



Agriculture and  
Agri-Food Canada

Agriculture et  
Agroalimentaire Canada



Canadian Agricultural Loans Act (CALA)

# **LENDERS' GUIDELINES**

June, 2009

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***Canadian Agricultural Loans Act (CALA)***  
**LENDERS' GUIDELINES**  
**June, 2009**

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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. This publication is also available electronically on the Internet Site listed above.

## Program Summary

### CALA GUIDELINES - INTRODUCTION

The *Canadian Agricultural Loans Act* (CALA) is a federal loan guarantee program designed to increase the availability of loans for the purpose of the establishment, improvement and development of farms and the processing, distribution or marketing of farm products by agricultural co-operatives. Under the *Act*, the Minister is liable to pay to the lender 95% of a loss sustained on a CALA registered loan provided that the requirements of the *Act* and the Regulations have been met. The CALA replaces and expands on the *Farm Improvement and Marketing Cooperatives Loans Act* (FIMCLA).

The CALA Regulations outline the procedures to be followed and conditions to be met in granting and administering loans under the CALA as well as submission and substantiation of claims for loss.

The *Act* and the Regulations collectively are generally referred to as the CALA Program. The objective of these Guidelines is to assist lenders in the interpretation of the *Act* and the Regulations and in the delivery of this program. If a 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, and Section C details the required action when a loss is incurred.

Lenders are expected to take the same care in making CALA 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 co-operative associations.

The information provided relating to the CALA is collected for Agriculture and Agri-Food Canada (AAFC) under the authority of the CALA for the purpose of efficient management of the program. Any personal information provided to AAFC will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC PPU 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 if 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 these Guidelines, additional clarification or information is required, please contact the CALA Administration at AAFC. Program Officers are available to provide advance rulings on the eligibility of a loan applicant or the purpose for a loan upon receipt of a letter, facsimile or email describing the circumstances. Program staff can be contacted at 1-888-346-2511 or by email at [fgp-pgf@agr.gc.ca](mailto:fgp-pgf@agr.gc.ca).

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## Section A - Assessing Eligibility

*This section outlines the procedures lenders are to follow assessing the eligibility of the borrower and the loan purpose when 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 CALA loan, both the applicant and purpose must meet eligibility criteria defined in the *Act*. An applicant must be a farmer engaged or intending to be engaged in farming in Canada as defined in section 2 of the *Act*. Part-time farmers do qualify. Business enterprises engaged in financing (holding companies) are not eligible. A landed immigrant/non-Canadian citizen may be considered for a CALA loan provided the eligibility requirements are met.

Loans are limited to the establishment of, maintenance of, or the improvements to a farming enterprise, or the processing, distribution or marketing of the products of farming by a co-operative association. Assets of a farming operation, financed with a CALA loan, must be used in that farming enterprise.

**Advance Rulings:** CALA Program Officers can make an advance ruling, where circumstances warrant, upon receipt of a written inquiry detailing the particulars of a loan application. The advance ruling is a written confirmation that the CALA Administration gives the client concerning the results of a proposed transaction. Inquiries should be emailed to [fgp-pgf@agr.gc.ca](mailto:fgp-pgf@agr.gc.ca) or faxed to 1-613-773-2020.

Appendix - Part II provides further information on Advance Rulings.

#### 1.2 Definitions

“**Farmer**” is defined under the CALA as an “individual, partnership, corporation or cooperative association that is or intends to be engaged in farming in Canada”.

“**Beginning Farmer**” is defined as a “farmer who intends to be or has been engaged in farming in Canada for less than six years”.

“**Farming**” is defined under the CALA 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.”

“**Farm Products Marketing Cooperative**” is defined under the CALA 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, with a majority of 50% plus one of members or shareholders that are farmers”.

### 1.3 **Acceptable Proof**

An applicant is considered to be a **beginning farmer** if they can demonstrate that they have either been farming in Canada for less than six years or intend to begin farming in Canada. Acceptable proof may include an income tax return that show no farming income earned and/or expenses incurred in Canada at least once in the last six years from the date the loan is being requested. With regards to **intent to farm**, acceptable proof may include a business plan assessed and deemed viable by the lender.

To demonstrate that a **farm products marketing cooperative** is eligible under the CALA, 50 percent plus one of the members or shareholders must provide a copy of an income tax form, farm financial statement or other evidence showing that they are engaged in farming in Canada. An attestation from a notary that this requirement is met for a co-operative will suffice for this purpose.

### 1.4 **Nature of Interest of the Borrower in a 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 the CALA to an eligible farmer who leases 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:** Appendix - Part II outlines several eligibility scenarios. In all cases, each person who wishes to obtain a loan under the program must qualify on their own and must meet the criteria as described under “DEFINITIONS”.

## **1.5 Farm Products Marketing Cooperatives (*Act*, Section 6)**

A farm products marketing co-operative association may be eligible for loans of up to \$3 million for eligible purposes related to the processing, marketing or distribution of the products of farming. The requirements for obtaining such loans, including the necessity for approval of the Minister are outlined in section 6 of the *Act*.

### **1.5.1 Documentation required for loans above stipulated limits**

The following documentation must be submitted by the lender to the CALA Administration where a co-operative association is seeking a loan greater than \$500,000 for real property or \$350,000 for any other purpose:

- a) The co-operative association must provide a written request for a CALA guarantee to the CALA 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 co-operative association 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 50 percent plus one of the co-operative association's members or shareholders is a 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 co-operative association must agree to submit annual operating/financial reports or as may be requested by the CALA Administration.
- g) In addition to the agreement on loan payments, the co-operative 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 co-operative association.

