

colorado credit reserve



program guidelines





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executive summary

The Colorado Credit Reserve (“CCR”) Program is a pool guaranty program originally established and administered by Colorado Housing and Finance Authority (CHFA) and funded under contract with the Governor’s Office of Economic Development and International Trade (OEDIT). This program, which was put on hold in 2006 due to a lack of available funding, was able to utilize \$850,000 over a 10-year period to leverage over \$24 million in small business loans.

In 2010, the CCR Program was revitalized and expanded when, in response to the economic climate, the legislature appropriated \$2,500,000 to the OEDIT for allocation to the Colorado Economic Development Commission (EDC) to provide funding under contract with CHFA as Program Managers as a way to help small businesses access capital throughout the state. The revitalized program was designed to encourage lenders located in the State of Colorado (“Lenders”) to extend credit in amounts up to \$500,000 to Colorado businesses by establishing a reserve account at each participating Lender (“CCR Account”) to cover losses on loans it registers under the program (“Registered Loans”). The program also provided increased reserve funds for Registered Loans made to Colorado businesses owned by women or minorities or whose principal place of business or location of the operation is in a State of Colorado designated Enterprise Zone. The \$2,500,000 of funds was fully disbursed by 2014.

In response to the continued need for such a program, the legislature appropriated \$400,000 in 2015 to refund the CCR Program for the next fiscal year. Given OEDIT’s focus on rural development, \$185,000 of programmatic funds were earmarked for loans provided to businesses in rural parts of Colorado.

Registration fees in the amount of 1 percent (1.0%) of the maximum principal amount of each Registered Loan will be collected from the borrower and deposited into the participating Lender’s CCR Account, which will be owned by the Program Manager. Funds from the CCR Program will also be deposited by the Program Manager in the Lender’s CCR Account based on such maximum principal amount.

Losses from Registered Loans incurred by a participating Lender may be recovered from the reserves in the Lender’s CCR Account. The establishment of this loss reserve account enables a participating Lender to extend affordable credit to businesses that otherwise would not qualify for conventional loans. However, if a Lender’s losses exceed the reserve funds in the CCR Account, the Lender would be at risk for the excess losses. If a Lender’s Registered Loan pays off without a loss or with only a partial loss, the unused reserve funds will remain in the Lender’s CCR Account provided, however, that in no event shall the Lender’s CCR Account be greater than 50 percent (50%) of the aggregate gross loan amount of the Lender’s total Registered Loans.

If at any time a Lender’s CCR Account is greater than 50 percent (50%) of the aggregate gross loan amount of the Lender’s total Registered Loans, the Program Manager may, subject to the procedure outlined in these guidelines, withdraw any excess funds from the Lender’s CCR Account so that the CCR Account is equal to 50 percent (50%) of the aggregate gross loan amount. If a Lender has (i) not provided a new Registered Loan for 12 months or more, or (ii) has no Registered Loans outstanding and its participation in the program is not continued, the funds in the Lender’s CCR Account will be returned to the Program Manager.

These guidelines are meant to provide operational guidance for participating Lenders and are supplemental to the specific terms of a Lender Participation Agreement to be executed by the Program Manager and each Lender, the terms of which shall control. Capitalized terms not otherwise defined herein shall be as defined in the Lender Participation Agreement.

section 1 eligibility requirements

Section 1.1 Eligible Lenders

An Eligible Lender is (i) a depository institution that has been designated as an eligible public depository under the Public Deposit Protection Act (“PDPA”) or the Savings and Loan Association Public Deposit Protection Act, is located in the state of Colorado, and is regulated by Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, the Colorado Division of Banking, or similar regulatory agency (a “Bank Lender”); or (ii) a federally funded Community Development Finance Institution, State of Colorado funded Business Loan Funds, or other specific organization or entity that has received written approval from OEDIT to participate in the CCR program (a “Non-Bank Lender”).

Section 1.2 Eligible Borrowers

In order to be an Eligible Borrower under the program:

- a. The borrower must be carrying on a trade or business primarily within the state of Colorado.
- b. The primary economic benefit of the loan must be contained in Colorado.
- c. The borrower’s business may be not-for-profit or for-profit.
- d. The borrower’s business may be any type of business, including agricultural production and processing, except as limited in Section 1.3 below.

