

# Guidelines:

## Kentucky Loan Participation Program (KYLPP)

February 2023

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 to support a participating lender to originate much larger loans that, on its own, would not have been possible.

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 KYLPP.
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 KYLPP. 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;

	<p>(6) long-term residence in an environment isolated from the mainstream of American society;</p> <p>(7) membership of a federally or state-recognized Indian Tribe;</p> <p>(8) long-term residence in a rural community;</p> <p>(9) residence in a U.S. territory;</p> <p>(10) residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or</p> <p>(11) membership of another “underserved community” as defined in Executive Order 13985;</p> <p>(12) business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas;</p> <p>(13) business enterprises that certify that they will operate a location in a <a href="#">CDFI Investment Area</a>; or</p> <p>(14) business enterprises that are located in <a href="#">CDFI Investment Areas</a>.</p>
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.

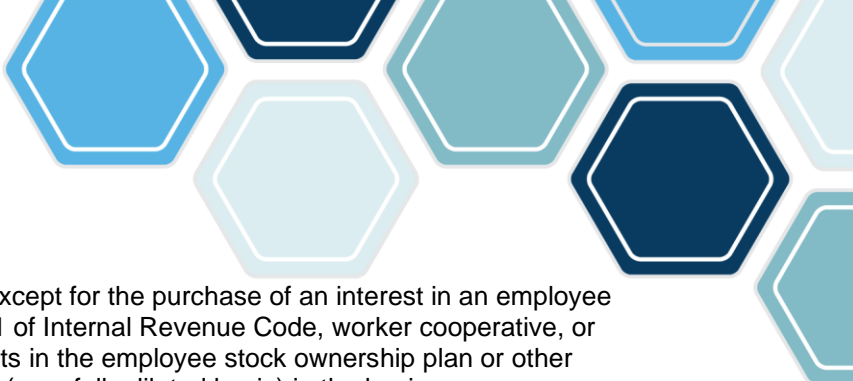
## Program Requirements

### 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. KYLPP funds may be used to purchase any tangible or intangible assets except goodwill. KYLPP 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 KYLPP, 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 KYLPP 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 KYLPP, 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

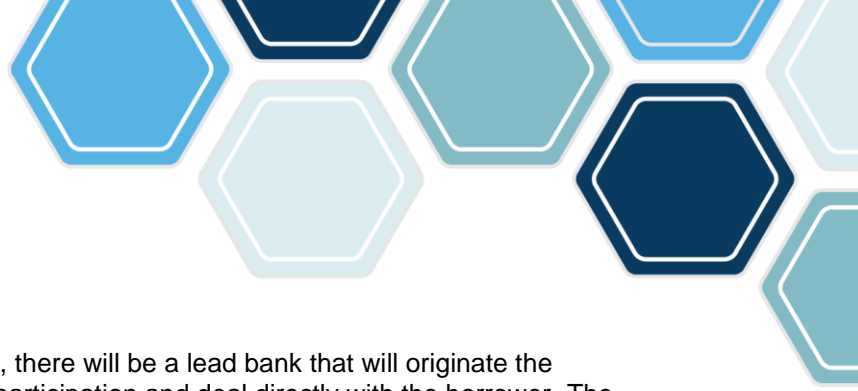
If the outstanding balance of a loan, which is not a line of credit, is reduced to zero (0), that loan will no longer be considered a KYLPP loan. If a loan that is a line of credit has an outstanding balance of zero (0) for twelve (12) consecutive months, it will no longer be considered a KYLPP loan, 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 repayment terms and amortization period will be commensurate with the lending institution's loan.

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.



## 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. The repayment terms and amortization period will be commensurate with the lead bank loan.

## Fees

Closing fees and late fees will be shared pro-rata with the lender, with a maximum fee to KEDFA of \$50,000.

## 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 its negotiated position with respect to the collateral. The lender will be required to diligently pursue collection of the total loan amounts owed to both KEDFA and the lender.

## Reporting Requirements

### Lender Reports

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

### Loan Activity Account Statement

The lender is to submit to the Authority a monthly account statement which reflects all loan activity for the period within ten (10) days of the previous calendar month's end. Interest, fees and service charges associated with the loan must be remitted on a pro rata basis.

## 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 KYLPP, 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 KYLPP, the participating lender shall:
  - Approve the loan. 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.
  - Submit the loan for review and approval by staff. Provide all certifications and disclosure statements from both the lender and the borrower.
- For loans in which the state's participation will exceed \$1,000,000, submit its application for KEDFA consideration at the next available meeting.
- Enter into a KYLPP participation agreement (includes lender's assurances and borrower's assurances).
- After written approval, the lender may close the loan.
- Remit fees. Loan Participation funds will be transferred electronically to the lender.



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