

Factsheet} Kentucky Capital Access Program (KYCAP)

The **Kentucky Capital Access Program (KYCAP) (the “Program”)** provides matching loan loss reserves, funded by combined premiums from lenders, borrowers, and the Kentucky Economic Development Finance Authority (the Authority).

Participants

Eligible Lenders: Eligible lenders include any federally insured commercial lender and federally insured credit union in good standing with the appropriate regulating authority and Community Development Financial Institutions (CDFIs), with sufficient commercial lending experience, financial and managerial capacity, and operational skills to meet the objectives of KYCAP.

Lender Certification: To be eligible, a lender must certify:

1. That it is in compliance with the requirements of Section 103.121 of Title 31, Code of Federal Regulations (Customer Identification Programs for financial institutions);
2. That, consistent with OMB Circular A-129, it has at least twenty percent (20%) of its own capital at risk in any loan enrolled in the Program, unless a waiver has been granted; and
3. That no principal of the lender has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, principal is defined as, “if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five (5) most highly compensated executives, or officers, of the entity, and each direct or indirect holder of twenty percent (20%) or more of the stock or stock equivalent of the entity;” and,
4. That the lender has complied with all federal statutes relating to non-discrimination including, but not limited to, Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin. That the lender has either adopted its own Title VI Implementation Plan, which will be made available for review by the Kentucky Cabinet for Economic Development’s Title VI Coordinator, or agrees to adopt the Title VI Implementation Plan of the Cabinet.

Borrowers

Eligible Borrowers: Eligible borrowers include: corporations, partnerships, joint ventures, sole proprietorships, state-designated charitable, religious, and other nonprofits, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations, provided the loan is for a *business purpose* as defined below. An *eligible borrower*, including its affiliates and subsidiaries, must have five hundred (500) or fewer employees at the time the loan is enrolled in KYCAP. Eligible borrowers must use the funds in the Program for investments in Kentucky.

Ineligible Borrowers: Borrowers may not be:

1. Executive officers, directors, or principal shareholders of the financial institution enrolling the loan; a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution enrolling the loan; or a related interest of such an executive officer, director, principal shareholder, or member of the immediate family. (For the purpose of these borrower restrictions, the terms executive officer, director, principal shareholder, immediate family, and related interest refer to the

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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.];

2. A business engaged in speculative activities that develops profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil or 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;
3. 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 or Community Development Financial Institution;
4. A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
5. A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities are the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
6. A business engaged in legal or illegal gambling enterprises. Provided however, a business that is an outlet for state lottery activities may be eligible if it earns less than thirty-three percent (33%) of its annual net revenue from state lottery sales.
7. A nonprofit business unless the business has a sustainable financial operation.

Borrower Certification: Borrowers must certify that no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For purposes of this certification, *principal* is defined as “if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who holds twenty percent (20%) or more ownership interest in the partnership; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, or officers, or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the stock or stock equivalent of the entity.

Program Requirements

Eligible Business Purposes: The loan proceeds must be used for a business purpose, including, but not limited to, start-up costs, working capital, business asset acquisitions and expansions, franchise financing, equipment loans, inventory financing, commercial real estate acquisitions, and construction. No passive real-estate, speculative investment projects or lobbying activities are eligible. KYCAP cannot be used in conjunction with any federal loan programs specifically prohibited by Treasury guidelines.

Ineligible Business Purposes: The loan proceeds cannot 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’s continuance; or to purchase any portion of the ownership interest of any owner of the business.

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Additional ineligible purposes include: acquiring or holding passive investments such as commercial real estate; pyramid schemes; speculative activities; illegal products or activities; legal products used for illegal purposes; the purchase of securities; legal or illegal gambling, except as provided above; or evangelizing, proselytizing, or lobbying.

Eligible Loan Amount: For the KYCAP Program, the maximum aggregate outstanding loan amount(s) that may be enrolled for any single borrower or any common enterprise in which the borrower has an ownership interest is \$5,000,000. For projects for which the State's participation will exceed \$250,000, the Authority must individually review and approve the project at a duly constituted meeting of its Board. The entire proceeds of the credit facility must be used for projects within the Commonwealth of Kentucky.

A Lender may submit for enrollment a portion of the loan if the collateral securing that portion is shared pro-rata between the Authority and the lender. In this case, premiums are paid only on the portion of the loan the lender chooses to enroll. In the event of default, the lender may recoup up to the enrolled amount of principal loss on the loan, plus up to ninety (90) days of accrued interest on the enrolled portion and up to fifty percent (50%) of documented, out-of-pocket collection expenses. By selecting this alternative, the lender and the borrower reduce the borrower's costs by reducing the premium payment that must be deposited into the reserve fund account and excess premiums are not paid for coverage that is not needed.

