



**Kentucky Housing**  
*Corporation*

*Leading the way home...*

# 2013

# QUALIFIED ALLOCATION PLAN



Effective for allocations made after December 31, 2011, until December 31, 2013, unless amended.

**AMENDED**



COMMONWEALTH OF KENTUCKY  
**OFFICE OF THE GOVERNOR**

STEVEN L. BESHEAR  
GOVERNOR

700 CAPITOL AVENUE  
SUITE 100  
FRANKFORT, KY 40601  
(502) 564-2611  
FAX: (502) 564-2517

February 8, 2013

Mr. Richard L. McQuady  
Chief Executive Officer  
Kentucky Housing Corporation  
1231 Louisville Rd.  
Frankfort, KY 40601

Subject: Low Income Housing Tax Credit Program  
Approval of the 2013 State Qualified Allocation Plan

Dear Mr. McQuady:

In accordance with the recommendation of the Executive Committee of the Board of Directors of Kentucky Housing Corporation and pursuant to Section 42 (m)(I)(A)(i) of the Internal Revenue Code of 1986, as amended, I hereby approve the 2013 State Qualified Allocation Plan for the Low Income Housing Tax Credit program.

Kentucky Housing Corporation, the duly authorized state Low Income Housing Tax Credit agency in the Commonwealth of Kentucky, shall use the 2013 State Qualified Allocation Plan to administer the federal Low Income Housing Tax Credit program, effective the date of this approval letter, through December 31, 2013, unless otherwise amended.

Sincerely,

A handwritten signature in black ink, appearing to read "S. L. Beshear".

Steven L. Beshear



## MEMORANDUM

FROM: Richard L. McQuady,   
Chief Executive Officer

DATE: March 29, 2012

SUBJECT: Amendment to the 2013 Qualified Allocation Plan  
Application Submission Due Date

In response to the destruction left in the wake of the severe storms and tornados that touched down across the Commonwealth on March 2, 2012, Kentucky Housing Corporation (KHC) is extending the application due date for the 2013 Housing Credit funding round to allow developers additional time to submit applications to address the housing needs in the affected areas.

The original due date for application submission was Monday, April 9, 2012. That date has now been extended to **Friday, April 20, 2012**. All applicants must submit their applications via KHC's online application system, which will open on Monday, April 9, 2012, and close on Friday, April 20, 2012.

Any questions regarding this amendment or the contents of the Qualified Allocation Plan should be directed to KHC's Andrew Hawes, director of Multifamily Finance, toll-free in Kentucky at (800) 633-8896 or (502) 564-7630, extension 326; TTY 711; or e-mail [ahawes@kyhousing.org](mailto:ahawes@kyhousing.org).



# 2013 QUALIFIED ALLOCATION PLAN

<b>Table of Contents</b>	<b>Page</b>
<b>Introduction</b>	4
<b>Qualified Allocation Plan</b>	5
Requirements of the Qualified Allocation Plan	5
Public Hearing Requirements	5
Approval Process	6
Open Records Request	6
<b>Annual Credit Available</b>	6
Types of Credit	6
Overview of Available Credit	8
Nonprofit Participants	9
Competitive Pools and Set-Asides	9
Waiting List	11
Tax-Exempt Bond Financing	11
<b>Development Team Characteristics</b>	12
Experience and Capacity Review	13
Capacity Review Time Frame and Response Period	13
<b>Applicable Program Fees</b>	14
<b>Housing Credit Requirements</b>	15
Letter of Support	15
Housing Credit Limit	15
Modifications to Definition of Eligible Basis (130 Percent Rule, Qualified Census Tract, Difficult Development Area, and Areas Defined by KHC)	16
Housing Credit Limit with 130 Percent Bonus	16
Community Service Facility	17
Acquisition of Existing Buildings	18
Maximum Credit Cap Requirements	18
Maximum Fees	20
Developer Fee	20
Minimum Set-Asides	20
Cost Containment	21
Building Requirements	21
Plan Approval	21
Capital/Physical Needs Assessment	22
Minimum Square Footage	22
Eligible Uses of Housing Credit	22
Financial Requirements	23
<b>Technical Assistance</b>	24

## Table of Contents (continued)

	<b>Page</b>
<b>Application Submission Requirements</b>	25
<b>Application Review Process</b>	26
Review Process	27
Credit Review	27
Partial Awards	29
Conditional Approval Process	29
<b>Technical Submission Stage</b>	30
Reservation Notice	30
Deadlines	30
Market Study	31
Carryover Allocation Requirement/Cost Certification	32
Recapture of Carryover Allocation	32
<b>Placed-In-Service Stage</b>	33
Pre-8609	33
Final Cost Certification	33
Land Use Restriction Agreement (LURA)	33
IRS Form(s) 8609	34
<b>Policies</b>	34
EEOC Requirements	34
Changes to Project Design	34
Inspections	34
Subsidy Layering Review	35
Identity of Interest	35
Material Participation by Nonprofit Organizations	36
Recapture of Housing Credit under Reservation	36
Qualified Contract Process	36
<b>Compliance Monitoring Procedure</b>	38
<b>Effective Date</b>	39
<b>Notice to Applicants</b>	40
<b>Disclaimer</b>	40

## INTRODUCTION

Kentucky Housing Corporation (KHC) is the designated administrator of the federal Low Income Housing Tax Credit (Housing Credit) for Kentucky under Section (§) 42 of the Internal Revenue Code (IRC) of 1986, as amended (Code), and all regulations promulgated there under.

The Housing Credit program was created by the Tax Reform Act of 1986. This program is one of the few remaining tax incentives for the construction, rehabilitation, and preservation of low-cost rental housing. Investors in affordable housing can claim Housing Credit against their federal income tax liability for ten years. The property must remain affordable for a minimum of 33 years.

