

cash collateral support



program guidelines





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section 1 overview

Colorado Housing and Finance Authority (CHFA) is the program manager for the Cash Collateral Support (CCS) program under contract with the Colorado Office of Economic Development and International Trade (OEDIT) and the Colorado Economic Development Commission (EDC).

CHFA, as program manager, is responsible for (1) managing the CCS program for OEDIT and EDC, (2) working with lenders to use CCS, and (3) connecting businesses needing collateral support with lenders using CCS.

CCS assists small and medium sized businesses operating in Colorado that are unable to secure credit due to collateral shortfalls. Under CCS, a cash deposit of typically the lesser of 25 percent of the loan amount or \$250,000 is pledged as additional collateral to lenders in order to help business borrowers meet the lender's collateral requirements and secure credit. Subject to the final approval of OEDIT, a CCS deposit that exceeds the maximum program limit may be considered on a case-by-case basis as warranted by the economic development impact or other factors as determined by CHFA and OEDIT. Lenders may use CCS 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. Lenders, business borrowers, and loans using CCS must meet the program eligibility requirements as explained below.

Loans or credit facilities up to \$5 million are eligible for CCS; however, deposit terms may vary depending on the loan amount, available collateral, and amount of cash collateral enhancement requested under CCS.

CCS 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 (Act) to strengthen state programs that support lending to small businesses and manufacturers. Colorado, through OEDIT, applied for and was awarded SSBCI funding on October 11, 2011, a substantial portion of which has been designated for use under CCS.

section 2 program description

Under CCS, lenders may apply to CHFA for cash collateral to support business loans that do not meet the lender's collateral requirements. To qualify for CCS funds, 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 CCS.

section 3 application

Lenders may apply for cash collateral by completing a CCS application and submitting the necessary documentation as outlined in the application to CHFA. Complete applications may be mailed, faxed, or emailed to the CHFA Community Development Lending Department for review. Applications are available online at CHFA's website (www.chfainfo.com/participating-lenders/business/pages/forms-ccs.aspx).

As part of the lender's application, the lender will be asked to demonstrate that:

1. The loan has a collateral shortfall that cannot be mitigated by other available credit enhancements at a reasonable cost,
2. There is a reasonable expectation the business loan will be repaid,
3. There is an economic benefit to the community or state of Colorado, and
4. There is an exit plan in place to return the CCS funds in a reasonable period of time.

section 4 credit enhancement levels

As explained above, lenders may use CCS to increase the amount of collateral securing new small and mid-sized business loans and credit facilities when the business borrower is unable to meet the lender’s collateral requirements. Loans and credit facilities up to \$5 million are eligible for CCS. An upfront Borrower fee (Borrower Fee) is collected by the lender at closing and may be deducted by the lender from the loan proceeds. The Borrower Fee varies based on the table below. There is no Annual Fee, defined below, during the Initial Term of the cash collateral deposit.

ccs deposit (as a % of the loan amount)	upfront borrower fees	annual fee
Up to 10%	2% of CCS deposit	None
Up to 25%	3% of CCS deposit	See below

- The Annual Fee applies if the Deposit Agreement is extended beyond the Initial Term, as defined below.
- The Upfront Borrower Fee and Annual Fee may, subject to CHFA’s approval, be reduced by 0.5 percent for loans made to 501(c)3 nonprofit organizations, businesses located in State of Colorado designated Enterprise Zones, women-owned business, and minority-owned businesses.
- The CCS enhancement may, subject to CHFA’s approval, be increased to 50 percent of the lender’s loan amount if the loan term is equal to two years or less, and the lender successfully demonstrates a “strong economic benefit” to the community or State of Colorado. These CCS deposits will not have an option to extend.

section 5 credit enhancement terms and extensions

The initial term for the cash collateral deposit (Initial Term) is generally three years, but can be up to five years, subject to CHFA’s approval. The lender at the end of the Initial Term may request an extension and CHFA will review such extension request to determine if there continues to be a collateral shortfall; however, CHFA is not obligated to approve such request. If CHFA determines there is a collateral shortfall, the cash collateral deposit may be adjusted to reflect the actual collateral shortfall, and a fee may be charged to the lender annually until the collateral account is released (Annual Fee). The lender may pay for the Annual Fee by adding the cost to the borrower’s interest rate, charging the borrower a one-time fee, or using the lender’s funds to pay the fee. The chart below outlines CCS terms based on the level of collateral support requested.

