



# GENDER LENS INVESTING: LEGAL PERSPECTIVES

*How Investors Incorporate Gender Considerations  
into Deal Documentation*

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**2021**

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This report would not have been possible without the hard work, dedication, and insight from the exceptional students and faculty at the **New York University School of Law's International Transactions Clinic (ITC)** responsible for survey design, execution, and primary report authorship: Professor Deborah Burand, Julia Chen, Elizabeth Damaskos, Himani Singh

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# LETTER FROM CALVERT IMPACT CAPITAL

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As we write this in March 2021 the world is making progress towards controlling the COVID-19 pandemic. Even so, headlines paint a bleak picture for women. Forty-seven million women around the world could fall into poverty;<sup>1</sup> four times as many women as men dropped out of the labor force;<sup>2</sup> and for those that kept their jobs, the additional burdens of caretaking and housework are more crushing than ever.

When the pandemic began, there were questions as to whether gender lens investing (GLI) would remain important to investors and funders under pressure to provide relief to the acute crises stemming from COVID-19. This pandemic has reinforced two things: one, there is a need for deliberate support for women as our economic systems are not built to value or consider them; and two, GLI is still misunderstood as solely an impact preference, rather than a tool to improve evaluation of risk and opportunity, and for creating outsized impact and potentially, outsized financial return.

Calvert Impact Capital remains dedicated to providing the resources investors need to incorporate gender into their investment processes and to demonstrating that gender lens investing is not a niche or optional impact strategy, but a powerful way for investors to enhance their portfolios and create structural change.

In 2018 we released “[Just Good Investing: Why gender matters to your portfolio and what you can do about it](#)”, a report that provided guidance on how to incorporate gender into investment strategies, as well as quantitative analysis of our portfolio that indicated borrowers with more gender diversity outperformed those with less. That report provided tools, including both an asset class framework and due diligence framework, to help investors understand and adopt GLI practices. Practitioners embraced these tools and have asked for more.

Fellow investors and our borrowers routinely asked for examples of how to include gender in deal documentation and for other mechanisms to make gender impact more tangible and accountable in their deals. We provided examples from our own work but knew our peers had more to share.

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1 <https://www.unwomen.org/en/news/stories/2020/8/press-release-covid-19-will-widen-poverty-gap-between-women-and-men>

2 <https://www.americanprogress.org/issues/women/reports/2020/10/30/492582/covid-19-sent-womens-workforce-progress-backward>

With a team from the New York University School of Law’s International Transactions Clinic (ITC), we began to explore a new question: *how do investors incorporate gender considerations from a legal perspective?* The ITC team conducted a survey of 20 investors, focusing on lender and borrower behaviors in incorporating gender considerations into debt transactions. In answering this question, the team had a broader discussion about investors’ motivations, challenges, and future plans for investing with a gender lens.

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The survey shows that the practice of using legal mechanisms to enforce gender considerations is still nascent, but there is a hunger for more information. In particular, investors want to know what their peers are doing to manage the primary challenge that incorporating gender into deal documentation presents: balancing flexibility in funding with accountability for impact. There is tremendous power and potential in greater information exchange, as it is only through transparency—sharing what has worked, what has not, what might—that we can create and

refine the best practices required to meaningfully scale the practice of GLI.

What follows is a summary of our survey findings, a sample term sheet, and a legal documentation questionnaire with guiding questions to help investors think through whether and how to incorporate gender into their deal documentation within the context of their broader GLI strategy. As with our prior frameworks, this is not meant to be an exhaustive or prescriptive document, but a flexible tool that investors can use as a starting place and adapt to their strategy.

A special thank you to the remarkable student team from the ITC, Julia Chen, Elizabeth Damaskos, and Himani Singh who worked on this project over months, and dedicated time during their summer to provide us with a comprehensive, high-quality product. We are all lucky to have people with such passion, dedication, and understanding joining the legal profession. Another special thanks to faculty advisor and leader of the ITC, Professor Deborah Burand, who provided essential guidance and wisdom unique to the impact investing universe from her years as an OPIC (now DFC) general counsel and has turned the ITC into a powerhouse of high-quality student production. We were fortunate to work with this team and look forward to continuing our relationship with the ITC.

We hope you find value in this report and that it leads to action. Our door is always open for further discussion.

**Jennifer Pryce**  
President & CEO, Calvert Impact Capital



# INVESTOR SURVEY OVERVIEW

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**This report summarizes a survey of how investors incorporate gender considerations into the legal documentation and terms of their debt financing.** We hope that in sharing this information, we can further demystify the practice of gender lens investing (GLI), continue to advance the GLI conversation and grow the community of practice.<sup>3</sup>

The survey was conducted by a student team from New York University School of Law’s International Transactions Clinic (ITC) and designed with support from Calvert Impact Capital staff. For the purposes of this survey, the ITC team focused on lender and borrower behaviors in incorporating gender considerations into debt transactions. We did not focus on equity transactions as there is a broader set of tools available to equity investors to shape portfolio company behavior than are available to a debt investor. Documentation used in debt transactions is typically more standardized than in equity transactions, allowing us to compare the approaches that Respondents are taking towards the deal documentation and the legal terms used in their debt transactions.

