

colorado capital access



program guidelines



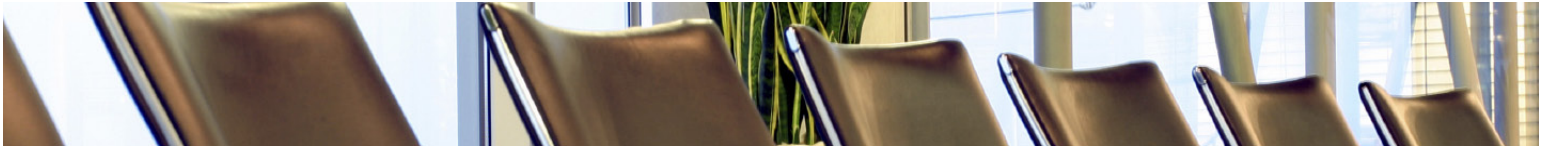


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section 1 overview

Colorado Housing and Finance Authority (CHFA) is program manager for the Colorado Capital Access (CCA) program under contract with the Colorado Office of Economic Development and International Trade (OEDIT) and the Colorado Economic Development Commission (EDC). As program manager, CHFA is responsible for: (1) managing the CCA program for OEDIT and EDC, (2) working with lenders to use CCA, and (3) connecting businesses with those lenders using CCA to make business loans.

CCA helps small businesses access capital by connecting the businesses with lenders participating in the CCA program (Lenders) and by funding a portion of the Lender's loan loss reserve fund. CCA is designed to assist those small businesses operating in Colorado that are having difficulty accessing capital, or do not otherwise qualify for traditional financing. Like capital access programs across the nation, loan loss reserves collected through CCA are held in a loan loss reserve account established by CHFA and held by the Lender. The reserves are used by the Lender to offset losses on small business loans enrolled in CCA.

CCA provides a \$1 for \$1 match of up to 7 percent of the Lender's loan or credit facility as a contribution to the Lender's loan loss reserve account. The Lender and business borrower must each contribute a minimum of 1 percent to the loan loss reserve account before the loan can be enrolled in CCA. Lenders must also execute a Lender's Participation Agreement (Agreement) to use CCA. Lenders may use CCA for most types of business loans or credit facilities, including start-up loans, working capital loans, lines of credit, term loans, real estate loans, and letters of credit. Loans or credit facilities up to \$750,000 are eligible for CCA.

To qualify for CCA, the Lender, borrower, and loan must meet those certain eligibility requirements discussed below. Applicants are encouraged to contact CHFA for assistance with determining if a Lender, borrower, or loan is eligible and qualifies for CCA.

CCA is funded through a grant made available under the State Small Business Credit Initiative (SSBCI), a program created by the Small Business Jobs Act of 2010 to strengthen state programs that support lending to small businesses and small manufacturers. Colorado, through OEDIT, applied for and was awarded SSBCI funding on October 11, 2011, a portion of which has been designated for use under CCA.

section 2 program description

CCA is designed to encourage Lenders located in the State of Colorado to extend credit in amounts up to \$750,000 to Colorado businesses by establishing and partially funding a loan loss reserve account at each Lender (Reserve Fund) to cover losses on loans it enrolls under the program [Loan(s)].

Under CCA, registration fees in the amount of a least two percent (2%) and up to seven percent (7%) of the maximum principal amount of each Loan (Registration Fee) will be collected in equal parts from the borrower and from the Lender and deposited into the Lender's CCA reserve fund (Reserve Fund) which will be administered by CHFA. CCA funds in an amount matching the aggregate Registration Fee for a given Loan (CCA Match) will be deposited by CHFA in the Reserve Fund.

Losses from enrolled Loans may be recovered by the Lender from the reserves in the Reserve Fund. The establishment of this loan loss reserve account enables a Lender to be more aggressive in making Loans and expanding its market. If, however, a Lender's losses exceed the funds in its Reserve Fund, the Lender would be at risk for any excess losses. If a Lender's enrolled Loans pay off without a loss or with only a partial loss, the unused reserve funds will remain in its Reserve Fund so long as and in such amount that allows the Lender to continue to have a meaningful amount of its own capital at risk in the Lender's portfolio of enrolled Loans (i.e., Lenders are not allowed to have reserves that exceed the outstanding principal balance of enrolled Loans). Any excess reserve funds will be returned to CHFA for use under CCA. If a Lender does not continue its participation in the program, the funds in its Reserve Fund will be returned to CHFA when the Lender has no enrolled Loans outstanding.

