby any other assets if the value of the substituted assets is not less than the value of the assets that are released for the security. A Revision of Terms form (Schedule 2) must be approved by the Administration. Section 13 of the Regulations states that no security shall be released or substituted by a lender before a loan is paid unless authority to do so is obtained in writing from the Minister. The Administration may deny a claim for loss by a lender if loans have not been administered in the manner prescribed by the Regulations.

#### 14.2 **Release:**

Providing other security is adequate to cover the outstanding balance on the loan, with the approval of the Administration:

With respect to an equipment loan, the lender may recommend release of collateral equipment pledged provided the loan is not in default;

- ▶ at least two years have elapsed since the date of the final disbursement of the loan proceeds; and
- ▶ the principal balance of the loan has been reduced by an amount equal to the original cost of the equipment released.

Lender may recommend release of an unsecured personal guarantee provided:

- ▶ the loan is in good standing; and
- ▶ the borrower has repaid at least 50% of the principal amount of the loan.

**Assets secured by a lender in a land or premises loan may be released if the assets are expropriated, provided that the proceeds of the expropriation are applied to repay the loan.**

**Once the loan is repaid in full, the lender may release the security without the approval of the Administration.**

#### 14.3 **Sale of Assets**

When the borrower disposes of any asset that is part of the security taken by the lender, the proceeds from such disposal shall be applied to the loan. This applies in the case of pledged assets that are sold, traded in, sold for salvage or destroyed, where such destruction is covered under an insurance policy (unless the insurance proceeds are used to immediately replace the destroyed asset and the new asset is included in the loan security). An explanation of such loan reduction should be kept on file. The lender does not need to inform the Administration at the time but should provide a full explanation

should a claim for loss be submitted. The application of such proceeds does not constitute or substitute a regularly scheduled payment. Where a lender learns of an asset disposal after the fact and the disposal proceeds have not been applied in reduction of the relative improvement loan, the lender should take such action as is necessary to protect the interest of the lender and the government including requiring additional security to be pledged in support of the loan.

## **15. AMENDING THE REPAYMENT TERMS/ REVISION OF TERMS (Act 11, Regs. 13)**

Section 11 of the Act states: “The Minister is not liable under the Act to make any payment to a lender in respect of any loss sustained by it as a result of a loan where, after the loan is made, the farmer or farm products marketing cooperative and the lender enter into an arrangement or agreement, whether or not it alters or revised the terms or conditions of that loan, that might increase the risk that the loan will not be repaid according to its terms, unless the Minister approves the arrangement or agreement before it is entered into”.

### **15.1 Amendments not requiring the Administration’s approval:**

The blanket authority process may be used by the lender to revise the terms of a loan without the pre-approval of the Administration only where the risk of repayment is not increased. The following scenarios have been determined to not increase the risk that the loan will not be repaid:

- ▶ extending the term for repayment of the loan within the maximum terms specified in the Act;
- ▶ changing the amount of the periodic instalments;
- ▶ changing the period between instalments; or
- ▶ changing the method of charging interest from fixed to variable and vice-versa.

In such cases, any changes should be properly recorded, documented and details kept on the borrower’s file. The Administration does not need to be informed at the time of the change but the lender must be ready to provide a full explanation should a claim for loss be submitted in respect of the loan.

#### **In the opinion of the lender, however**

- ▶ the producer will be able to meet his obligation under the revised terms;
- ▶ adequate security has been taken to secure the loan until full repayment is made; and
- ▶ any interest payment arrears have been paid in full.

#### **Lenders are reminded that any revision to the repayment terms:**

- ▶ must provide for the payment of at least one annual principal instalment; and

- ▶ must not result in extending the repayment period beyond 10 years with the exception of land purchase loans which receive a 15 year repayment period.

**NOTE:** It is commonly **misinterpreted** that as long as the first revised payment was within 1 year of the date of revision, and all future payments were no more than 1 year apart, the lender held the authority to revise the term without notifying the Minister.

