cash collateral support

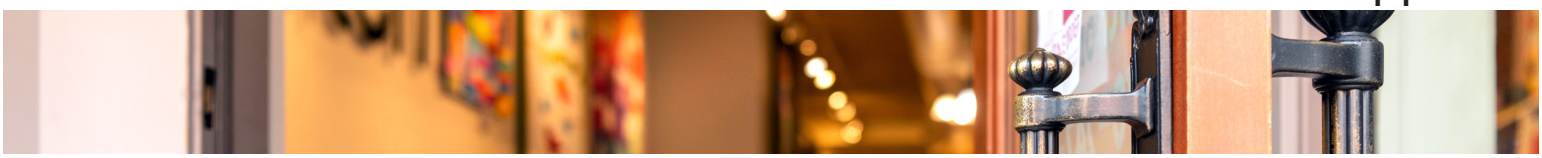


program guidelines

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executive summary

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 and nonprofits operating in Colorado that are unable to secure credit due to collateral shortfalls. Under CCS, a cash deposit of typically the lesser of (1) 35 percent of the loan amount, (2) $1,000,000, or (3) the size of the collateral shortfall is pledged as additional collateral to lenders to help business borrowers meet the lender's collateral requirements and secure credit. Projects supporting strategic industries and initiatives may be eligible to receive larger deposits, as described in Section 3 of these program guidelines. All increased deposit sizes are subject to the final approval of OEDIT and CHFA and considered on a case-by-case basis. 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 within these guidelines.

Loans or credit facilities up to $20 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 by the State Small Business Credit Initiative (SSBCI), a program created by the Small Business Jobs Act of 2010 (Act) and reauthorized by the American Rescue Plan Act of 2021. SSBCI was created to strengthen state programs that support lending to small businesses and manufacturers. Colorado, through OEDIT, applied for and was awarded approximately $35 million in SSBCI funding in 2022 to be used via the CCS program.

section 1 program description

Under CCS, lenders may apply to CHFA for cash collateral deposits to support business loans that do not meet the lender's collateral requirements. The deposits are pledged as additional collateral to lenders to help business borrowers secure credit. To qualify for CCS funds, the lender, borrower, and loan must meet those certain eligibility requirements discussed below. Lenders are encouraged to contact CHFA for assistance with determining if a lender, borrower, or loan is eligible and qualifies for CCS.

section 2 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 submitted to the CHFA Community Development Lending Department for review. Applications are available online at CHFA's website at chfainfo.com/business-lending/business-lenders/forms-and-documents.

section 3 credit enhancement levels, terms, extensions, and fees

For most projects, CCS can provide cash deposits up to the lesser of the following figures: (1) 35 percent of the loan amount, (2) $1,000,000, or (3) the size of the demonstrated collateral shortfall.

Projects supporting strategic industries and initiatives may be eligible to receive larger deposits up to the lessor of (1) 80 percent of the loan amount, (2) $3,000,000, or (3) the size of the demonstrated collateral shortfall. Specific deposit sizes will be established on a case-by-case basis, subject to the mutual discretion of CHFA and OEDIT.

Examples of projects supporting strategic industries and initiatives that may be eligible to receive larger deposit amounts include:

- Loans supporting employee ownership, including loans to existing employee-owned companies and loans supporting the transition to an employee-owned structure
- Loans supporting Colorado key industries like quantum and climate-tech
- Loans increasing access to child care services
- Loans supporting businesses that require significant up-front capital
- Loans supporting projects that create a substantial economic development impact in Colorado

The standard Initial Term on CCS deposits is three years.

At the end of the Initial Term the lender may request an annual 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 will be adjusted to reflect the remaining collateral shortfall.

A Borrower Fee is collected by the lender at closing and may be deducted by the lender from the loan proceeds or paid for by the borrower. The standard Borrower Fee is 4 percent and covers the entire Initial Term. This standard fee may be reduced by one percentage point for loans made to businesses that are Very Small Businesses (VSB) or are owned by individuals who qualify as a Socially or Economically Disadvantaged Individuals (SEDI). See Sections 13 and 14 for full details on SEDI and VSB qualifications.

There are also annual Extension Fees if annual extensions are approved after the Initial Term has expired. The Extension Fee for the first annual extension is 1 percent. The Extension Fee then increases by one percentage point for each subsequent annual extension. The second annual extension is 2 percent, the third annual extension is 3 percent, and so on. The lender may pay for the annual Extension 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.

section 4 security and loan documents

CHFA will provide email notification of approval and a copy of the Deposit Agreement to the lender for each approved project. 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 an approximate 30-day commitment period in which the lender must close its loan.

