

Risk-Sharing Monitoring Manual

(Revised 9/2014)

Introduction

Kentucky Housing Corporation (KHC), the state housing finance agency, was created by the 1972 General Assembly to provide affordable housing opportunities. As a self-supporting, public corporation, KHC offers typically lower-than-market interest rate home mortgages, housing production financing, homeownership education/counseling, rental assistance, housing rehabilitation, and supportive housing programs for special needs populations, including the homeless.

The U.S. Department of Housing and Urban Development (HUD) multifamily Risk-Sharing Program was codified as Section 542(c) of the federal Housing and Community Development Act of 1992. KHC chose to participate at the 75 percent level as a Tier II partner with HUD and the parties entered into a formal Risk-Sharing agreement dated May 5, 1994. On a limited basis, KHC has been a Tier I partner splitting the risk equally with HUD.

KHC must adhere to its agreement with HUD when administering the program. Included in KHC's obligations under the agreement is to perform periodic monitoring of the properties financed through the program. Included therein are (1) physical inspections of the properties, (2) financial management, and (3) on-site and/or a desk review compliance/management monitoring.

In addition to this Risk-Sharing Monitoring Manual, the following HUD handbooks are used as reference. In the event of a conflict between any of the provisions of this manual and HUD's laws and regulations, HUD's laws and regulations will serve as primary guidance:

- HUD HB 4350-1 Multifamily Asset Management and Project Servicing
- HUD HB 4370.1 Reviewing Annual and Monthly Financial Reports
- HUD HB 4590.0 Risk-Sharing Projects

Corporate Asset Management Structure

The Asset and Account Management and Loan Servicing departments at KHC have the primary responsibility of ensuring compliance with the requirements of the Risk-Sharing Program: The two teams perform the various functions required of the Risk-Sharing Program. The functions per department are as follows:

Asset and Account Management Department:

- Compliance Reviews
- Financial Review and Analysis
- Overall Asset Management
- REAC and other physical inspections

Loan Servicing – (Multifamily Division):

- Loan Servicing Functions:
- Owner / Management Certifications
- Replacement Reserves
- Real Estate Assessment Center (REAC) Coordination

Asset Compliance Reviews

The Asset Compliance staff performs the on-site compliance reviews of the Risk-Sharing projects. With the exception of one of the projects, all Risk-Sharing projects have other sources of affordable housing financing allocated by the Corporation, i.e., Low Income Housing Tax Credit (Housing Credit), HOME. As a result, the Compliance staff conducts on-site monitoring reviews at least once every three years (often every one or two years due to the amount of HOME funds in the project) to review project files to ensure adherence to the programmatic rent and income restrictions. Also, the physical condition of the project is monitored to ensure adherence to Uniform Physical Condition Standards for Housing Credit projects and/or Housing Quality Standards for HOME projects.

In addition, the Asset Compliance staff will also conduct a management review of the project at least once every three years. Depending on the overall rating assigned to the project during the previous management review, KHC may conduct such reviews as often as annually.

Loan Servicing

The Multi-family Loan Servicing staff is responsible for the loan servicing function of multifamily projects for the Corporation. In regard to Risk-Sharing projects, this includes, but is not limited to:

- Processing of monthly debt service payments.
- Processing of monthly reserve for replacement.
- Ensuring receipt of owners/managers certifications.
- Ensuring receipt of Affirmative Fair Housing Marketing Plans.
- Ensuring REAC inspections are conducted within required time frames.
- Ensuring annual financial statements (AFS) will be submitted/reviewed within required time frames.
- Ensuring receipt of required monthly quarterly reports for new and/or projects deemed “troubled.”
- Submitting required semiannual reports to HUD.

Delinquencies and Defaults

Monthly debt service payments, including escrows for taxes, insurance, and reserve for replacement, are due to KHC the 1st of each month. Payments that are not received by the 16th of each month are considered delinquent and late charges will accrue. The full payment is due by the 16th; if a partial payment is made, the loan will still be considered delinquent.