The federal laws establishing the Housing Credit program are subject to change. Final interpretations of certain rules and regulations governing various facets of the program have not yet been issued by the U.S. Department of Treasury. Therefore, it is strongly suggested that applicants interested in utilizing the program in their financing package contact their tax accountant and/or attorney prior to submitting an application. While KHC may respond to requests for technical assistance in applying for Housing Credits, applicants may not rely on KHC for tax advice.

For the 2013 Qualified Allocation Plan (QAP), KHC encouraged suggestions and comments from the affordable housing industry. Housing professionals and experts representing a wide range of interests and specialties participated in these discussions and contributed to the development of the 2013 QAP. KHC wishes to publicly acknowledge their contribution and to thank them for their time and effort.

In addition, as required by the Code, KHC presented the draft QAP for public review and comment at a public hearing on December 5, 2011.

Demand for Housing Credits often exceeds supply. In determining how and where to allocate Housing Credits, KHC must consider the need for affordable housing throughout the state of Kentucky. The purpose of KHC's QAP is to reserve federal tax credits for the creation and maintenance of rental housing units for low- and very low- income households in Kentucky in such a way as to further the following principles and priorities:

- Reserve credits in order to provide an equitable distribution throughout the state and provide a reasonable mix of affordable housing projects, both in number of units and the populations served (family, elderly, special needs);
- Reserve credits to as many rental housing projects as possible, considering cost, size, location, income mix of proposals, and environmental sustainability;
- Reserve credits in order to provide opportunities to a variety of qualified sponsors, both for-profit and nonprofit; and
- Reserve only the amount of credit that KHC determines to be necessary for the financial feasibility of a project and its viability as a qualified low-income housing project throughout the credit period.

## Qualified Allocation Plan

Each year, the state allocating agency for the Housing Credit program is required to publish a plan describing the process for the allocation of Housing Credits. This plan is called the Qualified Allocation Plan (QAP). The QAP establishes the administrative process governing the allocation of federal Housing Credits to qualifying developments that address low-income housing priorities throughout the state. This plan is intended to provide a fair and competitive means of utilizing the credits to the fullest extent possible each year for the creation and preservation of rental housing for lower-income households. The requirement that states develop a plan was established in the Omnibus Reconciliation Act of 1989.

### Requirements of the Qualified Allocation Plan

Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan that sets forth certain selection criteria to be used in determining priorities that include the following:

- Serving the lowest-income tenants
- Serving qualified tenants for the longest periods
- Contributing to a concerted community revitalization development plan

The Code under Section 42(m) also states that the selection criteria must take into consideration the following:

- Project location
- Housing needs characteristics
- Project characteristics
- Sponsor characteristics
- Tenant populations with special housing needs
- Tenant populations of individuals with children
- Projects intended for tenant ownership
- Public housing waiting lists
- Energy efficiency
- Historic properties

In addition to the above selection criteria and preferences, KHC, in its sole discretion, shall establish selection criteria and preferences that reflect the housing needs and trends as identified within the Commonwealth of Kentucky.

**NOTE: KHC may choose to modify or waive, on a case-by-case basis, any provision of this QAP that is not mandated by law, to effectuate the full implementation and utilization of the Housing Credit resource and for overall efficiency in the administration of the Low Income Housing Tax Credit program. All modifications or waivers of the QAP will be subject to written approval by the chief executive officer of Kentucky Housing Corporation.**

### Public Hearing Requirements

The draft QAP is subject to a minimum seven-day public comment period. KHC conducted a public hearing on December 5, 2011 to receive comments and accepted written comments through December 23, 2011 either by a formal letter to the attention of Andrew Hawes or e-mail at [rentalqap@kyhousing.org](mailto:rentalqap@kyhousing.org).

The announcement for the public hearing was published through KHC's eGram system, posted to KHC's Web site, and in accordance to the Kentucky open records law requirements.

### **Approval Process**

After public comment, the QAP must receive final approval by KHC's Board of Directors and the Governor of the Commonwealth of Kentucky.

### **Open Records Act Request**

Applicants are advised that materials contained in the application are subject to the requirements of the Kentucky Open Records laws at KRS 61.870-61.884, and the application materials may be viewed and copied by any member of the public. Applicants seeking to claim a statutory exemption to disclosure from open records requests, which may be made, must place all documents viewed as confidential in a sealed envelope marked "Confidential." Applicants should be aware that if an open records request is made for any of the application materials, KHC will make an independent determination of confidentiality and may or may not agree with the applicant's determination regarding the confidentiality of the materials.

KHC will provide a list of all applications received for the 2013 application rounds. The list will be available on KHC's Web site and will contain the funds requested, development team, and contact information, as well as project-specific information.

### **Annual Credit Available**

The total amount of Housing Credit **available to Kentucky for 2013 is estimated to be approximately \$9,546,607 million.** The total is determined from the following:

- \$2.20 plus the cost of living adjustment specified in Section 42(h)(3)(H) x Kentucky's population; based upon 2010 population figures.
- Any unallocated credit from previous years;
- Any returned credit from previous years; and
- Any amount allocated to Kentucky by the IRS from the National Pool.

### **Types of Credit**

- 9 percent credit  
Reflects 70 percent of the present value of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings.
- 4 percent credit  
Reflects approximately 30 percent of the present value of the qualified basis of acquired buildings that are to be substantially rehabilitated.