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

### 1.5.2 Shareholders

The shareholder member's equity in the co-operative association must always represent a minimum of 20% of the co-operative association'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 co-operative association's other creditors. Details should be provided with the co-operative association's financial statement.

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

**Shareholders** or members of the co-operative association, as individual farmers/farm partners are not prevented from applying for a CALA loan if they qualify on **separate** farming operations, and may be eligible for guaranteed loans of up to \$500,000 for these distinct operations. The \$500,000 maximum per individual farm enterprise could be comprised of a combination of individual or joint (partnership) loans.

### 1.5.3 Project Assessment

The application review process will not commence until all of the required documentation has been received by the CALA Administration. Once the documents are received, a six week time frame is anticipated to review and process the application. Failure to provide information on any area outlined in the application procedures may delay the evaluation of the application. Please note that under requirements of the *Canadian Environmental Assessment Act* (CEAA), a federal environmental assessment of the project may be necessary.

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

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

The maximum amount of the loan is dependent upon the legal status of the applicant. An applicant may have one or more loans at any one time, but the total of loans issued under the CALA and the *Farm Improvement and Marketing Cooperatives Loans Act* (FIMCLA) cannot exceed the **maximum limit of \$500,000**.

Loans can be issued for up to **\$500,000 for real property** (refer to section 4 of these Guidelines for real property purposes) and **\$350,000 for any other purpose**, including consolidation/refinancing .

### 2.1 **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 **\$500,000**.

### 2.2 **Partnership**

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 **\$500,000**.

For loans made to a partnership, each partner is attributed a pro-rated share of the loan amount. For example, if a loan for \$300,000 is made to a partnership consisting of three individuals, each individual is attributed a share of \$100,000. Care should be taken to ensure that when partnership loans are issued, each individual does not exceed their individual maximum amount of \$500,000 when their pro-rated share from the partnership loan is taken into account with their other CALA loans.

## 2.3 Corporation

A **corporation** is a **separate legal entity** on its own which qualifies for individual financing under the CALA. 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 **\$500,000**.

## 2.4 Co-operative Association

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 **\$3 million**. Applications for loans from co-operative associations over \$500,000 must be approved by the Minister prior to the lender issuing the funds. Loans under \$500,000 do not require prior approval of the Minister. Refer to section 1.5.1 of these Guidelines for application instructions.

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

The eligible amount of the loan is dependent upon the type of applicant.

### 3.1 Existing Farmers

Loans to existing farmers 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.

### 3.2 Beginning Farmers

Loans to beginning farmers must not exceed the lesser of 90 % 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% or 90% rule. Refer to sections 10.1 and 10.2 of these Guidelines for more information on the registration fee and charges.

**NOTE:** As an exception to the above, loans for **consolidation/refinancing** may be issued at 100% of the outstanding principal balance. Refer to section 5.8 of these Guidelines for further information on consolidation/refinancing loans.

### 3.3 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 would be considered **ineligible** under the CALA. If a payable on the property purchased beyond the 60 day time frame is still outstanding, it may be able to be refinanced under the CALA. Refer to section 5.8 of these Guidelines for further information on consolidation/refinancing loans.

### 3.4 Appraisals

The lender must request an 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 normally obtained an independent appraisal from a person qualified in the field relevant to the property being taken as security, they can do so. The amount of the loan must be based upon the lesser of the current market value, as reflected in the appraisal, or the cost of purchasing the asset(s) subject to the 80% - 90% rule described in sections 3.1 and 3.2.

Either types of appraisal must be documented and retained on file in the event of a Claim for Loss.

### 3.5 Farm Real Estate

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 is always based on the corresponding percentage of the purchase price or the appraised value, whichever is the lesser of the two. Refer to section 5.6 of these Guidelines for information on family dwellings.

### 3.6 Trade-In

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

### 3.7 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, it 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 will be required. **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.

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

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 the CALA provides a maximum rate of interest, lenders may charge interest rates lower than the maximum interest rates indicated below.

##### 4.1 **Maximum floating rate**

The maximum floating rate is 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. (Regulations 14 [1] [a])

##### 4.2 **Maximum fixed rate**

The maximum fixed rate is 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. (Regulations 14 [1] [b])

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. (Regulations 14 [2])

##### 4.3 **Prepayment**

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 31, 1999 revisions to the Regulations are governed by the CALA Regulations.

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

Only loans issued to farmers for the purpose of establishing, improving and developing a farm enterprise or co-operative associations for the processing, distributing or marketing of the products of farming qualify under the CALA. Assets of a farm enterprise or co-operative association financed with a CALA loan must be used in that farming enterprise or co-operative association that is carried on in Canada.

## 5.1 Summary of the Eligible Expenditures

- Equipment Loans (Refer to paragraph 5.4);
- Building/Construction Loans (Refer to paragraph 5.5);
- Land Loans (Refer to paragraph 5.6);
- Livestock Loans (Refer to paragraph 5.7);
- Consolidation/Refinancing Loans (Refer to paragraph 5.8);
- Co-operative Association Loans (Refer to paragraph 1.5).

**NOTE:** A loan can be financed for a small business on a farm as long as it is an improvement to the existing farm enterprise. 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 farmer wants to sell from an area off the farm, the project would not be eligible under the CALA, but rather would be considered a small business project and may be eligible under the *Canada Small Business Financing Act*.

