

**STATE OF COLORADO
DEPARTMENT OF THE TREASURY**

Dave Young
State Treasurer



Eric Rothaus
Deputy Treasurer

May 31, 2021

Joint Budget Committee
200 East 14th Avenue, Floor 3
Denver, CO 80203

Dear Members of the Joint Budget Committee,

Respectfully submitted on behalf of the CLIMBER Oversight Board, please find attached the second semi-annual report of the Oversight Board of the CLIMBER Small Business Loan Program. The CLIMBER Program was created in 2020 under §24-36-201, C.R.S. following the passage of HB20-1413, the CLIMBER Act. The initial report was required to be submitted to the JBC on or before November 30, 2020, under subsection (12) of §24-36-204, C.R.S.

The CLIMBER Act conveys the urgency felt by the General Assembly, the Governor, and me around providing much needed operating capital to small businesses across the state. Accordingly, the Board and OEDIT have been working diligently to launch the Program. Since the last report at the end of November, the Board has met 10 times as a full board, one time in noticed working group meeting that included more than one Board member, and several of other meetings that included only one Board member and Program staff. This report chronicles that intense work and the progress that has been made towards the launch of CLIMBER and current status of the program.

Please feel free to contact me if you have any questions about the report or the program.

Sincerely,

David L. Young
State Treasurer

CC: Members of the 73rd General Assembly
Members of the CLIMBER Oversight Board
Pat Meyers, Executive Director, OEDIT
Jeff Kraft, Deputy Director and Director of Business Funding and Incentives, OEDIT



CLIMBER Small Business Loan Program Semi-Annual Implementation Report Submitted to the Joint Budget Committee

May 31, 2021

Executive Summary

In June 2020 the Colorado General Assembly passed and the Governor signed HB20-1413, the Colorado Loans for Increasing Mainstreet Business Recovery (CLIMBER) Act. The legislation charged the State Treasurer and the program's Oversight Board, in partnership with the Governor's Office of Economic Development and International Trade (OEDIT), with establishing a small business loan program to provide below-market capital to Colorado small businesses across the state to aid in the state's economic recovery, help the small businesses, and save jobs.

The CLIMBER Oversight Board has policy oversight of the program. The Treasurer is the Chair of the Board. The Director of the Minority Business Office in OEDIT is likewise a member specified in statute. The three other members of the Board are appointees of the Governor, the Senate President and the Speaker of the house, respectively. The Board was fully appointed in July 2020.

The Colorado General Assembly, the Governor, the Treasurer, OEDIT, and CHFA, as well as the CLIMBER Oversight Board, have been working diligently to establish and stand up the CLIMBER Loan Fund to support Colorado small businesses, save jobs, and help support the Colorado economy.

According to statute, the Program will roll out in successive tranches of up to \$50 million of capital each. Except for the first tranche, a tranche cannot be launched until the previous tranche has been 90% deployed to small businesses. With the program moving from setup to launch, the first tranche has \$43,125,000 available for three lending products.

For the first tranche, the Board has established the three different lending products: 1) Direct lending capital for CDFIs and non-profit lenders, 2) Credit Enhancement for CLIMBER loans, and 3) Loan participations.

The CLIMBER Act also charges the Board with setting policy to ensure equitable access to capital, across all 64 counties and for disadvantaged demographics and communities. The Board has designed methodologies for achieving this equitable distribution that has included extensive data analysis and review of relevant studies. Although these are not the only businesses served by CLIMBER, given the disadvantages these communities have faced in the past with respect to access to capital, there is a strong rationale for taking care to ensure these businesses are included in a fair distribution.

At the time of this report, the CLIMBER program has launched all three lending products designed to help small businesses. The first program launched was the CLIMBER Credit Enhancement tool. This was launched on March 25th with the Direct Lending Capital and Loan Participation programs both launching at the end of May. There have not been any loans made to small businesses as of yet. The process of negotiating the Master Funding Agreement (MFA) with the contributory banks took longer than expected to finalize. The five contributor banks and all their signatures or joinders are expected by the end of May. The process to sign up the partner lending institutions through the Colorado Housing and Finance Authority (CHFA) is ongoing and running with at present 12 institutions and 15 locations across the state. This report details the implementation of the program to date.

Table of Contents

Cover Letter	1
Executive Summary	2
Full Report	5
Section 1: Overall Program Implementation Milestones	5
Section 2: The Oversight Board’s Work	8
Section 3: Loan Program Manager	8
Section 4: CLIMBER Products and Terms	9
Section 5: First Tranche Fundraising and Tax Credit Sales	10
Section 6: Achieving Equitable Access to Capital	11
Section 7: Statutorily Required Reporting Elements	13
Appendix A: Overview of Board Responsibilities and Plan for Addressing Board Work	14
Appendix B: Treasury and CHFA Executed Intergovernmental Agreement	17
Appendix C: Definition of CLIMBER Qualified Businesses	38
Appendix D: CLIMBER Financial Products for First Tranche of Capital	40
Appendix E: Allocation of State Funds for First Tranche CLIMBER	62
Appendix F: Methodology for Geographic Distribution of CLIMBER Capital	64
Appendix G: Benchmarks for Women-, Minority-, Veteran-Owned, and Rural Businesses	68
Appendix H: Definition of a CLIMBER-Underserved Business	70

Full Report

In June 2020 the Colorado general assembly passed and the Governor signed HB20-1413, the Colorado Loans for Increasing Mainstreet Business Recovery (CLIMBER) Act. The legislation charged the State Treasurer and the program's Oversight Board, in partnership with the Governor's Office of Economic Development and International Trade (OEDIT), with establishing a small business loan program to provide below-market capital to Colorado small businesses across the state to aid in the state's economic recovery, help the small businesses, and save jobs.

The CLIMBER Oversight Board has policy oversight of the program. The Treasurer is the Chair of the Board. The Director of the Minority Business Office in OEDIT is likewise a member specified in statute. The three other members of the Board are appointees of the Governor, the Senate President and the Speaker of the house, respectively. The Board was fully appointed in July 2020.

The CLIMBER program has launched all three lending programs designed to help small businesses. The first program launched was the CLIMBER Credit Enhancement tool. This was launched in March with the Direct lending capital and Loan Participation programs both launched in May. There have not been any loans made to small businesses as of yet. The process of negotiating the Master Funding Agreement (MFA) with the contributory banks and the process to sign up the lending institutions with CHFA have taken longer than anticipated to materialize. This report details the implementation of the program to date.

Overall Program Implementation Milestones

The CLIMBER Act conveys the urgency felt by the General Assembly, Governor and Treasurer around providing much needed operating capital to small businesses across the state. Accordingly, the Treasurer, Oversight Board, OEDIT and CHFA have been working swiftly to launch the Program.

- ◇ June 23: HB20-1413 is signed by the Governor
- ◇ July 13: Kick-off call with the Governor and prospective CLIMBER contributors
- ◇ July 22: Final Oversight Board member appointed
- ◇ July 23: First Oversight Board meeting
- ◇ July 30: CHFA is selected to be the Loan Program Manager
- ◇ July 30: Board adopts a conflict-of-interest policy
- ◇ August 6: Board adopts bylaws
- ◇ August 13: Board divides itself into working groups
- ◇ August 14: Impact working group begins work on setting targets for businesses owned by women, minorities and veterans, and rural businesses
- ◇ August 24: Treasury post CLIMBER staff position
- ◇ August 26: Underwriting working group begins design of financial products and loan terms
- ◇ August 27: Board adopts geographic distribution methodology
- ◇ August 27: Full Board takes up financial products and loan terms design issues [As the largest part

of the Board's work, these complex issues were before the Board each week until November 19]

- ◇ September 10: Board receives feedback from small business focus groups and the SBDC
- ◇ September 17: Board reviews the financial model for the CLIMBER fund
- ◇ September 17: Impact working group and OEDIT present the Board with data and research regarding access to capital of businesses owned by women, minorities and veterans
- ◇ September 24: Treasury releases RFQ for sale of insurance premium tax credits authorized by HB20-1413
- ◇ September 29: The Governor designated the fundraising team for CLIMBER
- ◇ October 8: Board adopts targets for businesses owned by women, minorities and veterans, and rural businesses
- ◇ October 8: Board takes up the definition for CLIMBER qualified businesses and methodology for counting employees
- ◇ October 12: Treasury selects two firms to manage the sale of the CLIMBER tax credits
- ◇ October 22: Board takes up plan for equitable distribution to economically disadvantaged areas of the state
- ◇ October 22: Board adopts definition for CLIMBER qualified business and methodology for counting employees
- ◇ November 5: Board adopts 80% of CLIMBER products and loan terms policy
- ◇ November 5: Board adopts plan for equitable distribution to economically disadvantaged areas of the state
- ◇ November 10: Treasury and CHFA execute MOU securing CHFA as the Loan Program Manager
- ◇ November 10: Treasury hires CLIMBER position
- ◇ November 17: Governor fundraising calls
- ◇ November 19: Board adopts remaining elements of CLIMBER products and loan terms policy
- ◇ November 23: CHFA CLIMBER kick-off call
- ◇ November 23: Governor fundraising calls
- ◇ November 23: Board meets for formal approval of the Semi-annual Report to the JBC
- ◇ December 7: Hire CLIMBER Director as part of the Treasury staff
- ◇ December 7: CHFA introduced the marketing team to the Board and outlined the plan
- ◇ December 7: Review of CLIMBER Term sheet and language was approved
- ◇ December 7: Treasurer's Office ran legislation during the special session to fix a mechanical problem with the tax credit sales.
- ◇ December 17: Formal anchor level commitment from Northern Trust of \$10M
- ◇ December 18: CLIMBER work group met with SBDC to establish technical assistance for launch
- ◇ December 29: First tax credit sale closed raising \$8.5M in purchase agreements
- ◇ December 31: Board member Rosy McDonough announced she will be leaving the Board
- ◇ January 5: Formal commitment from FirstBank of \$5M
- ◇ January 14: Welcome new Board member Monique Lovato
- ◇ January 14: Executive session to modify the programs policy on treatment of women, minority and veteran owned businesses

- ◇ January 19: climber-colorado.com website is under construction and redirects to temporary CHFA landing page
- ◇ January 21: Approved allocation of \$3M to CHFA to prepare to launch the Credit Enhancement Tool
- ◇ January 21: Approach to race and gender in Board policy adopted
- ◇ January 26: Formal commitment from UMB of \$5M to the first tranche of financing
- ◇ January 26: CLIMBER Logo design and color scheme are in draft form
- ◇ January 30: IGA between Treasury and CHFA was signed
- ◇ February 4: Board modifies the language in the geographic distribution to adopt benchmark over target
- ◇ February 4: Donald Zuckerman, Colorado Film Commissioner, was selected to produce 6 Public Service Announcements (PSA's) for CLIMBER
- ◇ February 4: Added clarification language on look back period for business eligibility for the program
- ◇ February 11: Geographic distribution methodology for the program is adopted by the Board
- ◇ February 11: Definition of underserved businesses and communities is determined needs modification
- ◇ February 19: CLIMBER logo and color scheme is finalized
- ◇ February 25: Modified definition of underserved and underserved is adopted
- ◇ March 4: Preliminary meetings to negotiate the MFA with the contributory institutions started
- ◇ March 9/11: PSA's are being produced and filmed
- ◇ March 11: Upfront fees to lenders is modified to align to offset cost and keep interest rates to businesses low
- ◇ March 11: Geographic distribution for first tranche, only for Credit Enhancement, is waived to speed up the lending process
- ◇ March 11: Refinance amendment to the Board policy is adopted to give direction about lines of credit
- ◇ March 14: Final \$14.45M of Deferred Insurance Premium Tax Credits were sold
- ◇ March 18: www.climber-colorado.com goes live and no longer redirects to the CHFA site
- ◇ March 25: CHFA announces that the Credit Enhancement Program launch and lenders have access to all the forms on the website
- ◇ April 30: Final revisions to the MFA are negotiated and the contributory institutions are getting approval from their boards
- ◇ May 17: Initial Direct loan capital request of \$2M came in from First Southwest Community Fund
- ◇ May 20: Board approves the transfer of first loss capital and lender fee to CHFA of \$7.325M
- ◇ May 20: Board approves a budget for marketing and advertising from information provided by CHFA of \$360,000
- ◇ May 21: Three of the five contributory institutions have signed the finalized MFA
- ◇ May 27: Approval of modified tranche one funding and first loss capital
- ◇ May 27: Approval of funding first lender with \$2M

The Oversight Board's Work

The CLIMBER Oversight Board has policy oversight of the program. The Treasurer is the Chair of the Board. The Director of the Minority Business Office in OEDIT is similarly a member specified in statute. The three other members of the Board are appointees of the Governor, the Senate President and the Speaker of the House, respectively. The Board was fully appointed in July 2020. The current members of the Board are:

- 1) Akasha Absher, President, Syntrinsic Investment Counsel (appointed by the Speaker of the House).
- 2) Peter Calamari, Managing Director, Platte River Equity (appointed by the Governor),
- 3) Monique Lovato, appointed by the Director of the Minority Business Office within OEDIT,
- 4) Douglas Price, Chairman and CEO, Citizens State Bank, located in Ouray, on the Western Slope (appointed by the Senate President); and
- 5) Dave Young, State Treasurer (chair),

The Board has continued to work diligently between the five working groups and launching the program. The five working groups: 1) Impact, 2) Underwriting, 3) Small business outreach and technical assistance, 4) Fundraising and 5) Tax credit sale. Since the last report at the end of November, the Board has met 10 times as a full board, one time in noticed working group meeting that included more than one Board member, and dozens of other meetings that include only one Board member and program staff. Staff from Treasury and OEDIT have been supporting the Board through all of their work. Attached as [Appendix A](#) includes the list of major decision points the Board was tasked to work through by the legislation. The Board has made decisions and adopted policies to address each item, with the support of analysis, research, data, and gathering and synthesis of input from stakeholders, provided by staff from OEDIT, Treasury, and CHFA. The Attorney General's Office has also provided critical, regular, and ongoing legal counsel on a wide variety of legal issues for CLIMBER.