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication, and marketing. The applicable percentage (that is the 9 percent and 4 percent approximations) of the qualified basis may be claimed annually for ten years as the Low Income Housing Tax Credit. The amount of credit that may be awarded to a building is based upon the depreciable cost of the building and the

portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

The fixed 9 percent credit rate established by the Housing and Economic Recovery Act of 2008 (HERA) will expire on December 30, 2013. All projects that have not placed in service by December 30, 2013 will lose the fixed 9 percent factor, and revert back to the credit percentage factor established by the U.S. Department of Treasury on a monthly basis. Developers cannot lock in the 9 percent factor prior to placing in service.

In an effort to preserve the 9 percent credit factor, KHC will be allocating 2013 housing credits in early 2012 to allow projects to begin construction, with the expectation that the projects will be complete and placed in service prior to the end of 2013.

In order for KHC to allocate the 2013 housing credits in a timely manner and so that awarded projects have the greatest possibility of being placed in service prior to December 30, 2013, KHC will forward commit 60 percent of the anticipated 2013 housing credit to the 2012 housing credit applications that were submitted on October 3, 2011.

KHC will fully allocate the 2012 housing credits to the applications received by their respective pools. KHC will then take all of the unfunded projects (excluding projects requesting HUD or RD assistance), regardless of which pool they applied in, and sort them by score from highest to lowest, and will then allocate 20 percent (approximately \$1,909,321) of the 2013 housing credits. If the final application requires more credit than is available, then it will not be funded.

KHC will allocate 40 percent (approximately \$3,818,642) of 2013 housing credits to new construction and adaptive reuse projects submitted in the 2012 application round. KHC will sort all of the new construction and adaptive reuse projects by their final score and fund them from the highest to lowest score until the credits have been fully allocated.

KHC will have a competitive application round with applications being due on **April 9, 2012** for 20 percent (approximately \$1,909,321) of the 2013 housing credits. This application round will be restricted to one application submission per developer and a maximum credit request of \$500,000 per project. Eligible properties will include new construction, adaptive reuse and non-federally assisted rehabilitation projects.

**HOME & AHTF Funds:** KHC will have available approximately \$2 million of HOME Investment Partnerships Program (HOME) funds and \$1 million Affordable Housing Trust Fund (AHTF) funds for projects applying for 2013 housing credit. Non-credit projects will not be eligible to apply in this round. Please refer to the Rental Guidelines for additional information.

Please note that any 2013 credit forward committed to projects from the October 3, 2011 application round **will not** count toward a user's maximum credit cap for 2012 credit, but **will** be applied to the maximum credit cap for 2013 credit. Projects awarded from the state priority set-aside will also count toward the 2013 credit cap.

Eligible projects for the April 9, 2012 application round are new construction, adaptive reuse and rehabilitation properties that do not have any new or assumed non-KHC federal debt. The credit will be awarded to the highest scoring projects from a single pool. If the pool has credit remaining and it is not sufficient to fully fund the next highest scoring project, that project will not automatically be funded. KHC must ensure the nonprofit set-aside

requirements have been met for the combined allocations of 2013 housing credit. KHC may fund a lower scoring nonprofit project if it is required to meet the nonprofit set-aside requirements.

KHC may allocate the Maximizing Outcomes Pool credit set-aside to the 2013 credit projects where the amount of additional credit needed to fund the next highest scoring project within one of the 2013 credit allocations is at a minimum. KHC will not fully allocate the remaining balance of the Maximizing Outcomes Pool until the final housing credit figures are announced by the federal government in late 2012. The manner in which this credit is allocated will be determined by KHC.

The changes to the 2013 Qualified Allocation Plan are based on comments and recommendations received from our partners through the Developers Forum/ Public Hearing, Investor/Syndicator conference call and through comments submitted to KHC.

Due to the time constraints associated with preserving the 9 percent credit factor, KHC has determined that it is warranted to forward commit 2013 housing credits to projects from the 2012 application round, in addition to a separate competitive application round in April 2012.

**Overview of Available Credit for 2013: Approximately \$9,546,607**

Competitive Pools and Set-Asides	2013 Approximate Amount
A. Competitive Single Pool (April 9, 2012)	\$1,909,321
B. 2013 Forward Commitments for applications submitted on October 3, 2011 (excluding federally-assisted rehabilitation projects)	\$1,909,321
C. 2013 Forward Commitments for new construction and adaptive reuse projects only via applications submitted on October 3, 2011	\$3,818,642
E. State Priority Set-Aside	\$1,524,000
F. Maximizing Outcomes	\$385,323

**☞ Please Note: KHC reserves the right to redistribute Housing Credit into other pools or set-asides as it deems necessary. KHC also reserves the right to allocate Housing Credit to non-specified projects if the credit amount can preserve the long-term viability of a project. Additionally, KHC reserves the right to reduce eligible basis and the amount of Housing Credit if costs appear excessive. Likewise, KHC may increase basis (not to exceed 130 percent) on any project for feasibility reasons as determined solely by KHC. KHC reserves the right to allocate resources to lower ranked proposals to achieve a better mix of resource usage or better geographical distribution of resources among Kentucky’s congressional districts as described above, or for any other reason judged by KHC to be meritorious. Such actions will be made at KHC’s sole and absolute discretion. Any decision KHC makes and any action or inaction by KHC in administering, managing, and operating the program, shall be final and conclusive.**

## **Nonprofit Participants**

The IRC requires that a minimum of 10 percent of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. In addition to the requirements of IRC Section 42(h)(5), a nonprofit must be the general partner of the project, with a minimum fifty-one percent (51%) ownership stake. Applicants must indicate that they are applying for Housing Credit as a nonprofit.