## 5.2 Detailed list of items that can be financed using the CALA (Regs. 2)

The following list of **eligible loan purposes** is not intended to be exhaustive, but simply illustrative of some items found in the *Act* or Regulations; others have been determined to be eligible through policy decisions rendered by AAFC.

### Real Property purposes:

- Purchase of land;
- Construction, repair or alteration of, or additions to, any building or structure on a farm;
- Purchase, movement to and installing on a farm of complete or partially complete structures and, where necessary, the completion of the installed structures.

### All Other purposes:

- Purchase, installation, alteration, major overhaul, or major repair to/of:
  - tools, implements, apparatus and machines of any kind not usually affixed to real or immovable property; or
  - machinery and apparatus for the generation or distribution of electricity, whether or not affixed to real or immovable property.
- Purchase of livestock, which will provide a long-term improvement to a farming operation (e.g. breeding stock) including:
  - horses and other equines;
  - cattle, sheep, goats and other ruminants;
  - swine, poultry, bees and fur-bearing animals; and
  - any other prescribed animal.
- Erection or construction of fencing or works for drainage.
- Clearing, breaking, irrigating and reclaiming of land.

- Conservation of soil, prevention of soil erosion by the planting of trees and shelter belts.
- Repair or overhaul of fencing where the cost is \$2,000 or more.
- Purchase and the planting of maple trees for maple syrup production and the purchase and planting of fruit trees, Christmas trees, and ginseng, where the cost is \$2,000 or more.
- Construction of a road or driveway on a farm.
- Land transfer tax, survey, appraisal and legal costs relating to the purchase of land.
- Consolidation/refinancing of loans granted under the *Farm Improvement and Marketing Cooperatives Loans Act* (FIMCLA) and the CALA by the lending institution where the loans originated, and loans issued by a third party originally made for the purposes eligible under the FIMCLA or CALA.
- Purchase of shares for inter-generational farm transfers (refer to section 5.9 of these Guidelines).
- Purchase of a crop storage condominium.
- The cost of obtaining security on existing assets (including premiums for life and/or disability insurance).
- The costs of a fee or charge referred to in section 17 of the Regulations.
- Purchase of a refrigerated truck or a mobile abattoir.
- The purchase of equipment to process farm products into energy (e.g. a biodigester).

**NOTE:** In terms of eligible forestry purposes under the CALA, farming includes the production of wood from wood lots. Wood lot operators are eligible provided that they plant the trees they are harvesting.

### 5.3 Examples of some of the Ineligible Expenditures

The following list of **purposes are deemed ineligible** under the CALA.

- Refundable Taxes (i.e. GST, PST or Custom Duties).
- Equipment for the sole use of custom work.
- Recreational vehicles.
- Operating loans.
- Loans for the purchase of short-term feeder livestock.
- Stock in trade.
- Construction of or improvements to a family dwelling.
- Permits & licenses.
- Goodwill.
- Vehicles for personal uses.
- Labour 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

**NOTE:** The previous lists are not exhaustive. When in doubt, loan officers should contact their head office, regional office, central or a CALA Program Officer for advice.

#### 5.4 Equipment Loans

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 labour cost attributed to the proprietor.**

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

#### 5.5 Building Loans

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 labour 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.

#### 5.6 Land Loans

Land loans made to a borrower who is or intends to become a farmer and who is to become the owner of the land, including any buildings or structures on it, necessary for the farming operation. If the land has a house on it, see reference to the *Act*, section 4.

## **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 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 a 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.

**NOTE:** If the above conditions can be met, then the financing of this land purchase can be made for the corresponding percentage of the value of the property or the purchase price, whichever is the lesser of the two.

## **5.7 Livestock Loans**

The purchase of livestock which will provide a long-term improvement to a farming operation (e.g. breeding stock), including cattle, sheep, goats, and other ruminants, swine, poultry, bees and fur bearing animals, other prescribed animals such as deer (including 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 and pregnant mare urine (PMU) only, not for riding stables, sport, or pets.

## **5.8 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 \$350,000.

- 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 registered under the FIMCLA or CALA may be consolidated/refinanced by the lending institution where loans originated. Consolidation/ refinancing of a lender's ordinary loans, (loans other than those granted under the CALA, but coming within the purposes of the CALA) must be referred to another lender. (Reg. 4[3])
- e) Loans by a third party (e.g. another financial institution, implement dealer, contractor, etc.), originally made for the purposes eligible under the CALA can be consolidated/refinanced under the CALA.

**NOTE:** When **consolidating/refinancing** loans granted for the acquisition of land, the term cannot exceed ten years.

- f) Care and prudence (*Act* 4[3][h]) may require that an appraisal be obtained at the time of the consolidation/refinancing to determine that the loan will not exceed the corresponding percentage of the current market value of the property being provided as security. (See Appendix, Part I - Care & Prudence in Granting CALA Loans)
- g) Terms of repayment should ensure that sufficient security will be available over the term of the loan to maintain the corresponding percentage security requirement.
- h) Consolidation of a CALA loan must remain within the prescribed amortization periods.
- i) All of the original loan documents for the loan(s) to be consolidated/refinanced to determine loan and farmer eligibility at the time of the original loan issuance, and the original loan documents demonstrating that only the principal amount(s) outstanding of the original loan(s) is being consolidated/refinanced must be retained on file and submitted with a Claim for Loss. 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 or from the borrower.