The Oversight Board's meetings are public meetings. Meeting notices, agendas, minutes, and all other documents presented to the Board are available on the [Board's webpage](#) on Treasury's website.

Loan Program Manager

CHFA was selected by the Treasurer as the Loan Program Manager to run the lending operations of CLIMBER. Since the November report, the state Treasury office and CHFA have completed the Intergovernmental Agreement required to administer the CLIMBER Loan Program. Both parties have agreed upon the roles and duties of administering the CLIMBER Loan Program attached as [Appendix B](#).

CHFA launched the Credit Enhancement Program back in March which is similar to CCR/CCS that they have used since 2010. Colorado credit reserve program described §24-46-104(1)(n), which includes those certain pooled and individual credit enhancement programs, commonly known as the Colorado Credit Reserve Program and the Cash Collateral Support Program, respectively, both of which are established and governed by the Colorado Economic Development Commission acting by and through

the Colorado Office of Economic Development and International Trade and administered by CHFA.

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. Lenders are encouraged to contact CHFA for assistance with determining if a lender, borrower, or loan is eligible and qualifies for CCS. Similarly, the CCR provides a loan loss reserve for loans enrolled in the program, that can be pooled across enrolled loans.

With the negotiations of the MFA recently being finalized and getting signed by all the contributory institutions, CHFA can start signing up the lending institutions to launch the last two product lines designed for the first tranche, Direct Lending Capital to CDFI's and Loan Participations. More information on these loan products is covered below.

CLIMBER Products and Terms

According to statute, the Program will roll out in successive tranches of up to \$50 million of capital. Except for the first tranche, a tranche cannot be launched until the previous tranche has been 90% deployed to small businesses.

As specified by statute, the Program will rely on the network of lending institutions across the state to originate loans and service CLIMBER loans. It is through this partnership with lenders that CLIMBER will be able to successfully deploy the capital and help support businesses. Qualified businesses are 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.

See [Appendix C](#) for the full description as determined by the Oversight Board.

For the first tranche, the Board has set out the financial products the Program will use to deploy capital. The Board created three different financial products: 1) Direct Lending Capital for CDFIs, 2) Credit Enhancement for CLIMBER loans, and 3) Loan Participations. Details about these financial products are included as [Appendix D](#).

The direct lending capital product is designed to help deploy capital through Community Development Financial Institutions (CDFIs) and similar non-profits. CDFIs are non-profit lenders (and also include a few for-profit entities) certified by the Federal CDFI fund whose mission is to expand economic opportunity in low-income communities by providing access to capital and financial services. Since CDFIs are generally not depository institutions, they have lending capital constraints, the direct lending

capital product will help address that constraint and ensure equitable access to CLIMBER capital.

The other two products will be available to all lenders, at their option and with CHFA approval. The credit enhancement tool will provide cash to lenders either to serve as collateral for a CLIMBER loan or to provide a pooled loan loss reserve for CLIMBER loans originated by the lender.

Finally, the Program will purchase 80% of CLIMBER loans, at the option of lenders. Through the loan participation product, the Program will significantly de-risk the loan by taking 80% of it off the books of originating lenders and also provide liquidity to the lenders. Loan participations are a tool used by most COVID-relief small business funds across the country and also by the Federal Main Street Lending Program.

The Board has designed all CLIMBER products to appropriately align incentives with the lending partners, the State, and the Program.

By statute, the small business loans must bear below-market interest rates. The Board has set interest rates for loans and other terms and conditions. CLIMBER loans will also include business-beneficial terms, including loan deferrals and maturities up to five years. All CLIMBER compliant loans will cohere with the interest rates and terms set by the Board. From a small business perspective, it should be uniform (depending on loan term and other specifics but in all cases set by the Board). Interest rates and terms are also presented in [Appendix D](#).

First Tranche Fundraising and Tax Credit Sales

The State's \$50 million contribution, as first loss capital, is designed to leverage an additional \$200 million in private contributions. Governor Polis named a fundraising group to raise the private capital for both CLIMBER, and the related Energize Colorado Gap Fund. The fundraising group is:

- 1) Peter Calamari (also a CLIMBER Oversight Board member),
- 2) Brad Feld,
- 3) Jim Kelley,
- 4) Blair Richardson, and
- 5) Kent Thiry (chair).

The fundraising group has been working with prospective contributors to raise the capital necessary for both these funds to help Colorado businesses.

Financial institutions that have Federal Community Reinvestment Act (CRA) requirements are possible contributors that could provide low-cost capital, which would make the economics of CLIMBER work. The fundraising team and Treasury staff have been working with these banks, and with the help of the Governor's Office, are on-track for program launch in March.

The CLIMBER Fundraising Committee has successfully raised enough of the private capital necessary for the statutorily required match between State and private contributions (1:4). The State's statutory

maximum for first-loss capital in any single tranche is \$10 million. The Board allocated \$3M for the first tranche of the Credit Enhancement portion of CLIMBER on January 21, 2021. Therefore, the Board may allocate up to \$7 million for first-loss capital for the Direct Lending and Participation products within the first tranche of CLIMBER.

The fundraising includes six contributory institutions making up \$22.5M. With the inclusion of the state's first loss capital of \$5.625M, the total of \$28.125M is available for the Loan Participation and Direct Lending Capital tools. The Credit Enhancement tool provides 15-20% credit enhancement in the form of a loss reserve or cash collateral for CLIMBER loans enrolled by lenders across the state. Adding the \$3M provided for the Credit Enhancement tool which leverages a potential additional \$12M from the various lenders borrowers can use brings a total first tranche loanable funds to \$43.125M. See [Appendix E](#) for a complete description.

On May 27, 2021, the Board unanimously approved the action to allocate \$5.625M to CHFA, as Loan Program Manager, to be used as first loss capital for the Participation and Direct Lending Capital CLIMBER tools. Additionally, the Board allocated \$450,000 to CHFA to be used for origination fees paid to non-depository, nonprofit lenders as a part of the Direct Lending Capital CLIMBER tools.

The CLIMBER legislation authorizes the Treasurer to sell deferred tax credits against State insurance premium tax liability. C.R.S. Section 24-36-206(2) provides the Department with the authority to sell up to an aggregate total of \$68 million in "Tax Credits" to "Qualified Taxpayers" in Fiscal Year 2020-2021 and 2021-2022. The first sale took place on December 29, 2020 and as of March 14th, the full \$68M fiscal year 2020-2021 tax credits were purchased. The state Treasurer teamed up with two companies (Petros Credit Strategies and Stonehenge Capital partnered to form State Credit Strategies (SCS LLC)) to perform the sale of the tax credits. The up-to \$68 million of authorized proceeds will provide the first-loss capital for the program over two fiscal years.

The tax credit sale did not go as quickly or as well as planned. The issue stemmed from the term the purchaser has hold the certificates for the rate of return the Board hoped to achieve. The certificates cannot be used for 5/6 years respectively. At the first maturity, 50% of the certificate is eligible for redemption and 50% the following year. Most insurance companies do not purchase these types of credits so far into the future and drove the price down. The state still was able to achieve and sell all the tax credits for \$0.75 per \$1.00 face value.

Achieving Equitable Access to Capital

The CLIMBER Act charges the Board with setting policy to ensure equitable access to capital, across all 64 counties and for disadvantaged demographics and communities. In order to ensure geographic equity, each tranche of loan funding must be subject to an initial period of time in which a portion of the money is allocated to each county on a basis proportional to the county's share of small businesses relative to the state, the county's share of small business employees relative to the state, the county's share of small business personal property relative to the state, or other similar metrics as

determined by the Oversight Board.

The Board has designed a methodology for ensuring equitable distribution to all 64 Colorado counties, which is attached as [Appendix F](#). The largest factor in distribution is the number of small businesses in each county. Additional considerations are: 1) non-metropolitan underserved areas, 2) non-metropolitan distressed areas, and 3) number of minority-owned businesses in the county. In addition, the methodology allocates a minimum of \$120,000 dollars, in each tranche, to each county in order to ensure sufficient capital for every Colorado county.

With respect to businesses owned by women, minorities and veterans, the Board is statutorily charged with setting benchmarks and tracking and reporting on achievement toward those benchmarks. In setting these benchmarks, the Board reviewed extensive data, research, and reports about the disproportionately low distribution of capital to these businesses in the past, and recently through the federal Payroll Protection Program (PPP), as well as how the recession created by the COVID pandemic has disproportionately affected them. The benchmarks set by the Board are included as [Appendix G](#).

The Board also focused on equitable distribution to economically-disadvantaged communities that have been historically underserved. The Federal Community Reinvestment Act of 1977 (CRA) identified the unfair financial practices of the past as an important rationale for requiring financial institutions to serve all communities, with a focus on the historically disadvantaged low-and-moderate- income communities, as well as non-metropolitan distressed and underserved communities. The Board's legislative charge is consistent with ensuring capital distribution to these communities. In addition, the private capital contributors to the fund are also concerned about equitable distribution to economically-disadvantaged communities as a part of their CRA obligations. See [Appendix H](#) for more information.

In each tranche, the Program will pause after 1/3 increments of capital deployment to review data and make necessary marketing, outreach, and structural changes to ensure equitable distribution.

These processes and methodologies are designed to ensure distribution to underserved businesses as well as rural businesses, especially those in distressed and underserved areas, and businesses in or serving low and moderate-income communities. Although these are not the only businesses served by CLIMBER, given the documented disadvantages these communities have faced in the past with respect to access to capital, there is a strong rationale for ensuring fair distribution to all Colorado businesses.

Statutorily Required Reporting Elements

At the time of this report, the CLIMBER program has launched all three of the lending tools. Currently, the CHFA is continuing to build up the number of lenders available to accept applications for CLIMBER loans and there are no small business loans have been made through the program.

The statute requires reporting on data associated with the small business loans made by CLIMBER. Although there is no loan data, information in the appendices of this report identifies Board policy on: 1)

loan size, 2) geographic distribution methodology, 3) eligibility requirements for size of business, and 4) demographic benchmarks for businesses owned by women, minorities and veterans and rural businesses. At the time of the next required legislative report on November 31, 2021, Treasury expects to have data on small business loans provided by the CLIMBER program.

Appendix A

Overview of Board Responsibilities and Plan for Addressing Board Work

Outline Working Groups and Plan for Addressing Board Work (Board Document 8/13/20)

In order to work through the many Board decision points most efficiently, the Board divided itself up into working groups with separate workstreams. Those working groups feed research and recommendations back into the full Oversight Board. Inevitably, the portfolios for these groups interact and even overlap. The full Oversight Board meetings and Board staff from Treasury and OEDIT will facilitate coordination and sequencing between working groups.

