



Guidelines:

Western Kentucky Risk Assistance Fund (WKRAF)

July 2023

The Western Kentucky Risk Assistance Fund (the “WKRAF” or “Program”) has been established to provide support and relief efforts imperative to the Commonwealth of Kentucky to recover from the considerable damage caused by the December 2021 storms and tornadoes in Western Kentucky. The Program provides an enrolled Qualified Lender (as defined herein) the following inducement (the “Inducement”): the lesser of twenty-five percent (25%) or up to one million dollars (\$1,000,000) of the loss incurred by a Qualified Lender on the unpaid principal balance of a Commercial Loan (as defined herein) made by a Qualified Lender to an Eligible Company (as defined herein). Twenty-five million dollars (\$25,000,000) is appropriated to the Program and will be used to provide Inducements to Qualified Lenders on the first two hundred million dollars (\$200,000,000) of Commercial Loans enrolled in the Program, provided that a Qualified Lender shall be eligible to enroll no more than ten million dollars (\$10,000,000) in Commercial Loans in the Program.

Inducements are awarded by the Cabinet for Economic Development (the “Cabinet”) in the order that applications are received. All Commercial Loans enrolled by a Qualified Lender must be originated prior to December 31, 2027, and may be eligible for an Inducement if said loss is suffered by the enrolled Qualified Lender within five (5) years of the Commercial Loan origination date.


Qualified Lenders

“Qualified Lender” means a cooperative lender or a FDIC insured depository institution as defined in 12 U.S.C. sec. 1813(c) in good standing with the Kentucky Department of Financial Institutions and which has a physical presence in Kentucky. A cooperative lender is a not-for-profit consortium of Qualified Lenders. Privately insured financial institutions are not considered Qualified Lenders.

Qualified Lenders may provide applications to an Eligible Company and then decide, regardless of further processing or underwriting results, to not provide final approval so long as the decision is not prohibited by state or federal law. If the Qualified Lender decides not to proceed, the Qualified Lender shall provide the application to a cooperative lender for further review and assignment to one or more other Qualified Lenders. A Qualified Lender that is unable to fund the entire amount requested in an application shall submit all or any portion of the requested amount to a cooperative lender for further review and distribution of the unfunded portion to one or more Qualified Lenders.

Eligible Companies

“Eligible Companies” include any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust or any other entity, its successors or assigns, that experienced direct or indirect loss from the December 2021 storms and tornadoes that occurred in the west Kentucky region and have or



had an existing or proposed business located in or planning to locate in the counties which were declared disaster relief areas by any state or federal agency.

An Eligible Company will be required to certify to the Qualified Lender the following:

- Such Eligible Company has applied for or will apply for all other available assistance that is not a Commercial Loan, including disaster relief assistance and insurance proceeds.
- Such Eligible Company shall notify its Qualified Lender immediately upon application for other available assistance that is not a Commercial Loan.
- Such Eligible Company shall provide an update on the status of such other available assistance when requested by its Qualified Lender.
- Such Eligible Company shall notify Qualified Lender when other available assistance has been approved and received.

Program Limitations

Program funds total twenty-five million dollars (\$25,000,000) for loan loss support of the first two hundred million dollars (\$200,000,000) of Commercial Loans enrolled in the Program and are thus limited to the applications from Qualified Lenders in the order in which the applications are received and approved. The maximum principal balance outstanding is \$100 million and may be reduced proportionately for loss payments disbursed. A Qualified Lender shall be eligible to enroll no more than ten million dollars (\$10,000,000) in Commercial Loans in the Program.

Program Requirements – Commercial Loans

Commercial Loans

“Commercial Loans” are agreements between an Eligible Company and one or more Qualified Lenders for Approved Costs (as defined herein). Commercial Loans under the Program must meet the following requirements:

- the commercial loan must be used by an Eligible Company.
- the commercial loan must originate prior to December 31, 2027.
- the commercial loan proceeds must be used for investments in Kentucky counties which were declared disaster relief areas by any state or federal agency.