These guidelines are meant to provide operational guidance for Lenders and are subject to the specific terms of the participation agreement to be executed by CHFA and the Lender, the terms of which shall control.

section 3 lender participation

3.1

Lender's Participation Agreement; Reserve Fund Set-up

To participate in CCA, Lenders must execute a Lender's Participation Agreement that provides the terms and conditions of the Lender's participation under the program, including the respective obligations of CHFA (Agreement). At the time the Agreement is signed, the Lender shall establish an interest-bearing account, under CHFA's Public Deposit Protection Act number, to be used as the dedicated Reserve Fund in which to accumulate the program reserve funds for the Lender's enrolled Loans. If the eligible Lender is a bank, the Reserve Fund will be established at such Lender. If the eligible Lender is a Community Development Financial Institution, the Reserve Fund will be established at a qualified banking institution chosen by CHFA. The Reserve Fund shall be entitled "Reserve Fund – [Lender's name]".

The signature card for a bank's Reserve Fund shall be forwarded to CHFA for completion by CHFA. One signature from an authorized CHFA staff member is necessary for withdrawals from the Reserve Fund.

Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. CHFA is authorized to withdraw at any time from the Reserve Fund up to 50 percent of the total interest or income that has been credited to the Reserve Fund since the date of the first enrolled Loan for program costs. Such withdrawals need not be returned to the Reserve Fund.

3.2

Loan Enrollment

Lender and borrower CCA enrollment and certification forms (in such form specified by CHFA from time to time) must be completed and submitted within 10 days after the Loan is made by the Lender. For purposes of this program, the date on which the Lender makes the Loan shall be deemed to be the date on which the Lender first disburses proceeds for the Loan to the borrower or such earlier date on which the Loan documents have been executed and the Lender has obligated itself to disburse proceeds of the Loan. Within 10 days of CHFA's receipt of all required registration documents for a Loan, CHFA will mail or otherwise deliver to the Lender an acknowledgement of enrollment, bearing the execution signature of CHFA's authorized representative, including documentation of the amount being transferred by CHFA into the Reserve Fund. CHFA shall notify the Lender if the Loan registration forms have been rejected for any reason, refunding the Registration Fees to the borrower and Lender.

If the outstanding balance of a Loan that is not a line of credit is reduced to zero for a period exceeding 60 consecutive calendar days, that Loan shall no longer be considered a Loan under CCA. If a Loan that is a line of credit has an outstanding balance of zero for a period of seven (7) consecutive years, it shall no longer be considered a Loan under CCA; provided, however, that the Lender may extend such Loan for a further enrollment period of up to three (3) years by notifying CHFA in writing that such Loan will remain enrolled for such additional period.

3.3

Registration Fees; CCA Matching Funds

At the time of the Loan closing, the Lender and borrower shall pay a combined Registration Fee of at least 2 percent and up to 7 percent of the total principal Loan amount and CHFA will deposit the CCA Match into the Reserve Fund. At a minimum, the Lender and borrower must each deposit 1 percent of the total principal Loan amount into the Reserve Fund to enroll a Loan. Lenders will deposit such Lender and borrower registration fees into the Reserve Fund at the time of closing. CHFA will deposit the CCA Match into the Reserve Fund once the Lender has provided CHFA all information required for Loan registration and such registration is complete. The CCA Match may be used to cover losses on any and all Loans made by the Lender and enrolled in CCA.

3.4 CCA Boost

CHFA will provide an additional deposit to the Reserve Fund equal to 25 percent of the CCA Match for Loans made to Colorado businesses owned by women or minorities and for Loans to Colorado businesses whose principal place of business or location of the operation is in a Colorado-designated Enterprise Zone.

3.5 Extension, Renewal, and Refinance of Enrolled Loans

Enrolled Loans may be extended, renewed, and refinanced. At the time of extension, renewal, or refinance, the Lender shall assess an additional Registration Fee of at least 2 percent but not more than 7 percent of the increase to the original principal loan amount that shall be deposited into the Reserve Fund. A CCA Match in the amount of such additional Registration Fee shall also be deposited in the Reserve Fund.

