

11 KAR 3:005. Lender participation.

RELATES TO: KRS 164.740(6), (16), 164.748(5), (13), 20 U.S.C. 1078(B)(1)(U), 1085(d), 34 C.F.R. 682.401(b)(17)(i)(A), (B)

STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 20 U.S.C. 1078(B)(1)(U), 34 C.F.R. 401(b)(17)(i)(A), (B)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(1) authorizes the board to "provide loan guarantees, upon such terms and conditions as the board may prescribe within the limitations provided by KRS 164.740 to 164.785, and the federal act in respect of loans to eligible students." KRS 164.748(5) authorizes the board to "enter into contracts with eligible lenders approved by the state to lend moneys, upon such terms and conditions as may be agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans." The authority is the designated guarantor for the state of Kentucky under the Robert T. Stafford Federal Student Loan Program, the Federal Plus Program, the Federal Consolidation Loan Program, and the Federal Supplemental Loans to Students Program pursuant to the federal act of 1965, as amended (20 U.S.C. 1071 et seq.) and agreements with the secretary. Section 428(b)(1)(U) of the federal act requires the authority to provide for the eligibility of all lenders described in 435(d)(1) of the federal act under reasonable criteria. 34 C.F.R. 682.401(b)(17)(A) requires the authority to establish and disseminate the criteria for lender eligibility. This administrative regulation sets forth the criteria for approval of lender participation and execution of a contract of insurance with eligible lenders. This amendment is necessary to eliminate a geographic limitation on organizations that may participate as lenders, and eliminate definitions now contained in 11 KAR 3:001.

Section 1. (1) In order to be considered for participation in the authority's insured student loan program, a lender shall submit to the authority, if requested, information sufficient to enable the authority to determine the eligibility of the lender and whether it meets the following criteria. In determining whether to enter into a contract of insurance with an applicant, and, if so, what the terms of the contract will be, the authority considers:

(a) Whether the applicant is an organization described in, and not disqualified pursuant to, 435(d) of the federal act (20 U.S.C. 1085(d));

(b) Whether the applicant is capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(c) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting insured student loans;

(d) Whether the applicant has had prior experience with a similar federal, state, or private non-profit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(e) The financial resources of the applicant; and

(f) In the case of a school that is seeking approval as a lender, whether it is accredited.

Section 2. (1) The authority may enter into a contract of insurance with an eligible lender approved by the secretary, if the lender is:

(a) Capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(b) Capable of implementing adequate procedures for making, servicing, and collecting insured student loans; and

(c) Located in any state.

(2) The authority shall issue loan guarantees for lenders under contracts described in Section 3 of this administrative regulation without regard to the residency of the borrower or the state in which the educational institution is located.

(3) In the event that loan guarantees are issued pursuant to subsection (2) of this section, and none of the principal parties (lender, educational institution or borrower) are located in the Commonwealth, then, for purposes of the federal act, the authority shall deem the state in which the participating lender is located to be the area served by the authority.

Section 3. The Contract of Insurance. (1) In order to participate, an eligible lender shall execute a contract of insurance with the authority. No loan guarantee shall be issued by the authority unless it is covered by such an agreement.

(2) In general, under a contract of insurance, the participating lender agrees to comply with all laws, administrative regulations, and other requirements applicable to its participation as a lender. In return the authority agrees to insure each eligible loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The authority may include in a contract of insurance a limit on the duration of the contract and the number or amount of loans the participating lender may make or hold.

(4) Except as otherwise approved by the authority, a contract of insurance with a school lender limits the loans made by that school lender that will be covered by the loan guarantee to those loans made to students, or to parents borrowing on behalf of students, who are:

(a) In attendance at that school;

(b) In attendance at other schools under the same ownership as that school; or

(c) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the authority considers appropriate for loan guarantees.

(5) A limit imposed under subsection (4) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools may be imposed on a school-by-school basis. (19 Ky.R. 1012; eff. 12-9-1992; 21 Ky.R. 47; 908; eff. 9-12-1994; Crt eff. 9-28-2018.)