A qualified nonprofit organization is one which:

- Is described in §501(c)(3) or (4) of the Code and is exempt from tax under §501(a) of the Code;
- Is not controlled by a for-profit;
- Has as one of its exempt purposes the fostering of low-income housing;
- Has been in existence for at least one year; and
- Owns 51 percent of the general partnership interest of the ownership entity of the development.

In order to qualify for the nonprofit set-aside, a qualified nonprofit organization must own a majority interest and materially participate in the development, ownership, and management of the project. Please refer to the Policies section, page 36, for a full description of nonprofit participation.

## **Competitive Pool**

Any qualifying project can apply for Housing Credit through a competitive process and compete through a single competitive pool. All applications must indicate if the project is in a rural or urban area on the application. Allocation and compliance monitoring fees apply to all Housing Credit projects. Complete and accurate applications must be submitted for all pools and set-asides. All applications will be scored and ranked based on the application submission package.

**KHC will score the application as submitted and will not contact the applicant for any type of clarification or additional information once the application is submitted, unless KHC experiences difficulties downloading electronic attachments or if a copy is illegible.**

### **A. Competitive Single Pool**

The 2013 competitive pool of approximately \$1,909,321 is 20 percent of the remaining Housing Credit after set-asides and other pools are deducted. Projects must meet a minimum score as outlined in the scoring guidelines in order to be considered for funding.

### **B. State Priority Set-Aside**

KHC has established a State Priority Set-Aside to address specific housing needs in Kentucky.

<b>State Priority Set-Aside 2013</b>	
<b>Project</b>	<b>Housing Credit Award</b>
Recovery Kentucky (\$740,000)	\$740,000
Louisville HOPE VI	\$784,000
<b>Total</b>	<b>\$1,524,000</b>

The set-aside for the Louisville HOPE VI set aside is not competitive, but must comply with all applicable aspects of the QAP.

The set-aside for Recovery Kentucky is for Bowling Green Recovery for the creation of a Recovery Kentucky center. The allocation of credits for this project will not exceed \$740,000 and will not be competitive; however, the project must adhere to all applicable aspects of the QAP. Also, the Recovery Kentucky set-aside must meet the nonprofit pool qualifications.

The application due date for the Louisville HOPE VI and Recovery Kentucky projects will be announced at a later time.

### **2013 Forward Commitments**

Approximately \$1,909,321 in Housing Credit will be allocated to projects that applied for credits during the October 2011 application round for 2012 housing credits. KHC elected to forward commit credit to the 2012 applications in an effort to fund non-federally assisted rehabilitation projects with the 2013 housing credits.

Approximately \$3,818,642 in Housing Credit will be allocated to new construction and adaptive reuse projects that applied for credits during the October 2011 application round for 2012 housing credits. KHC elected to forward commit credit to the 2012 applications in an effort to fund new construction and adaptive reuse projects with the 2013 housing credits and elected to fund projects currently under review due to the time constraints of projects having to place in service by December 30, 2013.

All eligible projects for the 2013 forward commitments will be scored based on the same scoring criteria as the 2012 housing credit applications. The 2013 credit awarded to projects from the October 3, 2011 application round **will** be applied to the maximum credit cap for 2013 credit.

### **Maximizing Outcomes Pool**

The remainder of the annual Housing Credit allocation (approximately \$385,323) will be awarded from the Maximizing Outcomes Pool at the discretion of KHC. KHC will use the Maximizing Outcomes Pool to fully fund projects that are awarded funds in the designated pools, reducing the need for KHC to issue partial awards. If there is a remaining balance in the Maximizing Outcomes Pool sufficient to fund another project, a project will be selected at the discretion of KHC. KHC will not fully utilize the Maximizing Outcomes Pool in the allocation set-asides or in the April application round. KHC will retain a portion of credits from this pool and allocate once the exact credit amounts for 2013 have been published. Historically, this final confirmation of available credit occurs late each calendar year. Once known, KHC will allocate any remaining credits in this pool. The manner in which this credit is allocated will be determined by KHC.

Projects will be selected based on the criteria indicated below and other factors at the discretion of KHC, in order to meet program policies and goals that were not achieved in the other pools.

Consideration will be given to:

- Projects located in counties or submarkets that received the fewest number of Housing Credit awards in the target and geographic pools. The population and housing need in these areas will be considered.
- Projects in the target and geographic pools in which the total amount of credits awarded is significantly less than the maximum amount available in such pools.
- Proposals where a previous phase of the same multifamily development has been successfully constructed, placed in service, and is operating at a high occupancy rate.
- Projects developed in a Qualified Census Tract, Difficult Development Area, or contributing to a community revitalization plan.

KHC reserves the right to deviate from the ordinary guidelines to make awards to projects from the Maximizing Outcomes Pool. The criteria for these awards may be based on changing market conditions, geographic need, expiring federal funding commitments, or other factors KHC deems significant.

### **Waiting List**

KHC will establish a waiting list for projects that applied through the 2013 application round and that do not receive a reservation of 2013 housing credits, due to the limited amount of available resources. Housing Credits that become available via returned credit or from the National Pool later may be allocated to the projects on the waiting list.

If a project returns Housing Credits that were reserved during the 2013 application round, then the next highest scoring application may receive first consideration for any award of credits if that project remains financially feasible as submitted. Any other available credits will be distributed according to the criteria of the Maximizing Outcomes Pool. Please note, if a project returns credits that were awarded during the current year, then all other KHC funding award(s) must also be returned. Projects that receive credits from the waiting list may then be considered for other KHC funding, although that funding cannot be assured.

KHC will contact representatives of the waiting list projects when Housing Credits become available. KHC will set a deadline for the applicant to respond to any offer.

