CANADA MEDIA FUND

Working Group

Date: October 19, 2011 **Presenter: S. Cardin**

FOR INFORMATION

SUBJECT: English Regional Projects

BACKGROUND AND DISCUSSION:

This memo discusses issues pertaining to CMF support for regional projects in the Convergent Stream.

Mandate

The Contribution Agreement between the CMF and the Department of Canadian Heritage states:

> The [CMF] must also:
> …
> (v) ensure funding support to regional television convergent productions;

This is entirety of the direction to the CMF in the Contribution Agreement on regional support. The Agreement does not set minimum levels of regional support, state how that support should be delivered, or define what a region is.

Current CMF Regional Measures

a) Performance Envelope Program

The primary way in which the CMF provides funding support for regional projects is through the "Regional Production Licences" calculation factor in the Performance Envelope Program. The factor is currently weighted at 20% in the English market, which resulted in an associated funding allocation of $37.8 million in 2011-2012. As described in the Performance Envelope Manual:

> **C.3.2 Regional Production Licences**
>
> The purpose of the regional production licences factor is to encourage broadcasters to contribute licences to regional productions (as defined in the Guidelines).
>
> In the calculation of the regional production licences performance factor, a broadcaster's credit is determined by the total amount of eligible licences, in dollars, that they committed to the television component of CMF-funded Convergent stream projects defined as "regional" according to the Guidelines, for a given language-genre category. The regional production licences credit for each broadcaster is equal to the amount of eligible licence fees they contributed, regardless of the number of broadcasters involved or whether or not they contributed funds from an envelope.
>
> For this factor, statistics for a given performance envelope calculation year are based on activity in the previous year.
>
> Regional production licences credit is only applied to the same genre in which it was earned.

Projects funded through the Aboriginal Program, Diverse Languages Program, English POV program and Francophone Minority Program do not yield regional production licences credit, unless they also use performance envelope funds. Projects that do not use performance envelope funds, but do take advantage of the English Production Incentive Northern Production Incentive and/or Regional French Incentive will be eligible for credit.

The CMF defines "Regional Production" for the purposes of the Regional Production Licenses factor as follows:

2.1.1 Definitions Applicable to the Performance Envelope Program: In-house Programming, Affiliated Programming, and Regional Production

…

For the purposes of the Performance Envelope Program, "regions" are defined as any part of Canada more than 150 km by shortest reasonable roadway route from Montréal or Toronto. The CMF defines a Regional Production as follows:

a) Principal photography for the Television Component occurs in the regions, with suitable exceptions for documentaries; and

b) The Applicant (or, where there are separate Applicants for the Television Component and the Digital Media Component(s), the Applicant which owns the rights to the Television Component) is based in the regions (with its head office situated in the regions); and

i) Exercises full control of the creative, artistic, technical and financial aspects of the Television Component, or, in the case of a regional/non-regional co-production, the regional Applicant has such control in proportion to its copyright ownership;

ii) In the case of a regional/non-regional co-production, the regional Applicant owns at least 51% of the copyright of the Television Component;

iii) In the case of a regional/non-regional co-production, the regional Applicant shares equitably in fees payable to producers and corporate overhead;

iv) Initially owns and controls the distribution rights to the Television Component and retains an on-going financial interest in the Television Component or, in the case of a regional/non-regional co-production, the markets and potential revenues are shared equitably in proportion to the financial participation of each co-producer; and

v) Has meaningfully participated in the Television Component's development.

Where the control and central decision makers in the Television Component are located outside of the regions, the project is not considered to be a Regional Production.

<u>b) Development Program</u>

The CMF also supports regional activity in its Development Program. In that program, the CMF requires broadcasters to pay a minimum Development Fee Threshold to the project and the CMF will provide its own contribution up to a maximum. For non-regional projects, the Development Fee Threshold and CMF Maximum Contribution are both 50% of the development budget. However, for a Regional Development Project, the Development Fee Threshold is lowered to 25% and the CMF Maximum Contribution is raised to 75%. Regional Development Projects are defined as follows:

2.A.1.1 Definition of Regional Development Project

For the purposes of the regional incentive, described at sections 2.A.2 and 2.A.3 below, a Regional Development Project is a project in which:

a) The Applicant (or, where there are separate Applicants for the Television Component and the Digital Media Component(s), the Applicant which owns the rights to the Television Component) is based in a region with its head office situated in a region; and

b) The regional Applicant (or, where there are separate Applicants for the Television Component and the Digital Media Component(s), the Applicant which owns the rights to the Television Component) initiates and continues to meaningfully participate in the project's development, and must retain at least 51% ownership of the copyright interest in the project.

