

200 KAR 17:010. Guidelines for Infrastructure Revolving Fund.

RELATES TO: KRS 96.540, 147A.021, Chapter 224A

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.112, 224A.113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations in accordance with KRS Chapter 13A to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of infrastructure projects from the Infrastructure Revolving Fund established pursuant to KRS 224A.112.

Section 1. Definitions.

- (1) "Applicant" means any eligible applicant, pursuant to Section 2 of this administrative regulation, that has submitted an application for funds to the Authority.
- (2) "Authority" is defined by KRS 224A.011(4).
- (3) "Closing date" means the date established by the Authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.
- (4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide financial assistance subject to the satisfaction of certain conditions by the applicant on or before the closing date.
- (5) "Kentucky eClearinghouse" means the automated Kentucky State Clearinghouse coordinating the Federal Executive Review Process and Kentucky Intergovernmental Review Process, for which the Department for Local Government, Office of the Governor, has been designated as the single point of contact for federal or state funding financial assistance as required by KRS 147A.021(3)(k).
- (6) "Kentucky State Data Center" means the agency within the Urban Studies Institute of the University of Louisville designated by the Commonwealth to serve as the repository and analyst of data and information generated by the U. S. Census Bureau.
- (7) "Median household income" means the statistical middle value in household income, considering all households in Kentucky, with an equal number of households above and below the middle value, as determined by the Kentucky State Data Center.
- (8) "Regionalization" means the creation of expanded service areas which take in a large geographic area of multiple systems; the creation of multijurisdictional utility commissions, special districts, authorities, or corporations; the utilization of interlocal cooperation agreements; the consolidated operation or management of multiple systems which may include regional facilities, smaller systems, or onsite systems; or the merger, consolidation, or combination of two (2) or more existing facilities or systems.

Section 2. Eligible Applicants.

- (1) Any governmental agency, as defined in KRS 224A.011, or investor-owned water system, as provided for in KRS 96.540, 224A.306, 224A.308, and 224A.310, shall be eligible to apply to receive financial assistance for construction or acquisition of infrastructure projects.
- (2) Each applicant shall have or shall attain the legal authority necessary for constructing, operating, and maintaining, the proposed infrastructure project. The applicant shall also have the legal authority to obtain, give security for, and repay a proposed loan. The applicant shall be responsible for operating, maintaining and managing the infrastructure project and providing for its continued availability and use at rates and terms that shall be adequate to meet its obligations as they become due, including any loan or loans outstanding. If the infrastructure project is to be operated, maintained, or managed by a third party under contract, management agreement, or written lease, the applicant shall continue to be responsible for compliance with the requirements of this section.

Section 3. Eligible Infrastructure Projects. Monies in the Infrastructure Revolving Fund shall be used for infrastructure projects that will enhance the health, safety, and welfare in local communities. Eligible activities shall include infrastructure projects as defined in KRS 224A.011(16).

Section 4. Submission Requirements and Review Process.

- (1) An application shall be submitted to the Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Attention: Executive Director.
- (2) Application forms may be obtained from the Authority.
- (3) Applicants may supplement their applications during the review process to clarify or explain the project scope, funds pledged as repayment of the loan, or make adjustments in the application to enhance the programmatic or financial feasibility of the project.
- (4) Applicants shall be required to submit to the Authority a current endorsement letter from the Kentucky eClearinghouse.

Section 5. Criteria for Awarding Financial Assistance.

- (1) The Authority shall select eligible projects for financial assistance taking into consideration the following:
 - (a) Total cost of the project;
 - (b) Availability of other funding for the project;
 - (c) Number of unserved and underserved households;
 - (d) Regional impact of the project; and
 - (e) Consistency with the Area Water Management Plan (if applicable).
- (2) Financial review of the project applications shall include analysis of:
 - (a) The appropriateness and adequacy of revenues pledged for the repayment of financial assistance;
 - (b) The validity of the assumptions used to project new revenues resulting from the project;
 - (c) Security of monies other than the infrastructure financial assistance pledged to fund the project cost;
 - (d) Ability of the applicant to provide for maintenance and operations cost of the project and related public service system;
 - (e) Ability of the applicant to service existing debt of the system and debt related to the project; and
 - (f) Ability of the Authority to finance the applicant project using the financing programs permitted by state and federal law or regulation.

Section 6. Financial Assistance Process.