Lines of credit may be eligible for the Program so long as all funds have been drawn/disbursed at the time of application. Construction loan proceeds may be considered fully funded if funds are disbursed to escrow before applying for Inducements, and the funds must be disbursed from escrow within three years.

All Commercial Loan proceeds must be spent by the Eligible Company on Approved Costs within three (3) years of final approval of the Commercial Loan by the Qualified Lender, unless an extension is required by the Qualified Lender or necessitated by circumstances beyond the control of the Eligible Company or the Qualified Lender.

Approved Costs

“Approved Costs” may include, as approved by the Qualified Lender, the following:

- Obligations incurred for labor and materials in connection with the acquisition, construction, equipping, rehabilitation, and installation of an Eligible Company;

- Cost of contract bonds and any insurance that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of an Eligible Company which is not paid by a vendor, supplier, deliveryman, contractor, or otherwise provided;
- All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, including the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of an Eligible Company;
- All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, or installation of an Eligible Company;
- All costs required for the installation of utilities, including water, sewer, sewer treatment, gas, electricity, communications, railroads, and any off-site construction of the facilities to be paid by an Eligible Company;
- All costs required for the operating of an Eligible Company, including inventory, furniture, equipment, labor, and other incidental costs for startup or enhancement of an Eligible Company, if the location has been completed;
- Ongoing and future operating expenses incurred by an Eligible Company; and
- Any other necessary and reasonable costs incurred by an Eligible Company.

The following costs/uses are not considered eligible Approved Costs and may not be funded with the Commercial Loan proceeds:

- Repayment of delinquent federal, state, or local income taxes unless the Eligible Company has a payment plan in place with the relevant taxing authority;
- Repayment of taxes held in trust or escrow (e.g. payroll or sales taxes);
- Pyramid schemes;
- Speculative activities;
- Illegal products or activities or legal products used for illegal purposes;
- Purchase of securities;
- Gambling;
- Evangelizing, proselytizing, or lobbying.

Procedure for Approval

Qualified Lenders may submit a Commercial Loan for consideration under the Program after (i) final approval of the Commercial Loan has occurred by the Qualified Lender, and (ii) funding of the Commercial Loan to the Eligible Company by the Qualified Lender has been completed.

Claim for Commercial Loan

The Program shall be used to pay a Qualified Lender on the unpaid principal balance of a Commercial Loan to an Eligible Company in an amount up to the lesser of the following:

- Twenty-five percent (25%) of the loss suffered on the unpaid principal balance on a Commercial Loan; or
- One million dollars (\$1,000,000).

A loss may be determined by the Qualified Lender by either of the following methods:

- Amount of loan loss reserve the Qualified Lender establishes based on the current expected credit losses methodology for estimating allowances for credit losses, as reflected in an official, filed call report (RI-B Schedule) which reflects the changes in the allowance for credit loss relating to the Commercial Loan originated; or

- Amount of the estimated loss as documented by an updated appraisal of the underlying collateral, or a change in economic value of the Commercial Loan based on expected cash flows.

Claims for Inducement (also referred to as a loss payment) must be submitted within five (5) years from the Commercial Loan origination date. Required documentation must be submitted with the claim for the loss and the loss payment calculation on a form provided. The claim will be approved or denied within thirty (30) days from the submission date of the claim. Within sixty (60) days of the claim submission, the loss payment will be issued or a written explanation for denial will be provided to the Qualified Lender.

Inducements shall be paid by the Cabinet to the Qualified Lender on claims as long as moneys are available in the Program and the claim meets Program eligibility requirements.

Collection Rights and Recovery by Qualified Lender Subsequent to Claim

After payment of a claim under the Program, if the Qualified Lender recovers any amount for which payment of the claim was made, the Qualified Lender shall promptly return to the Cabinet the amount that is more than seventy-five percent (75%) of the previously considered uncollectable balance for deposit into the Program. However, no more than one million dollars (\$1,000,000) shall be recovered from the Qualified Lender.