The ITC team interviewed 20 Respondents in this survey, including both private and public sector lenders. All Respondents make investments through privately held debt instruments and some also through equity instruments. We sought a diverse group of debt investors in terms of their geographic location, the regions and sectors they invest in, their portfolio sizes, and whether they engage in direct lending to businesses or indirect lending through funds and intermediaries. This included Development Finance Institutions (DFIs), for-profit and nonprofit lenders, sector-specialized investment managers, philanthropically supported funds, and more ([see Appendix A](#) for a list of Respondents). Their assets under management (AUM) range from \$20 million, the smallest private sector investor, to over \$3 billion at some DFI participants.

Respondents had a variety of motivations for adopting a gender lens. Some adopted a gender lens because their own investors and partner NGOs propelled conversations around GLI. Others found

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<sup>3</sup> The [Global Impact Investing Network \(GIIN\)](#) defines gender lens investing as: “Investment strategies, applied to an allocation or to the entirety of an investment portfolio, which seek to examine gender dynamics to better inform investment decisions and/or intentionally and measurably address gender disparities.” As the name “gender lens investing” makes clear, gender is a lens—a way of seeing that helps an investor highlight opportunity, illuminate risk, and understand strategy in a more nuanced way.

that internal actors or dynamics were more influential, attributing the initiation of a GLI strategy to a critical mass of women in their organizations' leadership or an organization-wide self-evaluation. Many highlighted the Sustainable Development Goals (SDGs) and the prominent role that SDGs are increasingly playing in the world of investment, as well as the business case for GLI.

Respondents also took different approaches to considering gender at various stages in their transactions, from sourcing through exit. While there is an abundance of resources on how to incorporate gender into due diligence, sourcing, and other deal touchpoints, the legal aspect is both underexplored and, perhaps for that reason, under-utilized.

This report will focus on the following methods and considerations when incorporating gender goals in legal documentation:

- [Section I](#): Loan Agreements
- [Section II](#): Alternatives to Loan Agreements
- [Section III](#): Non-compliance, Events of Default, and Consequences
- [Section IV](#): Comparison with Equity Documents

Each of the methods described in this survey are worthy of further consideration as there is no 'one size fits all' when it comes to GLI. But there is a need for greater uniformity in how the investment community approaches these methods so that investors can get on the same page and begin to determine which are most effective.

Right now, most Respondents do not employ many legal mechanisms to enforce gender considerations, primarily out of concern for disrupting a borrower's ability to do business or their own. **This raises a familiar question for impact investors—how do we balance the need for flexibility in funding with the need for integrity and accountability in impact?**

This question can only be addressed within the context of an investor's broader strategy, of which their legal approach is just a part. But many Respondents do hope to employ more robust legal methods in the future. **When we asked investors what the greatest challenge to implementing GLI was, they answered the need for greater uniformity in best practices.** Respondents were particularly interested in the development of legal templates and the standardization of legal language for use in transactions. There is a demand to see peers' sample deal documents, clauses, or excerpted language, in order to envision how GLI requirements could be translated into legal obligations. Several noted that such sharing could lower the transaction costs that go into developing legal language, which can smooth the way for current actors to integrate these requirements in documentation and enable new actors to enter the GLI space with clear standards to adhere to, further growing the market.



**Before best practices can be developed, there must be more information-sharing among those practicing GLI.** Beyond lowering costs and making it easier for new entrants to participate, greater sharing can also make it easier for lenders to collaborate within a deal. Investors are rarely in a deal alone; collaboration and transparency on GLI between lenders could ease the concerns of both borrowers and investors that are detailed in this report. Standardizing of best practices, while leaving room for improvement and experimentation, can create a strong foundation that will allow gender considerations to be a part of every deal, whether formal or informal.



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# METHODS AND CONSIDERATIONS

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## I. LOAN AGREEMENTS

While our Respondents differ greatly in the way they incorporate their impact goals in deals<sup>4</sup>, they all expressed that, when incorporating GLI-related legal terms into loan documentation, the approach must be systematic, and consequences must be carefully considered.

Detailed below are some of the ways in which Respondents have designed loan agreements to create a balance between gender lens goals and financial considerations. Most common were provisions that: (1) directed the use of loan proceeds to women-owned/led businesses; (2) directed proceeds to businesses that serve largely women clients; and (3) required reporting on gender lens metrics.