If payment is not received by the 16th, KHC will contact the owner and/or management company either by telephone, e-mail, or written correspondence informing them of the status of the delinquency. Loans that are delinquent as of the 16th of the month will also be reported in HUD’s Multifamily Delinquency and Default Reporting (MDDR) System.

Upon receipt of subsequent payments, KHC will update the MDDR System accordingly. KHC may waive any accrued late charges if extenuating circumstances prevented the payment of the loan on time. Such waivers are at the discretion of KHC.

KHC will adhere to all requirements of HUD's MDDR System and the Risk-Sharing Program so as to not jeopardize the insurance on a property. KHC will commence with the filing of a claim to HUD and foreclosure proceedings on any loan that remains delinquent 65-75 days from the default date. As outlined in the MDDR System procedures, KHC may request HUD approval to extend this 75-day period if extenuating circumstances warrant such a request. KHC will make the determination if such an extension should be requested.

KHC will adhere to guidance provided in Chapter 10 of HUD Handbook 4590.01 when working with Risk-Sharing loans in default.

Financial Monitoring

Quarterly Reporting Requirements

Commencing with the issuance of the Certificate of Occupancy (or no later than the date of the permanent loan closing), Risk-Sharing projects will be required to submit quarterly reports. Such reports will be submitted to the Asset Management-Multifamily Loan Servicing staff. Required documents will include, but not be limited to:

- Occupancy reports.
- Monthly financial statements including balance sheet or changes in net assets, income statements indicating Quarter-to-Date and Year-to-Date totals and statements of cash flow.
- Or other suitable documentation as determined by KHC.

Quarterly reports must be submitted by the 20th of each month following a quarter end. Reports must be submitted, at a minimum, until the project achieves an 85 percent occupancy rate and retains such occupancy for three consecutive months. KHC reserves the right to extend the reporting requirement as deemed necessary.

In addition, a Risk-Sharing project may be required to begin submitting Quarterly reports if KHC deems the project troubled. If a project is deemed troubled, it will be placed on a corporate watch list for more regular periodic reviews. In making such a decision, KHC will consider such factors as (list is not all inclusive):

- Occupancy
- Cash flow
- Compliance violations
- Annual audit findings (as noted in the annual audited financial statements)
- Incidents of delinquent payments of debt service and/or Reserve for Replacement and/or requests for forbearance of such payments
- Change in property management
- Low REAC scores (or any other property standards required of such project)

Additional information regarding the watch list can be found in KHC's Watch List Procedures.

Annual Audited Financial Statements (AFS)

Owners must submit AFS for Risk-Sharing projects within 90 days of the end of their fiscal year. Audit requirements are outlined in KHC's Annual Financial Statement and Compilation Requirements document. As noted in the Regulatory Agreement between KHC and the owner, the AFS are due within 30 days of the end of the fiscal year; however, the HUD Consolidated Audit Guide (7/2008) states on pages 3-4 that the Uniform Financial Reporting Standards supersede these requirements and allow project owners 90 days.

Owners should submit their AFS to KHC's Asset Management-Multifamily Servicing staff. E-mailed electronic copies are preferred. Upon receipt, the audit will be date stamped (paper copies) and forwarded onto the appropriate staff member assigned to conduct the review. Staff will review the AFS using KHC's Loan Project Performance Evaluation Criteria and the analysis form developed by KHC's Asset Management-Multifamily Loan Servicing staff. HUD Handbook 4370.1 will also be used as a guide.

KHC staff will conduct a preliminary review of the audit within 30 days of receipt. During the initial review, staff will note any obvious shortcomings of the audit (such as a non-HUD audit) and any findings reported. Staff will immediately address obvious audit shortcomings.

Within 60 days of the receipt of the audit, staff will conduct a full review of the audit on projects that received a ranking of "doubtful" on the prior year's AFS. In addition, if the AFS reflect unresolved and significant findings, this 60-day time frame will be utilized. Likewise, projects that received a ranking of "substandard" on the prior year's AFS will be reviewed within 90 days of receipt of the audit, "special mention" within 120 days, and "pass/watch or pass" within 150 days.

