

## **808 KAR 10:490. Procedures for distributing and using funds from the Securities Fraud Prosecution and Prevention Fund.**

RELATES TO: KRS 292.322

STATUTORY AUTHORITY: KRS 292.322(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.322(6) requires the commissioner to promulgate administrative regulations, in consultation with the Attorney General and local prosecutors, for the use of money in the Securities Fraud Prosecution and Prevention Fund. This administrative regulation establishes the procedures for distributing and using the money from the Securities Fraud Prosecution and Prevention Fund.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 292.310(4).

(2) "Department" is defined by KRS 292.310(7).

(3) "Outside agency" means:

(a) The office of the Kentucky Attorney General;

(b) The office of the United States Attorney;

(c) The office of any county or Commonwealth attorney in Kentucky; or

(d) Any other state or federal regulatory or criminal enforcement agency.

(4) "Securities Fraud Prosecution and Prevention Fund" means the account established under KRS 292.322(1).

Section 2. Authorization for Use of Funds. (1) The commissioner may disburse funds held in the Securities Fraud Prosecution and Prevention Fund to cover the expenses of the department or an outside agency for the purposes of prosecuting or aiding the prosecution of fraudulent securities-related activities, whether arising from an investigation initiated or conducted by the department or from the independent investigation of an outside agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of securities-related fraud, and for consumer education aimed at preventing victimization by securities-related fraud.

(2) Authorized expenses may relate to the following:

(a) Training and equipment;

(b) Investigation;

(c) Trial preparation and trial, including discovery;

(d) Witness expenses;

(e) Travel expenses;

(f) Sentencing;

(g) Appeal; or

(h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds. (1) The department may utilize any of the following for application, approval, and disbursement of funds to an outside agency:

(a) A written agreement or memorandum of understanding with an outside agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the outside agency and shall identify:

1. The effective period;

2. The expenses to be covered;

3. The dollar limit, if any; and

4. The manner and form of billing expenses and the process for disbursement of funds.

(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:

1. The agency applicant name, address, and contact information;
2. A detailed description and estimated amount of the expenses sought to be covered, or if expenses have already been incurred, proof of incurrence of these expenses;
3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and
4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.

(c) For funds sought to be utilized for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all these expenditures which shall include the information required under paragraph (b) of this subsection.

(2) The commissioner shall approve or deny the application for funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.

(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to other agencies shall be based on funds available in the account established under the provisions of KRS 292.322 and the following criteria:

- (1) The likelihood that any investigation or inquiry will lead to criminal prosecution;
- (2) Whether criminal prosecution is imminent; or
- (3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. The commissioner shall not be required to disburse any funds unless the Securities Fraud Prosecution and Prevention Fund contains sufficient funds to cover the agreed disbursements. The commissioner and the department shall not be required to make disbursements from the department's own operating funds.

Section 6. Confidentiality of Information Provided in Funding Applications. The commissioner shall keep confidential and withhold from public inspection all information provided by outside agencies that:

- (1) Is furnished to the department on the express condition that the information remain confidential; or
- (2) The commissioner determines is necessary to withhold to protect the public welfare by avoiding the premature or unwarranted disclosure of information concerning any criminal investigation, prosecution, or litigation. (37 Ky.R. 2511; 2851; eff. 7-1-11; Cr. eff. 2-27-2020.)