### **Tax-Exempt Bond Financing and 4 Percent Housing Credits**

Pursuant to Section 42(h)(4), KHC is able to increase the amount of low income housing tax credits available for multifamily rental housing projects within the Commonwealth of Kentucky by issuing private activity bonds to finance at least 50% or more of the aggregate basis in the building(s) and land within a project. Such projects are eligible to receive 4% credits, which are not subject to Kentucky's annual credit authority described earlier.

To encourage the utilization of tax-exempt bond financing, increase in the amount of 4% credits available within the Commonwealth of Kentucky and increase the amount of private equity available for multifamily rental housing projects, applicants requesting 9% credits are eligible for additional points for scoring purposes on a 9% Project if they are able to meet the following requirements.

1. The applicant has requested an allocation of private activity bond financing and 4% credits for a project (the "Bond Financed Project") which is separate from the project which is being considered for 9% credits (the "9% Project"). However, the

- projects may be on one site or scattered sites. A request for private activity bond financing is evidenced by the submission of a complete application titled “KHC’s Tax-Exempt Bond Request with Conduit Financing.”
2. There must be some nexus between the bond-financed project and the 9% project. Applicants must submit to KHC a statement indicating the existence of such nexus.
  3. With regard to the bond-financed project, fifty percent of the aggregate basis of the building(s) and the land on which the building(s) is located must be financed with the proceeds private activity bonds and such bonds must remain outstanding through the placed-in-service date of such project.
  4. The minimum amount of private activity bonds to be issued in connection with the bond-financed project must exceed \$1,000,000. However, KHC may, at its sole discretion, waive this minimum requirement if KHC determines that such waiver is necessary to advance KHC’s mission.
  5. The applicant must submit a statement of a qualified bond counsel to the effect that (i) bond counsel has reviewed preliminary information regarding the proposed bond issue, (ii) the bond issue does not appear to be in conflict with applicable state and federal legislation, (iii) bond counsel anticipates issuing its approving opinion (if applicable, the conditions under which bond counsel will issue such opinion) and (iv) the bond issue is the type of issue that must be counted against Kentucky’s private activity bond volume limitation. Note: the proposed bond counsel must submit their resume and qualifications, including a bond transaction history as part of their application for tax-exempt bond financing. A qualified bond counsel is an attorney or firm that is licensed to practice law in the Commonwealth of Kentucky and is able to demonstrate expertise in the issuance of bonds, the proceeds of which were used to finance multifamily rental housing within the Commonwealth of Kentucky.

## **Development Team Characteristics**

KHC values development teams with the ability to meet key responsibilities in a timely and efficient manner. Development team members include the **general partners, developers, consultants, and property managers.**

KHC values development team members with successful experience in the location and type of housing being proposed.

For the 2013 housing credit application round, KHC has implemented a one application submission limit for developers and consultants. Developers who also provide consulting services will be considered for their combined participation and limited to one application.

KHC will limit new developers or developers new to Kentucky to one funded project in 2013 from any of the 2013 housing credit allocations. Developers who have previous experience with KHC’s Housing Credit program, or KHC’s Tax-Exempt Bond Program will be limited to one funded project for the April 9, 2012 competitive application round for 2013 Housing Credits. Developers and consultants will be limited to the maximum credit cap limitations based on the combined 2013 housing credits they may receive from the credit allocations.

For a developer to be considered to have previous experience with KHC, they must have placed a KHC housing credit property in service within the past 7 years and/or have successfully managed such placed in service project for 5 years. Projects that have recurring compliance issues, as determined by KHC, will disqualify a developer from the previous experience benefits.

KHC supports the endeavors of community-based, nonprofit housing organizations to develop housing in their service area. Furthermore, KHC values development teams with a strong financial base.

Development teams will be evaluated on any prior and/or outstanding financial obligations with KHC. KHC staff will evaluate the repayment histories of all loans extended to previous projects, as well as payments of all other fees and monies due to KHC.

### **Experience and Capacity Review**

KHC will conduct a review of the experience and capacity of development team members **prior** to submission of Housing Credit applications for individual properties. The result of this review will determine whether an organization may participate in the upcoming program year and/or if any scoring issues are present.

The following items must be submitted for KHC to conduct the experience and capacity review, along with their request for an ID and password to access the online application.

- A brief narrative describing the experience of the organization with regard to the development of subsidized affordable housing, including the number of projects and units that have been completed and placed into service.
- A spreadsheet summary of all projects under construction in any state (or stage of completion), including their present status and expected completion date.
- A full organizational chart, staff roster, and resumes of key development staff within the organization, focusing on their affordable housing development experience.
- A narrative that explains the proposed application for the 2013 round, including:
  - The allocation pools in which the single application will compete.
  - The roles that the organization will play in the project.
  - Development and ownership partners that the organization may be working with on the project.

### **Capacity Review Time Frame and Response Period 2013:**

- Developers will identify the development team when they first access the online application. This system will be available on February 15, 2012 for the 2013 Housing Credit round. Development team information may be submitted until the application deadline.
- KHC will review and score the development team capacity based on the information in the application. KHC will provide developers with the score for the capacity review within two weeks of submittal.
- In order to ensure the highest possible standard of accuracy, thoroughness, and service, applicants will have five business days to provide a written response to any factual discrepancies in the review.
- KHC will review the response, make any adjustments deemed necessary and appropriate, and provide a final experience and capacity evaluation on or before February 29, 2012.

- Applications entered after March 23, 2012 will be reviewed for capacity, but will not have the ability to submit a written response for consideration. Any changes made to the development team must be made in the on-line capacity team section of the on-line application and reflected on the application. KHC will not consider any changes to the development team that do not follow this procedure.
- Awards will be announced in June 2012.