If the review reveals that additional clarification is needed from the project owner, the owner and/or management company will be contacted to request additional information and/or noting that the owner must implement needed changes to internal policies. If the review of the AFS reveals that policy changes are required, the Compliance staff will also follow up to ensure that such changes have been implemented during the next Risk-Sharing management review.

After each AFS has been reviewed, the staff member performing the review will give the project a preliminary financial ranking of "pass", "substandard", "special mention", "pass/watch" or "pass. The project will then be reviewed by KHC's watch list committee at its next meeting. The preliminary ranking given from the AFS review will be supplemented with input from compliance and loan servicing. A final project ranking will be determined. The committee meeting will also serve as the first discussion regarding possible actions/resolutions for "troubled" projects. After the committee meeting, the Asset Management staff will e-mail copies of the audit, review forms, and any applicable follow-up letters, to HUD for their review.

Risk-Sharing projects that are placed into service during the last quarter of their fiscal year will not be required to complete an end-of-the-year audit for that particular year. Instead, this "stub" period will be added to the AFS submitted for the subsequent fiscal year (e.g., the owner would submit financial statements covering up to 15 months). This procedure is known as deferment of the reporting period. A deferment is different from a waiver in that the financial submission requirement is not waived, but the timing of the submission is deferred to a later date.

Annual Budget

Projects are required to submit their budgets to KHC on an annual basis through the TDCS system as a part of their annual performance report submission. KHC reserves the right to request a more detailed budget.

Annual Performance Report

Property owners must submit to KHC by March 15th of each year an annual performance report certifying that the project remains in compliance with the rules, regulations, and laws set forth in the loan documents and/or the Land Use Restriction Agreement for the property.

On-Site Management Review

KHC's Asset Compliance staff will be primarily responsible for performing management reviews of the Risk-Sharing portfolio as set forth in the following instructions. On-site reviews will be conducted at least every three years and more frequently, if warranted. A review of tenant files and management practices will be completed during each on-site management review. Please note the following in regard to KHC's policies/procedures for management reviews.

- KHC will conduct a project's initial management review within one year from the issuance of the Certificate of Occupancy.
- KHC will ensure that ownership has been made fully aware of ongoing monitoring activities by issuing written communication to the owner entity with a copy going to the management company (if applicable) or any additional parties as identified by the ownership.
- KHC will utilize a portion of HUD Form 9834 as a guide when conducting such reviews. Specifically, KHC will add certain questions on the Summary Report (page 1) and Part II – On-Site Review to their form. It is understood that some of the questions in Part II only pertain to the Project-Based Program and are not applicable to Risk-Sharing projects.
- KHC will utilize guidance as provided by the Louisville HUD Office and HUD Handbook 4350.1 in assigning ratings in each of the following categories:
 - General Appearance and Security
 - Follow Up and Monitoring of Physical Inspections
 - Maintenance and Standard Operating Procedures
 - Financial Management/Procurement
 - Leasing and Occupancy
 - Tenant/Management Relations
 - General Management Practices
 - Overall Rating
- Most Risk-Sharing projects are combined with another source of affordable housing financing, i.e., Housing Credit, HOME, etc. As a result, these programs may necessitate that on-site physical reviews, as well as file reviews, be conducted at regular intervals, some as often as annually. This will not necessarily mean that a management review will be conducted as often.

- When assigning a rating to the various categories, KHC's considerations will include, but not be limited to:
 - Establishment by management of effective procedures necessary to carry out the requirements of the Risk-Sharing Program.
 - Adherence to such established procedures.
 - Incidence of occurrences of non-adherence and resulting outcomes of such non-adherence.
 - Willingness of management to revise/adopt procedures as identified necessary by KHC.