Underwriting: This working group will interface with lenders and lender organizations to hone the details of how the fund will function (e.g. loan participations, loan loss reserve, etc.) and what the terms will be for eligible loans. The central question for this group is how the program can most effectively provide capital to small businesses. What is the gap where these loans would not be possible were it not for this program?

The legislation charges the Oversight Board with consulting with “lending industry leaders” on these matters. OEDIT organized a series of lender focus groups that included: 1) members of the Colorado Bankers Association, 2) members of the Independent Bankers of Colorado, 3) credit unions, and 4) Community Development Financial Institutions (CDFIs).

In addition to these focus groups, this working group will organize discussions, research, and recommendations for the first tranche of CLIMBER funding around the following workstreams and feed that work back to the full Oversight Board at future Board meetings:

- How will the program function?
 - What are the most effective tools for the CLIMBER fund to use: participations, Colorado Credit Reserve (CCR) or another loan loss program, Cash Collateral Support (CCS) or a similar program? Each tranche of up to \$50M may have different terms. What portion of the first tranche should be allocated to the tools?
 - If the fund will purchase participations, what should the participation percentage be? If it should be different in different circumstances (either by lending institution or by loan/business particulars), how should that be determined?
- Loan terms
 - Loan size, within the statutory parameters (between \$30,000 and \$500,000)
 - Loan maturities, within the statutory parameters (not more than 5 years).
 - Loan amortization, within the statutory parameters (not less than the term of the loan but could be longer).

- Payment deferrals, within the statutory parameters (up to one year).
- Interest rate of the loans, within the statutory parameters (“lower than would otherwise be available”)
- Loan security, within the statutory parameters (no security is required by statute, but the Board may add security requirements that could include a personal guarantee, collateral, or “other security as determined by the Oversight Board”).

Impact: This working group will interface with the OEDIT staff and the OEDIT Office of Minority Businesses to design impact benchmarks. The central issue this group will tackle is ensuring equitable distribution of capital.

The legislation charges the Oversight Board with consulting with the OEDIT Minority Business Office in designing benchmarks for women, minority, and veteran-owned businesses in addition to rural businesses. In addition, the Board must determine the methodology for allocating capital across the state’s 64 counties.

This working group will organize discussions, research, and recommendations for the first tranche of CLIMBER funding around the following workstreams and feed that work back to the full Oversight Board at future Board meetings:

- Geographic distribution methodology
 - What is the metric(s) used to determine geographic distribution?
 - For what period of time with the capital be allocated geographically (after which it reverts to the general pool)
- Establish targets for loans to women, minority, and veteran-owned businesses and rural businesses.
 - What will the metrics be?
 - How will it be tracked?
 - What is the process for monitoring and making needed adjustments over the course of the first tranche of funding?

2. Small business outreach and technical assistance: This working group will interface with the OEDIT Small Business Development Center office and small businesses in Colorado to determine how businesses are being impacted and what their financing needs are. The central question for this group is how the CLIMBER program can best serve small businesses and what additional supports/resources can be connected to the program.

The legislation charges the Oversight Board with consulting with small businesses in designing loan terms and the definition of eligible borrowers. On this workstream, the small business working group work will inform the work of the underwriting working group and vice versa. In addition, the Board is also charged with consulting with small businesses in establishing the criteria for eligible borrowers.

This working group will organize discussion, research and recommendations for the first tranche of CLIMBER funding around the following workstreams and feed that work back to the full Oversight Board at future Board meetings:

- Establishing the criteria for eligible borrowers, in consult with small businesses
 - Defining how to determine “principal place of business”
 - Defining how number of employees is measured (between 5-99) and whether the statutory range should be more prioritized
 - Defining what it means to demonstrate at least two consecutive years of positive cash flow prior to February 29, 2020 [Any two consecutive years, or does it need to be the two years immediately preceding February 2020?]
 - Defining what it means to demonstrate a debt-service coverage ratio as of February 29, 2020, of at least one-to-one and whether the DSCR should be higher.

In addition, this group will work with the SBDC to identify and problem-solve barriers to success for the program from the small business, user, perspective. OEDIT and the SBDC can help organize focus groups or surveys of small businesses and provide research and data on small businesses in the state as well as map existing technical assistance programs that could be connected to the program recipients.

Workstreams outside of the working groups

Tax credit sale: Through the CLIMBER Act, the State Treasurer is authorized to conduct a sale(s) of State insurance premium tax credits to fund the State’s contribution to the program. It is a foundational element to the program but otherwise not connected to other workstreams. The Treasurer and Treasury staff will provide the Oversight Board with updates on the tax credit sale, timing and process. Any Oversight Board members that would like to be involved in the tax credit sale workstream may participate in review of materials for the sale including professional services solicitation documents and responses and other timing and pricing documents.

Fundraising: Members of the Governor’s Council of Economic Stability and Growth’s Financial Services subcommittee that developed the vision for CLIMBER and provided support through the legislative process have volunteered to help the State by fundraising the private capital. This group of volunteer fundraisers includes Peter Calamari. As a member of the Oversight Board, Peter Calamari will update the full Board on the fundraising activities, progress, and other related issues that may inform Board decisions. Since the program relies on raising very significant amounts of private investments (up to \$200M), it will be important to communicate investor input with respect to program design to the Board. Any Oversight Board members that would like to be involved in the fundraising workstream may participate in review of materials and consultation with the Loan Fund Program Manager (CHFA) about how to incorporate investment requirements into the program parameters.

Appendix B

Treasury and CHFA Executed Intergovernmental Agreement

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

COVER PAGE

State Agency Department of the Treasury (the "State" or "Treasury")	
Contractor Colorado Housing and Finance Authority, a body corporate political subdivision of the State of Colorado ("CHFA" or "Contractor")	Agreement Performance Beginning Date The Effective Date
Agreement Maximum Amount Initial Term ^{1,2} State Fiscal Year 2020-2021 \$0.00 Extension Terms ^{2,3} State Fiscal Year 2021-2022 \$250,000.00 State Fiscal Year 2022-2023 \$200,000.00 State Fiscal Year 2023-2024 \$200,000.00 State Fiscal Year 2024-2025 \$0.00 Total for All State Fiscal Years: \$650,000.00	Initial Agreement Expiration Date June 30, 2021 Agreement Authority Authority to enter into this Agreement is set forth at §24-36-202, <i>et seq.</i> , C.R.S. and specifically §24-36-205, C.R.S., and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished. CHFA's proposal was selected in accordance with State law and State Procurement Code and Rules under the exemption for elective officers set forth in §24-2-102(4), C.R.S.
<p>¹ Pursuant to the Memorandum of Understanding defined below, regardless of whether the CHFA administers the CLIMBER Loan Program, Treasury agreed to pay CHFA a flat fee of \$50,000 as an "Exploration Fee" for the administrative costs CHFA incurred in exploring the CLIMBER Loan Program and possible duties thereof. This Exploration Fee is due and payable upon the expiration date of the Memorandum of Understanding and is therefore being credited to the services contemplated in this Agreement.</p> <p>² See Exhibit B, Statement of Work and Fees for a break out of the fees associated with this Agreement.</p> <p>³ The Agreement Maximum Amount listed on this Cover Page of this Agreement is payable by the State to CHFA for its in-scope services hereunder and shall not exceed \$650,000 plus any additional fees listed in Exhibit B.</p>	

Agreement Purpose

The purposes of this Agreement are to (1) have CHFA act as the Loan Program Manager as set forth at §24-36-203(6), C.R.S. and §24-36-205(2), C.R.S.; and (2) have CHFA administer the Loan Program as established by and in accordance with §24-36-205, C.R.S.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

1. Exhibit A – Memorandum of Understanding
2. Exhibit B – Statement of Work
3. Exhibit C – Sample Option Letter

In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §18 of the main body of this Agreement.
2. The provisions of the other sections of the main body of this Agreement.
3. Exhibit A, Memorandum of Understanding
4. Exhibit B, Statement of Work.
5. Exhibit C, Sample Option Letter.

Principal Representatives

For the State:

Eric Rothaus
Department of the
Treasury 200 E. Colfax
Avenue
120 State Capitol
Denver, CO 80203
Email:
eric.rothaus@state.co.us

For Contractor:

Steve Johnson
Colorado Housing and Finance Authority
1981 Blake Street
Denver, CO 80202
Email: sjohnson@chfainfo.com

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

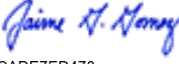
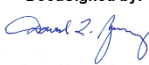
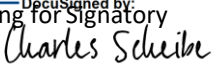
<p align="center">CONTRACTOR</p> <p align="center">Colorado Housing and Finance Authority</p> <p>DocuSigned by:  7E6EACADE7ED478...</p> <p>By: Jaime G. Gomez, Deputy Executive Director and Chief Operating Officer 1/30/2021 Date: _____</p>	<p align="center">STATE OF COLORADO</p> <p align="center">Jared S. Polis, Governor Department of the Treasury David L. Young, Treasurer</p> <p>DocuSigned by:  DocuSigned by: Lori Ann Byrd David L. Young, Treasurer 74149D15D30E4CE... 1/30/2021 Date: _____</p>
<p align="center">2nd State or Contractor Signature if Needed</p> <p>By: Name & Title of Person Signing for Signatory  Date: _____ 7CAD4A2171E1465...</p>	<p align="center">LEGAL REVIEW</p> <p align="center">Philip J. Weiser, Attorney General</p> <p>By: _____ First Assistant Attorney General 1/30/2021 Date: _____</p>
<p align="center">In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____ Charles Scheibe, Chief Operations Officer/Chief Financial Officer</p> <p align="center">1/30/2021 Effective Date: _____</p>	

TABLE OF CONTENTS

	COVER PAGE	17
	SIGNATURE PAGE	20
1.	PARTIES	21
2.	TERM AND EFFECTIVE DATE	21
3.	DEFINITIONS	22
4.	STATEMENT OF WORK	25
5.	TREASURY’S PROVISION OF FIRST LOSS CAPITAL AND OTHER FUNDS TO THE LOAN PROGRAM	25
6.	PAYMENTS TO CONTRACTOR	25
7.	[INTENTIONALLY DELETED]	27
8.	[INTENTIONALLY DELETED]	27
9.	[INTENTIONALLY DELETED]	27
10.	CONFLICTS OF INTEREST	27
11.	INSURANCE	27
12.	BREACH OF AGREEMENT	29
13.	REMEDIES	30
14.	DISPUTE RESOLUTION	32
15.	NOTICES AND REPRESENTATIVES	32
16.	STATEWIDE CONTRACT MANAGEMENT SYSTEM	32
17.	GENERAL PROVISIONS	32
18.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)	35

1. PARTIES

This Intergovernmental Agreement (“**IGA**” or “**Agreement**”) is entered into by and between Contractor named on the Cover Page for this Agreement (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Contractor and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Agreement.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Agreement. Except as stated in **§2.D**, the total duration of this Agreement, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the State Purchasing Director in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Contractor, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this

Agreement, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Agreement Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. **"CLIMBER Act"** means House Bill 20-1413, the Colorado Loans for Increasing Main Street Business Economic Recovery Act, signed by Governor Jared Polis on June 23, 2020. The CLIMBER Act is set forth at §24-36-201, *et seq.*, C.R.S.
- F. **"CLIMBER Fund"** means the sources of funds created and set forth at §24-36-208, C.R.S., also known as the Small Business Recovery Fund.
- G. **"Colorado Credit Reserve"** means the Colorado credit reserve program described §24-46- 104(1)(n), which includes those certain pooled and individual credit enhancement programs, commonly known as the Colorado Credit Reserve Program and the Cash Collateral Support Program, respectively, both of which are established and governed by the Colorado Economic Development Commission acting by and through the Colorado Office of Economic Development and International Trade and administered by CHFA.
- H. **"CORA"** means the Colorado Open Records Act, set forth at §24-72-200.1, *et. seq.*, C.R.S.
- I. **"End of Term Extension"** means the time period defined in **§2.D.**
- J. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5- 102(2.6), C.R.S., then the Effective Date of this Agreement shall be the later of the date on which this Agreement is approved and signed by the State's Chief Information Officer or authorized delegate or the date on which this Agreement

is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Agreement.