Section 1.3 Eligible Loans

Eligible Loans may be made for working capital, inventory, equipment, contract financing, lines of credit, and real estate projects. The aggregate principal amount of all Registered Loans to any borrower or any affiliates of a borrower shall not exceed \$500,000. The entire loan principal amount must be registered. The proceeds of an Eligible Loan may not be used for the following:

- a. Refinancing of debt on the books of the Lender or affiliate bank except in the case that a Registered Loan is renewed or extended.
- b. Loans made to executive officers, directors, or principal shareholders of a Lender, or family members of the same. The basic definition used in this prohibition is the same as Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O, and the Office of Thrift Supervision regulations at 12 C.F.R. §563.43.
- c. Loans to or for pyramid sales distribution plans; businesses engaged in political or lobbying activities; private or commercial golf courses; country clubs; massage parlors; hot tub facilities; suntan facilities; racetracks or other facilities used for gambling; stores where the principal business is the sale of alcoholic beverages for consumption off premises; governmental entities; businesses engaged in any illegal activities (including activities illegal under federal, state, and local laws); businesses where a principal is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs; businesses that present live performances of a prurient sexual nature or derives more than 2 percent (2%) of gross revenues from the sale of products or services of a prurient sexual nature.

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- d. Financing for housing.
- e. Loans guaranteed by the Small Business Administration or United States Department of Agriculture.
- f. Financing for investment real estate.

section 2 program participation

Section 2.1

Lender Participation Agreement; CCR Account Set Up

- a. Eligible Lenders must execute a Lender Participation Agreement that does not require the Lender to register any loans under the CCR Program, but does spell out the full requirements that apply when the Lender desires to register a loan under the program and the obligations of the Program Manager and the Lender thereunder.
- b. At the time the Lender Participation Agreement is signed, the Lender shall establish an interest-bearing account under the Program Manager's PDPA number to be used as the dedicated CCR Account in which to accumulate the program reserve funds related to its Registered Loans. If the Eligible Lender is a Bank Lender, the CCR Account will be established at the Bank Lender. If the Eligible Lender is a Non-Bank Lender, the CCR Account will be established at a qualified banking institution chosen by the Program Manager. The CCR Account shall be entitled "Colorado Housing and Finance Authority – CCR Account – (Lender's name)". Interest earned on the Lender's CCR Account will be distributed in the same manner as all other funds deposited therein.
- c. The signature card for a Bank Lender's CCR Account shall be forwarded to CHFA for completion by the Program Manager. One signature from an authorized Program Manager staff member is necessary for withdrawals from the CCR Account.

Section 2.2

Loan Registration

- a. A separate Loan Registration Form (see example in the Lender Participation Agreement) must be completed for each Eligible Loan registered in the CCR Program. Evidence of the deposit of the borrower's registration fee into the CCR Account, as required in Section 2.3 below, and an executed Borrower Notice and Waiver (see example in the Lender Participation Agreement) shall accompany the Loan Registration Form. The completed Loan Registration Form, fee deposit evidence, and executed Borrower Notice and Waiver may be faxed to the Program Manager's Community Development Division at 303.291.5709.
- b. Eligible Loans must be registered within 30 days after the loan is made by the Lender. For purposes of this program, the date the Lender makes the loan shall be deemed to be the date on which loan documents have been executed by the borrower and delivered to the Lender. The Program Manager shall notify the Lender if the Loan Registration Form is rejected for any reason and the borrower's registration fee for such loan shall be refunded to the Lender.
- c. A loan shall cease to be a Registered Loan when it has a zero balance or, if it is a line of credit loan, when it has a zero balance for a 12-month period.

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Section 2.3

Loan Registration Fees; CCR Program Matching Funds

- a. At the time of the Registered Loan closing, the borrower shall pay a program loan registration fee of 1 percent (1%) of the total principal loan amount, which shall be deposited into the Lender's CCR Account. The Lender may charge an additional origination fee, provided, however, for Bank Lenders the total fees paid by the borrower in connection with the Registered Loan cannot exceed 4 percent (4%) of the principal loan amount thereof, exclusive of closing costs. The borrower may finance these fees as an addition to the principal amount of the Registered Loan at the Lender's option, but the portion representing the loan registration fee must be deposited into the Lender's CCR Account.
- b. Upon acceptance of the loan into the program, the Program Manager will wire CCR Program funds ("CCR Match") for deposit into the Lender's CCR Account based upon the following schedule:

loan amount	\$0-\$10,000	\$10,001 - \$65,000	\$65,001 - \$250,000	\$250,001 - \$500,000
ccr match	20%	Fixed at \$2,000	3%	\$7,500
borrower fee	1%	1%	1%	1%

