Default Prevention and Management

Canada

Table of Contents

Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada

**Policy on Default Prevention and
Management** | **2011**

1.0   Effective Date

This policy takes effect on June 2011.

2.0   Application (Who is covered by this policy?)

This policy applies to Aboriginal Affairs and Northern Development Canada (AANDC) (hereafter referred to as the Department) officials managing transfer payments. This policy does not apply to funding provided under legislated self-government agreements and funding agreements resulting from federal-provincial accords.

This Policy is based on the implementation of the Policy on Transfer Payments (2008), setting out the policy framework for AANDC default prevention and management activities based on risk management and assessment to assist recipients to be proactive in addressing program and/or financial management and capacity challenges.

This policy repeals and replaces the Aboriginal Affairs and Northern Development Canada (AANDC) *Funding Agreements: Intervention Policy* dated April 1, 2007 and is issued under the authority of AANDC Chief Financial Officer (CFO).

3.0   Policy Statement (What is the policy designed to achieve?)

3.1   Objective

The objective of this policy is to:

- Support community capacity development so that communities continue to increase their ability to self-manage and prevent default and default recurrence;

- Assist Recipients, where possible, in preventing defaults of funding agreements;

- Assist Recipients, where possible, in their timely management and remediation of defaults;

- Maintain continuity in the delivery of departmentally funded programs and services to Aboriginal communities while the recipient is in default; and

- Meet the requirements for departmental accountability, transparency, and effective internal control in the management of departmental transfer payment programs.

3.2   Expected Results

The expected results are:

- Enhanced sustainability in the delivery of programs and services by recipients through minimization of default;

- Opportunity for the early identification and prevention of potential recipient defaults reducing the occurrence and severity of defaults through monitoring and compliance reviews;

- Increased capacity of recipients to remediate defaults in a manner that is timely and reflective of the complexity of the default and reflective of the community needs and priorities; and

- Recipients effectively addressing the causes of their defaults.

3.3   Defaults

A default, as specified in the funding agreement, is the occurrence of any of the following circumstances:

- The recipient defaults in any of its obligations set out in the current funding agreement, a prior agreement, or in any other agreement through which a Federal Department funds the recipient;

- The auditor of the recipient gives a disclaimer of opinion or adverse opinion on the financial statements of the recipient in the course of conducting an audit pursuant to a funding agreement;

- In the opinion of the Department, with regards to any financial information relating to the recipient and reviewed by the Department, the financial position of the recipient is such that the delivery of any program for which funding is provided under the funding agreement is at risk;

- In the opinion of the Department, the health, safety or welfare of the Aboriginal community is at risk of being compromised, or;

- In the case of an incorporated recipient, the recipient becomes bankrupt or insolvent, goes into receivership, takes the benefit of any statute from time to time being in force relating to bankrupt or insolvent debtors, or ceases to be in good standing with whichever federal or provincial jurisdiction in which the recipient was incorporated.

4.0   Context (Why this Policy matters?)

The Department recognizes the importance of continued, uninterrupted provision of programs and services for the health, safety and well-being of Aboriginal community members. This policy sets a three part approach of prevention, management, and sustainability to facilitate the effective management of defaults.

 Key principles of the approach involve:

1. Prevention:

- Where possible, developing recipient capacity and/or funding programs targeted to capacity development for efficient and effective program and service delivery to Aboriginal community members by;

  - supporting capacity development in Aboriginal communities in a sustainable manner;

  - Ensuring that capacity development is demand driven to meet specific needs of communities as opposed to supply driven;

  - Promoting capacity development within Aboriginal institutions and organizations to work with Aboriginal communities on their capacity gaps; and

  - Promoting community mentoring and linking communities with expertise to those with capacity gaps.

- Recognition of community identified needs and priorities and their role in default occurrence, as well as default prevention and sustained self-management.

2. Management:

- assist and support Recipients, where possible, in addressing situations that could give rise to a default under a funding agreement, and where one occurs, supporting effective recipient management of the default with a flexible range of strategies that will assist Recipients address the default situation and timely recovery;

- transparency to Aboriginal community members through disclosure of the General Assessment, Management Development Plan and/or Management Action Plan;

3. Sustainability:

- Identifying to recipients areas of capacity development that may enhance sustainability and reduce the occurrence of future defaults.

