Guidelines:

Kentucky Collateral Support Program (KYCSP)

February 2023

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 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 another designated insured depository financial institution in the name of the Kentucky Economic Development Finance Authority (the Authority).

Eligible Lenders	Eligible lenders include any federally insured financial institution, minority-serving institutions, and federally insured credit unions, in good standing with its regulating authority and Community Development Financial Institutions (CDFIs), with sufficient commercial lending experience, financial and management capacity, and operational skills to meet the objectives of KYCSP.
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 an eligible business purpose. 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.
Owned and Controlled	The term "owned and controlled" means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.
Socially and Economically Disadvantaged (SEDI)-owned Business	SEDI-owned Business means a business that is owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (1) membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society; (2) gender; (3) veteran status;

	(4) limited English proficiency; (5) physical handicap; (6) long-term residence in an environment isolated from the mainstream of American society; (7) membership of a federally or state-recognized Indian Tribe; (8) long-term residence in a rural community; (9) residence in a U.S. territory; (10) residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or (11) membership of another "underserved community" as defined in Executive Order 13985; (12) business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas; (13) business enterprises that certify that they will operate a location in a CDFI Investment Area; or (14) business enterprises that are located in CDFI Investment Areas.
Very Small Business (VSB)	A Very Small Business (VSB) means a business with fewer than 10 employees at the time of the loan support and includes independent contractors and sole proprietors. A business that has 10 or more employees following a transaction will not be considered a VSB for purposes of subsequent loans or investments.
Disaster Relief Affected Business	Disaster Relief Affected Business is a business that is located in or planning to locate in a county declared as a Disaster Relief Area by any state or federal agency, as of or after December 1, 2021.

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; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. Passive real estate is defined as investment in real estate acquired and held primarily for sale, lease, or future investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property. Passive real-estate projects are eligible under certain conditions, however, speculative investment projects are not eligible. KYCSP funds may be used to purchase any tangible or intangible assets except goodwill. KYCSP 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 except for the purchase of an interest in an employee stock ownership plan qualifying under Section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in 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 $1,000,000 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.

The State may participate up to fifty percent (50%) if the loan is used to meet the needs of a certified SEDI-owned business, a Very Small Business (VSB), or a Disaster Relief Affected Business locating or planning to locate in the counties declared Disaster Relief Areas by a state or federal agency as of or after December 1, 2021. Evidence of eligibility will be requested.

Security

Corporate or personal guarantees or other security acceptable to the Authority are required from any individual holding a twenty percent (20%) or more ownership interest of the borrower and includes secondary 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 if 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 restructure the term of the loan; however, lenders may not request to extend the term of the support once the loan has closed.

Lender Certification

To be eligible, a lender must certify the following:

- It will be participating at no less than twenty percent (20%) of the loan amount, unless a waiver has been granted; and
- 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.
- 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.
- The supported loan is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender.
- The supported loan is not a refinancing of a loan previously made to the borrower by the financial institution lender or an affiliate of the financial institution lender and complies with all applicable requirements related to refinancing.
- No principal of the financial institution lender has been convicted of a sex offense against a minor (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, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Borrower Certification

To be eligible, a borrower must certify the following:

- No principal of the financial institution lender has been convicted of a sex offense against a minor (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, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.
- If SEDI-owned business, certify that the SEDI-owned business is the business that receives a loan and KYCSP proceeds are for that loan.
- If a Very Small Business (VSB), certify that the business has fewer than 10 employees at the time of the loan support.
- If Disaster Relief Affected Business, certify that the business is in or planning to locate in a county declared as a Disaster Relief Area by any state or federal agency.

Ineligible Borrowers

Borrowers may not be:

- 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. (Same relationship to a financial institution as described in Part 215 or any successor to such part.).

- 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.
- 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.
- 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.
- A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business's intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 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. A business deriving more than one-third of gross annual revenue from legal gambling activities; or

Loan Refinances

Loans with the same lender or its affiliate may not be refinanced and enrolled in the Program. A loan refinanced from a different lender may be enrolled in the program.

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.

Cash Collateral Account

Payments and Transfers to Cash Collateral Account

The lender may request a deposit to the cash collateral account by the Authority, up to twenty percent (20%) of the original principal amount of the loan or up to fifty percent (50%) of the principal amount of the loan for SEDI, VSBs, or Disaster Relief Affected Businesses. 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 Account

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 may 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 more than 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 the corresponding percentage of eligibility for KYCSP support 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 federally 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

The lender will be required to report quarterly to the Authority on all enrolled loans.

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. Account fees and services charges associated with the cash collateral account are unallowable and if charged must be refunded on a quarterly basis.

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. However, the maximum closing fee is $50,000. 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 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 enrolling any loans in the KYCSP Program, the participating lender must:

- Submit application and certification for program consideration.
- Receive approval of lender participation from the Cabinet for Economic Development.
- For each loan in the KYCSP Program, the participating lender shall:
- Approve the loan. Request the collateral support amount for 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.

- Review the borrower certification and other relevant documents with the borrower.
- Submit the loan for review and approval by Authority staff. Provide a disclosure statement from both the lender and the borrower.
- For loans in which the state's participation will exceed $1,000,000, submit its application to the Authority's Board for review and approval.
- Enter a KYCSP cash collateral deposit agreement (includes lender's assurances and borrower's assurances) with the Authority.
- After written approval from the Authority, the lender may close the loan and obtain the borrower's signature and required information on the KYCSP cash collateral deposit agreement and borrower's assurances.
- Pay closing fee. Collateral support funds will be transferred electronically into the cash collateral account.

To learn more, contact:
Kylee Palmer
Kylee.Palmer@ky.gov
Phone: (502) 564-7670