**If the borrower is one day in arrears on an annual payment, the borrower is now in default and the lender should follow Section 16 of these Guidelines. To protect the Minister’s guarantee, it is important to submit a Schedule 4 “Claim for Loss” within 18 months of the date of default.**

## 15.2 Amendments requiring the Administration’s approval:

Section 13 of the Regulation states: “No security shall be released or substituted by a lender before a loan is paid in full unless authority to do so is obtained from the Administration”. Refer to Section 14 of these Guidelines for more information on change in security.

A revision that may increase the Minister’s risk or is a change in security falls outside of the blanket authority criteria. In these cases, Schedule 2 (Revision of Terms) must be completed by the borrower and the lender. The lender then forwards Schedule 2, along with current financial statements and supporting appraisals to the Administration for consideration. Once the request has been processed, Schedule 2 will then be returned to the lender. This form must be retained on the borrower’s file in the event of a claim for loss.

**NOTE:** When a producer is in default, the lender must refer to Section 16 of these Guidelines to administer the loan. FIMCLA defines the default date as the day after the day on which a payment under a loan was scheduled to have been made, but was not made. The default date is determined based on the terms and conditions indicated on the promissory note.

## 15.3 RENEWAL OF TERMS

Where the repayment term is less than prescribed by the Act and the FIMCLA loan is in good standing, the lender and the borrower may agree to renew the term of the loan for an additional term or terms, as long as the loan is repaid in full within the maximum terms prescribed by the Act. The rate of interest, as at the date of renewal, must be calculated in accordance with Item 3, Section A of these Guidelines.

## 16. LOANS IN DEFAULT

The lender has a maximum of 18 months from the date of default to submit a claim for loss, unless an extension is approved by the Administration. A loan is in default when any payment of principal in respect of the loan is not made on the day following the date it is due. The default date is referred to as the date indicated on the promissory note.

If a loan is in arrears and it appears the situation cannot be rectified, a Report of Default on the Loan (Schedule 3) must be submitted :

- a) **Farm Improvement Loan:** within 6 months from the default date, unless circumstances call for different, but not before 3 months from the date the loan was considered in arrears for a Farm Improvement Loan. The 3 month timeframe enables the producer to possibly bring his loan current.
- b) **Coop Loan:** within 15 days of the date the loan was considered in default for a cooperative loan.

In both situations, a history of the loan, a copy of the application form, promissory note, and proof of purchase for which the loan was granted should accompany the default report. The original documents must be kept in the lender's file in the event of a Claim for Loss.

In the event the lender and producer fail to agree on a suitable repayment program, the balance of the loan should be demanded by registered mail and action commenced to seize the security held in support of that loan in accordance with provincial laws and the Farm Debt Mediation Act. The lender should make every effort to obtain the current market value from the sale of the security. Funds from the sale of the security must be applied in the following order:

- 1) costs of repossession and subsequent sale, chargeable to the borrower;
- 2) accrued interest;
- 3) principal outstanding.

The producer should be made aware that the sale of the security does not release him from further payment of any deficiency balance. If a satisfactory arrangement to pay the deficiency is not arranged, judgement should be obtained for long term protection.

**NOTE: The lender should advise the Administration if the loan is brought current.**

## 17. CALLING THE LOAN

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

## 18. COLLECTING FROM BORROWERS, REALIZING ON ASSETS OF THE FARMING OPERATION AND ON GUARANTEES AND COMPROMISE SETTLEMENTS

Once the loan has been "called", the lender collects from the borrower by realizing on the security and guarantees. Generally, lenders should apply the same policies and procedures used in normal business practices to minimize the loss.

A lender may not submit a claim for loss before taking all appropriate actions to collect from all possible sources and realize on security. This includes the following steps:

- if applicable, obtain other collateral security of the farming operation;
- if applicable, realize upon any security of the farming operation;
- if applicable, effect a compromise.