All written responses to any factual discrepancies must be signed, identify the discrepancy, and provide supporting documentation or a narrative justifying reconsideration. All responses must be submitted to Andrew Hawes by mail at Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky, 40601, or by e-mail to [ahawes@kyhousing.org](mailto:ahawes@kyhousing.org).

## Applicable Program Fees

**Application Fee:** Fee amounts are \$1,000 per pool for exclusively nonprofit applicants and \$1,500 per pool for all other applicants. This nonrefundable fee must accompany each project application submitted for Housing Credit. If applying for two different pools with the same application, two fees will be required. Application fees will not be returned for incomplete applications or applications that do not meet minimum threshold requirements.

**Housing Credit Reservation Fee:** A reservation fee of 14 percent of the amount of Housing Credit reserved for a project will be charged. Payment of the 14 percent reservation fee is due within 2 weeks from the notification of funding. KHC will refund 50 percent of the reservation fee to projects that are able to place in service prior to December 30, 2013. Projects that do not meet this deadline are not eligible to receive a refund. Projects that do not meet the deadline and experience a reduction in the 9 percent credit factor may not apply for additional KHC resources to fill a gap. KHC will not alter this policy even if the fixed 9 percent credit factor is extended. Due to 50 percent of the reservation fee being refundable, KHC will limit the credit reservation fee reflected on the underwriting pro forma to 7 percent. KHC will make adjustments as necessary and base the credit allocation on KHC's adjusted figures.

Reservation fees may be lower for projects that receive an allocation of 2013 housing credits after August 2013 in the event KHC receives returned credit.

**Exchange Credit (Swap) Fee:** If an exchange of credit is requested by the applicant for any reservation made after January 1, 2012, the applicant will be required to pay an Exchange of Credit fee of \$5,000 in addition to a new reservation fee equal to the reservation fee listed in the Qualified Allocation Plan for the year the exchange is requested.

**Extension Fee:** For the 2013 housing credits, KHC will only impose an extension fee if the developer requests a 45-day extension to the January 2013 equity closing deadline.

**Additional fees are outlined on page 30 under Deadlines.**

**Inspection Fee:** KHC will charge a one time 0.2 percent inspection fee for all housing credit projects. The fee will be based on the credit allocation amount awarded to a project. This fee is due and payable before the start of any construction activities.

**Pre-8609 Compliance Review Fee:** Prior to issuing Form(s) 8609, a KHC compliance officer will review the project to ensure the owner adheres to Section 42 requirements and to all pledges and restrictions that were pledged in the application. There is a one-time fee of \$100 for this review.

**Compliance Annual Report Fee:** An annual fee will be assessed for the compliance monitoring program. Applicable fees must be submitted with the compliance monitoring annual report. The annual fee for projects to be examined by KHC is determined by KHC's Compliance Department. The schedule of compliance monitoring fees is contained on KHC's Compliance Web page. A late filing fee will be assessed as specified in the fee schedule.

Compliance monitoring fees are subject to periodic adjustment. Such adjustments will apply to all projects participating in the Housing Credit program.

## **Housing Credit Requirements**

In addition to the competitive Rental Housing application requirements, the following guidelines must be adhered to for all Housing Credit applicants when applying for and receiving Housing Credit. Projects requesting Housing Credit associated with multifamily tax-exempt bonds must meet these additional requirements as well. For additional programmatic and design guidelines, please refer to Rental Guidelines.

### **Letter of Support**

KHC will award points for scoring purposes for a letter of support from the mayor or the county judge executive (or the equivalent) of the jurisdiction where the project is located. This letter must be a letter of support, not just a letter recognizing the project. For scoring purposes, the letter should address the following:

- The community need for affordable housing,
- Comments on the site location,
- Comments on the market attributes related to proximity of tenant appropriate services, i.e., grocery, medical facilities, employment opportunities, public transportation etc.
- A statement regarding the planning and zoning regulations, if any.

The letter of support must be submitted as an attachment with the application. If a letter of support is not submitted, no points will be awarded.

### **Housing Credit Limit**

#### ✓ **Urban Counties (As listed on page 17 of the QAP)**

The Housing Credit subsidy allocated will be limited to \$15,000 per Housing Credit unit except for projects located in qualified census tracts (QCTs) or difficult to develop areas (DDAs), as designated by the secretary of the U.S. Department of Housing and Urban Development; Hope VI; historic/adaptive reuse projects; or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$19,500 per Housing Credit unit.

✓ **Rural Counties (Any county not listed on page 17 of the QAP is considered rural)**

The Housing Credit subsidy allocated will be limited to \$16,500 per Housing Credit unit except for projects located in QCTs or DDAs, as designated by the secretary of the U.S. Department of Housing and Urban Development; historic/adaptive reuse projects; or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$21,450 per Housing Credit unit.

**Example:** Subsidy limit:  
\$15,000  
\$19,500 (if in a DDA, QCT, or other KHC-defined area)  
40 total units not in any of the bonus areas  
40 x \$15,000 = \$600,000

The maximum annual Housing Credit allocation cannot exceed this amount.

**Modifications to Definition of Eligible Basis (130 Percent Rule, Qualified Census Tract, Difficult Development Area and Areas Defined by KHC)**

The IRS stipulates certain areas as QCTs and DDAs. These areas are designated as areas that are difficult to develop or are defined as census tracts in which 50 percent or more of the households are at-or-below 60 percent of the area median income, as well as census tracts with a poverty rate of 25 percent or higher.

The Housing and Economic Recovery Act of 2008, H.R. 3221 (HERA), provides state Housing Credit agencies the ability to enhance the credit to any building needing the enhanced credit to be financially feasible.