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.

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 5 reporting and notification

The Deposit Agreement will explain the lender's reporting requirements in detail. In general, the lender will be required to provide 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 6 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 7 eligible lenders

Eligible Lenders include banks, State of Colorado funded Business Loan Funds, insured credit unions 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).

section 8 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 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 9 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. 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.
3. There is a reasonable expectation the business loan will be repaid.
4. There is an economic benefit to the community or State of Colorado.
5. The loan is not a refinancing of a loan previously made to that borrower by the lender or an affiliate of the lender unless it meets all requirements outlined in Section 12 of these program guidelines. (This limitation does not prohibit a 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 lender into CCS).
6. Projects involving the acquisition of real estate, a business, or other large assets will generally require the borrower to provide a minimum cash contribution of 10 percent of total project costs.
7. 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;
7. Refinancing eligible debt (see Section 12); or
8. Purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes.

The term "Business Purpose" excludes acquiring or holding passive investments in real estate, 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. See Section 15 for further information regarding eligibility criteria for such loans, or contact CHFA's Community Development Lending Department.

No portion of SBA, USDA, or Tribal Government-guaranteed loans are eligible for CCS.

section 10 ineligible borrowers

The following are Ineligible Borrowers:

1. An executive officer, director, or principal shareholder of the Lender[1];
2. A member of the immediate family of an executive officer, director, or principal shareholder of the 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, 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 through the normal course of trade;
5. A business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
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 activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6;

8. A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business; "gaming activities" for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

9. A business engaged in selling, producing, or displaying sexually oriented material (e.g., adult bookstores, adult video stores, adult theaters, etc.);

10. A business engaged in non-medical massage services;

11. A business or organization that discriminates in its membership or facility usage on the basis of race, color, national origin, religion, gender, age, disability, citizenship status, sexual orientation, or any other status protected by law;

12. A business engaged in pawn brokering;

13. A business that has a principal owner that has been convicted of a sex offence against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act).

section 11 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;

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;

4. Purchase of any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business;

5. 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;

6. 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;

7. For-rent housing; or

8. Religious services, instruction, or overly sectarian activities.

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[1] 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.

section 12 eligible refinanced debt

A lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

1. The debt being refinanced was used for a Business Purpose(s) and was not utilized for any ineligible uses outlined in Section 11,
2. Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution, and
3. CHFA determines the transaction is beneficial to the small business owner.

Lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit, or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into CCS. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or other debt when all the following conditions are met:

1. The loan being refinanced was used for a Business Purpose(s) and was not utilized for any ineligible uses outlined in Section 11,
2. The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt,
3. The new credit supported with CCS is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender,
4. The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter),
5. Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution, and
6. Lender must provide records showing these criteria were met.

section 13 loan term limitations: ccs-supported loans must meet the following conditions

1. Rate Cap: The interest rate for each loan, at the time of obligation and throughout the term of the loan, may not exceed 18 percent.
2. Exclusion of Certain Features: CCS-supported loans may not include any of the following:
    i. Confession of judgment clauses that allow lender to obtain a judgment against debtor upon non-occurrence of payment without advanced notice or a hearing.
    ii. Prepayment penalties on loans with an original principal amount under $100,000. Loans with an original principal amount of $100,000 or more may include prepayment penalties so long as such fees are reasonable, customary, and clearly disclosed to the borrower.
    iii. Double-dipping fees – "Double dipping" occurs when a lender issues new credit to refinance prior credit it has issued without forgiving the portion of the fee already paid, resulting in the borrower paying a fee on top of a fee.
    iv. Fees or charges paid by the small business to the lender as part of the loan application, underwriting, approval or closing process that exceed 3 percent for loans greater than $25,000, or $750 for loans under $25,000. The CCS Borrower Fee and third-party costs do not count towards these fee maximums.

section 14 socially and economically disadvantaged individuals

The SSBCI and CCS programs target businesses that are owned and controlled* by Socially and Economically Disadvantaged Individuals (hereafter referred to as SEDI-owned businesses) and to Very Small Businesses (VSBs).