Eligible Loan Term: Although the lender may have a longer maturity term and amortization period, the maximum period a regular loan is covered under the program is ten (10) years from the date of enrollment, and the maximum period a line of credit is covered is seven (7) years from the time of enrollment. Lenders may extend lines of credit under the Program as long as the maximum term of the lines enrolled under the Program does not exceed seven (7) years, and the lines of credit are subject to annual credit review and renewal process. A matching fee for line renewals or loan extensions will not be provided unless additional principal is advanced.

Loan Refinances: Loans with the same lender or its affiliate may be refinanced and enrolled in the Program in accordance with Treasury Guidelines. When additional principal is added to an existing loan, the additional principal amount, and only that amount, may be eligible for KYCSP. Also, a loan refinanced from a different lender may be enrolled in the Program in accordance with Treasury Guidelines. In the event that an enrolled loan is refinanced and additional principal is advanced, the lender may file an enrollment form, and the KYCAP agreement may be amended accordingly.

Lines of Credit Balances: For purposes of this Agreement, fluctuations in the outstanding balance of a line of credit, without increasing the covered amount under the Program, will not be deemed to be a refinancing of the loan.

Termination as an Enrolled Loan: If the outstanding balance of an enrolled loan, which is not a line of credit, is reduced to zero (0), that loan will no longer be considered an enrolled loan. If an enrolled loan that is a line of credit has an outstanding balance of zero (0) for twelve (12) consecutive months, it will no longer be considered an enrolled loan, unless, before the expiration of the twelve (12) month period, the lender has reaffirmed in writing to the borrower that the line of credit will remain open, and the borrower has acknowledged that reaffirmation in writing to the lender and the Authority.

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Use of the Reserve Fund

Payments and Transfers to Reserve Fund: The lender shall set the premium charges payable to the reserve fund by the lender and the borrower in connection with a loan being filed for enrollment. The total amount paid by the borrower and lender combined shall not be less than two percent (2%) of the enrolled amount of the loan nor more than seven percent (7%) of the enrolled amount of the loan. When enrolling a loan, the Authority will transfer into the reserve fund, solely from available funds that have been allocated to the Program, a matching amount equal to the premium charges paid to the reserve fund account by the borrower and lender combined.

Ownership, Control and Investments of Reserve Fund: All funds credited to the reserve fund shall be the exclusive property of, and solely controlled by, the Authority. Interest or income earned on the funds credited to the reserve fund shall be part of the reserve fund. The Authority is authorized to withdraw at any time from the reserve fund fifty percent (50%) of all interest or income that has been credited to the reserve fund since the last such draw.

Claims by Lender against Reserve Fund: If a lender charges off all or part of an enrolled loan, the lender may file a claim with the Authority by submitting a completed claim form bearing the signature of an authorized officer of the lender. Any claim that is filed shall be filed within three (3) business days of the charge-off of all or part of the loan. The lender's claim may include the amount of the enrolled principal charged off plus up to ninety (90) days' accrued interest, and fifty percent (50%) of the reasonable, documented out-of-pocket expenses incurred by the lender in pursuing collection efforts, including the preservation of collateral: A lender may file more than one claim in connection with a loan. The lender will determine when and how much to charge off on an enrolled loan in a manner consistent with its usual and customary method for making such determinations on business loans that are not enrolled loans.

Disbursement of Reserve Fund: Upon receipt and acceptance by the Authority of a claim filed by the lender, the Authority will promptly pay the claim as submitted solely from funds in the reserve fund. Provided, however, that the Authority may reject a claim if the terms of the KYCAP Agreement have been violated. If the lender files two (2) or more claims contemporaneously and there are insufficient funds in the reserve fund at that time to cover the entire amount of those claims, the lender may designate the order of priority in which the Authority will pay the claims.

If there are insufficient funds in the reserve fund to cover the entire amount of the lender's claim, the Authority will pay the lender an amount equal to the then current balance in the reserve fund. The Authority will pay the remaining balance of the claim out of any future funds that are transferred into the reserve fund account on subsequently enrolled loans if the remaining balance of the claim is not greater than seventy-five percent (75%) of the balance in the reserve fund account at the time the Authority receives the second claim.

Collection Rights and Recovery by Lender Subsequent to Claim: Participating lenders may proceed with the claim process before exercising their collateral rights and taking legal action against the borrower on a charged-off loan. However, the claim should be based on a reasonable estimate of loss after all collateral and other remedies are pursued. If after payment of a claim by the Authority, the lender recovers from a borrower any amount for which payment of the claim was made, the lender shall promptly pay to the Authority for deposit in the reserve fund the amount recovered, less its reasonable, documented out-of-pocket expenses. The lender shall retain documentation in its files of those expenses. The lender will only be required to pay to the Authority amounts in excess of the amount needed to fully cover the lender's loss on an enrolled loan.

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Excess Reserve Fund: If the annual reports filed by the lender indicate that, for the preceding year, the balance in the reserve fund account continuously exceeded fifty percent (50%) of the aggregate outstanding balance of all enrolled loans for six (6) consecutive months during the period covered by the annual report, including unfunded portions of enrolled loans that are lines of credit, the Authority may make a withdrawal from the reserve fund account. The amount of the withdrawal may be no greater than the amount of any excess continuously maintained over the immediately preceding six (6) month period.