**To "realize on security" or "realization of security" means for a lender:**

- to seize, take possession of, sell, arrange, sell or engage a third party to sell secured assets;
- to fully settle or to negotiate a compromise settlement with guarantors;
- to have taken or be in the process of taking legal action without the lender necessarily having received any or all of the respective proceeds; or
- to establish a market value of the security acceptable to the Administration at the lenders full risk and responsibility for subsequent liquidation.

For the impact on timing for submission of a claim for loss, see Section 23 of these Guidelines.

### 18.1 Realizing on Assets of the Farming Operation

All assets of the farming operation, including those not specifically acquired with loan proceeds, are subject to realization. Where the farming operation has assets over and above those held as security for the loan, lenders are expected to follow normal lending practice in determining the cost effectiveness of realizing on those assets and, if appropriate, in realizing on those assets. Lenders are required to retain on file all

documents pertaining to the realization of the security and, if appropriate, to provide the rationale for dealing with the other assets of the farming operation.

### 18.2 **Collecting from Guarantors/Sole Proprietors/Partners**

The lender must take reasonable steps to collect from the guarantor(s).

### 18.3 **Compromise settlements**

Compromise settlements can be made at the discretion of the lender with the approval of the Administration, based on the financial circumstances of the guarantors. In cases where the lender is negotiating a settlement of a loan, the lender should inform the Administration of the negotiations. The reason for and basis of any compromise settlement with a borrower should be well documented in writing. The Administration's approval must be obtained prior to acceptance of any settlement of an outstanding loan.

## 19. **SHARING OF COSTS AND MONIES COLLECTED**

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

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

**NOTE:** Where the lender has a prior charge on security held for the loan and costs are incurred in the liquidation of the security, all such costs must be deducted from the proceeds received by the lender. The net amount of the realization will then be applied to the loans according to security held.

## 20. **TIME CONSTRAINTS (Regs. 20)**

The lender has a maximum of **18 months** from the date of default (see Section 25 of these Guidelines) to submit a claim for loss. Upon the lender's submission of a Request for Extension of Claim Submission Date Form prior to the passage of 18 months from the date of default, the Administration may extend the claim submission deadline.

The Administration may require that a claim for loss be submitted at any time by notifying the lender in writing.

## **21. ENVIRONMENTAL RISK**

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

## **22. REPORTS**

The Administration may, from time to time, require a lender to provide reports or information in respect of any loan on a form approved by the Administration. The Administration will provide the forms 30 days prior to the report date.

## **23. MINISTER'S LIABILITY (Act 8.)**

The Minister's liability in favor of a lender in respect of losses sustained by it as a result of loans made by it during a fiscal year at time of claim and four preceding fiscal years is a maximum of:

- 90% of the 1<sup>st</sup> million registered during the 5 year period;
- 50% of the 2<sup>nd</sup> million registered during the 5 year period;
- 10% of the remaining amount registered during the 5 year period.

## **24. OFFENCES AND PUNISHMENT (Act 17.)**

Offences under FIMCLA may arise as a result of :

- ▶ anyone making a false statement, a misrepresentation or furnishing false or misleading information.
- ▶ a borrower fraudulently using the proceeds for the FIMCLA loan for a purpose other than acquiring the assets for which the loan was approved.

### **Such offences and punishment can be:**

- ▶ indictable (fine up to \$2,000); and
- ▶ a penalty equal to such amount of the loan made to that person and not repaid, with interest thereon to the date of conviction. Any proceedings related to a summary conviction offense may be started within 12 months after the subject matter arose.

## FIMCLA Guidelines - Section C -

### SUBMITTING CLAIMS FOR LOSS

*This section deals with a claim for loss submission.*

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#### 25. TIMING FOR SUBMISSION

Once the lender has established a loss, a claim for loss may be submitted to the Administration. The Administration may be prevented from accepting a claim for loss and recommending payment, thereof, as long as:

- ▶ security in respect of the farm enterprise remains unrealized; or
- ▶ the realization, if any, of non-farming operation assets of a sole proprietor or an unincorporated partner remains incomplete.