## 5.9 Intergenerational Loans

Intergenerational loans made to a borrower who is or intends to be a farmer and who is to become the owner of the shares of a family farming operation. (please refer to paragraph 4(1)(g.1 to g.3) of the *Act*)

The CALA program aims to support intergenerational farm transfers. Not all farm businesses are carried on as a sole proprietorship, which would dictate a straight asset sale

to the next generation. In many cases, a parent may want to transfer his or her shares in a corporation that carries on the farming business to their child. The transfer could also be by sale of partnership shares or membership in a co-operative. So, an eligible purpose of a loan has to include the purchase by a child of shares in the parent's corporation, partnership or co-operative through which the farm business is carried on.

4(1)(g.1 to g.3 of the *Act* has the intent to incorporate this purpose under the CALA, and to consider all possible business structures involved. Without (g.1), all qualifying intergenerational transfers would have to be asset sales (land, buildings, equipment, etc.). This may not make sense from a business or tax purposes point of view to some farmers. (g.2) permits additional flexibility by allowing for transfers of, for example, the shares of a company that owns a company that operates a farm business. (g.3) makes shares of a company that owns a company referenced in (g.2) eligible. In other words, there can be a variety of ownership structures and the *Act* will still be available to assist with the intergenerational transfer. In all cases, 90 percent of the fair market value of the property (i.e. the assets) of the corporation, which shares are being transferred, must ultimately be attributable either directly, or through ownership of another corporation, to the business of farming in Canada. So, shares in a local dairy which bottles milk would not qualify but shares in a corporation carrying on the business of a dairy farm would.

Essentially, the purpose of (g.1), (g.2) and (g.3) is to accommodate a variety of business structures and thereby help ensure that farmers are free to organize their affairs for business and family reasons as they see fit and still have access to the benefits of a loan guarantee program for intergenerational transfers.

## 5.10 Other Eligible Purposes

Other eligible purposes include land transfer tax, survey costs, appraisal costs, legal fees relating to the purchase of land and crop storage condominiums.

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

### 6.1 Repayment Period

With the exception of loans to finance the purchase of land, which may be repaid up to 15 years, the maximum repayment period for all loan purposes, including all loans issued for consolidation/refinance, is 10 years. **The repayment period commences on the date of the first scheduled principal repayment for the loan.**

If the loan is amortized over more than 10 or 15 years, a balloon payment must be scheduled no later than the end of the 10 or 15 year maximum repayment period. Refer to section 15 of these Guidelines for the amending the repayment terms.

**For co-operative association loans for the processing, distributing or marketing of the products of farming**, 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.

## 6.2 Repayment of Loan Principal

Repayment of the loan principal must be scheduled at least annually from the first disbursement of the loan. The first instalment of principal must be scheduled no later than 12 months from the date of the first disbursement. Please note that any prepayment on the loan or payment due to sale of security is not considered a regular scheduled payment.

**NOTE:** A loan is considered to be made on the date of the first disbursement of loan funds.

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”.

## 6.3 Full or Partial Prepayment

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.

## 7. LOAN DOCUMENT AND SECURITY (Reg. 15)

At the time of making a loan, the lender and the applicant must complete and sign the appropriate documents as required by the lender. These documents will typically include:

- 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 the CALA’s schedules are required (e.g. Loan

**NOTE:** 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.

## 7.1 Security

At the time the loan is issued, the lender must take a security interest in accordance with normal lending practice, whichever security listed below is the most appropriate. The lender should maintain adequate security (sufficient for the amount of the loan outstanding and realizable) 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.

### **7.1.1 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, another financial institution or any other secured creditor on the land, premises or equipment, the lender's security for the loan must be a first fixed charge.

### **7.1.2 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* (equal ranking) with the other sources of financing provided for the asset(s).

### **7.1.3 Highest Ranking Security**

Every effort must be taken by the lender to obtain a first ranked priority or pari passu first ranked priority. However, if at the time the loan is made, prior charges exist in favor of the lender, another financial institutions or any other secured creditor, the lender's security shall be a fixed charge of the highest available rank, provided sufficient equity exists in the security being taken to validate the amount of the loan. This situation may arise when a loan is made for improvements to an asset or construction of building or structures on a farm property.

### **7.1.4 Lower Ranking Security**

If a lender is unable to obtain a first rank priority or pari passu ranking, 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.

### **7.1.5 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 CALA from the after acquired provision, thus allowing the CALA to be covered by a first rank priority on the new asset.

### **7.1.6 Additional Security**

Wherever appropriate, the lender may wish to further secure the CALA 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 CALA.

## **8. LENDER'S APPROVAL CHECKLIST**

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

- borrower is eligible (can demonstrate an intent to farm or is actively farming at the time of loan application);
- borrower is an eligible beginning farmer (i.e. farmer who intends to be or has been engaged in farming in Canada for less than six years);