ccs deposit (as a % of the loan amount)	initial term	ongoing annual fee
Up to 10%	Up to 5 years, with option to extend	None
Up to 25%	Up to 3 years, with option to extend	<ul style="list-style-type: none"> • 1% of CCS deposit for first extension, • 2% for second extension, • 3% for third extension, • 4% for fourth extension, • 5% for any additional extensions
Greater than 25%	2 years, with no option to extend	Not applicable

At any time, whether within the Initial Term or if an extension is approved, when the loan-to-value of collateral reaches the lender’s normal lending requirements as determined by the lender’s normal lending guidelines, CHFA has the option to withdraw the funds in the cash collateral deposit account and recycle the funds into the CCS program in accordance with the CCS Deposit Agreement between lender and CHFA (Deposit Agreement).

Once a lender makes a loan using the CCS program, the lender may apply to refinance that loan at any time under the CCS program or Colorado Capital Access (CCA) program, provided such refinancing complies with the CCS or CCA program requirements, as applicable, including, but not limited to, all SSBCI-related requirements and guidance issued by the U.S. Treasury, as updated from time to time.

section 6 security and loan documents

CHFA will provide an approval letter and a copy of the Deposit Agreement to the lender for each approved application. The Deposit Agreement will describe the deposit, interest accrual, and pledge restrictions and will contain the borrower and lender certifications, as outlined below. The Deposit Agreement, including completed lender and borrower certification attachments, will be fully signed at loan closing, and returned to CHFA shortly after closing. Each Deposit Agreement will include a 30-day commitment period in which the lender must close its loan. Lenders requiring longer commitment periods may be subject to a Commitment Fee of 1 percent of the CCS deposit for each additional 30-day period. Any Commitment Fee is nonrefundable and due to CHFA at the time the Deposit Agreement is reviewed and accepted by the lender.

CHFA will deposit the cash collateral into the account being pledged as collateral prior to, but not earlier than five business days of, the loan closing, unless CHFA deems additional time is necessary for the lender to perfect its security interest in the pledged account. If the lender has more than one loan under CCS, CHFA may, if agreed upon by the Lender, aggregate all of the cash collateral allocated to such lender for each of its CCS loans into one account.

The lender's loan or credit facility shall be evidenced by a loan agreement, note, and other documentation; if secured, secured by such security agreements, real estate mortgages, or hypothecations; if guaranteed, guaranteed by such agreements evidencing the guarantees (collectively, the "Loan Documents"). The Loan Documents shall be dated on or about, but at any event after the date of the Deposit Agreement. The original Loan Documents shall be retained by the lender, and copies of all Loan Documents shall be forwarded to CHFA upon execution.

section 7 reporting and notification

The Deposit Agreement will explain the lender's reporting requirements in detail. In general, the lender will be required to provide:

1. Quarterly reports to CHFA within 10 days after the last calendar day of each calendar quarter, and
2. Annual reports to CHFA within 15 business days after the last calendar day of each calendar year.

Reporting will be done in accordance with the Deposit Agreement in such form as required by CHFA. CHFA has the right to waive certain reporting requirements at its sole discretion.

section 8 claims and recoveries

The Deposit Agreement will explain the claim and recovery procedures in detail. In general, the CCS deposit is available to the lender only after all other collateral secured by the loan has been liquidated. The process for filing a claim under CCS includes (1) notifying CHFA when a loan is in default, (2) liquidating assets, and (3) filing a claim with CHFA.