In this section, "region" or "regional" is defined as any part of Canada more than 150 km by shortest reasonable roadway route from Montreal, Toronto or Vancouver. "Region" or "regional" also includes any part of Vancouver Island.

Note the different treatment of Vancouver in production versus development.

c) English Production Incentive

The CMF also has the English Production Incentive (EPI) which, starting in 2011-2012, is targeted to individual provinces and territories across Canada. The EPI Guidelines are appended to this memo at Appendix "A". The provinces and territories eligible for the 2011-2012 EPI and their respective allocations under that program are as follows:

Region	Budget	Earmarked	Remaining
Alberta	1,149,957	591,180	558,777
BC	2,917,146	2,916,254	892
Manitoba	1,228,068	872,849	355,219
New Brunswick	200,000	200,000	0
NWT	200,000	0	200,000
Nova Scotia	1,957,528	1,690,781	266,747
Nunavut	200,000	178,000	22,000
PEI	200,000	0	200,000
Quebec	1,747,301	2,174,781	-427,480
Yukon	200,000	0	200,000
TOTALS	**10,000,000**	**8,623,845**	**1,376,155**

d) Northern Production Incentive

Finally, the CMF has the Northern Production Bonus which is described at section 2.3.1.2.TV as follows:

> Productions based in the north—i.e. productions that meet the definition of a Regional Production (see section 2.1.1) as that definition would read with the words "regions" or "regional" replaced by "Nunavut, the Yukon Territory, or the Northwest Territories"—are eligible for the Northern Production Incentive.
>
> The incentive will take the form of a CMF licence fee top-up contribution of 10% of the Television Component's Eligible Costs up to a per-project maximum of $100,000. This incentive will be awarded to Eligible Projects on a first-come, first-served basis. It will be awarded directly by the CMF separately and in addition to what was awarded by the broadcaster through its Performance Envelope. The incentive must be applied to the Eligible Costs of the Television Component.

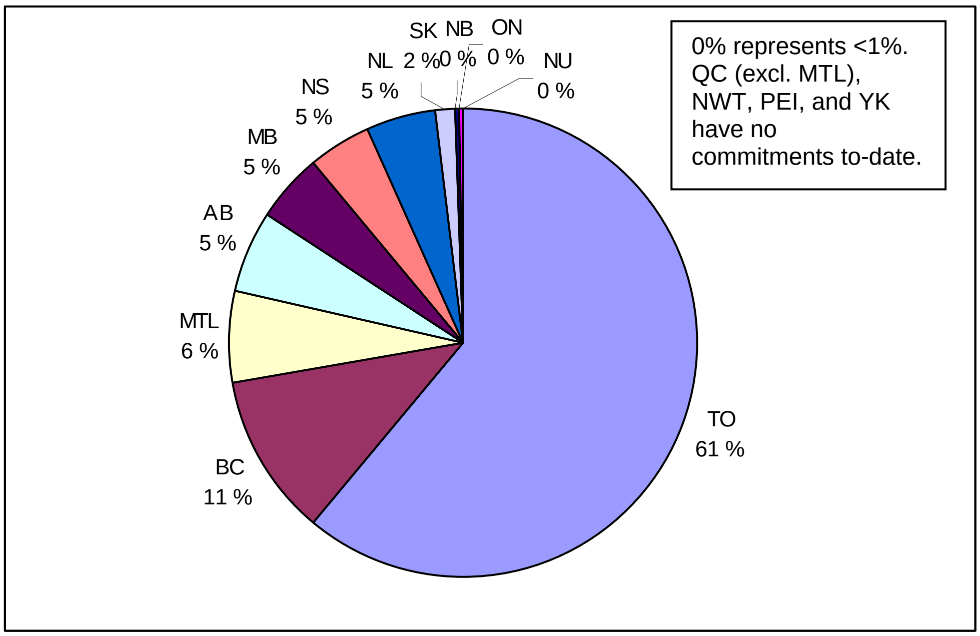
The 2011-2012 allocation for the Northern Production Bonus is $500,000.