SEDI-owned businesses are defined as a business enterprise that certifies to at least one of the following:

1. The business is owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (1) membership in a group that has been subjected to racial or ethnic prejudice or cultural bias within American society, (2) gender, (3) veteran status, (4) limited English proficiency, (5) physical handicap, (6) membership in a federal or state-recognized Indian Tribe, (7) long-term residence in a rural community, (8) residence in a U.S. territory, (11) residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization), or (12) membership of another "underserved community" as defined by Executive Order 13985**;

2. The business is owned and controlled by individuals who residences are in CDFI Investment Areas as defined in 12 C.F.R. § 1805.201(b)(3)(ii); or

   https://cimsprodprep.cdfifund.gov/CIMS4/apps/pn-cdfi/index.aspx#?center=-98.212,38.724&level=4

3. The business enterprise will operate a location in a CDFI Investment Area.

* The term "owned and controlled" means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

** Per Executive Order 13985, the term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

section 15 very small businesses (vsb)

VSB means a business with fewer than 10 employees at the time of the loan, investment, or other credit/equity support and includes independent contractors and sole proprietors. A business that has 10 or more employees following an SSBCI transaction will not be considered a VSB for purposes of subsequent loans or investments.

section 16 guidance for passive real estate investment

Each CCS borrower must affirm that the loan proceeds will be used for a business purpose. An eligible business purpose under CCS includes the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. Acquiring or holding passive investments in real estate is not an eligible business purpose. Loan proceeds are used for passive real estate investment purposes when the proceeds of the loan are used to invest in real estate acquired and held primarily for sale, lease, or investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property.

A borrower can deliver the assurance that the loan is not being used for passive real estate if the borrower occupies and uses at least a specific percentage of the building; the percentage varies depending on whether the project involves the construction of a new building or renovation of an existing building:

- Construction of a new building. If CCS-supported loan proceeds are used in the construction of a new building, the small business must occupy and use at least 60 percent of the total rentable property following issuance of an occupancy permit or other similar authorization.
- Renovation of an existing building. If SSBCI-supported loan proceeds are used in the acquisition, renovation, or reconstruction of an existing building, the borrower may permanently lease up to 49 percent of the rentable property to one or more tenants, if the small business occupies and uses at least 51 percent of the total rentable property within 12 months following the acquisition, renovation, or reconstruction.

If a small business chooses to lease an allowable portion of the rentable square footage to a tenant, the jurisdiction may rely on lease agreements, blueprints, or similar documentation in assuring the lease of an allowable portion of the rentable square footage is consistent with these guidelines.

CCS-supported loan proceeds may not be used to improve or renovate any portion of rentable property that the small business borrower leases to a third party. “Rentable property” means the total square footage of all buildings or facilities used for business operations, which (1) excludes vertical penetrations (e.g., stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors) and all outside areas, and (2) includes common areas (e.g., lobbies, passageways, vestibules, and bathrooms).

There are two exceptions to the general prohibition on the use of CCS-supported loan proceeds for passive real estate investment. An eligible business purpose may include the financing of real estate investments in either one of the following limited circumstances.

1. Passive company leasing to operating company. A passive company, such as a holding company that acquires real property using a CCS-supported loan, may have an eligible business purpose where 100 percent of the rentable property is leased to the passive company’s affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:
    - The passive company must be an eligible small business;
    - The operating company must be subject to the same sublease restrictions as the owner affiliate;
    - The operating company must be a guarantor or co-borrower on the CCS supported loan to the eligible passive company;
    - Both the passive company and the operating company must execute CCS borrower use-of-proceeds certifications and sex-offender certifications covering all principals;

- Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
- The passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).

2. Construction loan of $500,000 or less. A construction loan with an original principal amount of $500,000 or less may have an eligible business purpose if:

   - the building will not serve as a residence for the owner, their relatives, or affiliates;
   - the building will be put into service immediately;
   - the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and
   - the building has not been and will not be financed by another SSBCI-supported loan.

Under this exception, loans that automatically convert into permanent financing are excluded from the definition of "eligible business purpose," unless the converted loans would no longer rely on CCS support. The term "construction loan" means a loan secured by real estate made to finance (1) land development (e.g., the process of improving land, such as laying sewers or water pipes) preparatory to erecting new structures, or (2) the onsite construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, "construction" includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

section 17 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.

cash collateral support



program guidelines

800.877.chfa (2432)
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www.chfainfo.com

With respect to its programs, services, activities, and employment practices, Colorado Housing and Finance Authority prohibits unlawful discrimination against applicants or employees on the basis of age 40 years and over, race, sex, sexual orientation, gender identity, gender expression, color, religion, national origin, disability, military status, genetic information, marital status or any other status protected by applicable federal, state or local law. Requests for reasonable accommodation, the provision of auxiliary aids, or any complaints alleging violation of this nondiscrimination policy should be directed to the Nondiscrimination Coordinator, 1.800.877.2432, TDD/TTY 800.659.2656, CHFA, 1981 Blake Street, Denver, Colorado 80202-1272, available weekdays 8:00am to 5:00pm.

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