### **Recitals/Introductory Provisions**

While the recitals and introductory provisions of a loan are typically not binding, these provisions are often used to clarify the parties' intentions. Impact investors, particularly U.S. foundations designating loans as program-related investments (also called PRIs), often use recitals to describe the charitable or impact-related intent of their investment activities, which could include gender-specific goals. Similarly, a U.S. charitable organization will often include a recital in its loan agreement to make it clear that this debt investment is being made in furtherance of its charitable mission. The audience for such a statement, however, is not so much the borrower as it is the Internal Revenue Service (IRS). Most Respondents did not use the recitals or introductory provisions of their loan agreements to memorialize the parties' shared commitment to achieving gender-specific objectives.

### **Disbursement Mechanism**

The disbursement mechanism is commonly used to ensure accountability for gender impact in grants, but it is rare in investment applications as it is often cumbersome and impractical for reasons

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<sup>4</sup> A GIIN survey, [The State of Impact Measurement and Management Practice, Second Edition](#) found that 55% of its surveyed private debt investors are including qualitative and/or quantitative impact targets in their loan agreements or term sheets.



**“Behavior change, which is at the root of much of the impact we are trying to achieve, takes time—particularly when you are working with entrepreneurs who operate in low-resource, challenging environments.”**



are tied to gender-specific or impact-related targets within short time periods. One investor cautioned strongly against this method: “We strongly recommend against using the disbursement mechanism as a motivator to achieve impact targets. It can be detrimental to the ultimate achievement of impact to set an artificially short time period. Behavior change, which is at the root of much of the impact we are trying to achieve, takes time—particularly when you are working with entrepreneurs who operate in low-resource, challenging environments.”

Moreover, lenders that are asset managers or other aggregators of capital may face pressure to quickly disburse the capital under their management. They are likely to resist a disbursement process that prevents them from deploying the capital quickly. This is again why such a method is more appropriate for grant-makers, or others with captive pools of capital, who do not have the same incentives for deploying capital as investors.

## Representations and Warranties

Representations and warranties assure lenders that (1) the legal, financial, and regulatory affairs of borrowers are in order before the funds are disbursed; and (2) all factual and legal predicates to the investment are fulfilled at the time the loan agreement is signed or becomes effective and will be true and correct at the time of each loan disbursement.

No Respondent had formally incorporated gender considerations within representations and warranties. However, two public sector Respondents are considering including gender-specific representations in their loan agreements and would similarly consider linking a material misrepresentation by their borrowers to events of default as well.

discussed below. However, some Respondents mentioned they will on occasion tie their subsequent disbursements to the borrower’s completion of agreed-upon gender metrics or impact metrics. This is typically documented as a “conditions precedent” to disbursements.

Multiple disbursements are not appropriate for many loans and it is often unrealistic to expect borrowers to satisfy conditions precedent to disbursement that

## Covenants



Covenants require the borrowers to either fulfill certain conditions (affirmative covenants) or forbid the borrowers from carrying out specific actions (negative covenants). Lenders use covenants to mitigate the risk of non-payment by ensuring that their borrowers maintain their business in a manner that allows for the timely and the full repayment of the loan. Covenant defaults typically act as early warning signals for lenders.

**We heard from these Respondents that GLI may be too qualitative or contextual to be embodied in covenants, especially since it could constrain transactions due to cultural barriers in specific regions. Several Respondents relayed that negative or affirmative covenants would have to be accurately contextualized and tailored to each borrower so as to avoid overly restrictive covenants that may jeopardize the borrower’s ability to repay.**

As a general rule, Respondents were reluctant to impose gender-specific covenants on their borrowers. We heard from these Respondents that GLI may be too qualitative or contextual to be embodied in covenants, especially since it could constrain transactions due to cultural barriers in specific regions. Several Respondents relayed that negative or affirmative covenants would have to be accurately contextualized and tailored to each borrower so as to avoid overly restrictive covenants that may jeopardize the borrower’s ability to repay. For example, a focus

on “counting women” can lead investors to miss opportunities for gender impact outside narrow expectations. They may overlook the value which women can bring to an organization or fail to grasp the impact of the goods and services their borrowers provide that enable women to improve their lives.

Further, gender-specific covenants are less suitable in the case of short-term loans because of the front-end administrative work needed to properly include and enforce those covenants. The mismatch of time needed to deploy the loan and time needed to implement, measure, quantify, report, and verify any gender-specific covenants would create issues in the loan and might lead to unintended consequences.

In addition, borrowers are often extremely reluctant to include gender-related covenants, particularly if they are specific to particular lender interests and could trigger cross-default on other obligations. Many investors recognize that incorporating gender is a process, and that while progress is important, it might not follow a linear trajectory. To call an otherwise performing loan into default over failing to meet gender covenants is considered extreme and, in many cases, counterproductive.