Due to the economic impact of the current market and the decline in equity pricing, projects are now seeking substantial amounts of soft money to be considered financially feasible. Because the supply of soft money is limited, few projects will be completed without other financial assistance. The additional equity provided by the enhanced credit reduces the amount of soft funding required by each project. Without the enhanced credit, projects will not be financially feasible. As a result, KHC has determined that all projects located in all areas of the state are eligible to receive the enhanced credit if they demonstrate a need. If the project does not demonstrate the need, KHC reserves the right to reduce the amount of credit requested to the maximum allowed without the boost.

Under the enhanced credit, the eligible basis of a building is increased from 100 to 130 percent. This allows developers to request 130 percent bonus of credits derived from the basis calculation. The award of the bonus will be made based upon the amount of credits required to make the project financially feasible. Eligible basis costs for new construction and rehabilitation only can qualify for this basis increase. Acquisition costs are specifically excluded by Code from the 130 percent bonus.

**Housing Credit Limit with 130 Percent Basis Boost**

**Urban Counties**

The Housing Credit subsidy allocated with 130 percent basis boost will be limited to \$19,500 per Housing Credit unit.

For the Housing Credit program, the following counties are considered urban based upon 2010 area median incomes above \$48,800 and 2009 populations of 20,000 or more:

Boone	Clark	Henderson	Madison	Nelson
Boyle	Daviess	Hopkins	Marshall	Oldham
Bullitt	Fayette	Jefferson	McCracken	Scott
Calloway	Franklin	Jessamine	Meade	Shelby
Campbell	Grant	Kenton	Mercer	Warren
Christian	Hardin	Logan	Montgomery	Woodford

**Rural Counties (Any county not listed in the chart above is considered rural)**

The Housing Credit subsidy allocated with 130 percent basis boost will be limited to \$21,450 per Housing Credit unit.

**Difficult to Develop Areas (DDAs)**

The following counties are HUD-designated Difficult to Develop Areas (counties) for 2013.

Butler	Fulton	Nicholas	Powell
Carlisle	Lincoln	Owen	Simpson

**Community Service Facility**

A Community Service Facility (CSF) is a space that can be used for purposes including, but not limited to, child daycare, senior programs, and job training. It is defined as facilities that are designed to primarily serve low-income individuals whose income is 60 percent or less of area median income. Project employees could also use the facilities.

Housing Credit projects utilizing a CSF described under IRS Revenue Ruling 2003-77 may be entitled to an additional allocation of Housing Credit. House Resolution 3221 – The Housing and Economic Recovery Act of 2008, expands the size of the CSF with respect to which the Low Income Housing Tax Credit may be claimed. Under the provision, the size of the CSF may not exceed the sum of 25 percent of the eligible basis and total project cost does not exceed \$15,000,000. However, the additional increase will be prorated based upon the number of square footage of the CSF as a percentage of the residential space per project. Projects with costs exceeding \$15,000,000 have additional limitations.

**Example:** The residential building(s) “only” is 32,100 square feet  
The CSF is 4,500 square feet.

CSF space to residential space:  $4,500 \div 32,100 = 14.0$  percent.

This is the amount of additional credit that can be requested for a CSF.

This provision is limited to buildings located in QCTs only.

Housing Credits allocated to the CSF portion of a project will not be considered when ensuring a project is within KHC’s cost containment limits.

## **Acquisition of Existing Buildings**

Projects eligible for Housing Credit based on the acquisition of existing buildings must provide an appraisal supporting the building basis for purposes of determining the proper amount of Housing Credit reserved. The appraisal must provide, at a minimum, the “as-is” market value of the building and a separate-site value for the underlying land. Eligible basis will be limited to the basis determined by the required final cost certification.

For rehabilitation and preservation developments that qualify for acquisition tax credits, a developer’s fee will be allowed on a portion of the acquisition cost that is basis eligible. The maximum acquisition cost that will be recognized in determining the developer’s fee will be the lesser of the actual amount paid for the building or the Member of the Appraisal Institute appraised value.

Projects requesting Housing Credit only that are not requesting other KHC funds but are requesting acquisition credit must provide an appraisal supporting the building basis for the Housing Credit funds requested at the technical submission stage. Applicants must choose an appraisal firm or individual that is listed on the Approved Appraiser List on KHC’s Web site at [www.kyhousing.org](http://www.kyhousing.org) under Housing Production, Multifamily Finance.

Projects requesting credit and other sources of KHC funds in the form of a loan are required to meet KHC’s appraisal guidelines and must also choose an appraisal firm or individual from the approved list.

Applicants/developers will enter into a contract for services directly with the appraiser and, with the exception of questions about KHC standards and/or requirements, the applicant/developer shall be responsible for handling all issues related to the appraisal. Applicants/developers contracting with appraisers for the benefit of KHC shall be responsible for negotiating the price of the contracted work.

Although the applicant/developer is responsible for engaging the appraiser, the report shall identify KHC as the intended user for the purpose of providing KHC a basis for investment and loan underwriting decisions.

## **Maximum Credit Cap Requirements**

All users are restricted to a maximum of **\$1,250,000** in annual Housing Credits based on their involvement in projects as the general partner or developer. All other users will be restricted to a maximum cap of **\$2,500,000** for their combined participation in all Housing Credit projects at the determination made by KHC in the capacity of development team review. Applicants that receive an allocation of 2013 housing credits for an application submitted on October 3, 2011 for the 2012 housing credit application round will be subject to the 2013 maximum credit cap to include the award on the 2012 application receiving 2013 credit.