- K. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page of this Agreement.
- L. **“Extension Term”** means the time period defined in §2.C.
- M. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- N. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.”
- O. **“Initial Term”** means the time period defined in §2.B.
- P. **“Loan Program”** means the fund established pursuant to this Agreement and provided for by the CLIMBER Act, which provides for, among other things, the creation of a “Small Business Recovery Loan Program” or “Loan Program” whose primary purpose is to support the State’s recovery from the crisis caused by COVID-19.
- Q. **“Loan Program Manager”** means CHFA.
- R. **“Memorandum of Understanding”** means Exhibit A, Memorandum of Understanding entered into between CHFA and Treasury.
- S. **“Oversight Board”** means the Loan Program Oversight Board created in §24-36-204, C.R.S.
- T. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- U. **“Services”** means the services to be performed by Contractor as set forth in this Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.
- V. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State;

(iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- W. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- X. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Y. **“Subcontractor”** means third parties, if any, engaged by Contractor to aid in performance of the Work, but does not include Participating Lenders, as defined in the Statement of Work, or other Loan Program participants, funders, contributors or other third-parties related to the CCS and CCR Programs administered by CHFA.
- Z. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **STATEMENT OF WORK**

Contractor shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit B. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. **TREASURY’S PROVISION OF CAPITAL AND OTHER FUNDS TO THE LOAN PROGRAM AND THE COLORADO CREDIT RESERVE**

- A. Pursuant to §24-36-204, §24-36-205(3)(a)(I) and §24-36-205(3)(a)(II), Treasury shall remit first loss capital to the Loan Program or the Colorado Credit Reserve.
- B. Treasury shall maintain a capital contribution schedule recording each deposit of capital to the Loan Program and the Colorado Credit Reserve, a form of which is included as Schedule 1 hereto. Treasury may choose to track such contributions to each together or separately.
- C. Treasury may reasonably appropriate and expend moneys that would otherwise be remitted to the Loan Program or the Colorado Credit Reserve pursuant to this Agreement for any direct and indirect costs incurred in connection with Treasury’s

establishment of the Loan Program pursuant to the terms hereof, pursuant to §24-36-208(3), C.R.S.

6. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Agreement Funds. The State shall not pay Contractor any amount under this Agreement that exceeds the Agreement Maximum for that State Fiscal Year shown on the Cover Page for this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the

State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

7. **[INTENTIONALLY DELETED]**

8. **[INTENTIONALLY DELETED]**

9. **[INTENTIONALLY DELETED]**

10. **CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Agreement. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of

Contractor's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

11. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Contractor Insurance

The Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Contractor shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Contractor shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any one fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and

non- owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

- iv. Protected Information
Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$2,000,000 general aggregate.
- v. Professional Liability Insurance
Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
- vi. Crime Insurance
Crime insurance including employee dishonesty coverage with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
- C. Additional Insured
The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.
- D. Primacy of Coverage
Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.
- E. Cancellation
All commercial insurance policies shall include provisions preventing cancellation or non- renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.
- F. Subrogation Waiver
All commercial insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- G. Certificates
For each commercial insurance plan provided by Contractor under this Agreement, Contractor shall provide to the State certificates evidencing Contractor's insurance

coverage required in this Agreement within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§10**.

12. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§12** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109- 105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

13. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§11**, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Contractor shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations

as necessary to do so within this Agreement's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request,

Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

14. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

15. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals

to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§16** shall apply. Contractor agrees to be governed by and comply with the provisions of §24-106-103, C.R.S., §24-102-206, C.R.S., §24-106-106, C.R.S. and §24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the §symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

L. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

M. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Agreement.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A, this

Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

S. Governmental Immunity.

In addition to the Governmental Immunity paragraph set forth below as part of Colorado Fiscal Rule 3-3, it is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement will be construed as: (i) an express or implied waiver by either Party of its governmental immunity or of the governmental immunity of the State; (ii) an express or implied acceptance by either Party of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; (iii) a pledge of the full faith and credit of a debtor contract; or (iv) as the assumption by either Party of a debt, contract, or liability of the contractor in violation of Article XI, Sections 1 and 6 of the Constitution of Colorado.

T. Joint Partnership

CHFA and Treasury jointly agree that the economic access to capital and federal policy environment impacting small businesses during the term of this IGA is likely to be fluid and will necessitate a flexible approach to how the Loan Program is implemented, which may result in periodic and ongoing modifications to the Program rules, criteria and implementation. The Parties agree to make every reasonable effort to modify the Loan Program in a timely manner in response to any necessary changes affecting the Loan Program. Notwithstanding anything the contrary in this IGA, CHFA and Treasury agree that if the Loan Program and the Loan Program Manager's duties

and responsibility, as outlined enacted in the CLIMBER Act, materially changes, in CHFA's sole discretion, from the version of said Act enacted by House Bill 20-1413, the parties will renegotiate CHFA's compensation in good faith.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §24-30-1501, *et seq.*, C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Agreement and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.
§24-18-201,
C.R.S. and §24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

Appendix C

Definition of CLIMBER Qualified Businesses

ADOPTED: October 22, 2020

AMENDED: February 4, 2021

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.

- (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.

- (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.

Appendix D

CLIMBER Financial Products for First Tranche of Capital

CLIMBER FUND Products

ADOPTED November 22, 2020

AMENDED March 11, 2020

CLIMBER Product Type	Lender Type	Program Structure and Rules	Meets CLIMBER Loan Terms
Direct Lending Capital	Non-Depository CDFIs & Non-profit Lender	<ul style="list-style-type: none"> • Lending capital in the form of low interest loan @2% to originator • Can fund up to 100% of originated loans • Lender has to pay at least 80% of capital back to CLIMBER • Lender can charge borrower-paid fees of .5 to 1% • If lender returns more than 80% of the capital they keep half the difference over 80% • Need for fund paid fee of 5% or higher to underserved businesses 	Yes
CLIMBER Credit Enhancement	Bank/Credit Union CDFI & Non-profit Lender	<ul style="list-style-type: none"> • 10 to 15 percent pooled loan-loss reserve contribution (bonus for loans to underserved demographics) or up to 20% dedicated collateral, no borrower fee • Accessible after Lender undertakes collection activity • CLIMBER Fund deposits are interest-free but must be paid back to state at the end of the CLIMBER Program 	Yes
Loan Participation	Bank/Credit Union CDFI & Non-profit Lender	<ul style="list-style-type: none"> • Fund will purchase 80% of loans originated by lender • No borrower fees • Lender can charge interest rate of 4.25 to 6.5% to borrower on retained share of loan (blended rate to borrower much lower due State contribution) • Purchased part of loan must be <i>pari passu</i> with retained loan regarding collateral • The originator-retained portion of CLIMBER Loans that are participated can also use CLIMBER Credit Enhancements if the loans are to targeted segments. 	Yes

CLIMBER FUND Interest Rates and Fees for CLIMBER Compliant Loans

Reference point: *Wall Street Journal Prime Rate* was 3.25% as of 8/21/20

	Loan Term			
	1-2 year	3 year	4 year	5 year
Fixed Borrower Interest Rates by Product				
Direct Lending Capital	3.45%	3.60%	3.75%	3.90%
CLIMBER Credit Enhancement	2.45%	2.60%	2.75%	2.90%
Blended Borrower Rate on 80% Participated Loan	2.45%	2.60%	2.75%	2.90%
	Loan Term			
Borrower Origination Fees Paid to Lender (excludes packaging fees)*	1-2 year	3 year	4 year	5 year
Direct Lending Capital	.5%	.75%	1%	1%
CLIMBER Credit Enhancement	0%	0%	0%	0%
	Loan Term			
APR by Borrower (excludes packaging fees)	1-2 year	3 year	4 year	5 year
Direct Lending Capital (DLC)	3.94%	4.10%	4.26%	4.31%
CLIMBER Credit Enhancement (CLCE)	2.45%	2.60%	2.75%	2.90%
Loan Participation (LP)	2.45%	2.60%	2.75%	2.90%

CLIMBER FUND Loan Terms

Term Name	Summary	Details/Notes	
Loan Amount	\$30,000 to \$500,000	Recommend keeping full statutory range	
Length of Term	Revolving/1 to 5 years	Up to lender to decide	
Use of Funds/Definition of working capital	See later slide for details	Statement by borrower on use of funds included in note/loan close docs	
Payment Frequency	Monthly		
Payment Deferral	Up to 1 year on principal and interest	3 months' automatic deferral of principal at borrower discretion. Lender can offer up to 6 months' deferral of principal; need approval from CHFA to go beyond 6-month deferral of principal.	
Amortization	Full level to 20% balloon	Need approval from CHFA to not fully amortize	
Borrower APR	2.45 to 4.31%	Fixed but varies with length of term and product	
Prepayment Penalty	None		
Borrower Origination Fee Paid to Lender	0% to 1% (deducted from loan disbursement)	Varies with product type and term of loan	
Ability to Refinance Existing Debt	See later slide for details	Yes (minimum 2 to 1 ratio of new to refinanced debt) 50/50 with CHFA approval	
Collateral	To be proposed by lender	Need approval from CHFA if no collateral	
Personal guarantee	To be proposed by lender	Need approval from CHFA if no guarantee	

Direct Lending Capital

- Who Can Use this Option: Non-Depository CDFIs and Non-Profit Lenders
- How It Works:
 - CLIMBER Provides lending capital in the form of low interest loan @2% to originator
 - Can fund up to 100% of originated loans
 - Lender has to pay 80% of capital back to CLIMBER depending on losses plus interest on full principal
 - If lender can return more than 80% of the capital, they keep half the difference over 80%
 - Lender can charge origination fees (deducted from loan disbursement) per schedule approved by Board
 - Program is working to identify a source of funds to have a “fund-paid” fee averaging 6% to lender. Higher fees will be paid on loans to underserved borrowers [Treasury and OEDIT are working to identify necessary funds]
- What it Addresses for Lenders:
 - Lack of capital/liquidity to make new loans by directly funding the loans
 - Credit risk by allowing non-profit lenders to not be obligated to pay back full loan to fund
 - Loan margin by allowing larger fees and higher APRs

***Underserved demographics include rural or minority, women, veteran-owned businesses and businesses located in low to moderate income communities or economically distressed or underserved non-metropolitan areas.

CLIMBER Credit Enhancement

- Who Can Use this Option: CDFI, Non-Profit Lenders, Banks, Credit Unions
- How It Works:
 - CLIMBER provides 15% to 20% Contribution, (per table in next slide)
 - Contribution can be used either as pooled loan-loss reserve or dedicated cash collateral, at lender's choice
 - Lender can mix and match and choose different option for each CLIMBER loan
 - CLIMBER contribution available to lender after lender undertakes collection activity
 - CLIMBER contribution is interest-free but unused amount must be paid back to state at program end
 - Only CLIMBER loans can be registered for CLIMBER Credit Enhancement (CCE), but CLIMBER Loans can also leverage the existing Colorado Credit Reserve (CCR) pools as a secondary reserve
 - The originator retained portion of CLIMBERL loans which are participated can also be registered against CCE per table below
 - What it Addresses for Lenders:
 - Credit risk by providing pooled loan-loss reserve
- Provides extra risk capital to absorb loan losses so should make regulators more comfortable

CLIMBER Credit Enhancement Contribution Table

Loan Size	\$30,000 to \$74,999	\$75,000 to \$249,999	\$250,000 to \$500,000
Standard Contribution to Pooled Loan Loss Reserve (PLLR) (loan <u>is not to</u> underserved demographic)	10% (~\$2,000)	10% (3%)	10% (\$7,500)
Max Contribution to PLLR (Loan <u>is to</u> underserved demographic)***###	15%	15%	15%
CLIMBER Contribution for Dedicated Cash Collateral	Up to 20% depending on shortfall Size (case by case basis)		
CLIMBER Contribution for retained portion of participated Loan (either Pooled LLR or Dedicated CC) only for Loans to underserved demographics as defined below***	8%	8%	8%

***Underserved demographics include rural or minority, women, veteran-owned businesses and businesses located in low to moderate income communities or economically distressed or underserved non-metropolitan areas.

###For each underserved demographic a borrower belongs to, up to two categories the PLLR gets an extra 2.5% contribution, up to a maximum extra of 5% or 15% total. Example: a veteran and minority owned business gets 15%.

Definition of Working Capital, Use of Proceeds and Borrower Certification

Proceeds are required to be used for working capital, which includes inventory, marketing, payroll, refitting work space for new social distancing guidelines, operating and emergency maintenance, property taxes, utilities, rent, supplies, making regularly scheduled interest and principal payments on mortgages, loans, and existing debt or paying off existing debt that is due within 90 days and other working capital uses

- Refinancing of an existing loan is not permitted except as explicitly in the CLIMBER Rules
- The loan applicant will be required to describe anticipated use of funds when they apply and certify that the use of funds will not violate terms.