- If a project is deemed by KHC to have major adverse findings in a category, that category will receive a ranking of "unsatisfactory." One single instance may not result in such a ranking. The project must demonstrate a pattern of such instances of noncompliance. Examples of major adverse findings include, but are not limited to:
 - Willful failure to maintain the property.
 - Unauthorized distributions.
 - Willful failure to pay monthly debt service/reserve for replacement payments.
 - Implementation of unauthorized rent increases (if applicable).
 - Failure to certify/recertify tenants.
 - Fraudulent certifications.
 - Failure to comply with fair housing laws.

- Prior to finalizing the summary report for a particular Risk-Sharing project, KHC will review the summary reports completed on previous management reviews to ensure consistency in the assigned rankings.

- Overall rating – To be assigned a specific overall rating, a project must have received a majority of such ratings in the seven individual categories. For example, for a project to receive an "excellent" rating, it must have been rated "excellent" in at least four of the seven individual categories.

If a review is completed so that none of the individual ratings result in a majority, i.e., three "excellent," three "good," and one "satisfactory," KHC will use its professional judgment in assigning the overall rating.

A review cannot receive an overall rating of "excellent" unless it has a REAC score of 90 or higher. Likewise, a score of 80-90 would be needed to receive a "good" rating and a 60-80 to receive a "satisfactory" rating. In addition to the above criteria, a review cannot receive an overall "excellent" rating if it has more than one minor finding, as defined by HUD. Likewise, a "good" rating cannot be given if the review notes more than three minor findings. In the event that a property owner can document that all findings have been corrected, KHC can consider changing the overall rating until the next scheduled REAC inspection. The property owner must request the exception from KHC in writing and include all supporting documentation.

"Satisfactory" and below ratings will be at the discretion of the reviewer based on the quantity and type of findings (major and minor).

An overall rating may not exceed the "satisfactory" rating if any of the seven individual categories received a rating of "unsatisfactory."

- Repainting of exterior buildings.
- Extensive replacement of siding.
- Replacement of carpeting, tile, and/or linoleum (reviewed case-by-case).
- Replacement of or major repairs to swimming pools and related equipment.
- Other improvements that, in the opinion of the mortgagee, enhance the mortgage security, place the property in a more favorable competitive position in the rental market, or are necessary to comply with changes in local, state, or federal law, and would not inordinately deplete the reserve for replacement.

Ineligible expenditures include, but are not limited to:

- Repainting of interior areas.
- Replacement of small appliance parts such as burners, elements, switches, valves, wires, etc.
- Minor HVAC repairs such as valves, thermostat, switch and filter replacements, and cleaning.
- Minor repairs to roofs, gutters, and downspouts.
- Minor paving repairs.
- Caulking and sealing.
- Window and screen repairs.
- Purchase of maintenance tools and equipment, such as lawn mowers, weed eaters, and snow blowers.
- Purchase of minor office equipment.
- Inspection, recharging, and replacement of fire extinguishers.
- Other items traditionally considered being routine maintenance.

In addition, please note:

- No draws may be requested within the first 24 months after the loan has had the final closing and the loan is placed into service. (Note: Exceptions may be made in the event of an emergency request and will be reviewed on a case-by-case basis.)
- The request(s) for withdrawal may be made no more than quarterly, except in the event of an emergency, i.e., water damage, roof damage, and other items affecting the physical condition of the property.
- The reserve balance may not be drawn below a balance equal to 24 months of reserve deposits except in certain cases as mentioned above.
- Mortgagor shall make all requests in writing and shall provide a detailed description of the work done or scheduled to be completed. The description must identify the specific location, including building number and unit number; a physical inspection may be performed to ensure the workmanship and/or the replacement of the expenditure. KHC requires that specific forms be used when submitting a request for a disbursement from a project's reserve for replacement account.
- An analysis of the reserve for replacement account must be performed by the owner/management company periodically to assure the funds are adequate and in compliance with procedures.
- If the request is for reimbursement for work that has already been completed, a copy of the paid invoice(s) must accompany the request. If needed, an inspection will be completed prior to the release of funds.
- Generally, if the request is in excess of \$20,000.00 or 20 percent of the reserve balance, an inspection will be conducted prior to the release of funds. Otherwise, the repairs/expenditures will be inspected at the next physical inspection or management review. If any paid releases from the account are found to be incomplete,

inadequate, or excessive, the owner/management may be required to reimburse the reserve account.