The Lender must notify CHFA in writing prior to any extension, renewal, and refinance of an enrolled Loan. When such change does not increase the principal loan amount, the Lender shall provide a written statement detailing the change accompanied with a copy of the original Loan registration forms for the Loan. When the change increases the principal loan amount, the Lender shall file again the required Loan filing form and Lender certifications.

section 4 reporting

The Agreement will explain the Lender's reporting requirements in detail. As an overview, the Lender will be required to provide quarterly reports on or before the fifteenth day of the month following the end of each calendar quarter, in the form specified by CHFA from time to time, regarding all enrolled Loans and the outstanding balances of such Loans, including but not limited to any amount from private sources, the current balance of the reserve fund, and charge-offs and recoveries on Loans in the immediately preceding calendar quarter.

If, upon receipt of the reports filed by the Lender concerning its enrolled Loans, it is determined by CHFA that the balance in the Reserve Fund exceeds the amount required for the Lender to have a meaningful amount of its capital at risk under the Loans, as discussed above, CHFA may withdraw such excess funds from the Reserve Fund. If at any time a Lender ceases to have any Loans in CCA, CHFA may withdraw the remaining balance in the Reserve Fund.

section 5 claims

5.1 Timing of a Claim

If a Lender charges off all or a part of a Loan because of the borrower's delinquency or other default, the Lender may submit a request for loss reimbursement (Claim) to CHFA. All Claims must be filed within 120 days of the action of the Lender to charge off all or part of the Loan. The Lender shall determine when and how much to charge off of a Loan in a manner consistent with its normal method for making such determinations on business loans that are not CCA Loans. Upon filing a Claim, the Lender shall cease to accrue interest on the Loan in accordance with generally accepted accounting principles and as required by federal or state regulatory agencies.

5.2 Claims Process

Upon making a charge-off of all or part of a Loan, the Lender may file a Claim with CHFA by submitting a completed Claim form (in the form specified by CHFA from time to time), verified and signed by an authorized officer of the Lender.

The Lender's Claim may include the amount of principal charged off, plus up to 90 days' accrued interest from the date of borrower's the last payment, and an amount that represents the Lender's customary and reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of any collateral. However, in the event that only a portion of the amount of the Loan is enrolled in the Program, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion of the Loan to the total amount of the Loan. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed. The amount of principal, accrued interest, and out-of-pocket expenses included in the Claim shall not exceed the principal amount of the Loan covered under CCA at the time of the Loan's enrollment.

Notwithstanding the violation of any other provision of the Agreement by the Lender, upon receipt by CHFA of a Claim properly filed by the Lender, CHFA shall promptly pay, from funds in the Reserve Fund, the Claim as submitted. CHFA may reject a Claim when the representations and warranties provided by the Lender under the Agreement were known by the Lender to be false at the time of the Loan's enrollment in CCA.

5.3 Insufficient Funds

If there are insufficient funds in the Reserve Fund to cover the entire amount of the Lender's Claim, CHFA shall pay to the Lender an amount equal to the current balance in the Reserve Fund, net of interest to which CHFA is entitled to under this Agreement. That payment shall be deemed to satisfy the Claim made with CHFA and the Lender shall have no other or further right to receive any amount from the Reserve Fund with respect to that Claim, provided that during the 12 months following the date of such payment, the Lender shall be entitled to claim and receive funds subsequently deposited into the Reserve Fund (the "Follow-up Claim") on account of such claim so long as the amount of the Follow-up Claim does not exceed 75 percent of the amount then on deposit in the Reserve Fund. The Follow-up Claim shall be in the form required under the Agreement. Nothing in this provision shall limit or constitute a waiver or subrogation of any rights Lender may have against a Borrower, any other obligor or any collateral pursuant to the terms of the Loan documents between the Borrower and the Lender relating to the portion of the Claim not paid from the Reserve Fund as a result of the Reserve Fund having insufficient funds available to fully satisfy the Claim.

5.4 Recoveries

If after payment of a Claim by CHFA, the Lender recovers from a borrower any amount for which payment of the Claim was made, the Lender shall promptly pay to CHFA for deposit in the Reserve Fund an amount recovered equal to the payment received from CHFA for the Claim, less the Lender's customary and reasonable out-of-pocket expenses. The Lender shall retain documentation in its files evidencing those expenses. Notwithstanding anything to the contrary herein, the Lender shall be required to make the foregoing payment solely to the extent that the amount recovered by the Lender from the borrower for a Loan for which the Lender made a Claim, when added to the payments received by the Lender under such Claim, exceeds the Lender's loss on such Loan.