These principles of Prevention, Management and Sustainability are enabled through a process where:

- Recipients remain responsible and accountable for compliance with the terms and conditions set out in funding agreement including effective management and use of resources involved, preventing defaults, and remediating and recovering from these defaults in a timely manner when they occur;

- AANDC provides funding to recipients in accordance with funding agreements, reviewing the recipient's accounting for the appropriate use of the funds provided, and in applying this policy and related directives as appropriate;

- AANDC strives to develop and maintain a co-operative relationship with recipients to enhance the capacity and financial health necessary for sustainable, efficient and accountable delivery of programs and services;

- AANDC, where possible, will strive to ensure incidents of defaults that AANDC becomes aware of are clearly communicated;

- Use of voluntary Management Development Plans will be strongly encouraged for addressing low risk defaults;

- AANDC, where possible, will strive to make default management progressive, flexible and implemented in a manner which allows the recipient the opportunity to remedy the default; and

- AANDC, where appropriate, will allow default management to be, on a program specific basis to insure the action taken is reasonable, cost effective and proportionate to program risk.

Achievement of the objectives and expected results of this policy relies on an integrated approach involving effective default prevention, management and sustainability processes, specialized pools of expert resources, who the Recipient will monitor for performance, and capacity development resources available within departmental programs.

5.0   Policy Requirements (How will the policy results be achieved?)

5.1   Responsibilities (Who does what under this policy?)

As Chief Accounting Officer, the Deputy Minister is responsible for:

- ensuring that the Department has the capacity to implement and oversee this policy; and

- ensuring that controls are in place to manage recipient defaults in a manner that is cost effective and proportionate to program and recipient risks.

The Chief Financial Officer is responsible for:

- providing oversight on the implementation of this policy including investigating and acting when significant issues arise regarding policy compliance and monitoring to certify that appropriate remedial actions are taken to address these issues;

- supporting the implementation by providing guidance, training, internal service standards and bringing to the Deputy Minister's attention, any significant difficulties or gaps in performance;

- conduct annual assessments of the application of this policy, and provide an annual report for the Department's Operation Committee review, which would include a status report of all recipients then in intervention.

The Regional Operations Senior Assistant Deputy Minister is responsible for:

- ensuring the strategies for capacity development and sustainability in the delivery of programs and services are implemented to meet the requirements of this policy.

Assistant Deputy Ministers are accountable to the Deputy Minister for:

- ensuring that appropriate capacity is in place to implement the requirements of this policy.

Regional Directors General and Directors General are accountable to their Assistant Deputy Ministers for:

- ensuring appropriate oversight of default management decisions in their regions/directorates, and for ensuring staff compliance with this policy.;

- ensuring effective management of recipient defaults for agreements that they administer including a minimum yearly review of recipients in default by a Regional Operations Committee, and regular updating of those recipients' status in the Department's reporting system ("First Nations and Inuit Transfer Payment (FNITP) System").

5.2   Approach

This policy will support the delivery of programs and services through a three part approach which includes:

1. default prevention,

2. default management, and

3. sustainability.