- Owners/Management may not request a suspension of the deposit to the account until the balance reaches the established monthly reserve deposit times 144 months (12 years). The owner/management must be in good standing with KHC and HUD. The property must be maintained in a good physical condition. If a suspension is approved and the balance falls below the above-mentioned threshold, then the monthly deposits will resume. This will be determined on a case by case basis.
- In rare cases, as requested by the owner, KHC may allow an owner to reserve for replacement funds to be applied toward a monthly debt service payment if such allowance would prevent an incident of default. Any such disbursements from the reserve account must be repaid at a later date. KHC will work with the owner to determine a repayment plan. Please note that such allowance may also require HUD approval and will be used sparingly.

Rent and Income Restrictions

The Regulatory Agreement states that the owner of a Risk-Sharing property has entered into a contract and has agreed that, in conjunction with all phases of operation of the property, the owner and any subsequent purchaser of the property shall comply with the following items.

- A. The residents occupying the income-restricted units must be income-eligible as outlined in the loan documents. The Risk-Sharing Program uses the rent and income restrictions of 40/60 or 20/50 as used in the Housing Credit program. However, depending upon the various other financing used in a project, as well as the pledges made by the owner in the original application for funding, more stringent restrictions may apply.
- B. Any affordable unit shall retain its affordability designated at the time of Move-in until the unit is reoccupied. Certification of residents' eligibility and income verifications must be present in the tenant files for inspection by KHC. Please note that certain exceptions apply for projects combined with other sources of affordable financing.
- C. Income limits shall not exceed those stipulated in writing by KHC. Income Limits that are annually updated by HUD will provide the income limitations calculated by KHC.
- D. The gross rent charged for very low-income, low-income, and moderate-income units shall not exceed the rent limits stipulated in writing with KHC. Income limits that are updated annually by HUD provide the basis for gross Rent and income limitations calculated by KHC.
- E. Rent-restricted units shall be representative of each type of unit found on the Property and must be integrated with all other units in the development. All residents in such units shall enjoy access to all common facilities of the property.
- F. Households must be deemed income-eligible prior to move-in by having all household income and assets third-party verified as outlined in HUD Handbook 4350.3. Furthermore, a household's income and assets must be recertified annually via third-party documentation. Please note that certain exceptions may

apply to the requirement to annually recertify a household's income and assets for Risk-Sharing projects allocated Housing Credits in which 100 percent of the units are considered Housing Credit units and which have been awarded an annual recertification waiver by the Internal Revenue Service.

Requests for Rent Increases

For projects allocated a Risk-Sharing loan only, requests for rent increases must be initiated in writing by the owner/management.

- A. The letter needs to include:
 - A summary of the reason(s) why an increase in the rent amount is needed and the effective date the increase should become effective.
 - The new proposed rent amount by number of bedrooms.
 - Rent amount may not exceed the applicable 50 percent or 60 percent rent limit (as used for the Housing Credit program) in effect at that time.
- B. Upon receipt of the letter containing all of the needed information, KHC will review and determine if the request should be approved.
- C. Approved requests shall be in writing and shall preclude the submission of additional requests for rent increases for a period of 12 months.
- D. Properties utilizing Housing Credits, HOME, etc., are exempt from having to submit requests for rent increases as long as all increases are consistent with the rents approved by KHC at the time of the initial loan closing.

Owner Management Agent Certification

Projects allocated a Risk-Sharing loan are required to submit an Owner Management Agent Certification prior to the initial loan closing. As this agreement expires or when a new management company is hired, a new certification must be submitted and approved by KHC.

