Factsheet} Kentucky Collateral Support Program (KYCSP)

The **Kentucky Collateral Support Program (KYCSP) (the "Program")** provides a pledged asset (cash collateral account) to an enrolled lender of up to twenty percent (20%) of their loan in order to enhance the collateral coverage of a small business borrower that is otherwise qualified but unable to meet the lender's security requirements. The cash collateral account will then be pledged as collateral on behalf of the borrower on a transaction by transaction basis and located at the participating lending institution or at other designated insured depository financial institution in the name of 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 its 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 KYCSP.

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 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.
5. 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 KYCSP. Eligible borrowers must use the funds in this 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 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 non-profit business unless the business has a sustainable financial operation.

Borrower Certification: To be eligible, a borrower 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, of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership 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. KYCSP cannot be used in conjunction with any federal loan programs specifically prohibited by Treasury guidelines.

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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.

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 KYCSP 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 $20,000,000. Any commitment of lending support assistance for any one borrower in an amount over $250,000 will require approval from the Authority on a loan by loan basis at a duly constituted meeting of its Board.

The State's maximum participation cannot exceed twenty percent (20%) of the total loan amount. The entire proceeds of the credit facility must be used for projects within the Commonwealth of Kentucky.

Security: Personal guarantees or other security acceptable to the Cabinet are required from any individual holding a twenty percent (20%) or more ownership interest of the borrower. The security is normally secondary to the collateral for the project at the time of closing.

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 the loan, and the maximum period a line of credit is covered is seven (7) years from the time of loan. 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.
Lenders may extend lines of credit under the Program so long as the maximum amount of the line is enrolled under the Program.

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.

Lines of Credit Balances: For the purposes of the KYCSP Program, 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 a loan, which is not a line of credit, is reduced to zero (0), that loan will no longer be considered a KYCSP loan. If a 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 a KYCSP 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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Cash Collateral Account

Payments and Transfers to Cash Collateral Account: The lender shall set the amount of the cash deposit to be paid into the cash collateral account by the Authority, up to twenty percent (20%) of the original principal amount of the loan. The lender's potential risk of loss not covered by KYCSP funds will be a minimum of twenty percent (20%) of the loan.

Ownership, Control and Investments of Cash Collateral Accounts: All funds transferred to a cash collateral account will be the property of, and solely controlled by, the Authority. Interest or income earned on the funds will be credited to the account. The Authority is authorized to withdraw at any time from a cash collateral account all interest or income that has been credited to the account. Interest or income withdrawals may be used for any purpose in connection with the Program. The cash collateral account will be reduced proportionately with the principal reduction of the loan, on an annual basis or sooner if the loan is paid off.

Claims by Lender against Cash Collateral Account: After a lender charges off all or part of an enrolled loan and after making other efforts to collect upon the enrolled loan, including but not limited to seeking judgment and levying against collateral, 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. The lender's claim may include the amount of the enrolled principal left unpaid by lender's collection efforts plus up to ninety (90) days of accrued interest, and fifty percent (50%) of the reasonable, documented out-of-pocket expenses incurred by the lender, but not paid by the borrower, in pursuing collection efforts, including the preservation of collateral. The lender will determine when and how much to charge off on a KYCSP Loan in a manner consistent with its usual and customary method for making such determinations on business loans that are not enrolled in the program.

Disbursement of Cash Collateral Account: 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 cash collateral account for that particular loan. Provided, however, that the Authority may reject a claim if the terms of the KYCSP agreement have been violated.

Collection Rights and Recovery by Lender Subsequent to Claim: 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 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 a KYCSP loan.

Excess Cash Collateral Account: If a KYCSP loan that is a line of credit remains unfunded or not fully funded for twelve (12) months, the Authority may withdraw a portion or all funds from the cash collateral account. The cash collateral account shall not cover more than twenty percent (20%) of the outstanding balance on the line of credit.

Maintenance of the Cash Collateral Account: For efficiency and administrative convenience, each cash collateral account for participating lenders will be established in the name of the Authority and maintained at that lender or at another designated insured depository financial institution. If the cash collateral accounts for each lender exceed the federally insured amount, lenders will provide pledged assets sufficient for compliance with state law regarding state deposits over the FDIC insured amount.

The cash collateral accounts are to be interest bearing, and participating lenders may not charge the Authority for any fees related to KYCSP transactions or for the maintenance of a cash collateral account.

Reporting Requirements

Lender Reports: Each lender will provide 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.

Cash Collateral Account Statement: The lender is to submit to the Authority a monthly account statement which reflects all activity for the period under the cash collateral account within ten (10) days of the previous calendar month's end.

Termination from KYCSP

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 KYCSP loan is refinanced with the same lender 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 a Cash Collateral Account is reduced to zero, the KYCSP loan agreement with the lender shall automatically terminate.

By the Lender: If a participating lender discontinues using the Program and no additional loans are being made under KYCSP, the Authority will make withdrawals against each cash collateral account proportionately to the outstanding balance of the loan until each loan has been repaid. At that time, all remaining funds in the account will be withdrawn by the Authority.

Closing Fee

The Lender shall pay the Authority a closing fee equal to one percent (1%) of the initial deposit into the cash collateral account for a loan with a term of less than three (3) years; two percent (2%) for a loan with a term of three (3) years or greater but less than five (5) years; and three percent (3%) for a loan with a term of five (5) years or greater. The closing fee shall be paid to the Authority at closing.

If the loan is a line of credit, the closing fee will be based upon the maximum amount of collateral support to be made available for the line of credit. The fee shall be one percent (1%) of the maximum amount of collateral support for a loan with a term of less than three (3) years; two percent (2%) for a loan with a term of three (3) years or greater but less than five (5) years; and three percent (3%) for a loan with a term of five (5) years or greater. The closing fee shall be paid to the Authority at closing.

The lender may be reimbursed for the closing fee by the borrower.

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 making any loans under the KYCSP Program, the participating lender must:

1. Determine that the borrower, based on its risk profile, is appropriate for the program.
2. Submit the KYCSP application and required documentation.

For each loan in the KYCSP Program, the participating lender shall:

1. Approve the loan. Establish the collateral support amount to be deposited in the cash collateral account. The Authority does 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.
2. Review the borrower certification and other relevant documents with the borrower.
3. Submit the loan for review and approval by Authority staff. Provide a disclosure statement from both the lender and the borrower.
4. For loans in which the state's participation will exceed $250,000, submit its application to the Authority's Board for review and approval.
5. Enter into a KYCSP cash collateral deposit agreement (includes lender's assurances and borrower's assurances) with the Authority.
6. Close the loan and obtain the borrower's signature and other required information on the KYCSP cash collateral deposit agreement and borrower's assurances.
7. Pay closing fee.
8. Collateral support funds will be transferred electronically into the cash collateral account.

For further information contact: J. Don Goodin
Kentucky Cabinet for Economic Development
300 West Broadway, Old Capitol Annex
Frankfort, Kentucky 40601
Phone: 502-782-1978
Don.Goodin@ky.gov

9/2013