- borrower is an eligible co-operative association for loans for the processing, distributing or marketing of the products of farming (i.e. 50 percent plus one farmer membership)
- purpose of loan is eligible;
- date of purchase is not more than 60 days prior to the day the loan is disbursed;
- percentage of assets financed does not exceed the corresponding percentage of the appraised value or purchase price;
- term of loan is not greater than 10 years, except for land where it may be up to 15 years (20 years for land and buildings for farm product marketing cooperatives);
- first scheduled repayment of principal is within a maximum of one year of the initial disbursement of the loan and at least annually thereafter;
- aggregate of the borrower's CALA outstanding loans is not greater than \$500,000;
- real property loans do not exceed \$500,000 and loans for any other purposes do not exceed \$350,000;
- required security has been taken and registered;
- insurance is held over assets pledged if applicable;
- rate of interest does not exceed one percent above the prime rate or one percent above the residential mortgage rate over the term of the loan;
- evidence is on file to support the cost of assets financed (e.g. invoices, contracts, purchase and sale agreements, etc.);
- evidence is on file to support that the assets financed by the loan were paid by the borrower (e.g. cancelled cheques, vendor's receipted invoice, or vendor's declaration);
- an appraisal is on file for non-arm's length transactions;
- no fee, 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 fee, 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 paragraphs 4(3)(c) or 6(2)(e) of the *Act*;
- a loan registration form is being submitted with a 0.85% registration fee to the CALA Administration; and
- the lender's administration fee does not exceed 0.25% of the loan amount up to a maximum of \$250 for loans less than \$250,000, and for loans equal to or greater than \$250,000, the lender's administration fee does not exceed 0.1% of the loan amount.

## 9. 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.

For guaranteed farm products marketing loans over \$500,000 for real property or over \$350,000 for all other purposes (refer to subsection 6.1 of the *Act*), a federal environmental assessment in accordance with the CEAA may be necessary.

## Section B - Administering CALA Loans

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

### 10. LOAN REGISTRATION FEE, LENDER ADMINISTRATION CHARGE AND LOAN REGISTRATION (Regs. 8, 16 & 17)

The lender must ensure that the loan qualifies under the program prior to submitting the Loan Registration and Fee Submission (Schedule 1). **The acknowledgment of the Schedule 1 by the CALA Administration is not a confirmation that the loan is eligible for the guarantee.** When lenders are unsure of the eligibility of a potential borrower, the CALA Administration should be contacted to seek clarification and, if necessary, an advanced ruling (refer to section 1 of these Guidelines for eligibility and advance rulings).

#### 10.1 Loan Registration Fee

- ▶ the loan registration fee is 0.85% of the loan principal;
- ▶ a CALA 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 and Fee Submission**, Schedule 1 must be signed by a responsible officer of the lender and by the borrower;
- ▶ the **government guarantee** is granted for the CALA loan registered;
- ▶ a **cheque or draft**, payable to the Receiver General for Canada, in the amount of **the registration fee** must accompany the form;
- ▶ once the loan has been registered by the CALA Administration, a Loan Registration and Fee Receipt Acknowledgment will be sent to the lender;
- ▶ a CALA loan registration can include assets from multiple purposes without submitting a separate form for each purpose.

## 10.2 Lender Administration Charge

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; and
- ▶ 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 reimbursement of any excess must be refunded to the borrower.

## 10.3 Loan Registration Application

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

**NOTE:** An incomplete Loan Registration and Fee Submission 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. Refer to the Appendix, Part IV for instructions relating to the registration of loans. The loan will be registered when all missing information is received by the CALA Administration.

The CALA Administration defines the amount of the loan to be the total amount ultimately disbursed by the lender to the borrower.

## 10.4 Borrower Name for Loan Registration

The borrower is considered to be the individual, in the case of a sole proprietorship, the partners, in the case of a partnership, the incorporated body, in the case of an incorporated company, and the co-operative association, in the case of a co-operative association loan. Loans will be registered in the name of the individual, the names of the partners, the name of the incorporated company, or in the name of the co-operative association, as the case may be.

## 10.5 Late Registration

If a lender is unable to register a loan within the prescribed time period, the CALA Administration may extend the registration period. In this situation, the lender must provide a written explanation why the registration request is late to the CALA Administration for consideration.

## 10.6 Adding Loan Registration Fee and Lender Administration Charge to the Loan Amount

The CALA 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 does not exceed the corresponding legislated or prescribed amount. When completing the Loan Registration and Fee Submission, it is not mandatory to add the registration fee and the lender's charges to the amount of the loan. The fees and charges do not need to be considered in determining the limit regarding the corresponding percentage of the appraised value or cost of the property of which the loan is made. Refer to section 3.1 and 3.2 of these Guidelines for more information on the corresponding percentages.

## 10.7 Registration Fee Reimbursement

Within one year from the date of the first disbursement of a loan, 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 CALA 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 an eligible CALA loan, the CALA 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.

## 11. LOAN IDENTIFICATION

While there are actually very few instances where correspondence is needed, should the lender encounter situations such as inquiries regarding eligibility, revisions of loan terms, defaults, claims for loss, etc. these should be reported to the CALA Administration. Where this occurs, it is important that any correspondence concerning a loan identify the loan registration number indicated on the Loan Registration and Fee Receipt Acknowledgment Form for identification purposes.

## 12. CHANGE OF LENDER

A CALA loan cannot be transferred from one lender to another. Please refer to section 5.8 of these Guidelines, refinancing/consolidating a loan, for further details. However, a CALA loan may be transferred to another branch of the same lending institution.

## 13. 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, corporation or co-operative association), it is important that the lender obtain a formal notice from the borrower 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 CALA Administration of the borrower's change of name.

## 14. SALE OF THE BORROWER'S FARM OR ASSET/CHANGE OF BORROWER STATUS OR STRUCTURE

In the case where the assets of a farm enterprise are sold, the loan should be repaid entirely as there will be a change of proprietor of the assets or the farming enterprise.

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.