However, some Respondents actively incorporated gender-specific covenants in certain standard covenant provisions in order to ensure that their borrowers engage with gender lens considerations. It is also important to note that GLI provisions are always applied in a broader mix of covenants including financial ratios.

## USE OF PROCEEDS

This clause is typically drafted as an affirmative covenant. A certain percentage of the loan amount is earmarked to advance a GLI goal or impact in general that is inclusive of GLI. For example, the use of proceeds clause might specify that a certain percentage of the loan amount must be on-lent to fund women-owned or women-led businesses. Or, it could be more general, e.g., that funds must be used to benefit women and their families or further SDG 5.

Most Respondents adjust the criteria in the use of proceeds clause depending on each borrower's ability to meet GLI goals. This capacity can be influenced by the borrower's familiarity with gender considerations in past transactions, the specific project that the borrower is undertaking, the extent to which gender considerations are observable in the project, and the depth and breadth of the gender impact the project is expected to make.

Some Respondents prefer to negotiate gender-specific 'use of proceeds' clauses in a legally binding side letter, as opposed to the loan agreement ([see Section II: Alternatives to Loan Agreements](#)).



## INFORMATION RIGHTS AND REPORTING REQUIREMENTS

Reporting requirements are the most common type of gender-specific legal provisions used among our Respondents. Typically included as affirmative covenants, the borrower is asked to provide periodic information on the gender-specific impact of their work.

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Respondents approached reporting requirements in a variety of ways. For example, some set up gender-specific milestones with their borrowers and then ask the portfolio companies to report on a regular basis about their progress in meeting these milestones. Reporting can be monthly, quarterly, semiannually, or yearly, depending on the requirements the Respondent faces, the nature of the milestone, the reporting capacity of the borrower, and the related costs imposed on it.

Others have created or are considering a reporting requirement that enables them to request data from the borrower from time to time, as the borrower improves its gender impacts.

Some Respondents also require borrowers to report gender-specific impact metrics and related performance indicators after the loan has been repaid as an informal condition to refinancing or future financings to be extended to the borrower.

Even without contractual obligations for reporting, many Respondents still request information on impact or gender metrics from their borrowers. They may use this information to evaluate the capabilities of their borrowers to meet formal gender impact metrics in future financing. Most rely on borrowers to self-report, and do not look to third-party verification, while others gather data informally, such as through conversations with senior management of the borrower.

Some Respondents who also invest in convertible debt or other quasi-equity instruments ask borrowers to provide information using side letters. Although they did not indicate that such metrics would be tied to debt conversion triggers, the data can help inform Respondents' decisions to convert their debt investments into equity securities.

## CHANGE OF BUSINESS OR MISSION

Another covenant that many Respondents referenced relates to the material change of business or mission of the borrower. It is usually drafted as a negative covenant such that the borrower is not to make any material change to its business or mission without the lender's prior approval. If the borrower intends to materially change its business or mission, which could alter its gender impact or focus, then it must obtain a waiver from the lender or a possible amendment of this negative covenant. A borrower who proceeds with such a material change without first getting its lender's consent typically could trigger an event of default under the loan agreement. Most Respondents, however, observed that they prefer not to exercise the remedies that arise when an event of this kind ripens into an event of default, for the reasons detailed in [Section IV](#) on noncompliance and default. Nevertheless, this covenant can be used as leverage to bring the borrower to the table to discuss possible solutions that satisfy both parties.

## MISCELLANEOUS COVENANTS

Other common covenants can also be modified to include GLI objectives. For example, a "key person covenant" can be used to ensure that existing leaders, including women leaders, stay onboard and that the lender will be informed if there is any material change to the organizational structure. Lenders seeking to advance GLI objectives may look at the covenants currently being used in their loan agreements and adapt each accordingly.

## Other factors

Respondents revealed that their approach towards incorporating gender considerations into transactions may differ according to several other factors, such as the term of their loans, the nature of their loans, and whether their loans are direct or indirect, etc.

### TENOR OF THE LOAN

Loans with a longer term are more likely to incorporate gender considerations in the legal documentation. A longer term gives the borrower time to generate impact and collect data that evidences such impact. Many Respondents who lend on a relatively short-term basis mentioned that promise of extension or another round of funding provides an incentive to the borrowers to meet gender-related obligations, which has been just as effective, if not more, as imposing legal obligations in the loan documentation.

### DIRECT LOANS VS. INDIRECT LOANS

The type of lending, whether direct or indirect, also impacts Respondents' willingness to include gender-specific terms in their loan agreements. Indirect lending refers to extending loans to a financial intermediary or other aggregator of capital that subsequently on-lends those funds to end clients.


In indirect lending, lenders must decide which borrowers are subject to gender-specific obligations—the intermediary borrower, the end-borrower, or both. Respondents have differing views on how far downstream they are willing to extend gender considerations.