The lender is typically given 24 months from the time CHFA is notified of a loan default to file a claim. Any claims are limited to the amount of CCS funds on deposit at the time. Claims are further limited by the lender's actual principal loss, as well as up to 60 days of accrued interest

section 9 eligible lenders

Eligible Lenders include banks and Community Development Financial Institutions as defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702). Each Eligible Lender participating in CCS must provide the following certifications to CHFA:

1. The loan has not been made in order to place under the protection of CCS prior debt that is not covered under CCS and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;
2. The loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender. (This limitation does not prohibit a financial institution lender from originating a new loan under CCS and subsequently refinancing the same loan under CCS, or enrolling or refinancing previously made loans from another, non-affiliated financial institution into CCS); and
3. No Principal of the financial institution 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)]¹.
4. The loan will not be used to pay the salary of any individual employed by lender engaged in activities related to the SSBCI who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties.

section 10 eligible borrowers

Eligible Borrowers include corporations, sole-proprietors, partnerships, nonprofits, limited liability companies, and others operating in the state of Colorado. Permissible borrowers include state-designated charitable, or other nonprofit or eleemosynary institutions, government-owned corporations, and consumer and marketing cooperatives, provided the loan is for a "Business Purpose" as defined below. To be an Eligible Borrower, the business must:

1. Have no more than 750 employees, and
2. Be legally allowed to operate in the state of Colorado.

Borrowers must provide the following certifications in the form provided by CHFA to 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).

section 11 eligible loans

To be an Eligible Loan, the loan must meet the following requirements:

1. Principal loan amount and total financing (public and private) made available to borrower at time of loan closing must not exceed \$20 million (this applies in cases where the Eligible Loan is part of a larger transaction);
2. Cash collateral deposits cannot exceed 80 percent of the lender's loan amount throughout the life of the loan;

¹ For the purposes of this certification, "Principal" is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association, or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

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3. If CCS is used with other credit enhancements, the lender must demonstrate its loan has at least 20 percent of exposure to the borrower; and
4. Loan proceeds must be used for a “Business Purpose” (defined below).
5. Borrower must provide collateral assets with a value sufficient to cover 50 percent of the proposed loan size after lender applies their loan to value requirements to those assets. Exceptions to this rule can be made at the sole discretion of program manager.

A Business Purpose includes, but is not limited to:

1. Startup 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].

Notwithstanding the foregoing, Lenders may, under certain circumstances, finance real estate construction, acquisition, or renovation for a borrower who or which does not directly engage in business operations, but leases such real property to one or more operating companies. Contact CHFA's Community Development Lending Department for further information regarding eligibility criteria for such loans.

Lenders may, under certain circumstances, use CCS funds to support a new extension of credit that repays the amount due on a matured loan or line of credit on the books of such Lender, where the prior debt was used for a Business Purpose, listed above. Contact CHFA's Community Development Lending Department for further information regarding eligibility criteria for such loans.

The unguaranteed portions of SBA, USDA, or Tribal Government guaranteed loans are not eligible for CCS without the prior written consent of CHFA. The US Treasury must also approve all transactions where CHFA uses CCS for the unguaranteed portion of SBA, USDA, or Tribal Government guaranteed loans.

section 12 ineligible borrowers

1. An executive officer, director, or principal shareholder of the financial institution lender²; or
2. A related interest of an executive officer, director, principal shareholder, or member of the immediate family of any of them; or
3. 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; or

² For the purposes of the borrower restrictions herein, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

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4. A business that earns more than half of its annual net revenue from lending activities, unless the business is a non-bank or non-bank holding company Community Development Financial Institution; or
5. 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; or
6. 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; or
7. A business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales; or
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)].³

section 13 ineligible uses

Borrowers using CCS must certify 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; or
2. Repayment of taxes held in trust or escrow, e.g. payroll or sales taxes; or
3. Reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business' continuance;
4. Purchase of any portion of the ownership interest of any owner of the business;
5. Payment of the salary of any individual engaged in activities related to the SSBCI who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal government computer or while performing official Federal Government duties;
6. The payment to any person to influence or attempt to influence any agency, elected official, officer, or employee of a State or Local Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan, or cooperative agreement as such terms are defined in 31 U.S.C. §1352; or
7. The payment of any costs incurred in connection with: (i) any defense against any claim or appeal of the United States Government, any agency, or instrumentality thereof (including the US Department of Treasury) against the State of Colorado, or (ii) any prosecution of any claim or appeal against the United States Government, any agency, or instrumentality thereof (including the US Department of Treasury), which the State of Colorado instituted or in which the State of Colorado has joined as a claimant.

section 14 other requirements

In addition to compliance with those certain requirements listed above and compliance with 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.

³ For the purposes of this certification, principals is defined as: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock or stock equivalent of the entity.

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