**NOTE:** The lender must submit a valid claim for loss within 18 months from the date of default. A request for an extension to the claim submission deadline within 18 months of the date of default may be made to the Administration (see Section 20 of these Guidelines). The Administration cannot extend the 18 month period retroactively.

If it is impractical or impossible to realize on all or part of the security and guarantees, or collect the balance outstanding from the borrower, a claim for loss may be submitted. Accompanying the claim for loss must be an explanation, as well as supporting documents, outlining why all security could not be realized upon and why no further recovery could be made from the borrower.

The Administration may require that a claim for loss be submitted at any time by notifying the lender in writing (Regulation 20 (2)).

**NOTE:** A claim for loss by a lender may be denied if loans have not been administered in the manner prescribed by the Regulations.

## **26. ESTABLISHING AMOUNT OF CLAIM FOR LOSS**

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

- a) unpaid principal amount of the loan (after recoveries from the borrower, application of proceeds of security realization, and payments by guarantors);
- b) the accrued interest that was not paid by the borrower before the due date of the first unpaid instalment;
- c) the uncollected interest accrued after the date referred to in paragraph (b) and outstanding at the time the claim is approved for payment by the Minister, at the rate of interest specified in the written promise to repay the loan, for a maximum period of 365 days after that date;
- d) the amount of legal fees, costs and disbursements that have been assessed and allowed by the Administration (section 13 of the Act) and actually incurred by the lender, with or without litigation, in collecting or endeavoring to collect the loan or in protecting the interests of the Minister, less any costs recovered by the lender; and
- e) the amount of any other costs or disbursements actually incurred by the lender in collecting or endeavoring to collect the loan or in protecting the interests of the Minister.

### **26.2 Subrogation:**

Once a claim is final, the Minister is subrogated in all the rights of the lender. The government/lender loss sharing ratio is 95% / 5%.

**NOTE:** A lender cannot avoid absorbing its 5% share of the loss by taking compensative security of any kind. Any recovery from such additional security is required to be applied to the loan and the loss established accordingly.

### **26.3 Limit:**

Individual claims for loss submitted by the lender will be reimbursed as per Subsection 26.1 of these Guidelines. However, if the aggregate amount of claim for loss payments to a lender reaches the maximum liability as per section 10 of the Act, subsequent claims for loss submitted by the lender in that lending period cannot be reimbursed by the Administration.

## 27. DOCUMENTING CLAIM FOR LOSS SUBMISSIONS

**When a lender submits a claim for loss, the following documents must be submitted:**

- a) a properly completed Claim For Loss form certified by both the responsible loan officer of the lender and his/her supervisor;
- b) a copy of the signed application form; evidence that the applicant was an eligible borrower under FIMCLA at the time the loan application was made;
- c) a copy of the Loan Registration and Fee Receipt Acknowledgment form, and the Loan Registration Modification Acknowledgment form, if applicable;
- d) evidence showing the actual cost of the equipment, premises, and/or land or in the case of "60-day" retroactive financing (see Subsection 8.1 of these Guidelines) that the cost of the asset(s) were paid by the borrower or by a third party on behalf of the borrower as the case may be;
- e) evidence showing that the loan proceeds were used to finance the cost of the asset(s);
- f) a copy of the borrower's statement of loan account (liability ledger card, computer print-out, etc.) showing the date the loan proceeds were advanced, all payments of principal and all payments of interest;
- g) a copy of the borrower's promissory note or as an integrated part of the lenders loans document (e.g. credit agreement). Please see Section 6 of these Guidelines;
- h) evidence that the lender has satisfied itself that the requirements outlined in Section 18 of these Guidelines were met;
- i) a copy of the security documents relating to security and guarantees;
- j) a copy of documents evidencing any revision in terms;
- k) a copy of documents evidencing the sale of security;
- l) a statement of unrealized security, including guarantees;
- m) a copy of documents supporting any settlement with the borrower or third parties, including guarantors;
- n) a copy of invoices/receipts supporting costs claimed or costs deducted from asset sales;
- o) details of the history of the account;