## II. ALTERNATIVES TO LOAN AGREEMENTS

Several Respondents have opted for alternate approaches to incorporating gender considerations in their investments, instead of either terms in the loan agreement or as supplementary agreements. These are: (1) executing a legally binding side letter to the loan agreement as a separate contractual arrangement, (2) engaging in relationship lending and business understandings with long-term borrowers, and (3) executing legally non-binding memoranda documenting impact targets, to ease the pressure of compliance on the portfolio companies.

### Side Letters

Side letters are a widely used mechanism to engage with borrowers on impact or gender-specific considerations. As mentioned earlier, impact investors are sometimes reluctant to include a gender lens-specific ‘use of proceeds’ clause in their loan agreements because of pushback from borrowers who fear that a breach of a ‘use of proceeds’ clause could trigger an event of default and potentially cross-defaults under their other loan obligations.



**Side letters are a widely used mechanism to engage with borrowers on impact or gender-specific considerations.**

To address this, some Respondents executed legally binding side letters with their borrowers that incorporate ‘use of proceeds’ clauses that tie the usage of earmarked loan disbursements to the social impact mission of the Respondent or specific gender goals that have been agreed to by the borrower. The obligations memorialized in side letters are intentionally kept separate from those imposed by other loan transaction documents, so they are not included as covenants or linked to the events of default found in loan agreements. This can lower the risk of cross-default and cross-acceleration.

### Relationship vs. Transactional Lending

Many Respondents seek to engage in relationships, not just transactions, with their borrowers. These Respondents are more comfortable entering into informal understandings about gender-related goals (as opposed to building formal contractual commitments) particularly with borrowers with whom they have or plan to have long-term relationships. The loan agreement, in such a situation, may be completely silent on the parties’ agreed gender goals. Instead, the parties rely on their relationship to advance gender impact.



Respondents indicated that trust has grown between them and their long-term or repeat borrowers. Consequently, in times of difficulty or when a crisis hits, these borrowers tend to be more likely, even in cases of default, to communicate and work with the lender. In these relationships, there appears to be a wider scope for re-negotiation or collaboration to tackle the challenges that resulted in non-compliance. This trust extends to how Respondents view compliance with impact goals. Where that relationship does not exist, we may see more formal approaches to memorializing both the financial and impact terms of loans.

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## Non-Binding Documents

Some Respondents have shown a preference for executing legally non-binding documents to set informal understandings with their borrowers. They do so by executing documents such as a memorandum of understanding (MOU) or a commitment letter to incorporate a gender lens. When making decisions about future financing, these Respondents take into account how seriously their borrowers took these more informal commitments, engaged with gender considerations, and met gender-specific impact metrics.

### III. NON-COMPLIANCE, EVENTS OF DEFAULT, AND CONSEQUENCES

Most Respondents showed an aversion to tying gender impact-driven provisions to events of default in the loan agreements. Instead, they prioritized flexibility over exiting an investment or penalizing the portfolio company. This is driven by concern over pushback from their borrowers, willingness to consider on-the-ground realities their borrowers face, and unwillingness to jeopardize relationships with a committed borrower.

According to many Respondents, borrowers are often open to adjusting their GLI goals to align with evolving interests and requirements in the impact market, such as meeting [2X Challenge](#) requirements or adhering to goals related to the SDGs. Several noted that many of their borrowers are already mission-aligned and that, if they were to impose restrictive obligations or onerous compliance requirements, the borrowers might be reluctant to work with them in the future. Others expressed concern that they would lose out on deals to competitors that do not focus on gender considerations in their legal documentation or impact more broadly if they implemented gender-related events of default or harsh consequences for non-compliance.

However, it is useful to note that Respondents did not express concern that borrowers would themselves walk away from potential funding if gender considerations were brought up. In general, Respondents reported that borrowers were willing to engage in conversations about gender and it was helpful to have more flexible strategies surrounding GLI.

As long as borrowers demonstrate good faith intent to achieve gender-specific goals, coming back to the table is greatly preferred over terminating the relationship. One Respondent highlighted that borrowers' management also want to make progress on gender goals but are working in very challenging markets where strict gender requirements may not always be appropriate. It is critical to be cognizant of the borrower's market environment and circumstances.



## IV. COMPARISON WITH EQUITY DOCUMENTS<sup>5</sup>

Interestingly, some Respondents prefer equity investments over debt investments when investing with gender considerations. Investing in equity often allows them to gain a seat on the board of directors, oversee management of the portfolio companies, and make sure that impact considerations are not ignored. Respondents can also actively help their portfolio companies respond to gender goals and challenges.

Similar to their approaches to debt documentation, some Respondents voiced a reluctance to introduce impact metrics in their equity term sheets, shareholders agreements, and share subscription agreements.