If an annual report is not filed within thirty (30) days of the original due date of the report, the Authority may make a withdrawal from the reserve fund account, based on the Authority's reasonable determination, for the preceding year, that the balance in the reserve fund account continuously exceeded fifty percent (50%) of the aggregate outstanding balance of all enrolled loans during that year, including unfunded portions of enrolled loans that are lines of credit. The amount of the withdrawal may not be greater than the amount of any excess continuously maintained over the immediately preceding six (6) calendar months.

Maintenance of the Reserve Fund: A separate reserve fund will be maintained for each lender participating in the Program, and the enrollment fees and matched premiums in that account are completely dedicated to covering losses on loans enrolled by that lender.

For efficiency and administrative convenience, the reserve fund for participating lenders will be established in the name of the Authority and maintained with that lender or at other designated insured depository financial institution. If the reserve fund exceeds the federally insured amount, lenders will provide pledged assets sufficient for compliance with state law regarding state deposits over the FDIC insured amount.

Reserve fund accounts are to be interest bearing, and participating Lenders may not charge CED for any fees related to KYCAP transactions or for the maintenance of the reserve fund account. The Authority will monitor reserve fund account activities and will deposit the Authority's matching premium into the reserve fund.

Reporting Requirements

Lender Reports: Each lender will make annual reports to the Authority. On or before January 31st of each year, the lender shall file a report with the Authority indicating the number of borrowers, the total dollar amount of new loans (broken down by industry type, loan size, annual revenues, and number of full-time equivalent employees, and separately, the number of jobs created or retained as a result of the loan, for each borrower) and the aggregate outstanding balance of all enrolled loans as of the previous December 31st. In computing the aggregate outstanding balance of all enrolled loans, the balance of any loan shall not be greater than the covered amount of the loan as enrolled and, in the case of lines of credit, the outstanding balance shall be the enrolled credit line amount.

Reserve Fund Account Statement: The lender is to submit to the Authority a monthly account statement which reflects all activity for the period under the reserve fund within ten (10) days of the previous calendar month end.

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Termination from KYCAP

By the Authority: The Authority may, in its sole discretion, terminate its obligation to enroll loans under the Program. The termination shall be applicable on the effective date specified in the notice of termination, except that the termination shall not apply to any loan which is made on or before the date on which the notice of termination is received by the lender. However, if the Authority is terminating the enrollment of loans not merely for a specific lender but instead is terminating the Program for all participating lenders, the Authority shall provide notice of at least ninety (90) days to every lender in the Program. Any terminations under this section shall be prospective only and shall not apply to any loans previously enrolled under the Program. Provided, however, that if a previously enrolled loan is refinanced on or after the termination date, the amount covered under the Program shall not be increased beyond the covered amount as previously enrolled. After a termination notice, if the balance of the reserve fund is reduced to zero (0), the loan enrollment agreement with the lender shall automatically terminate.

By the Lender: If a participating lender discontinues using the Program and no additional loans are being enrolled, the Authority will make withdrawals against the reserve fund as described below until all loans enrolled by the lender have been repaid. At that time, fifty percent (50%) of the remaining funds in the reserve fund account will be withdrawn by the Authority. If a lender formally terminates its participation in the Program, the Authority may withdraw fifty percent (50%) of the funds from the reserve fund immediately.

Title VI

The Authority operates its programs and services without regard to race, color or national origin and in compliance with Title VI of the Civil Rights Act of 1964.

Application Process

Prior to enrolling any loans in the KYCAP Program, the participating lender must:

1. Submit the KYCAP application for review and approval by the Authority.
2. Enter into KYCAP agreement with the Authority.

If approved, for each loan enrolled in the KYCAP Program, the participating lender shall:

1. Determine that the loan project, based on its risk profile, is appropriate for the program.
2. Approve the loan. (The Authority will not participate in the lender's loan approval decision. All lending decisions are left to the lender and should be based upon their underwriting and loan policy guidelines.)
3. Review the borrower certification and other relevant documents with the borrower.
4. Establish the premium level and calculate the enrollment fee based on the amount of the loan being enrolled. The lender shall file a KYCAP enrollment form. When the Authority receives an enrollment form, it will be reviewed for completeness and, upon approval, borrower's and lender's premium funds will be transferred electronically into the reserve fund.
5. For loans in which the state's participation will exceed \$250,000, submit its application to the Authority's Board for review and approval.

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6. Provide a disclosure statement from both the lender and the borrower. Close the loan and obtain the borrower's signature and other required information on the borrower's certification and loan enrollment form.
7. Collect and deposit the enrollment premium from the borrower.
8. Deposit the premium from the Authority into the reserve fund and forward deposit receipt to the Authority.

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