Kentucky UNBRIDLED SPIRIT
Cabinet for Economic Development

Factsheet} Kentucky Loan Participation Program (KYLPP)

The **Kentucky Loan Participation Program (KYLPP) (the "Program") allows** the Kentucky Economic Development Finance Authority (the Authority) to purchase up to twenty percent (20%) of a small business loan and potentially offer a grace period for payment of interest and/or principal.

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 KYLPP.

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 KYLPP. 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 nonprofit business unless the business has a sustainable financial operation.

Borrower Certification: To be eligible, a borrower must certify:

1. 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 the 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 (5) 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; and,
2. That the borrower 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 borrower 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.

Program Requirements

Eligible Business Purposes: The loan proceeds must be used for a *business purpose* as defined in the U.S. Department of Treasury Guidelines for the State Small Business Credit Initiative dated April 27, 2011, and any subsequent amendments thereto, 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. KYLPP cannot be used in conjunction with any other 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 KYLPP 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.

Existing Loans: Existing loans of lenders may not be enrolled in KYLPP.

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 date of the 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 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.

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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 KYLPP 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 KYLPP 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.

Loan Participation

Authority's Loan Participation: The Authority may purchase up to twenty percent (20%) of the original principal amount of the loan. The lender's potential risk of loss not covered by KYLPP funds will be twenty percent (20%) or greater. The Authority's terms for participation for each loan are negotiable, including its position with respect to the collateral. The Authority may offer zero (0) interest and principal up to twenty-four (24) months on its participation. After the grace period, the interest rate will begin to accrue, and the interest rate and amortization period will be commensurate with the bank loan.

Multiple Lenders: When multiple lenders are involved in one project, there will be a lead bank that will originate the loan, service the loan, organize and manage the participation and deal directly with the borrower. After the grace period, the interest rate will begin to accrue, and the interest rate and amortization period will be commensurate with the lead bank loan.

Fees: Closing fees and late fees will be pro-rata with the lender.

Collection Rights and Recovery: The Authority will hold a security interest in the collateral securing the loan based upon its percentage of participation in the loan and negotiated position with respect to the collateral. The lender will be required to diligently pursue collection of the total loan amounts owed to both the Authority and the lender.

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 KYLPP 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.

KYLPP Account Statement: The lender is to submit to the Authority a monthly account statement which reflects all activity for the KYLPP loans within ten (10) days of the previous calendar month end.

Termination from KYLPP

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 KYLPP 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 the KYLPP loan owed is zero (0), the KYLPP loan participation and servicing agreement with the lender shall automatically terminate.

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 KYLPP, the participating lender must:

1. Determine that the borrower, based on its risk profile, is appropriate for the program based upon its risk profile; and,
2. Submit the KYLPP Application and required documentation.

For each loan in KYLPP, the participating lender shall:

1. Approve the loan. Establish the amount of loan participation by the Authority. 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. Submit the loan for review and approval by Authority staff. Provide a disclosure statement from both the lender and borrower.
3. For loans in which the state's participation will exceed $250,000, submit its application to the Authority's Board for review and approval.
4. Enter into a KYLPP loan participation and servicing agreement (includes lender's assurances and borrower's assurances) with the Authority.
5. Close the loan and obtain the borrower's signature and other required information on the KYLPP loan participation and servicing agreement and borrower's assurances.

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