In the case where the sole proprietor or a partnership of individuals changes, or decides to incorporate, 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, the lender's security is maintained, and repayment of the loan continues by the original borrower or by the new sole proprietor, partnership of individuals or the incorporated company.

**NOTE: In most cases, CALA loans may not be assumed.** 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.

## 15. CHANGE IN SECURITY

### 15.1 Substitution

If there is to be a change in the security that was originally registered at the time the loan was approved, the CALA Administration's approval of the change, in the form of a Schedule 2 (Request for Revision of Loan Terms) must be received. Any substitution should be properly recorded, documented and details kept in the borrower's file. Refer to section 16 of these Guidelines for more information on Revision of Loan Terms.

As a principle, lenders should evaluate the worth and realization potential of the replacing asset/guarantee using the same care and criteria used for the non-CALA loans. 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 substitutions of loan security:**

- a) any security registered for the loan with any other security referred to in section 7.1.1 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 sufficient for the loan amount outstanding;
- c) a personal guarantee by any other personal or corporate guarantee or by any other security referred to in section 7.1.1 of these Guidelines; and
- d) a corporate guarantee by any other corporate or personal guarantee (see section 7.1.6 of these Guidelines) or by any other security referred to in section 7.1 of these Guidelines.

**NOTE:** The CALA 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 other assets if the value of the substituted assets substantiates the value of the loan outstanding.

The CALA Administration will not 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.

## 15.2 Release:

A lender may recommend release of collateral equipment pledged for an equipment loan provided:

- ▶ other security is adequate to cover the outstanding balance on the loan;
- ▶ the loan is not in default; and
- ▶ the principal balance of the loan has been reduced by an amount equal to the original cost of the equipment to be released.

A lender may recommend release of an unsecured personal guarantee provided:

- ▶ other security is adequate to cover the outstanding balance on the loan; and
- ▶ the loan is not in default.

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.

The approval of the CALA Administration must be received for these releases.

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

## 15.3 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 CALA 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 to the loan, the lender should take such action as is necessary to protect its interest and that of the government, including requiring additional security be pledged in support of the loan.

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

The Minister is not liable under the *Act* to make any payment to a lender in respect of any loss sustained as a result of a loan where, after the loan is made, the farmer or co-operative association 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.

### **16.1 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 CALA Administration only when the risk of repayment is not increased and the loan is not in default.

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 documented and details kept on the borrower's file. The CALA 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.

**For any revision to the repayment terms, it should be the opinion of the lender that:**

- ▶ the farmer 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 also 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 loans which have a 15 year repayment period.

**NOTE: A common mistake** occurs when the first revised payment is scheduled within one year of the date of revision, but the revised payment date is actually beyond the original annual repayment date for the loan.

**If a borrower misses a repayment date, the borrower is in default and the lender should follow section 17 of these Guidelines.**

## 16.2 Amendments requiring the CALA Administration's approval:

Section 13 of the Regulations 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 in writing from the Minister". Refer to section 15 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, a Schedule 2 (Request for Revision of Loan Terms) must be completed by the borrower and the lender. The lender then forwards the Schedule 2, along with its opinion that the farmer can meet his obligation under the revised terms, adequate security has been taken to secure the loan and any interest payment arrears have been paid in full, to the CALA Administration. Once the request has been reviewed and approved, the approved Schedule 2 will be sent to the lender. This form should be retained on the borrower's file in the event of a Claim for Loss.

**NOTE:** When a borrower is in default, the lender must refer to section 17 of these Guidelines to administer the loan. The CALA defines the default date as the day after the day on which a payment for a loan was scheduled to have been made, but was not made. The default date is determined based on the terms and conditions indicated in the promissory note.

## 16.3 Renewal of Terms

Where the repayment term is less than prescribed by the *Act* and the 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 section 4 of these Guidelines.

## 17. 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 to this 18-month period is received by the CALA Administration prior to its expiration. The CALA 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 in the promissory note.

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

- a) **For loans other than co-operative loans**, within 6 months from the default date, but not before three months from the date the loan was considered to be in arrears. The

three month time frame allows for the borrower to bring the loan current.

- b) **For farm products marketing cooperative loans**, within 15 days of the date the loan was considered in default.

In both situations, a loan history/account statement (showing the loan disbursement and payments made) and a copy of the promissory note should accompany the default report. Original documents should be kept in the lender's file in the event of a Claim for Loss.

In the event the lender and farmer fail to agree on a suitable repayment plan, the balance of the loan should be demanded by registered mail and action commenced to seize the security held in support of the loan in accordance with provincial laws and the *Farm Debt Mediation Act* (FDMA). 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 should be applied in the following order:

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

The farmer 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, judgment should be obtained for protection of the Minister's subrogation rights.

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

## **18. CALLING THE LOAN**

If the lender decides that the default situation cannot be remedied, 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 FDMA.

## **19. 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 can include:

- obtaining other collateral security of the farming operation;
- realizing upon any security of the farming operation;
- effecting a compromise settlement. (**Note: the approval of the CALA Administration is necessary for a compromise settlement**; please refer to section 19.3 of these Guidelines)

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

- to seize, take possession of, sell, arrange for sale or engage a third party to sell secured assets;
- to fully settle or to negotiate a compromise settlement (**subject to CALA Administration approval**; please refer to section 19.3 of these Guidelines) 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 CALA Administration at the lender’s full risk and responsibility for subsequent liquidation.