With respect to equity investments, if portfolio companies are unable to deliver on the promised gender goals, the primary remedy available to equity impact investors is to exit the company. Respondents stated that they would consider exiting their portfolio companies for gender-specific reasons only if performance on gender goals would not be possible or non-compliance with gender considerations were to continue beyond an agreed time period.

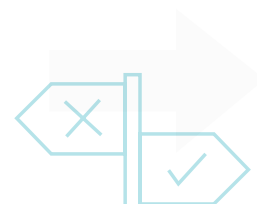
## CONCLUSION

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We hope this report is a step in the right direction towards greater exchange and transparency. We look forward to your feedback and your partnership as we continue to evolve the GLI field and expand the community of practice. As one of our Respondents highlighted: **“Once you open your eyes to gender considerations, you can’t go back.”**

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<sup>5</sup> A similar survey of equity practices could be a valuable companion report to this Report on debt practices.



## APPENDIX A:

# SURVEY PARTICIPANTS

Accion	FinDev Canada
Acumen	FMO
AlphaMundi	Global Innovation Fund (GIF)
Capital 4 Development Partners (C4D Partners)	Global Communities
Calvert Impact Capital	Investing Fund for Developing Countries (IFU)
CDC Group	MCE Social Capital
Clark Hill PLC	MicroVest
Deutsche Investitions- und Entwicklungsgesellschaft mbH (DEG)	Morgan, Lewis & Bockius LLP
Development Finance Corporation (DFC)	Root Capital
Developing World Markets (DWM Asset Management)	SEAF
	SunFunder

# APPENDIX B:

## INCORPORATING GENDER IN LOAN AGREEMENTS

Below is a sample term sheet, highlighting areas where gender-specific provisions can be incorporated along with some practice tips. This document should be read as a practical overview of key points. Please note that this is for informational purposes only and shall not be construed as legal advice under any circumstances.

Provisions	Commentary
<b>INTRODUCTORY PROVISIONS</b>	
<b>Recitals</b>	<p>These are introductory statements used to express the intent of the parties in the transaction. The recitals may clarify the charitable or impact-related purpose of the investment. U.S. investors who are subject to tax or regulatory requirements for their investment activities may use this section of the agreement to signal that the investment is intended to fall within program-related investments (PRI) for U.S. foundations or activities that further charitable missions for U.S. charitable organizations.</p> <p>Recitals are non-binding provisions and can be easily negotiated with the borrowers.</p>
<b>Definitions</b>	<p>Many key concepts in the agreement are captured using defined terms. Defined terms may need to be updated to reflect agreed-upon GLI objectives and concepts.</p>
<b>FINANCIAL TERMS</b>	
<b>Disbursements</b>	<p>Where a loan is separated into multiple disbursements, investors may include GLI goals or reporting metrics as a condition to disbursements. These are “conditions precedent” to disbursement. In negotiating these conditions, the parties should consider: (1) the borrower’s ability to achieve and measure the requirements, (2) the borrower’s ability to do so within the timeframe of the loan, and (3) the borrower’s need for the funds. Note that gender-specific conditions may not be suitable for all transactions due to the level of complexity and burden on both borrower and lender.</p>
<b>PERFORMANCE COMMITMENTS</b>	
<b>Representations and Warranties</b>	<p>Representations and warranties assure the lender that at the time of signing the contract and each disbursement of funds, (1) the legal, financial, and regulatory affairs of a borrower are in order; and (2) the factual and legal predicates to the investment are fulfilled. This section may be used to describe those aspects of the borrower’s mission and operation that reflect its gender-specific commitments. For lenders employing a gender lens, representations and warranties may be easier to negotiate with borrowers if they are not linked to events of default.</p>