- p) a copy of the Statement of Claim, Judgement and Writ of Execution;
- q) evidence of bankruptcy/receivership, a copy of the lender's proof of claim against the bankrupt estate of obligate (which is to include the total amount owing on the loan), and the Trustee's/Receiver's final report, where one has been issued. Where the Trustee's final report is not available, the lender/trustee's comments as to the probability of receiving dividends from the estate should be provided;
- r) a copy of any approved request for extension of claim submission deadline;
- s) in the case of non-arm's length transactions, a copy of the appraisal obtained on the assets being financed;
- t) other documents, if and when requested by the Administration to process the claim for loss.

**NOTE:** Lenders are required to keep all documents on file in accordance with normal banking practices.

## **28. CLAIM FOR LOSS FORM**

Although the Claim For Loss form contains instructions for its completion, the following provides additional information for completing the narrative sections of the form.

### **28.1 Information on the Borrower - History of the Borrower**

**The "History of the Borrower" must include brief comments, as appropriate, on the following:**

- ▶ description of the farm operation;
- ▶ purpose of loan and description and function of assets being acquired; and
- ▶ problems leading to default and claim.

### **28.2 Information on Loan**

#### **Description of security taken**

- ▶ description of the security instrument and the rank of the security taken, as well as personal and corporate guarantees; and
- ▶ description and explanation of any subsequent amendments to securities and/or guarantees, as well as an explanation whenever a sole first or pari passu first fixed charge was not obtained.

**Description of the realization process and the reasons that any security/assets/guarantee(s) were abandoned:**

- ▶ description of method used to dispose of the collateral security, success of action taken, and recommended action to dispose of unrealized security;
- ▶ an explanation why the gross amount of proceeds realized from the disposal of collateral security and recoveries from the guarantors and the borrowers were considered reasonable;
- ▶ in every case where security is sold and, to the knowledge of the lender, the purchaser is a party to or has an interest in the loan (e.g., lender, borrower, shareholder, guarantor, landlord, original vendor, etc.) or is related to the borrower by marriage or otherwise, an explanation as to why sale and the amount realized was considered to be appropriate;
- ▶ where asset security has been abandoned, justification for abandonment should be provided (e.g. value of asset security versus estimated realization costs); and
- ▶ details of any suspected wrong doing by the borrower (such as the unauthorized sale of assigned security) and details of the action taken by the lender to remedy the situation.

**NOTE:** The completeness of the documentation will determine how fast the claim will be processed. The claim shall be paid within **60 days** after the Administration approves the claim.

**28.3 Description of the potential for any additional recovery**

- ▶ description and appraised value of any unsold assets taken as security for the loan; and
- ▶ if personal guarantees remain outstanding, financial and employment data on the guarantors supported by recent personal financial statements, the lender's opinion as to the potential for future recoveries, its recommendation for further collection action, and the estimated costs involved. If a current personal financial statement cannot be obtained from the guarantor(s), the personal financial information should be obtained from other sources.

**29. POST-CLAIM FOLLOW-UP**

- 29.1 After payment of the Claim for Loss, the lender may be requested to continue to actively follow up on an account in order to effect recovery and to provide reports on any developments.

## **Procedures:**

Specific action may be directed by the Administration from time to time. This could range from a request that an account be lodged with a collection agency/skip tracer, RCMP, or the judgment be executed, to a request for the gathering of more detailed information on a guarantor's circumstances.