Figure 1 outlines some of the tools and resources available for each approach.
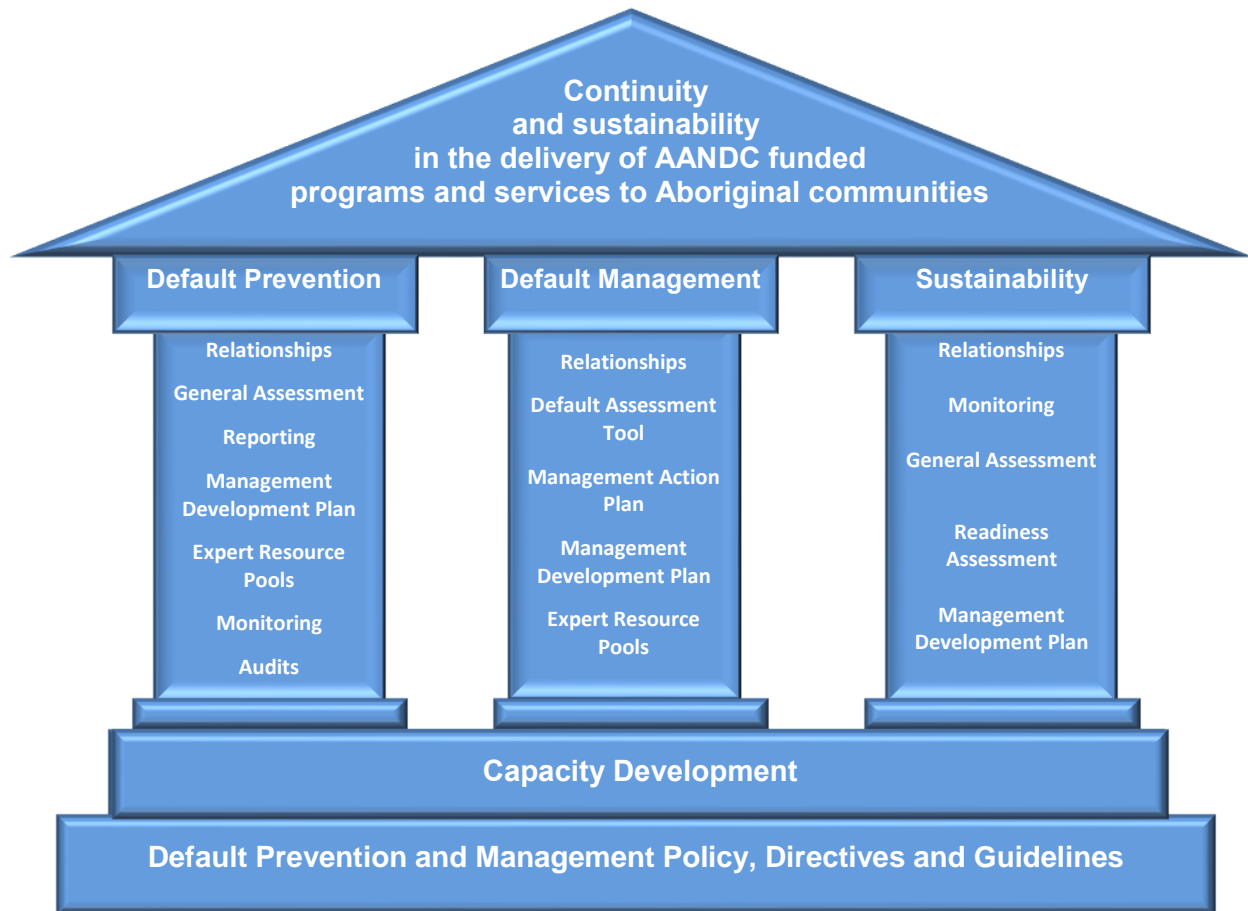
Figure 1 - Three Part Default Approach

5.2.1 Default Prevention

The Department, through ongoing review of information available about the recipient's management of funding and through other strategies, will, to the extent possible, assist recipients in their efforts to prevent the occurrence of circumstances that may give rise to defaults. Such assistance may include, but may not be limited to:

- Providing detailed explanation/analysis of the Department's General Assessment to assist recipients in identifying circumstances that may lead to default;

- Listening to communities that have identified needs and priorities and responding to these in a manner that enables capacity development and increases their ability to self-manage effectively;

- The application of a proactive approach which includes early identification and tracking of the causes or deterioration of a problematic situation that may lead to a default and that will strengthen the community's ability to improve their accountability processes, administrative and financial systems;

- Strategic use of expert resource pools to address the causes of defaults, and identify and develop necessary capacity to prevent the occurrence of circumstances that may give rise to a default; and/or

- Assisting with identification of capacity development actions and resources available to develop a voluntary Management Development Plan (MDP) targeted at increasing recipient capacity and preventing defaults.

5.2.2 Default Management

Notwithstanding the best intentions of Recipients to prevent the occurrence of default, from time to time defaults will occur. The *Directives on Default Prevention and Management* and *Third Party Funding Agreement Management* contain details for the default management process. This process, through the use of departmental tools and resources, will support the recipient in remediating their default. The process is a continuum of default management that includes active monitoring of the situation, requiring the recipient to develop and implement a Management Action Plan to the employment of expert resources.

Subject to the terms and conditions of the funding agreement, the appropriate departmental official may take any one or more of the following actions once a default has been identified:

- Require the recipient to develop and implement a Management Action Plan within sixty (60) calendar days;

- Require the recipient to seek expert resource support from individuals or organizations acceptable to the Department;

- Withhold any funds otherwise payable under a funding agreement;

- Require the recipient to take any other reasonable action necessary to remedy the default;

- Take such other reasonable action as the Department deems necessary;

8

- In the case of a First Nation or Tribal Council recipient, appoint, upon providing notice to the recipient, a Third Party Funding Agreement Manager;

- Terminate the funding agreement.

When deciding what measures to take, the official must, to the degree that is prudent in the circumstances:

- take into account the risks and circumstances associated with the default,

- the degree of co-operation between the recipient and the Department,

- the willingness and ability of the recipient to remedy the default,

- insure the default management is progressive in nature and,

- allows the recipient the opportunity to remedy the default before more intrusive measures are taken.

Defaults will not automatically result in the need for formal measures.

These measures, and the processes related to them, are described in greater detail in the Directives on Default Prevention and Management, Third Party Funding Agreement Management, Financial Reporting and Reporting Management.