<p><b>Covenants: Reporting Requirements</b></p>	<p>Reporting requirements are affirmative covenants imposed on borrowers to report on GLI goals. These may be in terms of progress towards certain targets or data on gender metrics. Aligning with industry standards (e.g., IRIS+) is encouraged, but individual metrics selected should be tailored to the context of the lending activities. The method of reporting can also be tailored to the timing and scope of the project and whether the data is self-reported or subject to third-party evaluation. A gender-related reporting requirement is one of the most commonly used tools.</p>
<p><b>Covenants: Use of Proceeds</b></p>	<p>Use of proceeds is an affirmative covenant that sets boundaries on how a borrower may use the borrowed funds. In GLI, lenders may earmark loan proceeds (all or a portion) to be used to further its GLI goals or for the borrower to invest into meeting gender targets. The scope of the provision (including percentage of loan) can be individualized to borrower.</p> <p>Note however that some borrowers may be reluctant to include strict gender-specific restrictions in the loan agreement and would prefer softer commitments via a side letter or other type of agreement.</p> <p>Some borrowers may request a lower interest rate when use of proceeds are limited, whether all or a portion, to meeting gender-specific goals (as opposed to more general working capital loans).</p> <ul style="list-style-type: none"> <li>• <i>Sample use of proceeds clause</i></li> </ul> <p><b>Purpose and Use of Funds</b></p> <p>At least 50% of the proceeds of the Loan shall be used by the Borrower solely for [loans to][investments in] women-owned/-led enterprises, women-supporting enterprises, or individual women borrowers.</p> <ul style="list-style-type: none"> <li>• <i>Sample Clause for On-lending to Women Entrepreneurs</i></li> </ul> <p>The Borrower will use the Facility solely to finance any Micro Loans and SME loans which are disbursed by the Borrower to Eligible Sub-Borrowers in original principal amount not exceeding USD [•] ([•]) per Eligible Sub-Borrower between the date that falls [•] months prior to the date of this Agreement and the date that falls [•] months after the date of this Agreement.”</p> <p>Under Definitions, “Eligible Sub-Borrower” means such private enterprises, firm, corporation or partnership within the territory of the Country that is not engaged in any excluded activity as listed in Schedule [•] (Excluded Activities) and in which (a) a woman owns not less than 50% of its total share capital (or equivalent); or (b) women own not less than 20% of its total share capital (or equivalent) and a woman is the CEO/director/president.</p>
<p><b>Covenants: Material Change of Business or Mission</b></p>	<p>Lenders can use negative covenants to prevent borrowers from materially altering their businesses or missions without prior permission from lenders. This may be reflected as a more general limitation or narrowly drafted to only implicate GLI commitments.</p>

<b>Miscellaneous Covenants</b>	<p>Other covenants may be used or adapted to advance GLI objectives. These covenants should be tailored to the specific investment goals of the lender and practical for the borrower. For example, a lender may ask the borrower to ensure existing leaders (management or other key employees), who may be key drivers of GLI in the borrower's organization, stay onboard and the lender is informed if there is any material change to the organizational structure (a variation of a key person clause).</p>
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## DEFAULTS AND REMEDIES

<b>Events of Default</b>	<p>While an event of default can ultimately stop and sever the lender relationship, it should serve first and foremost as a way to bring parties back to the table when things go awry. If a borrower has multiple lenders, then defaulting under one agreement may cause cross defaults in other agreements. Therefore, borrowers may push back against tying gender provisions to events of default. Other creditors may also raise concerns of how or when gender-related defaults are triggered. One way to mitigate the stringency of triggering an event of default is to provide more generous cure periods for GLI-related defaults.</p> <p>Respondents have voiced that they believe it is reasonable to link events of default to “Change of Business or Mission” covenant, use of proceeds, and non-compliance with reporting requirements.</p>
<b>Remedies &amp; Enforcement</b>	<p>Because gender-related events of default can accelerate the loan or trigger other enforcement mechanisms, borrowers are concerned about how remedies and enforcement mechanisms will be imposed by lenders. Borrowers may try to narrow scope of cross-default and cross-acceleration clauses to exempt or carve out these clauses from gender-related events of default.</p>

# APPENDIX C: LEGAL DOCUMENTATION QUESTIONNAIRE

## SUMMARY



## 1. INITIAL QUESTIONS TO CONSIDER

The first segment of the toolkit focuses on the type of investments an investor makes. These questions are meant to guide decision-making and conversations within your organization, as you consider opportunities to incorporate a gender lens. Accordingly you may consider whether you are looking to memorialize gender considerations in your debt transaction documents, and would this be suitable for your investment strategy?

### *Questions to guide in determining the intention to memorialize gender lens:*

1. Are the gender goals that you set up or are looking to set up for your borrowers aspirational? Do you currently, or in future, intend to make such goals legally binding?
2. Are you operationalizing or looking to operationalize your gender lens investing (GLI) strategy by including GLI specific legal terms in your debt transaction documents?
3. What is the unique position of your organization that drives you or stops you from incorporating GLI specific legal terms into your debt transaction documents?
4. How would you describe your portfolio structure? Would it be possible for you to incorporate GLI specific legal terms in your debt transaction documents across your portfolio? Would you want to target only a few borrowers?
5. Do you engage in both short-term and long-term loans? If yes, would you be comfortable including GLI specific legal terms in your short-term loans as well along with long-term loans? To what extent can you do that?
6. Do you engage in refinancing facilities or extension of your loans? Does completion of gender or impact goals guide your refinancing or loan extension decisions? To what extent?
7. Do you engage in direct or indirect lending? If you do engage in indirect lending, would you be comfortable including GLI specific legal terms in your downstream investments as well? To what extent can you do that?
8. Do you engage in issuing quasi-debt instruments like convertible debt? If yes, to what extent can you incorporate a gender lens in your convertible debt transaction documents?
9. To what extent do you think your borrowers would be willing to cooperate with you in including GLI specific legal terms in their transactions with you?