Loan Participation

- Who Can Use this Option: CDFI, Non-Profit Lenders, Banks, Credit Unions
- How It Works:
 - CLIMBER Fund will purchase 80% of loans originated by lender
 - Lender can charge higher interest rate to borrower (per schedule above) on its retained share of loan.
 - Purchased part of loan must be pari passu with retained loan regarding collateral/guarantees.
 - The originator retained portion of CLIMBER Loans which are participated can also be registered against CLIMBER Credit Enhancement.
- What it Address for Lenders:
 - Lack of capital/liquidity by purchasing a big portion of lender originated loans.
 - Credit risk by allowing lenders to sell off some portion of loan and using CLCR to created pooled loan loss reserve for un-participated portion.
- Loan Margin by allowing origination fees and the lender to charge higher interest in the unsold portion of the loan.

Borrower Certifications on Use of Funds

CHFA is to develop appropriate guidelines and present to CLIMBER Board, taking the following ideas and others into account

Borrower Certification on Use of Funds

Borrower will attest that loan proceeds will be used for working capital as defined by CLIMBER rules

Borrower Certification on Prohibited Uses of Funds

Borrower will attest that loan proceeds will not be used:

- to repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
- to repay taxes held in trust or escrow (e.g., payroll or sales taxes)
- to reimburse funds owed to any owner, including any equity injection or injection of capital for the business continuance;
- to purchase any portion of any ownership interest of any owner of the business
- to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the Borrower to the Intermediary or to an affiliate of the Intermediary without approval per the rules of the CLIMBER Program;
- To refinance a loan previously made to the Borrower by the Intermediary or an affiliate of the Intermediary that existed prior to the COVID-19 Crisis without approval by CHFA per the CLIMBER refinancing rules;
- to enroll or refinance the unguaranteed portions of SBA-guaranteed or other federal loans; or
- to pay severance to any employee (CHFA may waive this restriction in writing).

Rules for Refinancing Existing Debt

- 1) Making regularly scheduled interest and principal payments on mortgages, loans, and existing debt or paying off existing debt that is due within 90 days is considered a working capital use of CLIMBER Loan proceeds and is not considered to be refinancing.
- 2) CLIMBER Loans can be used for refinancing per the following terms
 - a) The debt being refinanced must be incurred on or after July 1, 2019.
 - b) Any refinanced loans, including both new and existing debt must be *pari passu* with regard to security (e.g. collateral and guarantees) held by the original, refinanced debt.
 - c) Lines of credit (LOC) are a unique case and those that meet a) and b) above but not d) below can be refinanced by taking the unpaid balance and converting it into a CLIMBER term loan
 - i) The bank must also maintain a LOC with the borrower with at least the amount of the original line of credit that was refinanced as a term loan or at 80% of the full original amount of the LOC, whichever is larger.
 - ii) All three product types (direct lending capital, loan participations and credit enhancement) can be used for the refinancing of a LOC into a term loan.
 - iii) The lender cannot charge fees for re-establishing the new LOC after an existing LOC was refinanced into a CLIMBER Loan

- d) All other debt types aside from LOCs, including credit cards and term loans, can be refinanced under the following conditions and subject to a) and b) above
- i) Only via the credit enhancement product (i.e. the lender must use its own capital not CLIMBER Fund investor capital)
 - ii) The APR being refinanced to must be at least 5% less than the interest rate on the refinanced loan
 - iii) The lender must provide new credit via a CLIMBER loan at a rate equal to at least \$2 for every \$1 refinanced unless CHFA approves an exception of a \$1 to \$1 ratio. This new credit may be an LOC
 - iv) No debt associated with a federally funded loan program can be refinanced. Per 1) CLIMBER Loan Proceeds could be used to make regularly scheduled debt payments including on federal loans.
 - v) If the loan being refinanced had an origination fee of more than 3% or a prepayment penalty of more than 3%, no fee other than packaging fees can be charged on the CLIMBER refinancing. Note that CDFI's cannot use the direct lending product, only the credit enhancement product, to refinance except for Line of Credit.
 - vi) The term on the CLIMBER Loan must be at least as long as the remaining term on the refinanced debt unless CHFA permits an exception.
 - vii) If a borrower demonstrates that it uses its credit card to pay monthly operating expenses which would be considered working capital uses [for example 1/12 of annual operating costs] and, pre-COVID, the borrower had the cash to pay these monthly expenses and reduce the credit card balance to zero each month, making these monthly payments is considered a working capital use of CLIMBER proceeds and not a refinancing. However, if the borrower has accumulated credit card balances that exceed 1/12 of operating expenses and wishes to pay this balance off with a CLIMBER loan, this would be considered a refinancing and is subject to the rules around re-financing.

Subject to all of the rules above, lenders are allowed to refinance their own or other lenders' debt.



720-580-3832 direct
CLIMBER@chfainfo.com
CLIMBER-colorado.com



CLIMBER DIRECT LENDING CAPITAL (CLIMBER DLC)

PROGRAM GUIDELINES

Revised April 12, 2021



04/21.v3

Table of Contents

Executive Summary	3
Section 1	
Eligible Lender	4
Section 2	
Eligible Borrower	4
Section 3	
Eligible Loan	4
Section 4	
Eligible Refinanced Debt	5
Section 5	
Ineligible Borrowers	6
Section 6	
Ineligible Uses	6
Section 7	
Lender Application Process, Loan Agreement, and Procorem	7
Section 8	
Loan Registration Process and Loan Documents	7
Section 9	
Underwriting Require	7
Section 10	
Underserved Business Demographics	7
Section 11	
Repayment of CLIMBER DLC Loan	8
Section 12	
Performance Incentive	8
Section 13	
Reporting	8
Section 14	
Other Requirements	8

CLIMBER DLC Guidelines

Executive Summary

The CLIMBER Direct Lending Capital program ("CLIMBER DLC") is administered by Colorado Housing and Finance Authority ("Program Manager") and funded by the Colorado Department of the Treasury ("Treasury"). CLIMBER DLC was created in 2021 as part of the CLIMBER Loan Fund, a COVID-19 response program.

In accordance with the CLIMBER Act, CLIMBER DLC provides affordable loan capital to lenders located in the State of Colorado ("Lenders") to enable them to extend affordable working capital loans and lines of credit to Eligible Borrowers, as defined in these guidelines, that have been negatively impacted by COVID-19. Lenders may request loan capital of \$1,000,000 or greater and must use the capital to extend loans and lines of credit to Eligible Borrowers in amounts between \$30,000 and \$500,000.

Loans originated with CLIMBER DLC funds must meet the specified interest rates and terms described in these guidelines. Lenders, borrowers, and loans using CLIMBER DLC must meet the program eligibility requirements as explained within these guidelines.

These guidelines are meant to provide operational guidance for participating Lenders and are supplemental to the specific terms of a Loan 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 Loan Agreement.

Section 1: Eligible Lenders

Eligible Lenders include non-depository Community Development Financial Institutions (CDFIs) or any nonprofit lending institution that has received approval from Treasury to participate in the CLIMBER DLC program and become a Participating Lender. Participating Lenders must request lending capital by submitting a Loan Request Form along with the required supporting documentation to Program Manager. See Section 7 for full details on the lender application process.

Section 2: Eligible Borrowers

Eligible Borrower means a business* that:

- y Has its principal place of business in the State of Colorado;
 - Has more than 50% of its employees based in Colorado;
- y The borrower must have at least 5 but fewer than 100 employees.;
 - Employee is defined as residents of Colorado who have a W2 or 1099 relationship with the borrower. To satisfy the minimum requirement of 5 employees, applicants may include full- and part-time employees, and applicant may use their employee count as of February 20, 2020, or time of application. To satisfy the maximum limit of fewer than 100 employees, applicant may aggregate part-time employees into FTEs. Seasonal businesses who have more than 100 employees in certain periods of the year may use their average monthly FTE based on a 12-month period of their choice that includes the date of application or their most recent full tax year.
- y The borrower must demonstrate that it had at least 2 consecutive years of positive cash flow within the past 5 fiscal years 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.
- y The borrower can demonstrate that it had a debt service coverage ratio of at least 1 to 1 as of February 29, 2020.
 - Debt Service Coverage Ratio (DSCR) shall be determined and documented by the lender using following methods:
 - DSCR = Net Operating Income divided by total debt service, or
 - Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), 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. The Lender may require a higher ratio.

*Business is defined as: (1) A for-profit partnership, corporation, association or entity, incorporated in Colorado and 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 nonprofit entity, incorporated in Colorado.

Section 3: Eligible Loans

Eligible Loans are limited to Working Capital and Eligible Refinanced Debt (defined in Section 4). Working Capital includes:

- y inventory, marketing, payroll, refitting a workspace for new social distancing guidelines, operating and emergency maintenance;
- y current property taxes, utilities, rent, supplies;
- y making regularly scheduled interest and principal payments on mortgages, loans, and other existing business debt;
- y paying off existing debt that is due within 90 days; and/or
- y paying off credit cards that were used to pay monthly operating expenses and that the business historically was able to pay off each month.

The aggregate principal amount of all loans made using DLC funds to any borrower or any affiliates of a borrower must not exceed \$500,000.

CLIMBER DLC Guidelines

Eligible Loans must meet the following term, interest rate, and fee requirements:

Loan Term				
Interest Rate	Up to 2 years or revolving	3 years	4 years	5 years
	3.45%	3.60%	3.75%	3.90%

Eligible Loans must meet the following additional requirements:

Term Name	Requirement	Additional Notes
Loan Amount	\$30,000 to \$500,000	NA
Length of Term	1 to 5 years, may be revolving	NA
Payment Frequency	Monthly	NA
Payment Deferral	Principal	Automatic 3-month deferral of principal at discretion of the borrower. Up to 6-month deferral of principal at discretion of the Participating Lender. CHFA approval required to go beyond 6 months. Interest payments begin immediately.
Amortization	Fully amortized	Up to 20% balloon allowable with approval from CHFA
Prepayment Penalty	None	NA
Origination Fee	Up to 2%	Intended to cover the Participating Lender's cost of origination; paid by the borrower
CLIMBER Fee	5-7%	CLIMBER Fee is paid to Participating Lender by Program Manager using moneys provided by Treasury. The standard fee of 5% can be increased by 1% for the first two underserved business categories the applicant meets, to a maximum fee of 7%.
Collateral	Defer to lender policy	Must be approved by CHFA if uncollateralized
Personal Guaranty	Required	Need approval from CHFA for exception

Section 4: Eligible Refinanced Debt

Loan proceeds may be used to refinance existing business term debt incurred after July 1, 2019, if the following conditions are met:

1. The new loan, including both new and existing debt, must have the same security (e.g. collateral and guarantees) held by the original, refinanced debt.
2. The APR on the loan being refinanced must be at least 5% more than the rate on the CLIMBER loan.
3. The amount of new capital must be at least twice as large as the loan being refinanced.
4. No debt associated with a federally funded loan program can be refinanced (such as the Small Business Administration).
5. The term on the CLIMBER loan must be no less than the remaining term on the refinanced loan.
6. The loan being refinanced was not used for any of the ineligible uses described in Section 6 of these Guidelines.

Lines of Credit (LOC) that were incurred after July 1, 2019 may be refinanced if the borrower still has access to an LOC consistent with the dollar amount of the portion being refinanced, or 80% of the full original amount of the LOC, whichever is larger. For example, if the Lender refinances \$60,000 debt from a \$100,000 LOC into a CLIMBER term loan, they must maintain a LOC of the greater of \$60,000 or 80% of the \$100,000 LOC, or \$80,000.

1. Refinanced LOCs must not have been used for any of the ineligible uses described in Section 6 of these Guidelines.

1. If Lender is refinancing debt from a LOC held by another lender, they are not required to provide a new line of credit to that Borrower if the original line of credit remains open.
1. If the Lender closes an existing LOC and establishes a new one for the same Borrower, Lender may not charge fees for re-establishing the new LOC.