All reasonable out-of-pocket expenses in connection with any action undertaken on the loan may be claimed or deducted from recovered funds, as appropriate. Where expenses are incurred on the loan and other advances made by the lender, the expenses are to be prorated between the loans. The lender should first determine the amount of expenses applicable to the loan then calculate for the 95% / 5% Administration/lender sharing depending on the period involved. Any engagement of a collection agency (other than for a "locate" action) is to be on a "contingency" fee basis. Legal action should not be undertaken through a collection agency without the prior written agreement of the Administration.

The Administration's share of any moneys collected after payment of a claim for loss are to be forwarded to the Administration, with a cheque payable to the Receiver General for Canada. Included should be a statement showing the name of the borrower, the source of the funds, the date collection was made, the amount of any sums deducted from the gross proceeds, and a summary of the lender's pro rata calculations, where the funds are shared with other loans.

In the sharing of proceeds from the sale of security or collection on personal debts (direct or indirect), the lender should first determine the amount of proceeds applicable to the loan (see Section 19 of these Guidelines) then calculate for the 95% / 5% Administration/lender sharing.

### **29.2 Collection of the Debt by the Administration**

Once the claim to honor a guarantee has been approved by the Administration, the Administration's Accounts Receivable Unit will undertake any collection action required to collect the debt owing to the Department.

The Account Receivable Unit will attempt to collect the amount outstanding under FIMCLA through such means as the use of collection agencies, recovery from amounts owed to the producer from other governmental programs such as NISA and any other safety net program, and any other methods deemed appropriate.

When possible, the lender should assist the Department in the collection of the amount outstanding after the Department honors the guarantee.

## APPENDIX

### I. Care and Prudence in Granting FIMCLA Loans:

In making and administering a loan under FIMCLA, the lender is expected to apply similar procedures for loan approval as when granting loans that are not subject to a FIMCLA guarantee. Care and prudence is not a fixed and absolute standard. Care and prudence is a floating standard of reasonable and sound practice in relation to the varying level of risk involved in a particular loan. Obviously, a lender will exercise different levels of care and prudence depending on the amount of the loan. Similarly, more care is taken when lending to a relatively new or less established borrower than when lending to a long-time, well-established customer that does not carry the same degree of risk.

At a minimum, the lender should obtain credit references or conduct a credit check in accordance with the lender's ordinary business practices, complete an assessment of the repayment ability of the borrower taking into account all other obligations of the borrower and when assets are purchased from a non-arms length party, when assets of a going concern are purchased; and when assets are purchased from a lender, an appraisal should be performed.

### II. The following is a breakdown of different scenarios and whether or not the producer is eligible under FIMCLA:

- ▶ Individual or a company has been farming for XX years. He/she has a land base. The farmer wants to purchase a new tractor under FIMCLA - **Eligible**.
- ▶ Individual or a company purchases an existing farm operation (turn-key) A short while after, he wants to purchase a new tractor - **Eligible**.
- ▶ Individual or a company purchases an existing farm operation (turn-key). He/she wants to use FIMCLA to help with this purchase -**Not Eligible, Start-up**.
- ▶ Individual or a company purchases an existing farm that is not currently in operation. He/she wants to purchase a tractor using FIMCLA -**Not Eligible, Start-up**.
- ▶ Individual or company has farm land. It is currently not being used. No farming activity is taken place. The farmer wants a FIMCLA to purchase a tractor - **Not Eligible**.

In the scenario where an individual wants to incorporate and requests to have his/her existing FIMCLA loan transferred over into the companies name, the lender must leave the loan as it is if the company does not meet the eligibility requirements under FIMCLA and simply have the company assume responsibility for the care and maintenance of the

product purchased. This leaves full responsibility of the loan still with the individual and does not jeopardize the guarantee.

Companies may be eligible under FIMCLA. But as with individuals, it must be determined that the company meets the program eligibility. The company has to show that it is a "farmer" and "farming" and that it also has a land base. Even if the principals of the company have been farming for 5 years, the company itself still has to show that it is actively engaged in farming. If it can not, then it would not be eligible for financing under FIMCLA.