## 2. POSSIBLE MECHANISMS

This segment will help an investor explore several mechanisms to determine a preferred method for incorporating GLI specific legal terms into its debt transaction documents. Questions will guide an investor to think about what is suitable to its organization, portfolio, investment size, and sectoral or regional focuses. This is applicable to all investors looking to include GLI specific legal terms in their debt transaction documents in some form.

### *Questions to guide in determining how to memorialize gender lens:*

1. How would you describe the current structure of your debt transaction documents? Do you already include GLI specific terms in your documents? How and to what extent?

#### **Loan Agreement:**

2. Are you looking to incorporate GLI specific legal terms formally in a loan agreement? If yes, which segments of the loan agreement are you looking to target?
3. Would you be comfortable addressing gender impact goals of your organization in the recitals or introductory portions of the loan agreement with a portfolio company?
4. Would you consider including GLI specific representations and warranties in your loan agreement?
5. Do you think it would be appropriate for your organization to include GLI specific covenants, such as use of proceeds and information and reporting requirements, in your loan agreements?
6. Have you considered adapting already existing provisions in your standard loan documentation to include GLI considerations?
7. Have you considered tying your GLI specific goals to loan disbursements? Do you think that would be helpful for ensuring your borrowers comply with the gender impact goals set out for them?
8. Have the GLI specific legal terms in your loan agreements been tied to events of default in your loan agreement? If not, are you looking to tie your GLI specific terms to events of default in future? To what extent?
9. Are there any other mechanisms that you can rely on, other than relying on consequences of events of default, when GLI specific legal terms are not complied with?
10. Do you receive or anticipate receiving pushback from your borrowers on including GLI specific legal terms in the loan agreement? If yes, to what extent?



**Side Letters:**

11. Do you want to separate the consequences of breaching GLI commitments from the consequences of otherwise breaching the loan agreement?
12. Do you already enter into side letters in relation to your loans or other debt transactions? If yes, to what extent do you already use side letters to moderate/motivate your borrower's behaviors, include GLI specific legal terms?
13. If you are considering opting for a side letter to document GLI specific legal terms, what kind of legal terms do you intend to include? Aspirational gender goals? Best efforts?
14. In case GLI specific terms incorporated in side letters are not complied with, what are the consequences you are looking to build in your side letters, if any?

**Non-Binding documents:**

15. Do you think executing a legally non-binding document that incorporates GLI specific legal terms, such as a memorandum of understanding (MoU) or commitment letter, would be helpful to memorialize an understanding between your organization and borrower?
16. What kind of steps, if any, do you want to take in case a borrower does not comply with GLI specific terms set out in a non-binding document? Would you use these instances of non-compliance to inform whether or not to provide new funding, refinance, or extend/roll-over existing debt? Other steps?

### **3. NEGOTIATIONS WITH BORROWERS**

This segment covers some questions you should consider when discussing the option of memorializing GLI specific goals in legal documentation with borrowers:

1. Has the borrower worked with any other lenders with GLI specific goals? Are they familiar with GLI? Specifically, do they understand the implications of incorporating GLI specific goals in legal documentation? If they have prior experience, it can be helpful to gather information on past GLI reporting practices used by the borrower, in order to lower transaction costs for the borrower, increase efficiency on both sides, and standardize reporting.
2. Does the portfolio company understand your organization's reasons behind incorporating GLI specific goals? This includes both impact-driven or financial-driven reasons. For example, if your organization focuses on this, do they understand that GLI is also "just good investing"? Explain the reasoning behind the importance that your organization places on GLI.
3. Does the portfolio company understand your approach on how "hard" or "soft" these legal considerations are? For example, consider the balance between signaling the importance you want to place on GLI

specific goals, but also consider signaling that you are open to “coming back to the table” and having discussions to collaborate on achieving gender goals as opposed to assessing an event of default. If borrowers understand the importance or of the collaborative approach you provide, this may make them more open to having language in the agreement.

#### **4. FORWARD-LOOKING STRATEGIES**

This segment covers some forward-looking issues that investors must take into account when making a decision on operationalizing a GLI strategy through legal documents.

##### ***Questions to guide considering future GLI strategy***

1. How satisfied are you with the way you document gender considerations in your legal documents as of today? What are the needs of your organization currently, in operationalizing gender goals in your debt transaction documents?
2. How do you expect your portfolio to grow in the future, in terms of size of the portfolio, size and types of investments you make and the regions and sectors that you focus on?
3. Do you anticipate requiring a change in your GLI strategies and how they are being incorporated in your debt transaction documents, depending upon how you anticipate your portfolio to grow in future?
4. Where do you see yourself in next 5-10 years in the GLI field? Are you looking to educate your organization and include more formal legal terms in your debt transaction documents in future?



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For more resources on gender lens investing, please visit:

[calvertimpactcapital.org/insights/gender](http://calvertimpactcapital.org/insights/gender)