Recent Regional Statistics

English Regional Commitments

It is early in the year for conclusions to be drawn about regional distribution of funding for 2011-2012. In most provinces, the percentage share reflects a range that is similar to the same time last year. The one exception is in BC, which currently stands at 11% (10 share points lower than this time last year). The regional/non-regional split currently stands at 33:67.

The final percentages for 2010-2011 were 30:70, far below the prior 5-year average of 37:63. For development, the ratio was 35:65.



However, as shown in the chart below, it is undeniable that the share of CMF funding to English regional projects has generally been on a downward trend since 2005-2006.

Regional Production Trends
(English TV production outside of Toronto and Montreal)

	2006-2007		2007-2008		2008-2009		2009-2010		2010-2011	
		%		%		%		%		%
Funding Commitments ($M)	71,2	43	60,9	39	47,9	26	72,2	36	55,1	30
Hours of Content	414	41	374	38	281	29	389	40	320	35
Production Budgets ($M)	249,6	42	220,7	37	172,2	26	245,4	35	181,3	28
# of Projects	135	48	97	41	88	35	101	42	70	34

Regional Production Incentives

The regional production incentives are granted on a first-come, first-served basis. They are meant to supplement to performance envelope funding. The English Production Incentive is currently 80% spent, matching the amount spent for all of 2010-2011. For the first time this year, this incentive is calculated by province and territory instead of by “area”. Any unspent funds in a province or territory as of October 14 become available for projects from any other eligible province or territory. It is expected that applications from provinces for which the allocation is already depleted will submit their projects after October 14 as Telefilm has received many calls from producers who are anxious to access these funds.

As for the Northern Production Incentive – for producers from Yukon, Northwest Territories and Nunavut - only $97,500, or 19.5%, of the $500,000 dedicated envelope has been spent to date.

Applications for these incentives can be submitted until December 5.

POLICY OPTIONS:

1. Amend the Definition of a "Regional" Project

<u>CRTC Request</u>

Several issues have arisen in relation to the CMF's definition of regional production. Firstly, in Broadcasting Decision CRTC 2011-441, the "Group-based licence renewals for English-language television groups – Introductory decision", the CRTC said the following:

> 106. Finally, the Commission notes that the question of its definition of regional programming has been raised several times, and has determined that it would be appropriate to amend that definition to ensure that its approach to English-language programming in a minority situation is consistent with its approach to French-language production. Accordingly, the Commission hereby adopts the following definition of "regional production," in order to permit English-language production in Montréal to count as regional production:
>
>> English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally produced programs;
>>
>> French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal;
>>
>> Programming drawn from program category 1 News, 2 Analysis and interpretation, 3 Reporting and actualities, and 6 Sports, are excluded.
>
> 107. Given that the Commission is not imposing specific obligations relating to regional and/or OLMC production, its revised definition will have little direct impact on the volume or nature of such production. However, <u>given that the broadcast and funding of Canadian programs are closely linked, the Commission is of the view that it is also important that the CMF amend its definition of regional production in a manner that renders it comparable to the Commission's definition, above, so as to ensure the appropriate support of OLMC production objectives. Accordingly, the Commission encourages the CMF to review its definition of regional production.</u> [Emphasis added]

The current CMF definition of Regional Production differs from the current CRTC definition in several key ways:

1. The CMF currently makes no reference to the official language of the project. As such, for the CMF, neither French-language projects from Toronto nor English-language projects from Montreal are regional.

Note: The CMF understands the CRTC's request to refer specifically to item "1." above in reference to the official language of the project.

2. Vancouver is treated differently by the CMF and the CRTC. For the CRTC, English-language projects from Vancouver are not regional whereas for the CMF, for regional *production*[1], they are. This difference existed prior to the above CRTC decision.

3. The criteria for determining where a project is made differ. For the CRTC, only the location of principal photography is relevant, whereas the CMF considers a variety of other factors such as where the producer is based, and ownership and control issues where the project is an interprovincial co-production. This difference also existed prior to the above CRTC decision.