**NOTE:** For the impact on timing for the submission of a Claim for Loss, see section 21 of these Guidelines.

### **19.1 Realizing on the 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.

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

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

### **19.3 Compromise Settlements**

Compromise settlements can be made at the discretion of the lender with the approval of the CALA Administration, based on the financial circumstances of the farmer and/or guarantors. In cases where the lender is negotiating a settlement of a loan, the lender

should inform the CALA Administration of the negotiations. The reason for and basis of any compromise settlement with a borrower should be well documented in writing.

**NOTE:** The CALA Administration approval is necessary for compromise settlements as Justice Canada must approve any write-off of debts owed to the Crown.

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

Where monies are collected and/or costs are incurred on behalf of both the loan and other loans from the same lender, the costs incurred and the monies collected are to be pro-rated 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.

## **21. CLAIM FOR LOSS TIME CONSTRAINTS (Regs. 20)**

**The lender has a maximum of 18 months from the date of default** (see section 26 of these Guidelines) **to submit a Claim for Loss.** The lender may submit a request to extend the claim submission deadline prior to the passage of the 18 months from the date of default, to the CALA Administration. Further extensions are possible following the same procedure.

The CALA Administration may require that a Claim for Loss be submitted at any time by notifying the lender in writing.

## **22. 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.

## **23. REPORTS**

The CALA 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 CALA Administration.

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

The Minister's liability in favour of a lender in respect of losses sustained by it as a result of loans made by it during a fiscal year and the 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.

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

Offences under the CALA may arise as a result of :

- ▶ anyone making a false statement, a misrepresentation or furnishing false or misleading information; and
- ▶ a borrower fraudulently using the proceeds for the CALA 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.

## Section C - Submitting Claims for Loss

*This section deals with a Claim for Loss submission. A Claim for Loss by a lender may be denied if loans have not been administered in the manner prescribed by the Regulations.*

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### 26. TIMING FOR SUBMISSION OF CLAIMS FOR LOSS

Once the lender has suffered a loss, a Claim for Loss may be submitted to the CALA Administration. The CALA Administration may not be able to accept a Claim for Loss and recommend payment under the guarantee if:

- ▶ 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 this 18-month period **prior to its expiry** may be made to the CALA Administration (see section 21 of these Guidelines). The CALA 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 should be an explanation, as well as supporting documents, outlining why all security could not be realized on and why no further recovery could be made from the borrower.

**NOTE:** The CALA Administration may require that a Claim for Loss be submitted at any time by notifying the lender in writing (Regulations 20 (2)).

### 27. ESTABLISHING AMOUNT OF THE CLAIM FOR LOSS

**27.1 The amount of loss shall be determined by the CALA 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 for Loss 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 CALA 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.

### **27.2 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, or any type of further recovery, is required to be applied to the loan and the loss established accordingly.

### **27.3 Limit:**

Individual Claims for Loss submitted by the lender will be reimbursed as per section 27.1 of these Guidelines. However, if the aggregate amount of Claim for Loss payments to a lender reaches the maximum liability as per section 8 of the *Act* (section 24 of these Guidelines), subsequent Claims for Loss submitted by the lender in that lending period cannot be reimbursed by the CALA Administration.

## **28. DOCUMENTING CLAIM FOR LOSS SUBMISSIONS**

**When a lender submits a Claim for Loss, any or all of the following documents may be required to be submitted:**

- a) a properly completed Claim for Loss form certified by the lender;
- b) a copy of the signed application form and evidence that the applicant was an eligible borrower under the CALA at the time the loan application was made;

- c) a copy of the Loan Registration and Fee Receipt Acknowledgment form, and a copy of any modification subsequently made, if applicable;
- d) evidence showing the actual cost of the equipment, premises, and/or land purchased, or in the case of “60-day” retroactive financing (see section 3.3 of these Guidelines) to demonstrate 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 and the date all payments of principal and interest were made;
- g) as per section 7 of these Guidelines, a copy of the borrower’s promissory note or lender’s loan document showing agreed upon terms and conditions for repayment of the loan (e.g. interest rates, loan repayment dates and amounts, etc.);
- h) evidence that the lender has satisfied itself that the requirements outlined in section 19 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 loan 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 compromise 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, Judgment and Writ of Execution;
- q) evidence of bankruptcy/receivership, a copy of the lender’s proof of claim against the bankrupt estate of obligant (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’s/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 for Loss 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 CALA Administration, to process the Claim for Loss.

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

## **29. CLAIM FOR LOSS FORM**

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

### **29.1 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.

### **29.2 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 wrongdoing 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 for Loss will be processed. The claim shall be paid within **60 days** after the CALA Administration

### **29.3 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 if possible.

## **30. POST-CLAIM FOLLOW-UP**

### **30.1 Lender Follow-Up After Payment of a Claim for Loss**

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 CALA 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 pro-rated between the loans. The lender should first determine the amount of expenses applicable to the loan, then calculate for the 95% / 5% CALA 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 CALA Administration.

The CALA Administration's share of any monies collected after payment of a Claim for Loss are to be forwarded to the CALA Administration, with a cheque payable to the Receiver General of 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 20 of these Guidelines) and then calculate for the 95% / 5% CALA Administration/lender sharing.

**30.2 Collection of the Debt by the CALA Administration**

Once the Claim for Loss under the guarantee has been approved by the CALA Administration, the AAFC Accounts Receivable Unit will undertake any collection action required to collect the debt owing to the Crown.