- (1) Upon completion of the credit review by the Authority, the application shall be submitted to the Authority's board for final action. The credit review shall include an analysis of the applicant's ability to generate sufficient revenue based on financial statements provided by the applicant to cover operating costs and to repay the required principal, interest, fees, and reserves required by receipt of the financial assistance.
- (2) If the Authority's board approves the application, a Conditional Commitment Letter shall be issued to the applicant. This letter shall set forth the conditions and documentations required prior to execution of an assistance agreement. Funds shall not be provided until the assistance agreement is fully executed. The commitment shall be made upon the Authority's satisfaction that the project proposed is financially feasible, the applicant is credit worthy and the project shall comply with all technical and program requirements set forth in state and federal law and regulations including certification by the applicant as to compliance with KRS 224A.306 requiring a uniform system of accounts and cost-based rates.

(3)

(a) The Authority shall establish interest rates based on:

1. Prevailing market conditions;
2. Availability of funds; and
3. Demand for financial assistance.

(b) The executive director of the Authority shall recommend rates to the Authority's board for approval at least annually.

(c) The rate of interest on each financial assistance shall be set forth in the conditional commitment letter.

(d) Interest rates shall be offered at the:

1. Standard rate; and
2. A nonstandard rate or rates, which may be lower than the standard rate.

(e) Applicants shall receive the standard rate of interest unless they qualify for a nonstandard rate.

(f) An applicant shall qualify for a nonstandard rate if:

1. The median household income of the applicant's jurisdiction or service area as published by the Kentucky State Data Center is below the state median household income;
2. The applicant can document that the median household income of the users in the project area is lower than the state median household income published by the Kentucky State Data Center;
3. There is as set out in Section 1(8) of this administrative regulation and verified by the Authority; or
4. There exists an order or judgment addressing environmental noncompliance; or
5. Other criteria relating to public health or safety, environmental concerns, or financial considerations that the Authority may determine from time to time.

(g) If the nature of the project financed by the Authority's financial assistance causes interest on any Authority bonds issued to fund the project to become taxable, the Authority may consider adjustments in the interest rate to reflect the additional costs of Authority funds.

(4) Financial assistance repayments shall not exceed thirty (30) years. Principal and interest shall be payable semiannually, unless the Authority establishes a more frequent payment schedule. The repayment period may be less than thirty (30) years upon election of the Authority.

(a) Interest payments on the outstanding principal amount of the financial assistance shall be paid semiannually and shall commence within six (6) months of the initial disbursement of financial assistance proceeds.

(b) Principal and interest payments shall commence on June 1 or December 1 immediately succeeding the date of the last draw of funds unless the principal payments are directly dependent upon revenues generated from the project. If the principal payments are directly dependent upon revenues, principal payments shall commence on the June 1 or December 1 immediately succeeding the date the project is completed. Principal payments shall be payable semiannually, unless the Authority establishes a more frequent payment schedule. The Authority may also require that repayment occurs via an electronic debit of the applicant's account.

(5) The principal amount of financial assistance shall be equal to the amount approved by the Authority. The final amount of financial assistance may be adjusted by the Authority's director up to ten (10) percent of the amount stated in the Conditional Commitment Letter without further action by the Authority's board, subject to availability of user fees to service the debt, the Commonwealth's Capital Projects and Bond Oversight Committee approval, and Authority funds to provide the increase.

(6) The assistance agreement between the Authority and applicant shall contain terms and conditions that maintain the financial integrity of the Infrastructure Revolving Fund according to the circumstances of each project.

Section 7. Financial Assistance Closing and Extensions. An applicant shall meet all conditions for closing and take action to award contracts for the project within not more than twelve (12) calendar months after the date of the conditional commitment letter. Otherwise, the commitment shall expire. One (1) extension period of up to six (6) months may be granted if needed. If the extension is denied, the financial assistance offer may be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the commitment may be rescinded. The applicant may reapply for any project for which the commitment has expired or rescinded under this section.

Section 8. Authority to Administer the Program. The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant at reasonable intervals. The Authority shall monitor the cash flows of the project and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation.

Section 9. Administrative Fees. There shall be an annual administrative fee of two-tenths (0.2) percent charged on the unpaid balance of all financial assistance. This fee shall apply to the unpaid balance of the financial assistance and shall be used to defray the Authority's expenses of servicing the financial assistance and necessary operating expenses of the program.

(16 Ky.R. 89; Am. 341; eff. 8-22-1989; 35 Ky.R. 2474; 36 Ky.R. 21; eff. 7-29-09; Crt eff. 2-28-2020.)