Note: The CMF intends to maintain those described at "3." above, since the CMF believes they more accurately reflect where a project is truly "from", and a more granular definition is appropriate given the CMF's role as a production funding body.

<u>Treatment of Vancouver, Toronto and Montreal</u>

As outlined in the briefing note produced for the Fall 2010 Working Group discussion on this same issue (which we have posted to our web site along with the current briefing note):

"Some stakeholders have pointed out that the situations of all English-Canadian cities is not identical with regard to "regionality". As has been discussed before, the binary distinction between "regional" and "non-regional" productions is arguably something of a blunt instrument which simplifies a situation that is, in fact, quite complicated. Among the rationales for regional support is the notion that certain "centres" of production (currently, Toronto and Montreal) have inherent advantages over "regions"—namely, accessibility to production infrastructure (e.g. a greater depth of skilled crew, talent pool, equipment rentals, studio space) and buyers of their product (i.e. broadcast programming decision-makers). The region/centre distinction implies that producers in the regions lack access to these resources while producers in the centres have full access.

The reality, however, is that there is a gradient in these factors which differs in different parts of the country. English-language producers in Montreal have abundant access to production infrastructure, but do not reside in the same city as most of their buyers, the English-language broadcasters (most major English-language broadcasters are based in Toronto). English Montreal producers are, however, a short flight or a reasonable train ride from Toronto. Vancouver-based producers have access to production infrastructure, but are a 5-hour flight and three time zones away from Toronto. (…)

Given these realities, there have been calls from stakeholders to reconsider the binary notion of "region" versus "centre" to better reflect the regional reality. The English Production Incentive Program (EPI) which approaches the problem on a province-by-province basis rather than "region-vs.-centre", was a past attempt at this. But given the EPI's flaws, some have argued for further action on the issue of varying degrees of "regionality". In particular, English-language producers in Montreal have said that their official-language minority status and distance from English-language broadcasters should qualify them for a distinct funding allocation similar to that provided to French-language producers outside of Quebec or, at the very least, regional status. Vancouver-based productions have been questioned as to whether they are truly from a "region" or not. And finally, certain stakeholders from the Toronto area have argued that the CMF should provide no incentives whatsoever for English language regional production."

<u>Producer Ownership and Control</u>

[1] In the Development Program of the Convergent Stream, Vancouver-based projects are not considered regional.

Inter-provincial co-productions may be deemed regional or not based in part on rules on ownership and control of the producers (see the definition of "Regional Production" above). For example, a co-production that is 51% owned and controlled by a Saskatchewan-based producer and 49% owned and controlled by an Ontario-based producer would be considered entirely a regional production. Some stakeholders have considered whether the CMF should only consider 51% of the project to be regional.

This however raises complexity concerns, since it requires parsing of each project depending on the precise percentage of its ownership structure, as well as ensuring that CMF regional incentives are delivered not in respect of the project as a whole, but only to the regional portion.

2. Adjust the Regional Factor Weight in Performance Envelope calculations

Currently the Regional factor weight in calculating English Performance Envelopes is 20%. Some stakeholders have called on the CMF to adjust this factor upwards, while others have called for a decrease.

A discussion of this factor weight should take into consideration the differing impacts of adjustments on different broadcasters. Smaller independent broadcasters and provincial educational broadcasters in particular gain a significant portion of their envelopes from the Regional factor, so changing this factor is likely to affect them disproportionately.

3. Amend the English Production Incentive

As with the previous option, some stakeholders have questioned the effectiveness of the English Production Incentive (preferring a regional bonus as outlined below), while others –the CMPA in particular- believe that the EPI should not only be maintained, but that its funding allocation should be increased (see the CMPA proposal posted on our web site).

Other than increasing its funding allocation, one option for modifying the EPI would be to correlate the Maximum Contribution of the EPI to the extent of the drop in production volume in the province or territory. Currently, the per-project Maximum Contribution from the EPI is the lesser of $1 million or 10% of the television budget. Where a province or territory has a particularly dramatic drop—for example, 30% (the current threshold is 20%)—the CMF could raise the per-project Maximum Contribution to the lesser of $1.5 million or 15% of the television budget. This would help in striving to ensure that all EPI funds in the affected province or territory are spent – particularly if the EPI's overall allocation is increased. This proposal would however not align with the CMF's strategic objective of simplification.