Defaults in reporting resulting in halted funds will be subject to the Directives on Financial Reporting and Reporting Management and the Management Control Framework that is programmed within the First Nations and Inuit Transfer Payments (FNITP) System.

The appointment of a Third Party Funding Agreement Manager would be instituted as a last resort to ensure the continued delivery of programs and services to community members.

5.2.3 Sustainability

The objectives of sustainability are to:

- Mitigate residual risks that leave the recipient vulnerable to circumstances that may give rise to future defaults;

- Help address capacity gaps in the recipient's community where applicable;

Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada

**Policy on Default Prevention and
Management**

2011

- Enhance the recipient's management and program and service delivery capabilities.

The Department will work within the Community Development Framework with the recipient and other partners where feasible to support capacity development and identify and appropriately apply available resources to help re-establish sustainable program and service delivery and prevent the recurrence of circumstances that may give rise to future defaults.

5.3 Tools

The following is a list of the main tools and resources that may be used to implement this policy:

- The General Assessment (GA) – a tool that will support the management of funding agreements. The GA tool works by taking an annual "snapshot" of the funding recipient's past performance and identifies strengths and emerging risks that may have an impact on its future performance, The GA is an early warning and diagnostic tool used to determine the risk profile of recipients. A high-risk profile may be indicative of a recipient trending towards a default situation, or that may already be in default;

- Management Development Plan - means a plan developed and approved by the Council which addresses any recommendations identified in an assessment of the Council's administrative, accountability and management practices in the General Assessment or Readiness Assessment. May also be used to meet requirements for de-escalation from a Management Action Plan (MAP);

- The Governance Capacity Planning Tool - a departmental tool that was developed to allow First Nations and Inuit communities to create a community-focused, long-term plan for governance capacity development;

- The Default Assessment – a departmental tool used to confirm the occurrence of a default, identify its causes and inform possible subsequent default remediation actions based on capacity, willingness and the risk of the recipient to deliver programs and services;

- Management Action Plan (MAP) – the primary plan, developed by the recipient, to remedy and recover from the default, to address its causes and prevent its recurrence. The MAP is also used to identify capacity gaps and resources available for successful implementation;

- Access to an Expert Resource Pool – a pool of specialized individuals and organizations that are engaged by a Recipient to aid in default prevention, default management, and sustainability. The recipient may be asked to engage an expert from this pool as part of the default management process;

- Capacity and Community Development Programs – programs that are available periodically to enhance the recipients and its community's capacity to deliver programs and services; and,

- The Readiness Assessment (RA) – a departmental tool used primarily to determine a recipient's eligibility or renewal for the block funding approach.

6.0   Consequences (What happens when significant issues arise under this policy and directives?)

Consequences of non-compliance with this policy and its supporting directives, or of failure to take corrective actions that may be requested by the CFO, may include reporting to Senior Management, requiring additional training, changes to procedures and systems, the suspension or removal of delegated authority, disciplinary action, and other measures as appropriate.

7.0   Enquiries

For enquiries and interpretations please contact the AANDC Transfer Payments Centre of Expertise:

PaiementTransfertCentreExpertise.TransferPaymentCentreExpertise@aadnc-aandc.gc.ca

Appendix A: References (What other policies and directives are relevant?)

Treasury Board Secretariat: Policy on Transfer Payments (2008)

Treasury Board Secretariat: Directive on Transfer Payments (2008)

AANDC: Management Control Framework for Grants and Contributions

AANDC: Directive on Default Prevention and Management

AANDC: Directive on Third Party Funding Agreement Management

AANDC: Directive on Financial Reporting

AANDC: Directive on Reporting Management

AANDC: Directive on General Assessment

AANDC: Community Development Framework

Appendix B: Definitions

Default management: the process for identifying and managing defaults of a funding agreement.

Financial assessment process: an assessment process developed by AANDC based on accepted accounting and financial standards and a holistic set of indicators and measures designed to consider the operating environment and community as a whole that assists in the determination of the financial position of the recipient.

Funding agreement: a written agreement or documentation constituting an agreement between the Government of Canada and an applicant or a recipient setting out the obligations or understandings of both with respect to one or more transfer payments.

Program: is a group of related activities that are designed and managed to meet a specific public need and are often treated as a budgetary unit. A program can be a project or a service.

Recipient: Is an individual or entity that either has been authorized to receive a transfer payment or that has received that transfer payment.

Third Party Funding Agreement Manager: a prequalified Third Party, appointed by the Department, that administers funding for services otherwise payable to the recipient and the recipient's obligations under a funding agreement, in whole or in part, and that may assist the recipient to remedy defaults under a funding agreement.