- c. Matching Funds deposited into a Participating Lender's CCR Account for any Registered Loan shall be held for the benefit of all Registered Loans made by the Participating Lender.
- d. \$185,000 of newly appropriated funds from 2015 will be directed to "rural communities" in Colorado, which for the sake of this program, are defined as any areas other than:
 - i. A city or town that has a population of greater than 50,000 inhabitants; and
 - ii. The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Section 2.4

Extension, Renewal, and Refinance of Registered Loans

- a. Registered Loans may be extended, renewed, and refinanced. At the time of extension, renewal, or refinance, the Lender shall assess an additional loan registration fee of 1 percent (1%) of the increase to the original principal loan amount, which shall be deposited into the Lender's CCR Account; however, there will not be a CCR Match regarding the increased amount. The Lender may charge an additional origination fee, provided, however, for Bank Lenders the total fees paid by the borrower in connection with each extension, renewal, or refinance of a Registered Loan cannot exceed 4 percent (4%) of the principal loan amount thereof, exclusive of closing costs.
- b. The Lender must notify the Program Manager in writing of any extension, renewal, and refinance of a Registered 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 Form for the loan. When the change increases the principal loan amount, the Lender shall submit a new Loan Registration Form and evidence of the deposit of any additional registration fee paid by the borrower, along with a copy of the original Loan Registration Form and evidence of deposit.

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Section 2.5

Annual Loan Status Reports; Withdrawal of Excess Funds in CCR Account by Program Manager

- a. On or before July 31st every year, each participating Lender must file a status report (see example in the Lender Participation Agreement) with the Program Manager for each of its Registered Loans indicating outstanding balances of each Registered Loan as of the previous June 30th.
- b. If upon receipt of the annual report filed by each Lender concerning its Registered Loans, it is determined by the Program Manager that the balance in the Lender's CCR Account exceeds 50 percent (50%) of the aggregate gross loan amounts of the Lender's Registered Loans, the Program Manager may, but shall not be obligated to, withdraw the excess funds from the CCR Account after providing the Lender with notice of the excess funds and granting Lender a three-month period to cure the overage by adding a new Registered Loan to the Program such that the ratio falls to or below the 50 percent (50%) threshold. If at any time a Lender ceases to have any Registered Loans in the CCR Program, the Program Manager may, but shall not be obligated to, withdraw the remaining balance in the Lender's CCR Account.

Section 2.6

Maximum Account Balance

Notwithstanding anything contained in these program guidelines to the contrary, the Lender may only receive a CCR Match if their CCR Account is less than or equal to \$500,000. Once a Lender has \$500,000 in its CCR Account, it is no longer eligible to receive any CCR Program funds. However, the Lender may continue to register loans into the CCR Program and may grow its CCR Account with the 1 percent (1%) loan registration fees collected from borrowers.

Section 2.7

Inactive Lender Policy

If a participating Lender fails to register a new loan in the Program over a 12-month period, it shall be considered an inactive Lender. At such time the Program Manager may, but shall not be obligated to, notify the Lender of its inactive status and provide the Lender with a three-month period to re-engage in the Program by registering a new loan. If no new loans are registered in this three-month period, the Program Manager may withdraw funds to be redistributed into the Program.

section 3 claims

Section 3.1

Determination of Amount of Claim

If a Lender charges off all or a part of a Registered Loan because of the borrower's delinquency or other default, the Lender may submit a request for loss reimbursement ("Claim") to the Program Manager equal to the total amount of outstanding principal and accrued interest on the Registered Loan charged off by the Lender, together with the reasonable out-of-pocket expenses incurred by the Lender in pursuing recovery under the Registered Loan, provided, however, that the amount of the Claim shall not: (a) exceed the original principal loan amount of the Registered Loan as stated in the loan documents at the time the Registered Loan was registered; or (b) include any amount attributable to (i) damages paid by the Lender as a result of a legal claim against the Lender for negligence, misconduct, or otherwise; or (ii) unpaid late charges or unpaid default interest charges imposed by the Lender.

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Section 3.2 Timing of a Claim

A Lender may file a Claim with respect to a Registered Loan only after charging off all or a portion of the outstanding balance of the Registered Loan, in accordance with the Lender's customary policies and procedures and/or as required by federal or state regulatory agencies. Upon filing a Claim, the Lender shall cease to accrue interest on the Registered Loan in accordance with generally accepted accounting principles and as required by federal or state regulatory agencies.