Section 5: Ineligible Borrowers

The following borrowers are ineligible:

1. An executive officer, director, or principal shareholder of the financial institution lender
 - a. 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; or
1. A related interest of an executive officer, director, principal shareholder, or member of the immediate family of any of them; or
1. 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
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 that is a CDFI; or
5. A business engaged in pyramid sales, multilevel marketing, and/or network marketing 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% of its annual net revenue from lottery sales; or
8. A business engaged in selling, producing, or displaying sexually oriented material (e.g., adult bookstores, adult video stores, adult theaters, etc.); or
9. A business generating greater than 50% of its revenues from the sale of alcoholic beverages; breweries, wineries, and distilleries excluded from this rule; or
10. 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; or
11. A business engaged in pawn brokering; or
12. A business where a principal is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; or
13. A business principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs; or
14. A business engaged in political or lobbying activities; chambers of commerce are excluded from this rule. Other organizations advocating for small businesses may be considered on a case-by-case basis and must be approved by Program Manager.

Section 6: Ineligible Uses

Borrowers must certify that funds will not be used for any Ineligible Uses:

1. To repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
1. To repay taxes held in trust or escrow (e.g., payroll or sales taxes);
1. To reimburse funds owned to any owner, including any equity injection or injection of capital for the business continuance;
4. To purchase any portion of any ownership interest of any owner of the business;
5. To refinance a loan except as allowed in Section 4;

6. To enroll or refinance the unguaranteed portions of SBA-guaranteed or other federal loans; or
7. To pay severance to any employee.

Section 7: Lender Application Process, Loan Agreement, and Procorem

To access CLIMBER Loan Fund program documents, Eligible Lenders must submit a completed Lender Intake Form to Program Manager so that user accounts can be created on Procorem, the secure document-sharing platform provided by Program Manager for the CLIMBER Loan Fund. The Lender Intake Form can be found on [CLIMBER-colorado.com](https://climber-colorado.com).

Once registered on Procorem, Eligible Lenders can access the CLIMBER DLC Loan Request Form from the Program Forms folder in Procorem. Eligible Lenders should submit a completed Loan Request Form and the supporting documentation listed on the checklist of the Loan Request Form to Program Manager via Procorem. Program Manager's review of each request shall include an assessment of the Eligible Lender's financial statements, loan portfolio performance, management, and policies. If approved, Program Manager will provide a Loan Agreement that describes the full program requirements for CLIMBER DLC and request wiring instructions for transferring CLIMBER DLC funds.

Section 8: Loan Registration Process and Loan Documents

Once a participating Lender has received funding from CLIMBER DLC, such Lender may begin originating CLIMBER compliant loans using those funds. A separate Loan Registration Form (see form in the Loan Agreement) must be completed for each Eligible Loan registered in the CLIMBER DLC Program. An executed Borrower Application (see form in the Loan Agreement) is also required. The completed Loan Registration Form and Borrower Application must be submitted via Procorem within 14 days after the loan is originated by the Participating Lender. For purposes of this program, the date the Lender originates the loan is the date the loan documents are executed by the borrower and delivered to the Participating Lender. The Program Manager will notify the Participating Lender if the Loan Registration Form is rejected for not meeting program eligibility requirements.

The participating Lender's loan or credit facility must be evidenced by, at a minimum, a valid note, a loan agreement; and, if secured, security agreements, deeds of trust, real estate mortgages, or hypothecations; and, if guaranteed, one or more valid guarantee agreements evidencing such the guarantee(s) (collectively, the "Loan Documents"). The original Loan Documents shall be retained by the participating Lender, and copies of all Loan Documents shall be forwarded to Program Manager upon its request.

Section 9: Underwriting Requirements

Other than the eligibility requirements addressed in Section 2, the CLIMBER Loan Fund does not have established underwriting requirements that participating Lenders must adhere to. Lenders are expected to and must follow their own policies and procedures for underwriting loan requests.

Section 10: Underserved Business Demographics

As part of the Lender Application, Lenders must certify which underserved business categories apply to each loan made using CLIMBER DLC funds. The following are instructions for completing those certifications:

- γ Businesses in low- and moderate-income communities; [can be verified here \(FFIEC\)](#)
- γ Businesses in economically distressed non-metropolitan communities; [can be verified here \(FFIEC\)](#)
- γ Businesses in economically underserved non-metropolitan communities; [can be verified here \(FFIEC\)](#)
- γ Businesses in Federally designated New Market Tax Credit eligible geographies; [can be verified here](#)
- γ Businesses in State designated Enterprise Zones; [can be verified here](#)
- γ Businesses owned by veterans; verified by borrower certification on Borrower Application
- γ Businesses in rural counties with populations under 50,000; Program Manager provides county-level population figures on Procorem.
- γ Businesses that primarily employ low- and moderate-income individuals; qualifying businesses whose average annual employee wages or salary is less than 80% county Area Median Income (AMI), as established by HUD. Program Manager provides county-level AMI levels on Procorem.
- γ Businesses with \$1 million or less gross annual revenues; verified on most recent annual financial statement

CLIMBER DLC Guidelines

y Businesses without a current banking relationship, which is defined as businesses not having received a loan from a depository financial institution within the last 5 years; verified by borrower certification on Borrower Application.

- Business that have not received formal technical assistance (Defined as formal business education such as a college degree, a business coach or mentor relationship, or formal classes or extensive training in how to start, operate and grow a business from experts. Verified by borrower certification on Borrower Application)

Note: this sub-category is additive the the larger category but cannot be added without fulfilling the unbanked condition.

Section 11: Repayment of a CLIMBER DLC Loan

Participating Lenders will submit monthly payments to the Program Manager, which shall include the interest due on its outstanding balance as well as any principal payments the lender has received from its borrowers. Lenders receiving CLIMBER funding from the initial tranche of capital may benefit from up to 6 months of interest forgiveness, as outlined in the promissory note. Lenders are responsible for repaying at least 80% of their CLIMBER DLC loan, regardless of the repayment from their borrowers.

Section 12: Performance Incentive

If a participating Lender achieves a loan loss rate lower than 20%, the Lender will be allowed to retain 50% of the amount that exceeds 80% of the CLIMBER principal as a performance incentive. For example, if a Lender achieves a repayment rate of 92%, they will receive 6% of their loan back from Program Manager as a performance incentive.

Section 13: Reporting

Within 10 business days of each calendar quarter, Lenders must submit a report (see form of report in the Loan Agreement) to the Program Manager indicating, among other things, the status and outstanding balances as of the end of the prior quarter for all loans made using CLIMBER DLC funds.

Section 14: Other Requirements

In addition to compliance with those certain requirements listed above and compliance with all applicable federal and State laws (including but not limited to the CLIMBER Act), 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.



720-580-3832 direct
CLIMBER@chfainfo.com
CLIMBER-colorado.com



CLIMBER PARTICIPATION PROGRAM (CLIMBER PARTICIPATION)

PROGRAM GUIDELINES

Revised April 12, 2021



04/21 v2

CLIMBER Participation Guidelines

Table of Contents

Executive Summary	3
Section 1	
Eligible Lender	4
Section 2	
Eligible Borrower	4
Section 3	
Eligible Loan	4
Section 4	
Eligible Refinanced Debt	5
Section 5	
Ineligible Borrowers	6
Section 6	
Ineligible Uses	6
Section 7	
Application Process and Procedures	7
Section 8	
Participation Agreement, Participation Certification, and Loan Documents	7
Section 9	
Underserved Business Demographics	7
Section 10	
Loan Servicing	8
Section 11	
Loan Defaults	8
Section 12	
Reporting	8
Section 13	
Other Requirements	8

CLIMBER Participation Guidelines

Executive Summary

The CLIMBER Participation Program (CLIMBER Participation) is administered by Colorado Housing and Finance Authority (Program Manager) and funded by the Colorado Department of the Treasury (Treasury). CLIMBER Participation was created in 2021 as part of the CLIMBER Loan Fund, a COVID-19 response program.

In accordance with the CLIMBER Act, CLIMBER Participation purchases 80% of Eligible Loans made by certain eligible lenders (Participating Lenders), to increase their liquidity and enable them to extend affordable working capital loans and lines of credit to more Eligible Borrowers that have been negatively impacted by COVID-19 than would otherwise be possible. Participating Lenders may request loan participation on loans and lines of credit to Eligible Borrowers in amounts between \$100,000 and \$500,000.

Eligible Loans must meet the specified interest rates and terms described in these guidelines. Participating Lenders, Eligible Borrowers, and Eligible Loans purchased under CLIMBER Participation must meet the program eligibility requirements as explained within these guidelines.

These guidelines are meant to provide operational guidance for Participating Lenders and are supplemental to the specific terms of a Loan Participation Purchase 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 Loan Participation Purchase Agreement.

CLIMBER Participation Guidelines

Section 1: Eligible Lenders

Eligible Lenders include banks, credit unions, Community Development Financial Institutions (CDFIs), or any nonprofit lending institution that has received approval from Treasury to participate in the CLIMBER Participation program. Eligible Lenders must request the purchasing of a participation from CLIMBER Participation by submitting a Loan Participation Purchase Request Form along with the required supporting documentation to Program Manager. See Section 7 for full details on the lender application process.

Section 2: Eligible Borrowers

Eligible Borrower means a business* that:

- y Has its principal place of business in the State of Colorado;
 - Has more than 50% of its employees based in Colorado;
- y The borrower must have at least 5 but fewer than 100 employees.;
 - Employee is defined as residents of Colorado who have a W2 or 1099 relationship with the borrower. To satisfy the minimum requirement of 5 employees, applicants may include full- and part-time employees, and applicant may use their employee count as of February 20, 2020, or time of application. To satisfy the maximum limit of fewer than 100 employees, applicant may aggregate part-time employees into FTEs. Seasonal businesses who have more than 100 employees in certain periods of the year may use their average monthly FTE based on a 12-month period of their choice that includes the date of application or their most recent full tax year.
- y The borrower must demonstrate that it had at least 2 consecutive years of positive cash flow within the past 5 fiscal years 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.
- y The borrower can demonstrate that it had a debt service coverage ratio of at least 1 to 1 as of February 29, 2020.
 - Debt Service Coverage Ratio (DSCR) shall be determined and documented by the lender using following methods:
 - DSCR = Net Operating Income divided by total debt service, or
 - Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), 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. The Lender may require a higher ratio.

*Business is defined as: (1) A for-profit partnership, corporation, association or entity, incorporated in Colorado and 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 nonprofit entity, incorporated in Colorado.

Section 3: Eligible Loans

Eligible Loans are limited to Working Capital and Eligible Refinanced Debt (defined in Section 4). Working Capital includes:

- y inventory, marketing, payroll, refitting a workspace for new social distancing guidelines, operating and emergency maintenance;
- y current property taxes, utilities, rent, supplies;
- y making regularly scheduled interest and principal payments on mortgages, loans, and other existing business debt;
- y paying off existing debt that is due within 90 days; and/or
- y paying off credit cards that were used to pay monthly operating expenses and that the business historically was able to pay off each month.

CLIMBER Participation Guidelines

Eligible Loans must meet the following term and interest rate requirements:

Interest Rate and Loan Term				
	Up to 2 years or revolving	3 years	4 years	5 years
Lender-retained Portion (20%)	4.25%	5.00%	5.75%	6.5%
Participated Portion (80%)	2.00%	2.00%	2.00%	2.00%
Blended Rate	2.45%	2.60%	2.75%	2.90%

Eligible Loans must meet the following additional requirements:

Term Name	Requirement	Additional Notes
Loan Amount	\$100,000 to \$500,000	NA
Length of Term	1 to 5 years, may be revolving	NA
Payment Frequency	Monthly	NA
Payment Deferral	Principal	Automatic 3-month deferral of principal at discretion of borrower. Up to 6-month deferral of principal at discretion of lender. CHFA approval required to go beyond 6 months. Interest payments begin immediately.
Amortization	Fully amortized	Up to 20% balloon allowable with approval from CHFA
Prepayment Penalty	None	NA
Origination Fee	Up to 2%	Intended to cover the Participating Lender's cost of origination, paid by the borrower
Collateral	Defer to lender policy	Must be approved by CHFA if uncollateralized
Personal Guaranty	Required	Need approval from CHFA for exception

Section 4: Eligible Refinanced Debt

Loan proceeds may be used to refinance existing business term debt incurred after July 1, 2019, if the following conditions are met:

1. The new loan, including both new and existing debt, must have the same security (e.g. collateral and guarantees) held by the original, refinanced debt.
2. The APR on the loan being refinanced must be at least 5% more than the rate on the CLIMBER loan.
3. The amount of new capital must be at least twice as large as the loan being refinanced.
4. No debt associated with a federally funded loan program can be refinanced (such as the Small Business Administration).
5. The term on the CLIMBER loan must be no less than the remaining term on the refinanced loan.
6. The loan being refinanced was not used for any of the ineligible uses described in Section 6 of these Guidelines.