4. Introduce a Regional Bonus

The CMF could provide a direct bonus for regional productions, similar to how the previous Canadian Television Fund did. The CMF could provide a bonus to regional production at a certain percentage—10% for example—of the project's budget. Related to the above discussion on the definition of regional, the CMF could also provide different bonus amounts to "middle tier regions" like Vancouver and Montreal as compared with other regions.

The details of such a bonus are open for discussion, but presumably the bonus would replace the English Production Incentive, which would be eliminated in the year of the bonus's introduction. An overall budget allocation for the bonus would be set which would likely be equal to or greater than the current allocation to the EPI. Bonuses would likely be provided on a first come, first served basis until the bonus allocation is depleted, and would be paid in the form of a licence fee top-up separate and in addition to funding provided from Performance Envelopes. Bonus contributions would count towards Performance Envelope calculations.

In this respect, CMF has done some modeling and notes that the total of 2010-2011 regional convergent budgets was approximately $183 million. Had all those projects accessed a 10% "regional bonus", this would have resulted in additional CMF contributions of $18.3 million to regional projects.

It is important to note that an important distinction between the EPI and the bonus is that the EPI sets funding allocations per province and territory at the beginning of a fiscal year. In a regional bonus scenario with first-come, first-served access, it would be possible – at least in theory – for the entire budget allocation to go to a single province or territory.

Furthermore, as demonstrated by results for 2010-2011 shown below, the allocation of EPI and PE funds by genre also varies considerably.

2010-2011 Commitments

EPI genre split

	$	%	#	%
Children's & Youth	2 060 329	26	4	11
Documentary	2 610 476	32	26	74
Drama	3 408 801	42	5	14
VAPA	0	0	0	0
Total	8 079 606	100	35	100

Regional funding genre split (funds going outside of Toronto and Montreal)

	$	%	#	%
Children's & Youth	7 975 069	14	8	11
Documentary	12 574 178	22	49	65
Drama	33 732 119	60	12	16
VAPA	1 632 789	3	6	8
Total	55 914 155	100	75	100

5. Create a distinct program for the development of English regional projects or set regional spend requirements in broadcaster development envelopes

Some stakeholders have expressed the view that achieving a meaningful regional production volume is reliant upon access to development financing and that an envelope to ensure development activities take place in the regions is required. It is not clear at this time however if a distinct program was contemplated or rather if spending requirements were sought. The CMF will seek further clarification on this issue before further comments are provided.

6. Expand eligible travel costs in pre-development

Currently, section 2.3.2.TV.2 describes Eligible Costs in Television Pre-Development to include, “travel expenses incurred to meet Canadian broadcasters”.

This eligibility of these expenses was introduced for the first time in the current year Guidelines and, given that few projects have been submitted to-date in development, it is not possible at this time to assess the impact of this policy initiative.

The CMPA has proposed expanding this item to include travel expenses incurred to meet key creative personnel.

COMMENTS:

APPENDIX “A’

English Production Incentive Program

The Canada Media Fund’s mandate includes ensuring funding support to production across the country. As such, the CMF is continuing its English Production Incentive program for the 2011-2012 fiscal year.

The CMF will monitor television production activity in each Canadian province and territory. Where production activity drops significantly below a 5-year average in any province/territory, the CMF may implement an English Production Incentive for that/those province(s) or territory(ies) in the following fiscal year. The CMF considers a drop in production activity of more than 20% to be significant, but retains the discretion to implement an English Production Incentive for drops of less than 20% when circumstances dictate. For provinces/territories with production activity of less than 1% of the national total, the CMF will provide minimum English Production Incentives for each province/territory. The CMF will announce which provinces/territories have qualified for a 2011-2012 English Production Incentive, and the amount(s) of the incentive(s) at a later date.

Beginning in the current fiscal year, once a province or territory has qualified for an English Production Incentive in a given fiscal year, in the following year that province/territory will be allocated either: 1) the allocation it would normally receive under the CMF’s allocation formula if the province/territory again qualifies for the English Production Incentive; or 2) if it does not again qualify for the English Production Incentive, for one year only, 50% of what the province/territory received in the previous year.