### **III. Advanced Rulings**

Where loan officers are unsure whether a given situation is covered by the Act, Regulations, or Guidelines, they should seek clarification and direction from their head office, regional office or their central, as the case may be.

Individual circumstances may warrant an advance ruling in some cases, and FIMCLA's Program Officers are available to respond upon receipt of a written enquiry.

The advance ruling is written confirmation that the Administration gives the client concerning the results of a proposed transaction.

This service can save time if clients fax their requests and indicate to us in writing that FIMCLA may respond by fax.

FIMCLA will interpret specific provisions of the Act for a definite transaction or transactions that the client is **contemplating** in the near future.

Most advance rulings involve "grey areas", complex transactions or both.

Advance ruling applies only to the client to whom the ruling was issued.

Advance rulings are not always favourable to the client. However, FIMCLA would consider a request to reconsider, if the client has new information or can show that there was a misunderstanding of information previously submitted.

When necessary, FIMCLA will ask Justice Canada for legal advice.

FIMCLA's goals is to provide clients with quality & timely service, encourage self assessment and to interpret the Act consistently, fairly and according to its content for all clients.

**All correspondence concerning FIMCLA should be mailed to**

Program Manager  
Farm Improvement and Marketing Cooperative Loans Administration  
Agriculture and Agri-Food Canada  
2200 Walkley Road, 2nd floor  
Ottawa, Ontario  
K1A 0C5  
**e-mail: robertr@em.agr.ca**

#### **IV. Designation of Lenders**

In order to make FIMCLA loans, lenders must become designated by the Minister under the Act. Bank and other designated lenders are then able to counsel borrowers if they qualify under FIMCLA and how their particular financial needs can be met.

**A non-designated lender may become a designated lender under FIMCLA by submitting the following information to the Administration:**

- a) Assets of last balance sheet
- b) Net annual income in previous fiscal year
- c) Director's approval of application for designation (copy of formal board resolution)
- d) The date the financial institution opened for business
- e) Number of members
- f) Name of full-time manager
- g) Transit number
- h) Most recent annual report
- i) Acknowledgment that the lender understands and can accept the terms of FIMCLA
- j) Certificate of compliance to provincial laws (reserves).

All chartered banks and Alberta Treasury Branches are authorized to make loans under the provisions of the FIMCLA. Credit unions, caisse populaires, cooperative societies, trust companies, loan companies and insurance companies must submit the above information to become designated as a lender under the program.

#### **V. Instructions for the Registration of Loans**

**The Schedule 1 is to be completed and signed by the borrower at the same time the loan is negotiated. As the date of negotiation and the date of disbursement of funds may not be the same date :**

- ▶ Enter the name, address and postal code of the name of the lending institution granting the loan;

- ▶ Enter the eight-digit transit number of the lender branch where the loan was authorized/approved;
- ▶ Enter the name, address, and postal code of the individual, partnership, cooperation or cooperative associating requesting the loan;
- ▶ Check the type of operation: sole ownership, partnership, cooperation or cooperative association;
- ▶ Enter the date of the loan. Note it is important to enter the date Year/Month/Day;
- ▶ Enter the term of the loan: the duration of the loan, in months, not exceeding 10 years, unless additional land which is a maximum of 15 years;
- ▶ Enter the loan interest rate;
- ▶ Enter the type of interest: fixed rate interest/floating rate interest;
- ▶ Enter the repayment frequency: payments made annually, semi-annually, quarterly;
- ▶ Enter the FIMCLA purpose code for which the loan is required along with the amount required;
- ▶ Enter the total amount of the loan requested;
- ▶ Enter the amount of the FIMCLA Registration fee owed on the loan at a rate of 0.85%;
- ▶ Enter the amount of the FIMCLA Registration fee and lender's charges financed under FIMCLA;
- ▶ Be sure that both the lender and the borrower read, sign and date the registration form.