The Accounts Receivable Unit will attempt to collect the amount outstanding under the CALA through such means as the use of collection agencies, recovery from amounts owed to the farmer from other governmental programs and any other methods deemed appropriate.

When possible, the lender should assist AAFC in the collection of the amount outstanding after AAFC has honoured the guarantee.

## APPENDIX

### I. Care and Prudence in Granting Loans Under the CALA:

In making and administering a loan under the CALA, the lender is expected to apply similar procedures for loan approval as when granting loans that are not subject to a CALA 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, and complete an assessment of the repayment ability of the borrower taking into account all other obligations of the borrower. 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 eligible scenarios, with the indication of the type of scenarios that were previously ineligible under the FIMCLA but are now eligible under the CALA:

- ▶ 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 the CALA - **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 the CALA to help with this purchase - **Now Eligible**
- ▶ Individual or a company purchases an existing farm that is not currently in operation. He/she wants to purchase a tractor using the CALA - **Now Eligible**
- ▶ Individual or company has farm land. It is currently not being used. No farming activity is taken place. The farmer wants to use the CALA to purchase a tractor - **Now Eligible**

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 CALA Program Officers are available to respond.

The CALA Administration can provide written confirmation concerning proposed transactions.

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

Advance rulings may involve “grey areas”, complex transactions or both.

Advance rulings apply only to the client to whom the ruling is issued.

Advance rulings are not always favourable. However, the CALA Administration can reconsider a request if new/additional information becomes available or a misunderstanding of the facts previously submitted exists.

When necessary, the CALA Administration will seek legal advice from Justice Canada.

The CALA Administration’s goals include the provision of quality and timely service and consistent interpretation of the *Act* for all clients.

### III. Designation of Lenders

In order to issue CALA loans, lenders must be designated to do so under the *Act*, or become designated by the Minister under the *Act*. Designated lenders are then able to counsel borrowers if they qualify under the CALA and as to how their particular financial needs can be met.

All chartered banks and Alberta Treasury Branches are authorized to make loans under the provisions of the CALA. Credit unions, caisse populaires, co-operative societies, trust companies, loan companies and insurance companies must submit an application in order to become designated by the Minister as a lender under the program (**for organizations not falling under these listed, please refer to page 39**).

A non-designated lender may become a designated lender under the CALA by submitting the information specified below.

- 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 the CALA
- j) Certificate of compliance to provincial laws (reserves).

#### **Any Other Organization Wanting to Become Designated under the CALA**

The CALA allows any other organization, falling outside of the organizations included above, to become designated under its terms and conditions by the Minister **with the approval of the Minister of Finance**. The information to be reviewed for designation purposes under the CALA by these organizations may be unique and therefore differ from the information required above. Thus, an organization, which would fall under the lender definition as ‘any other organization’ under the CALA, should contact the CALA Administration if it wishes to become designated as a lender so that the specific information requirements to do so can be determined and evaluated.

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

**The Schedule 1, Loan Registration and Fee Submission, 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. Following are the instructions to complete the Schedule 1:**

- ▶ 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 Agricultural Co-Operative Associations requesting the loan;
- ▶ Check the type of operation: sole ownership, partnership, corporation or co-operative 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 the loan is a land loan which has a maximum duration of 15 years;
- ▶ Enter the loan interest rate;

- ▶ Enter the type of interest, fixed rate of interest or floating rate interest;
- ▶ Enter the repayment frequency, payments made annually, semi-annually, quarterly, monthly, etc;
- ▶ Enter the CALA 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 CALA Registration fee owed on the loan at a rate of 0.85%;
- ▶ Enter the amount of the CALA Registration fee and lender's charges financed under CALA;
- ▶ Be sure that both the lender and the borrower read, sign and date the registration form.

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

The schedule 1 must be received by the CALA Administration 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, the CALA Administration will register the loan. An acknowledgment that the loan has been registered will be sent to the lender certifying the loan has been registered.

**Refer to section 8 of these Guidelines for information that may be needed to be kept on the lender's file.**

#### **V. 60-60 Day Rule**

- ▶ a farmer has **60 days** to make formal application to a lender for a CALA 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 CALA Administration within **60 days** of the first disbursement of the loan (180 days for construction loans).

**It may be advantageous for a borrower to apply prior to making a purchase.**

#### **Construction Loans:**

- ▶ for loans granted for the purpose of constructing a farm building, section 14 of the Regulations allows up to **180 days** from the first disbursement to register the loan;
- ▶ the lender may issue an advance to the borrower provided there are sufficient receipts/invoices to cover the advance.

**NOTE:** The CALA Administration may, on application by a lender, extend the time limit to register a loan set out above, if it is satisfied that the lender was unable to register the loan within the specified time limit. Please refer to section 10 of these Guidelines. for more information on loan registration.

## **VI. Marketing Tools**

The CALA Administration has developed a number of marketing tools which are useful for increasing awareness and understanding of the CALA among all stakeholder groups. Through these tools, the program hopes to provide targeted, understandable information on the program to key audiences and 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 the CALA can contribute to Canada's farm sector.

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

- ▶ Presentations can be 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.
- ▶ The CALA Administration attends various farm shows across the country which provide an excellent opportunity for personal communication with program officials.
- ▶ A CALA brochure has been developed to provide a convenient and quick overview of the CALA program. Topics such as what the CALA is, who can apply, what is eligible, loan limits, etc. are covered.
- ▶ An AAFC website for the CALA has been developed and can be accessed at [www.agr.gc.ca/cala](http://www.agr.gc.ca/cala).