This incentive will take the form of a CMF licence fee top-up (see section 2.2.TV of the 2011-2012 Performance Envelope Program Guidelines) contribution of 10% of a Television Component’s Eligible Costs (see section 2.3.2 and all its subsections of the 2011-2012 Performance Envelope Program Guidelines) up to a per-project maximum of $1 million. The incentive will be awarded to eligible projects on a first-come, first-served basis until resources for the incentive are depleted or until the application deadline, whichever comes first.

The English Production Incentive may be combined with funding from other CMF funding Programs; it will be awarded separately and in addition to any amounts contributed to the project through other CMF Programs, and without regard to Maximum Contribution amounts applicable to those Programs. Projects with Eligible Licence Fees (see section 3.2.TV.5 of the 2011-2012 Performance Envelope Program Guidelines) from Canadian broadcasters who do not have a CMF Performance Envelope are eligible for the English Production Incentive.

Eligible Projects in the English Production Incentive Program are convergent projects (with a Television Component and one or more Digital Media Components, VOD presentation of the Television Component, digital distribution of the Television Component, or any combination of these three) as described in section 3.2 of the CMF’s 2011-2012 Performance Envelope Program Guidelines. However, only the Television Component will be financed by the CMF in the English Production Incentive Program (and not the Digital Media Component).

To be eligible for the English Production Incentive, the following criteria must be met:

a) The Applicant(s) and project meet all of the applicable requirements of section 3 of the CMF’s 2011-2012 Performance Envelope Guidelines.
b) The Television Component’s original language of production is English.
c) The Television Component is or was submitted for CMF funding for the 2011-2012 CMF fiscal year; projects that were submitted for and received CMF funding in previous fiscal years are not eligible for the 2011-2012 English Production Incentive.
d) The Television Component is 100% fully financed at application (including the English Production Incentive and any other CMF financing). For projects that have already applied for CMF funding

for the 2011-2012 fiscal year, the financing and/or budget must be adjusted accordingly; the English Production Incentive cannot result in a project being more than 100% financed.

e) The Television Component is not a third or subsequent cycle of a series.

f) The following geographical criteria are met:
   i) Principal photography for the Television Component occurs in the province/territory, with suitable exceptions for documentaries; and
   ii) The Applicant (or, where there are separate Applicants for the Television Component and the Digital Media Component(s), the Applicant which owns the rights to the Television Component) is based in the province/territory (with its head office situated in the province/territory) and
      - exercises full control of the creative, artistic, technical and financial aspects of the Television Component, or, in the case of a co-production, the province/territory Applicant has such control in proportion to its copyright ownership;
      - owns at least 51% of the copyright of the Television Component in the case of a co-production;
      - shares equitably in fees payable to producers and corporate overhead in the case of a co-production;
      - initially owns and controls the distribution rights to the Television Component and retains an ongoing financial interest in the Television Component or, in the case of a co-production, the markets and potential revenues are shared equitably in proportion to the financial participation of each co-producer; and
      - has meaningfully participated in the Television Component's development.

   Where the control and central decision makers in the Television Component are located outside of the province/territory, the project is not eligible for the English Production Incentive.

Section 4 and the information under "Interpretation, Application, Disclaimer, and other Important Information" in the CMF's 2011-2012 Performance Envelope Guidelines apply to applications for this Program.

Application Deadlines

Open for Submissions	First Closing Date	Final Closing Date
April 1, 2011	October 14, 2011	December 5, 2011

Deadline Definitions

Open for Submissions: All Applicants to this Program may submit applications beginning on the date indicated above.

First Closing Date: Applications to this Program will be accepted until the first closing date, or until funds for the province or territory's allocation are depleted, whichever comes first. If any portion of a province/territory's allocation has not been committed by the first closing date—i.e. the CMF has not received complete, eligible application(s) with regard to the province/territory's allocation by this date—the uncommitted portion will be made available to other projects eligible for the English Production Incentive in this fiscal year. But in no case will the CMF's contribution to a project from the English Production Incentive exceed 10% of a Television Component's Eligible Costs or $1 million, whichever is less.

Final Closing Date: Applications will be accepted until the final closing date, or until funds for this Program are depleted, whichever comes first. The final closing date is the deadline for submitting all applications for the fiscal year.