**Missing information may be cause for a delay in registering the loan or the return of the form.**

**It is imperative that the following information be noted:**

- ▶ Prepare a separate report for each loan.
- ▶ The schedule 1 is to be completed and signed by the borrower at the time the loan is negotiated and full or partial disbursement of funds is made. This form must be

received by Agriculture and Agri-Food Canada, Ottawa, within 60 days from the date the funds are disbursed (180 days for construction loans) along with the lender's cheque in the amount of 0.85% (Registration fee) of the amount of the loan.

- ▶ Upon receipt of the Schedule 1, Agriculture and Agri-Food Canada will register the loan. An Acknowledgment of Loan will be returned to the lender certifying the loan has been registered in Ministers Registry.

**Retain on file the information mentioned in Section 7 of these guidelines (Checklist).**

## **VI. 60-60 Day Rule**

- ▶ a farmer has **60 days** to make formal application to a lender for a FIMCLA loan once purchase has been completed;
- ▶ a purchase is not deemed to be completed until the goods and/or services have been rendered;
- ▶ the loan registration and related fee must be forwarded to the Administration within **60 days** of the first disbursement is advanced (180 days for construction loans).

**It is preferable that a borrower make application prior to making any purchase.**

### **Construction Loans:**

- ▶ for loans granted for the purpose of constructing a farm building, Section 14 of the Regulation allows up to 180 days from the first disbursement to register the loan;
- ▶ the lender may give advances to the borrower provided there is sufficient receipts to cover the amount given.

The Administration may, on application by a lender, extend the time set out above, if the Administration is satisfied that the lender was unable to register the loan within that time. Refer to Section 9 for more information on Registrations.

## **VII. Marketing Tools**

FIMCLA has developed a number of marketing tools which are useful for increasing awareness and understanding the Farm Improvement and Marketing Cooperatives Loan Act among all stakeholder groups. Through these tools the program hopes to provide targeted, understandable information on the program to key audiences, provide farmers with the tools they need to access the program and deal knowledgeably with the lenders.

We will provide lenders with the information they need to deliver the program effectively and show how FIMCLA is contributing to increasing growth in Canada's farm sector. Finally, we wish to show how FIMCLA's contributing to increasing growth in Canada's farm sector, demonstrate the program's effectiveness and cost-efficiency.

- ▶ It is most important, to establish our mandate through our marketing techniques with the audiences;
- ▶ the program helps farmers and their marketing cooperatives grow their businesses through loan guarantees;
- ▶ the program contributes to the development of a growing, competitive and market-oriented agriculture and agri-food industry;
- ▶ we help farmers and their marketing cooperatives achieve financial security and financial independence, and less dependence on government support; and
- ▶ the program contributes to quality of life in rural communities.

**The following are tools which are presently in use:**

- ▶ Presentations are often made in order to inform both lenders and borrowers of the purpose of our program, as well as any changes to program regulations or procedures.
- ▶ Exhibits are set up periodically which provide an excellent opportunity for individuals to communicate in person with members of the Department. Questions may be asked and further information and direction may be given.
- ▶ Fact Sheets are convenient and provide a quick overview of program objectives and guidelines. Commonly asked questions on topics like eligibility, time limits, registration procedures and general costs are simply answered and easy to comprehend.
- ▶ The FIMCLA News is published on a "as is required" basis and discusses current issues being handled in the department such as amendments to the regulations. Stories are also told of the benefits of the program to individual producers.

**FIMCLA may also be found on the Internet at the following address:  
[www.agr.ca/misb/nmp/fimcla](http://www.agr.ca/misb/nmp/fimcla)**

**FIMCLA Lender's Guidelines  
- Section D -**

**Forms**

**FIMCLA Lender's Guidelines**  
**- Section E -**

**Act**

**FIMCLA Lender's Guidelines  
- Section F -**

**Regulations**