Lines of Credit (LOC) that were incurred after July 1, 2019, may be refinanced if the borrower still has access to an LOC consistent with the dollar amount of the portion being refinanced, or 80% of the full original amount of the LOC, whichever is larger.

1. Refinanced LOCs must not have been used for any of the ineligible uses described in Section 6 of these Guidelines.
2. If Lender is refinancing debt from an LOC held by another lender, they are not required to provide a new line of credit to that Borrower if the original LOC remains open.

CLIMBER Participation Guidelines

1. If the Lender closes an existing LOC and establishes a new one for the same Borrower, Lender may not charge fees for re-establishing the new LOC.

Section 5: Ineligible Borrowers

The following borrowers are ineligible:

1. An executive officer, director, or principal shareholder of the financial institution lender
 - a. 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; 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
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 that is a Community Development Financial Institution; or
5. A business engaged in pyramid sales, multilevel marketing, and/or network marketing 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% of its annual net revenue from lottery sales; or
8. A business engaged in selling, producing, or displaying sexually oriented material (e.g., adult bookstores, adult video stores, adult theaters, etc.); or
9. A business generating greater than 50% of its revenues from the sale of alcoholic beverages (breweries, wineries, and distilleries excluded from this rule); or
10. 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; or
11. A business engaged in pawn brokering; or
12. A business where a principal is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; or
13. A business principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs; or
14. A business engaged in political or lobbying activities; chambers of commerce are excluded from this rule. Other organizations advocating for small businesses may be considered on a case-by-case basis and must be approved by Program Manager.

Section 6: Ineligible Uses

Borrowers must certify that funds will not be used for any Ineligible Uses:

1. To repay delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;
2. To repay taxes held in trust or escrow (e.g., payroll or sales taxes);
3. To reimburse funds owned to any owner, including any equity injection or injection of capital for the business continuance;
4. To purchase any portion of any ownership interest of any owner of the business;
5. To refinance a loan except as allowed in Section 4;
6. To enroll or refinance the unguaranteed portions of SBA-guaranteed or other federal loans; or
7. To pay severance to any employee.

Section 7: Application Process and Procurement

Lenders may apply for a loan participation from Program Manager by submitting a complete loan package, which includes: 1) Loan Registration form, 2) Borrower Application form, 3) a copy of the lender's internal credit presentation, and 4) a copy of all financial documents collected from borrower during lenders review (tax returns, interim statements, personal financial statements, etc.). The Program Manager may, at its sole discretion, request additional information or documentation before a final decision is made. Complete applications must be submitted via Procurement, the secure document-sharing platform provided by Program Manager for the CLIMBER Loan Fund. Eligible Lenders wishing to participate in CLIMBER Participation must submit a completed Lender Intake Form to Program Manager so that user accounts on Procurement can be created. The Lender Intake Form can be found on [CLIMBER-colorado.com](https://climber-colorado.com).

Section 8: Participation Agreement, Participation Certification, and Loan Documents

If a loan participation application is approved, Program Manager will notify the Participating Lender with a written commitment, which may be provided via email. If such approval is the first for the Participating Lender, Program Manager will provide a Loan Participation Purchase Agreement that will include all of the rules and requirements of the CLIMBER Participation Program as well as the terms and conditions for selling/buying 80% of the principal of an approved and Eligible Loan (each a "Participation"). Each Participation that Program Manager elects to purchase must be memorialized by a Participation Certificate in the form attached to the Loan Participation Purchase Agreement, with copies of all loan documents associated with and related to the Participation. After a Participation has been accepted for purchase, Program Manager will transfer funds for the purchase price equal to 80% of the principal of the approved Eligible Loan at par. Each subsequent Participation will be memorialized by a Participation Certificate (see example in the Loan Participation Purchase Agreement).

The Participating Lender's loan or credit facility must be evidenced by, at a minimum, a valid note, a loan agreement; and, if secured, security agreements, deeds of trust, real estate mortgages, or hypothecations; and, if guaranteed, one or more valid guarantee agreements evidencing such the guarantee(s) (collectively, the "Loan Documents"). The original Loan Documents shall be retained by the Participating Lender, and copies of all Loan Documents shall be forwarded to Program Manager upon its request and in accordance with the Loan Participation Purchase Agreement.

Section 9: Underserved Business Demographics

As part of the Lender Application, Lenders must certify which underserved business categories apply to each loan made using CLIMBER DLC funds. The following are instructions for completing those certifications:

- ✓ Businesses in low- and moderate-income communities; [can be verified here \(FFIEC\)](#)
- ✓ Businesses in economically distressed non-metropolitan communities; [can be verified here \(FFIEC\)](#)
- ✓ Businesses in economically underserved non-metropolitan communities; [can be verified here \(FFIEC\)](#)
- ✓ Businesses in Federally designated New Market Tax Credit eligible geographies; [can be verified here](#)
- ✓ Businesses in State designated Enterprise Zones; [can be verified here](#)
- ✓ Businesses owned by veterans; verified by borrower certification on Borrower Application
- ✓ Businesses in rural counties with populations under 50,000; Program Manager provides county-level population figures on Procurement.
- ✓ Businesses that primarily employ low- and moderate-income individuals; qualifying businesses whose average annual employee wages or salary is less than 80% county Area Median Income, as established by HUD. Program Manager provides county-level AMI levels on Procurement. Average employee wage provided by applicant on borrower application.
- ✓ Businesses with \$1 million or less gross annual revenues; verified on most recent annual financial statement
- ✓ Businesses without a current banking relationship, which is defined as businesses not having received a loan from a depository financial institution within the last 5 years; verified by borrower certification on Borrower Application.
 - Business that have not received formal technical assistance (Defined as formal business education such as a college degree, a business coach or mentor relationship, or formal classes or extensive training in how to start, operate and grow a business from experts. Verified by borrower certification on Borrower Application)

CLIMBER Participation Guidelines

- Note: this sub-category is additive the larger category but cannot be added without fulfilling the unbanked condition.

If a Participation is made to a business that meets one or more of these under served business categories, the Participating Lender is permitted to register the retained portion of their loan into CLIMBER CCR.

Section 10: Loan Servicing

The Loan Purchase Participation Agreement will explain the servicing requirements in detail required of the Participating Lender. In general, the Participating Lender will retain the servicing responsibilities for all CLIMBER Participation Loans. Participating Lenders are required to remit payments to Program Manager on its participated loans each month reflecting 80% of payments that were collected.

Section 11: Loan Defaults, Collections, and Recoveries

The Loan Purchase Participation Agreement will explain the procedures for loan defaults, collections, and recoveries in detail. In general, Lenders are required to follow their existing policies for collections on defaulted loans. Any recoveries that are received must be split 80/20 between Program Manager and Lender, respectively. Any losses on defaulted loans will also be split 80/20 between Program Manager and Lender, respectively.

Section 12: Reporting

The Loan Participation Purchase Agreement will explain the Participating Lender's reporting requirements in detail. In general, Lenders will provide a Quarterly Loan Status Report (see example in Participation Agreement) within 10 business days of each calendar quarter. Such report shall indicate the status and outstanding balances of each Registered Loan as of the end of the prior quarter.

Section 13: Other Requirements

In addition to compliance with those certain requirements listed above and compliance with all applicable federal and State laws (including but not limited to the CLIMBER Act), 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.

Appendix E

Allocation of State Funds for First Tranche CLIMBER

ADOPTED May 20, 2021

AMENDED May 27, 2021

The CLIMBER Fundraising Committee has successfully raised the private capital necessary for the statutorily required match between State and private contributions (1:4). The State's statutory maximum for first-loss capital in any single tranche is \$10 million. The Board allocated \$3M for the first tranche of the Credit Enhancement portion of CLIMBER on January 21, 2021.

Therefore, the Board may allocate up to \$7 million for first-loss capital for the Direct Lending and Participation products within the first tranche of CLIMBER.

Tranche One Summary

Below is a summary of the small business loan capital for tranche one of the CLIMBER program. The Board has also been presented with the overall budget for the program in a separate document.

CLIMBER Tranche One: Total Small Business Lending Capital=~\$43,125,000

- Loan Participation Tool and Direct Lending Capital for CDFIs Tool: These two CLIMBER tools use capital provided by a combination of the State and outside CLIMBER fund contributors. For loan participations, the fund purchases 80% of CLIMBER loans. For Direct Lending Capital, the fund provides lending capital to CDFI's to originate CLIMBER loans. The State always has 20% in a first loss position.

Contributor	Amount	
<i>State of Colorado</i>	\$5,625,000	20% of total, first loss
<i>Key Bank</i>	\$5,000,000	
<i>Northern Trust</i>	\$5,000,000	
<i>UMB</i>	\$5,000,000	
<i>Wells Fargo</i>	\$5,000,000	
<i>FNBO</i>	\$2,500,000	
Total	\$28,125,000	

- *Credit Enhancement Tool*: provides 15-20% credit enhancement in the form of a loss reserve or cash collateral for CLIMBER loans enrolled by lenders across the state. Therefore, the State's contribution leverages at least 1:4 total CLIMBER loan capital. Loans are enrolled into the program by lenders, then they receive a deposit equal to 15% (if loan loss reserve) or 20% (if cash collateral). This tool does not use outside investments from fund contributors.

<i>Contributor</i>	<i>Amount</i>	
<i>State of Colorado</i>	\$3,000,000	Provides 15%-20% credit enhancement for CLIMBER loans
<i>Various originating lenders across the state</i>	~\$12,000,000	
<i>Total</i>	~\$15,000,000	

Board Action

The Board hereby allocates \$5,625,000 to CHFA, as Loan Program Manager, to be used as first loss capital for the Participation and Direct Lending Capital CLIMBER tools, to be used in accordance with policies previously adopted by the Board.

The Board further allocates \$450,000 to CHFA, as Loan Program Manager, to be used for origination fees paid to non-depository, nonprofit lenders as a part of the Direct Lending Capital CLIMBER tool in accordance with policies previously adopted by the Board.

Appendix F

Methodology for Geographic Distribution of CLIMBER Capital

ADOPTED May 20, 2021

Methodology for Allocating the first \$28.125M Tranche of the CLIMBER Fund	
Description of methodology	Geographic by number of businesses + Bonus D&U + distribute \$5M based on Minority Population, then min. 120K/county
Amount Geographically Distributed (by number of small businesses)	\$21,226,464
Distressed and Underserved (D&U)	\$3,150,000 \$90,000 Per County
Metro Low Income Tract	\$2,280,000 \$30,000 Per Tract
Amount to get each county to a minimum of \$120K	\$1,468,536 \$120,000

All CO Counties	\$ of Allocation	% Allocation
Adams	\$1,533,617	5.45%
Alamosa	\$241,223	0.86%
Arapahoe	\$2,611,051	9.28%
Archuleta	\$164,862	0.59%
Baca	\$120,000	0.43%
Bent	\$120,000	0.43%
Boulder	\$1,816,498	6.46%
Broomfield	\$245,976	0.87%
Chaffee	\$226,550	0.81%
Cheyenne	\$188,370	0.67%
Clear Creek	\$120,000	0.43%
Conejos	\$195,499	0.70%
Costilla	\$120,000	0.43%
Crowley	\$120,000	0.43%
Custer	\$120,000	0.43%
Delta	\$120,000	0.43%
Denver	\$3,841,447	13.66%
Dolores	\$120,000	0.43%
Douglas	\$1,152,537	4.10%
Eagle	\$485,752	1.73%
El Paso	\$2,316,682	8.24%
Elbert	\$120,000	0.43%
Fremont	\$120,000	0.43%
Garfield	\$330,913	1.18%
Gilpin	\$120,000	0.43%
Grand	\$209,501	0.74%
Gunnison	\$258,169	0.92%
Hinsdale	\$120,000	0.43%
Huerfano	\$120,000	0.43%