For the purposes hereof, the Lender's loss on a Loan may include loss of principal up to the enrolled amount and up to 90 days accrued but unpaid interest from the date of borrower's last payment on the enrolled principal balance, plus an amount which represents the Lender's documented customary and reasonable out-of-pocket expenses incurred in pursuing its collection efforts with respect to the enrolled portion of any loan, including preservation of any collateral. In the event of any such recovery, the Lender shall on or before the fifteenth day of the month following the end of the next calendar quarter promptly provide CHFA with such information regarding the recovery as specified in the Agreement.

section 6 eligibility requirements

6.1

Eligible Lenders

Eligible Lenders include any insured depository institution or Community Development Financial Institutions as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702). Each eligible Lender must provide the following certifications to CHFA in the form provided by CHFA:

1. Each Loan enrolled has not been made in order to place under the protection of CCA prior debt that is not covered under CCA and that is or was owed by the borrower to the Lender or to an affiliate of the Lender;
2. Each Loan enrolled is not a refinancing of a loan previously made to that borrower by the Lender or an affiliate of the Lender. (This limitation does not prohibit a Lender from originating a new loan under CCA and subsequently refinancing the same loan under CCA or enrolling or refinancing previously made loans from another, non-affiliated financial institution into CCA); and
3. No principal of the Lender has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)].

6.2

Eligible Borrowers

Eligible borrowers include corporations, sole-proprietors, partnerships, nonprofits, limited liability companies, and others operating in Colorado. Permissible borrowers include state-designated charitable or other nonprofit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the Loan is for a Business Purpose, as defined below.

To be an eligible borrower, the business must:

1. Have 500 or fewer employees; and
2. Be legally allowed to operate in the State of Colorado.

Borrowers must provide the following certifications to the Lender in the form determined by the Lender at the time of closing:

1. The Loan proceeds will be used for a Business Purpose (defined below); and
2. The Loan proceeds will not be used for Ineligible Uses (defined below).

6.3 Eligible Loans

To be an eligible Loan, at the time of enrollment the Loan must meet the following requirements:

1. Principal loan amount made available to borrower at time of loan closing must not exceed \$750,000 and total financing (public and private in situations where the Loan is part of a larger transaction) made available to borrower at time of loan closing must not exceed \$20 million;
2. Lender must have 20 percent or more of its capital at risk; and
3. Loan proceeds must be used for a Business Purpose (defined below).

A Business Purpose includes, but is not limited to:

1. Start-up costs;
2. Working capital;
3. Business procurement;
4. Franchise fees;
5. Equipment;
6. Inventory; or
7. Purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes.

The definition of Business Purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities, and lobbying activities [as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended].

The unguaranteed portions of SBA or of other federally-guaranteed loans are not eligible for CCA without the prior written consent of CHFA. The US Treasury must also approve all transactions where CHFA uses CCA for the unguaranteed portion of SBA or of other federally-guaranteed loans.

6.4 Ineligible Borrowers

The following are Ineligible Borrowers:

1. An executive officer, director, or principal shareholder of the financial institution Lender;
2. A member of the immediate family of an executive officer, director, or principal shareholder of the financial institution Lender;
3. A related interest of such executive officer, director, principal shareholder, or member of the immediate family;
4. A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;
5. A business that earns more than half of its annual net revenue from lending activities, unless the business is a nonbank or nonbank holding company certified as a Community Development Financial Institution; or

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6. A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
7. A business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales;
8. Businesses in which a principal of the borrowing entity has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]; and
9. A business engaged in activities that are prohibited by federal, state, or other applicable law in the jurisdiction where the business is located or conducted.

6.5 Ineligible Uses

Borrowers using CCA must certify to the Lender, in the form determined by the Lender, that they will not use the Loan proceeds for any of the following Ineligible Uses:

1. Repayment of delinquent federal or state income taxes, unless the borrower has a payment plan in place with the relevant taxing authority;
2. Repayment of taxes held in trust or escrow, e.g., payroll or sales taxes;
3. Reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
4. Purchase of any portion of the ownership interest of any owner of the business.

section 7 other requirements

In addition to those certain requirements listed above and in all applicable federal and state laws, regulations, ordinances, and executive orders, additional restrictions on the eligibility of Lenders, borrowers, or Loans not inconsistent with the provisions and purposes of these guidelines may apply.

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1981 Blake Street
Denver, Colorado 80202

303.297.chfa (2432)
800.877.chfa (2432)

www.chfainfo.com

348 Main Street
Grand Junction, Colorado 81501

970.241.2341
800.877.8450



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