Reporting Requirements

The Qualified Lender will be required to submit to the Cabinet a quarterly report which reflects the status of all Commercial Loans enrolled in the Program for which a Claim was submitted and Inducement paid.

Beginning July 10, 2024, and by the tenth (10th) day following the end of each calendar quarter, Cabinet staff will submit a report to the Senate Standing Committee on Appropriations and Revenue and the House Standing Committee on Appropriations and Revenue or the Interim Joint Committee on Appropriations and Revenue detailing the following information for each Commercial Loan receiving a loss payment:

- Name of each Qualified Lender receiving a loss payment;
- Amount of the loss payment received by the Qualified Lender;
- Description of the Commercial Loan terms; and
- Explanation regarding why the loss payment was needed.

The required report for the legislature will end when no further Claims for Inducement may be submitted.

Fees and Costs

The Qualified Lender shall pay a one-time Qualified Lender application fee of \$1,000 to certify the lender regardless of the number of loans to be enrolled. The application fee shall be paid to KEDFA prior to certification of the Qualified Lender and approval of the Qualified Lender for participation in the Program. The Qualified Lender shall be responsible for legal costs, including legal costs of the Kentucky Economic Development Finance Authority (KEDFA) related to the preparation, execution, delivery of the documents under the Program and enforcement thereof. If a Claim for Inducement is submitted, an administrative fee equal to one percent (1%) of the eligible Inducement shall be required. This fee may be netted against the loss claim of a commercial loan.

Application and Approval Process

Qualified Lender Certification and Master Agreement

- Lender will complete and submit a Qualified Lender application with required attachments to Cabinet staff.
 - An application fee of \$1,000 is required at the time of submission and may be paid online.
- Cabinet staff will review applications for eligibility, completeness and accuracy.
- KEDFA will authorize Cabinet staff to certify lenders meeting the required qualifications as Qualified Lenders.
- Cabinet staff will notify an applicant lender if it meets the eligibility requirements to be certified as a Qualified Lender and confirm whether the applicant lender wishes to proceed with a master agreement under the Program.
 - The applicant Lender will be responsible for legal costs, including legal costs of KEDFA, for preparation of the master agreement.
- Once finalized and signed, Cabinet staff will provide to the applicant lender the master agreement for the Program certifying the applicant lender as a Qualified Lender.
- A listing of Qualified Lenders will be maintained on the Cabinet's website.

Enrolling Loans and Claim Processing

- Prior to enrolling any loans in the Program, the Qualified Lender must close and fully disburse the Commercial Loan to the Eligible Company.
 - Note: The Cabinet and KEDFA do not participate in the Qualified Lender's loan approval decision with respect to any Commercial Loan. All lending decisions are left to the lender and should be based upon their underwriting and loan policy guidelines.
- After the Commercial Loan has been approved and fully disbursed by the Qualified Lender, the Qualified Lender completes and submits a loan enrollment application with required attachments to Cabinet staff.
- Cabinet staff will review applications for eligibility, completeness and accuracy.
- KEDFA authorizes Cabinet staff to approve loan enrollment based on the requirements of the Program.
- Upon approval of loan enrollment, Cabinet staff will notify the Qualified Lender and update the attachment to the master agreement for the Program which identifies enrolled Commercial Loans.
- If the Qualified Lender incurs a loss on an Enrolled Loan, it may submit a Claim for Inducement based on the instructions and documents outlined in the Master Agreement.
 - An administrative fee equal to one percent (1%) of the eligible Inducement is required with the submission of the Claim for Inducement.
- Upon approval of the Claim for Inducement, Cabinet staff will disburse funds to the Qualified Lender as long as moneys are available in the Program.
 - The Qualified Lender will be required to submit the quarterly reports in accordance with the Reporting Requirements.
- In the event the Qualified Lender receives a recovery, refer to the Collection Rights and Recovery by Qualified Lender Subsequent to Claim section.

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