Jackson	\$189,610	0.67%
Jefferson	\$2,270,993	8.07%
Kiowa	\$184,495	0.66%
Kit Carson	\$125,184	0.45%
La Plata	\$328,278	1.17%
Lake	\$120,000	0.43%
Larimer	\$1,497,193	5.32%
Las Animas	\$228,358	0.81%
Lincoln	\$197,824	0.70%
Logan	\$120,000	0.43%
Mesa	\$561,854	2.00%
Mineral	\$189,610	0.67%
Moffat	\$120,000	0.43%
Montezuma	\$120,000	0.43%
Montrose	\$169,099	0.60%
Morgan	\$120,000	0.43%
Otero	\$140,528	0.50%
Ouray	\$120,000	0.43%
Park	\$120,000	0.43%
Phillips	\$120,000	0.43%
Pitkin	\$221,487	0.79%
Prowers	\$224,018	0.80%
Pueblo	\$458,421	1.63%
Rio Blanco	\$120,000	0.43%
Rio Grande	\$136,963	0.49%
Routt	\$244,426	0.87%
Saguache	\$120,000	0.43%
San Juan	\$120,000	0.43%
San Miguel	\$178,657	0.64%
Sedgwick	\$189,455	0.67%

Summit	\$305,494	1.09%
Teller	\$120,000	0.43%
Washington	\$120,000	0.43%
Weld	\$1,002,951	3.57%
Yuma	\$141,458	0.50%
Grand Total	\$28,125,000	100.00%

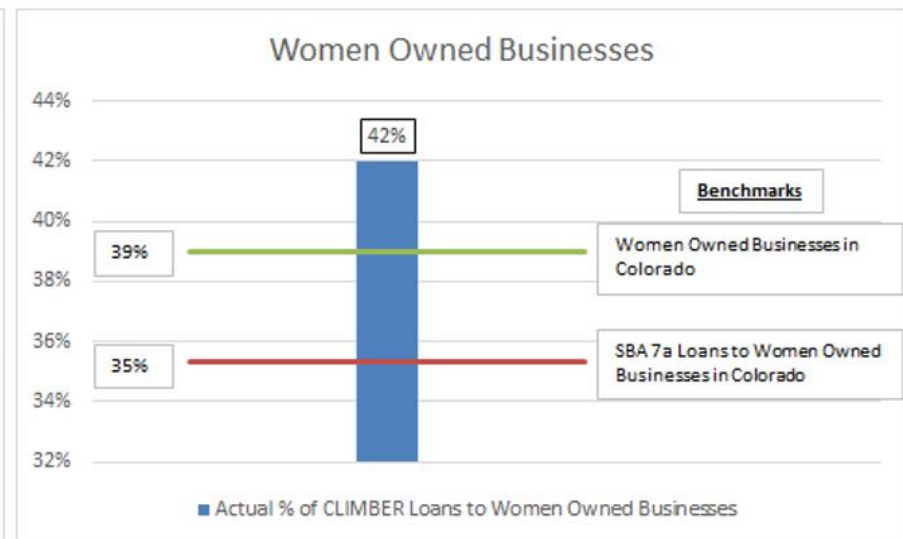
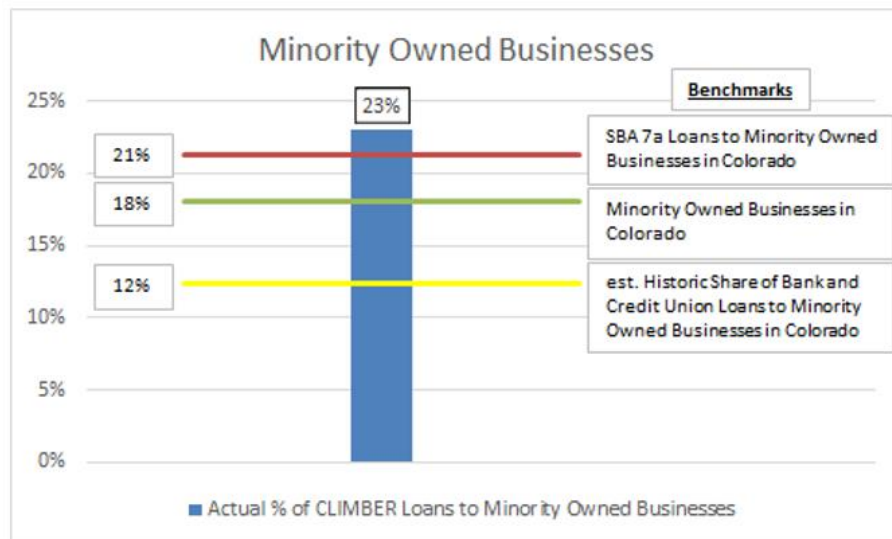
Appendix G

Benchmarks for Women-Owned, Minority-Owned, Veteran-Owned, and Rural Businesses

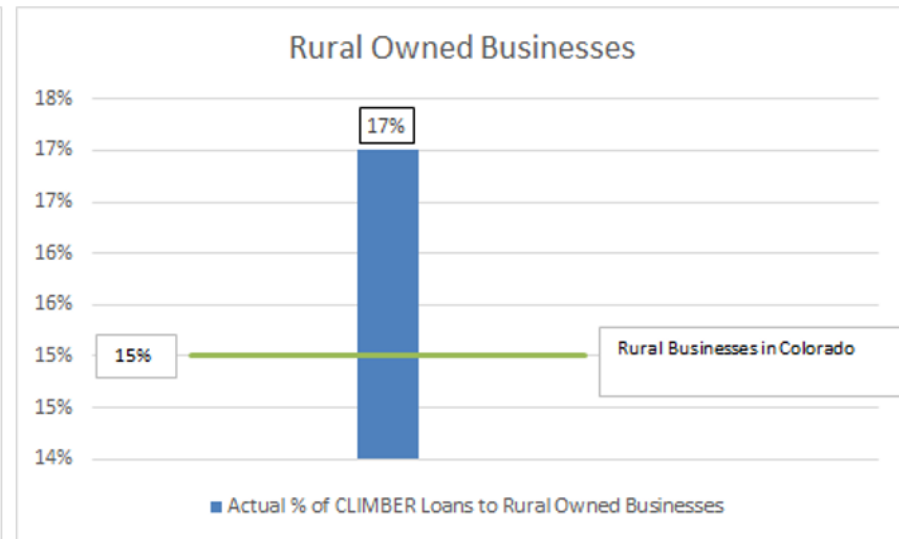
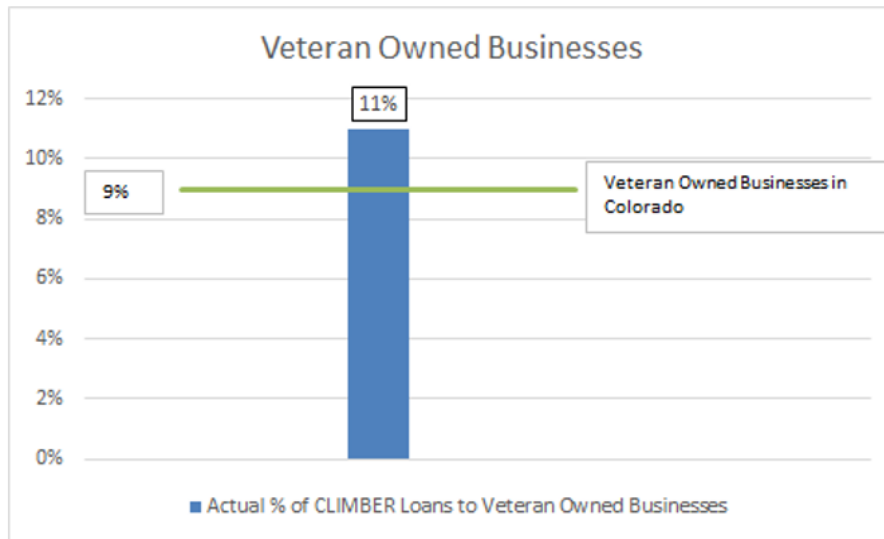
ADOPTED January 21, 2021

AMENDED February 11, 2021

Minority and Women Owned Businesses - Benchmarks *(“Actuals” are hypothetical data for illustrative purposes)*



Veteran and Rural Owned Businesses - Benchmarks (“Actuals” are hypothetical data for illustrative purposes)



Appendix H

Definition of a CLIMBER-Underserved Business

Summary of CLIMBER Focus on Underserved Businesses

ADOPTED January 21, 2021

AMENDED February 11, 2021

AMENDED February 25, 2021

Background

The CLIMBER program was designed to provide capital to strong small businesses across the state that are struggling due to the economic impact of the COVID-19 pandemic. As the legislative declaration for the CLIMBER Act makes clear, the program's goal is to secure the state's economic recovery by providing assistance to preserve small businesses, save Colorado jobs, and mitigate the pandemic's economic effect on communities across the state. The CLIMBER legislation also recognizes the disproportionate impact of the pandemic on certain businesses and geographies as well as the fact that certain businesses have been historically disadvantaged with respect to access to capital.

Accordingly, the CLIMBER Oversight Board has created policies and procedures to help the program meet its legislative goals to promote economic recovery, save jobs and provide equitable access to capital. The Board recognizes that these goals are inextricably intertwined, as the legislation makes clear.

Recognizing that certain businesses and communities have been historically disadvantaged and disproportionately impacted by the COVID-19 pandemic, the Board has adopted policies and procedures to advance equitable distribution of capital to underserved businesses.

Underserved Businesses

In order to advance the program's goals and statutory charge with respect to equitable distribution of capital, the CLIMBER Oversight Board has adopted policies to prioritize underserved businesses.

Definition of Underserved businesses: The Board has worked to identify the gaps in small business financing. Using data and analysis, the Board has defined Underserved Businesses as:

1. Businesses in low- and moderate-income communities
2. Businesses in economically distressed middle-income communities
3. Businesses in economically underserved middle-income communities
4. Businesses that primarily employ low- and moderate- income individuals
5. Businesses in Federally designated New Market Tax Credit eligible geographies
6. Businesses in State designated Enterprise Zones
7. Businesses owned by veterans
8. Rural businesses
9. Businesses with \$1 million or less gross annual revenues

10. Businesses without a current banking relationship
 - a. Businesses that have not received formal technical assistance

The Board has adopted the following policies to prioritize providing capital to Underserved Businesses:

1. The program will develop marketing strategies for focusing on underserved businesses (including lenders, community organizations and direct-to-business strategies).
2. The program will market to, recruit, and develop partnerships with CDFIs, understanding that CDFIs are more likely to serve Underserved Businesses as a percentage of their total CLIMBER small business loans.
3. Lender-level incentives (detailed in the Board's adopted CLIMBER Products policy):
 - a. Direct Lending Capital: The program will provide increased fees to CDFIs when loans are made to Underserved Businesses
 - b. CLIMBER Credit Enhancement: Lenders that use the credit enhancement tool can receive a higher level of enhancement when loans are made to Underserved Businesses
 - c. Loan Participation: Lenders that use the loan participation tool can additionally receive credit enhancement on the retained, un-participated, amount of a loan for loans made to Underserved Businesses

Geographic Distribution: The Board has adopted a methodology for making capital available to all Colorado counties for the initial two-month period following launch of each tranche of funding (after which time, unused portions revert to the general pool of capital available to any Colorado business). The methodology (detail in the Board's Geographic Distribution policy) provides additional distribution to businesses in low-and-moderate income geographies and businesses in distressed and underserved non-metropolitan geographies.

Board benchmarks and procedures to promote distribution of capital to Underserved Businesses:

In addition to the measures the Board has adopted to focus on areas of the state that have been overlooked and disadvantaged in the past, below is the Board's adopted procedure to optimize investment in these areas. These strategies will help the program provide equitable capital to low-and-moderate-income communities and to distressed and underserved nonmetropolitan areas of the state in keeping with its statutory charge.

Overall

Benchmark: The Board has set a benchmark to commit 60% of private capital from CLIMBER program private contributors to shared goals for underserved businesses [and/or] in economically disadvantaged areas of the state in order to promote economic development and job creation and retention in the state.

- After 33% of capital is deployed in any tranche, the Board will review data and make decisions based on strategies to achieve benchmarks, including:
 - Increased outreach/marketing to lenders, community organizations and Underserved Businesses
 - Increased outreach/marketing to CDFIs

- Adopting new financial incentives to advance goals
- Identifying new product offerings to advance goals

This process repeats after 66% of capital is deployed and before a new tranche of funding is launched.

In addition, after deployment of first tranche, the Board reviews data and makes further changes as necessary, including the same tools as above but could identify additional options at that point based on first tranche experience and data.