Section 3.3 Claim Process

- a. Upon making a charge-off in accordance with Section 3.2, the Lender may file a Claim with the Program Manager by submitting a completed Claim Form (see example in the Lender Participation Agreement) verified and signed by an authorized officer of the Lender. The Claim Form must be accompanied by a loan history certified by an authorized officer of the Lender and evidence, satisfactory in Program Manager's sole discretion, to demonstrate that the Lender has charged off such amount on its books. Claims must be delivered to the Program Manager not later than 30 calendar days after the date of the charge-off.
- b. The certified loan history must contain a summary of disbursements, payments, accruals of interest, and any other charges with respect to the Registered Loan. The Lender shall provide the Program Manager with such further information concerning the Registered Loan as may be reasonably requested by the Program Manager. The Lender must retain documentation in its files evidencing all expenses for which a Claim is filed.
- c. Within 10 business days after receipt by the Program Manager of a completed Claim (the "Review Period"), the Program Manager shall review the Claim and approve the Claim in its entirety, approve the Claim in part, or reject the Claim. If the Program Manager approves the Claim in its entirety or in part, then prior to the termination of the Review Period, the Program Manager shall pay, solely from funds available in the Lender's dedicated CCR Account, the entire amount of such Claim or such lesser amount as is approved by the Program Manager. If the Program Manager rejects all or any portion of a Claim, then prior to the termination of the Review Period, the Program Manager shall provide written notice of such adjustment or proposed rejection to the Lender, stating the basis for the proposed rejection or adjustment. A Claim may be rejected or adjusted by the Program Manager (i) on the basis that any representation or warranty provided by the Lender to the Program Manager with respect to a Registered Loan was known by the Lender, or should have been known but for gross negligence of the Lender, to be false at the time such Loan was registered; or (ii) due to the Lender's failure to comply with the requirements of the Lender Participation Agreement. A Lender may object to such adjustment or rejection by delivering a written statement to the Program Manager explaining the basis for such objection within 10 business days after receipt of the Program Manager's notice. After review of the Lender's objection, the Program Manager shall determine in its sole discretion whether to reject or adjust such Claim.

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- d. With respect to any Registered Loan for which a Claim has been paid, the Lender shall, within 60 calendar days from the date the Claim is paid, provide the Program Manager with a report outlining the Lender's proposed plan for pursuing its collection rights with respect to the Registered Loan. Such report shall include the description, location, and estimated value of all collateral that secures payment of the Registered Loan and proposed methods for pursuing the Lender's rights against the collateral and any guarantors of the Registered Loan. Thereafter the Lender shall on a periodic basis, but at least quarterly, file a report with the Program Manager summarizing the status of and any changes to the proposed collection plan or status of the collateral. If the Lender determines such collection activities are no longer economically feasible, it will so advise the Program Manager in writing, and the Lender shall have no future obligation to submit reports with respect thereto. Thereafter, the Program Manager shall, as specified in the Lender Participation Agreement, have the rights of collection and to collateral with respect to such Registered Loan.

Section 3.4 Insufficient Funds

A Lender's right to receive payment for a Claim approved by the Program Manager shall be limited to the amount of funds in the Lender's CCR Account. Loss Reserve Funds deposited with respect to multiple Registered Loans may be used to pay a Claim made with respect to any one of them. If there are insufficient funds in the Lender's CCR Account to pay the entire amount of the Lender's Claim, the Program Manager shall pay the Lender the current balance in such Lender's CCR Account. Such payment shall be deemed to satisfy the Claim in full and the Lender shall have no other or further right to receive any amounts from the CCR Account. If the Lender submits two or more Claims contemporaneously and there are insufficient funds in the CCR Account to cover the entire amount of such Claims, the Lender shall specify the amount of CCR Account funds to be allocated to each of the Claims or designate the order of priority in which the Program Manager shall pay the Claims.

Section 3.5 Recoveries

- a. If subsequent to payment of all or part of a Claim by the Program Manager, the Lender recovers any amount of the Registered Loan that was the subject of the Claim, the Lender shall promptly deposit such recovered funds in the Lender's CCR Account, less (i) any reasonable out-of-pocket expenses incurred by Lender, and (ii) any amount of the Lender's loss on the Registered Loan not covered by the Claim paid. The Lender shall retain documentation in its files evidencing any such expenses and unpaid loss.
- b. In the event of any such recovery, the Lender shall promptly provide the Program Manager with a written statement containing the following information: the name of the borrower, the amount recovered, the date the Claim was paid, the recovery costs incurred by the Lender, and the date the recovered funds were deposited into its CCR Account. The Lender shall attach a copy of the deposit slip showing that the recovered funds were deposited into the CCR Account.

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