

## **CLIMBER Oversight Board Staff Proposal: Definition of CLIMBER Qualified Businesses**

Section 24-36-203(4), C.R.S. "ELIGIBLE BORROWER" MEANS A BUSINESS THAT, AS DETERMINED BY THE OVERSIGHT BOARD:

*Business is defined as:*

*(1) A for-profit partnership, corporation, association or entity, incorporated in Colorado in good standing with the Secretary of State, or (2) that filed and is in good standing with the Secretary of State as a foreign entity authorized to transact business in Colorado, or (3) is a sole proprietorship owned by a Colorado resident that operates primarily in Colorado, or (4) is a non-profit entity, incorporated in Colorado.*

(a) HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE STATE;

*Defined as:*

*More than 50 percent of its employees are based in Colorado*

AND

(b) HAS AT LEAST FIVE BUT FEWER THAN ONE HUNDRED EMPLOYEES;

*Defined as:*

*Employees are residents of Colorado and have a w2 or 1099 relationship with the borrower as defined in 8-40-301, C.R.S.*

*The employees may be full or part-time to satisfy the statutory lower limit of five employees.*

*Part-time employees may be aggregated into FTEs for purposes of satisfying the upper statutory limit of fewer than 100 employees.*

*Seasonal businesses, who have more than 100 employees in certain periods during the course of a year, may satisfy the upper limit of fewer than 100 employees using an average monthly FTE calculation based on a 12-month period of their choice that includes the date of application or their most recent full tax year. The lower limit five-employee test is applied either as of February 29, 2020 or currently whichever has the most employees.*

*Businesses must have fewer than one hundred FTEs based on their current number of FTEs or the seasonal business calculation described above, whichever is lower.*

ADOPTED October 22, 2020

AMENDED February 4, 2021

(c) CAN DEMONSTRATE THAT IT HAD AT LEAST TWO CONSECUTIVE YEARS OF POSITIVE CASH FLOW PRIOR TO FEBRUARY 29, 2020; AND

*Defined as:*

*Any two consecutive years within the five year period prior to February 29, 2020.*

*Positive operating cash flow shall be determined and documented by the lender based on analysis of tax returns or similar financial statements. The two consecutive years must be within the five years prior to February 29, 2020 but are not necessarily the two years immediately prior to February 29, 2020.*

AND

(d) CAN DEMONSTRATE THAT IT HAD A DEBT-SERVICE COVERAGE RATIO AS OF FEBRUARY 29, 2020, OF AT LEAST ONE-TO-ONE OR A HIGHER LEVEL AS DETERMINED BY THE OVERSIGHT BOARD.

*Defined as:*

*Debt Service Coverage Ratio (DSCR) shall be determined and documented by the lender using following methods:  $DSCR = \text{Net Operating Income or Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA)}$  (whichever metric is deemed appropriate by the lender for the type of business applying for the loan), divided by total debt service. These metrics shall be based on either the actual operating income or EBITDA and debt service in the prior tax year immediately preceding February 29, 2020 or actual operating income and debt service from March 1, 2019 through February 29, 2020 or other reasonable methodologies as determined by the lending institution. Using these methods for calculating DSCR, the borrower must have a ratio of at least 1 but the lender, according to its own underwriting standards, may require a higher ratio.*