- One copy of the HUD form (9839-B) must be signed by the appropriate owner and management agent and submitted to KHC. All four pages of the form must be completed. In addition, a copy of the management contract detailing the daily duties of the management agent must also be submitted to KHC.
- The certification may be structured so that it automatically renews annually.
- Upon receipt, KHC will review the certification and approve, as appropriate. Upon approval, a copy will be returned to the project and a copy retained by KHC. The fee structure cannot exceed 8.5 percent of the effective gross rent, as underwritten by KHC. A lesser fee can be used as agreed to by the owner and management agent.
- A fixed-fee structure, i.e., \$35 per unit, may be used as long as this does not result in a total fee in excess of the percentage maximum allowed by KHC.
- In rare cases, KHC may underwrite a project with a higher percentage fee structure. The necessity to do so must accompany the project file. Also, in rare cases during the term of the loan, KHC may allow a management fee to exceed the applicable

percentage limit. Once again, documentation of the necessity to do so must be included in the project file.

- KHC will monitor for adherence to the allowable management fee during the Risk-Sharing management review, conducted at least once every three years.

Affirmative Fair Housing Marketing Plans (AFHMP)

- Projects allocated a Risk-Sharing loan are required to submit an AFHMP as a part of their technical submission items. The appropriate form to complete is HUD Form 935.2 and is available on KHC's Web site.
- One Copy of the HUD form must be signed by the appropriate owner representative and submitted to KHC and should also include the items referenced in the form. Such items may include:
 - Brochures, letters, and/or handouts to be used to advertise the project.
 - Photograph of project sign.
 - Informational correspondence about the project proposed to be used to inform community contacts.
 - Narrative of fair housing training to be provided to management staff.
- Upon receipt, KHC will review the AFHMP and approve, as appropriate. An approved copy will be returned to the project.
- The project will only be required to submit an updated AFHMP if the marketing efforts/target populations change or if there is a change in the management company. It is the owner's responsibility to maintain a file for Kentucky Housing's review detailing the actual efforts used to market the project.
- The AFHMP used by a Risk-Sharing project must be reviewed every five years (at a minimum) and updated as needed. KHC will contact each project every five years as a reminder of this requirement. Upon review by the owner, if the AFHMP requires no updates, it is not necessary to send any documentation to KHC. KHC will operate under the premise that the project will continue to utilize the marketing efforts noted in the originally approved plan.

Transfer of Physical Assets or Change in Property Management APPS-2530 HUD Approval Process

Prior to the issuance of a firm commitment by HUD and KHC to allocate a project a Risk-Sharing loan, the development team members (owner and management company, specifically) must be approved through HUD's Active Partners Performance System (APPS). This is often referred to as the 2530 approval process.

- If at any time during the term of the loan the management company changes, the new company must be approved via the APPS prior to execution of a management agreement. Such HUD approval through the system may take up to 60 days. The Risk-Sharing property owner should plan accordingly.
- Nonprofit ownership entities must also adhere to the 2530 process at any time there is a change in board members.

- Also, if at any time during the term of the loan the original owner wishes to transfer ownership to a subsequent entity, the assuming entity must receive approval via the APPS prior to such a transfer. Please refer to Chapter 13 of HUD Handbook 4350.1 for guidance on the transfer of physical assets (TPA) process. Please note that for Risk-Sharing projects also allocated Housing Credits, this TPA process (albeit modified) applies at any time there is a change in the general partner. Once again, the entities involved should plan accordingly. A delay in receiving this approval could delay the transfer of the property.
- Prior to a change in management or ownership, KHC should be contacted and made aware of the proposed change. At that time, KHC will provide the appropriate HUD forms to the owner for completion. Upon receipt by KHC, the forms will be forwarded to HUD for approval via the APPS. In regard to a change in ownership, once the approval has been obtained through the APPS, KHC can prepare the appropriate legal documents, as needed. For changes in property management, once the APPS approval has been obtained, KHC must also receive copies of the management agreement between the owner and new management company, as well as the Owner/Management Certification (HUD Form 9839-B).