**Example:** A developer may obtain up to \$1,250,000 for projects where they are acting in the developer role and may participate in additional projects as a consultant up to a maximum combined credit of \$2,500,000. If a developer participates as a consultant in projects exceeding \$1,250,000 of Housing Credit, the \$1,250,000 developer cap will be reduced accordingly.

**“Users,”** to which the credit cap applies, are general partners, parent organizations of general partner entities, affiliates of the general partner, or managing members of entities to which Housing Credits have been awarded. **“Affiliate”** is any entity that directly or indirectly controls another entity or has a controlling interest in the entity.

**“Controlling Interest”** is defined as the possession, direct or indirect, of the power to direct, or cause the direction of, the management and policies of an entity, whether through the means of ownership, position, contract, or otherwise. In addition, **“controlling”** means the possession, direct or indirect, of the power to direct, or cause the direction of, the management and policies of an entity, whether through the means of ownership, position, contract, or otherwise. These definitions do not include the relationship of syndicator or limited partner.

- a. Organizations acting as users, general partners, or developers are limited to a maximum of \$1,250,000 in annual Housing Credits based on the determination made by KHC in the capacity of development team review.
- b. Organizations acting as consultants are limited to a maximum of \$2,500,000 in annual Housing Credits based on the determination made by KHC in the capacity of development team review. If a consultant is also participating in the Housing Credit program in the capacity of a developer on other projects, then their combined participation will be limited to \$2,500,000.

An **“organization,”** to which this cap applies, is defined as the actual entity indicated in the application and any parent organization or affiliate of such entity (see the preceding paragraph for definitions of affiliate and other applicable terms). This restriction includes any applications in which such organization is indicated as a general partner or developer. If a developer enters any additional projects after reservation agreements are issued, these will count against their cap for the following year. Full disclosure of relationships between all development team members must be included in the application. At the time of reservation and allocation, each general partner and developer must execute a certification that their participation in Housing Credit projects is limited to the maximum credit cap amounts.

If an entity does not fully disclose all participation, then such entity may be banned from participating in the Housing Credit program for one year from the date of discovery by KHC.

KHC reserves the right to determine to which entities the maximum credit cap may apply. Any such determinations shall apply only to the applications received in 2012-2013 housing credits and shall not be bound or limited by any determinations made by KHC for any previous year. The annual credit amount for each project will be applied to each general partner, developer, guarantor, or consultant regardless of ownership interest. Thus, a 51 percent general partner will have the entire project credit amount applied toward its cap, rather than 51 percent of the credit amount.

However, tax-exempt bond projects are not restricted to this cap.

## Maximum Fees

Applications utilizing Housing Credit will be limited to the following fee structure, regardless of the total project costs.

General Requirements	up to 6%
Overhead	up to 2%
Profit	up to 6%

## Developer Fee

The allowable fees for developers are based on the total development cost (TDC) of the project. The developer fee on any Housing Credit project may not exceed 15 percent, unless approved by KHC's Board of Directors. At KHC's sole discretion, tax-exempt bond financed projects may be allowed an increase in developer's fee. Projects utilizing a Risk Sharing loan will be limited to a 10 percent developer fee.

For projects where there is an identity of interest or the appearance of an identity of interest between the developer, consultant, contractor/builder, architect, attorney or nonprofit, KHC expects increased transparency and accountability. At KHC's discretion, it may take actions to limit an entity's involvement or compensation if it believes there to be either an actual or an appearance of inappropriate accountability among the development team.

**Note:** Identity of interest exists where there is a financial, familial, or business relationship that permits less than arm's length transactions. This includes, but is not limited to, the existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

The developer fee (as a percentage) is calculated as follows:

$$\frac{\text{Developer Fee} + \text{Consulting Fees} + \text{anything resembling consulting or developer fees}}{\text{Total Project Costs} - \text{Developer Fee} - \text{Consulting Fees} - \text{anything resembling consulting or developer fees}}$$

## Minimum Set-Asides

For a project to qualify for Housing Credits, it must meet a minimum low-income set-aside requirement. The minimum set-aside requirement must be met no later than the close of the first year of the credit period for each building.

The owner of the project must irrevocably elect either the 20/50 or 40/60 minimum set-aside.

- ✓ **20 percent** of the rental residential units in the project will be rent restricted and are to be occupied by individuals whose incomes are **50 percent** or less of the area median income.
- ✓ **40 percent** of the rental residential units are rent-restricted and are to be occupied by individuals whose incomes are **60 percent** or less of the area median income.

The minimum set-aside is the election that commits the building owner to a specific income

level that will serve to define low income for that building. Under a 20/50 election, an owner who claims 100 percent of the units eligible for credit must rent all units to households at or below 50 percent area median income as adjusted for family size in order to claim 100 percent of the credit.

### **Cost Containment**

While maintaining aesthetic and livable standards, it is KHC's objective to fund as many proposals as possible. Because funds are limited, costs per type of unit and construction costs per square foot are important factors in analyzing applications. KHC has adopted cost containment guidelines to evaluate the total development cost for all projects. The cost containment limits apply to all resources, including Housing Credit only projects. KHC may waive cost containment guidelines for adaptive reuse projects, projects that have federal resources (HOPE VI, HUD 202, or HUD 811) committed, or projects for which such commitment are being processed. All requests for waivers must be made in writing and approved prior to application submission. Projects which receive a waiver for cost containment are not eligible to receive points in scoring pertaining to cost containment.

In the underwriting model, a request is made to enter the cost containment limit for the project. KHC's Cost Containment Guidelines can be found on the Multifamily Finance Web page under Housing Production on KHC's Web site. For additional information as it pertains to cost containment, refer to the Rental Production Guidelines.

### **Building Requirements**

All buildings must comply with all state and local building codes including accessibility standards, applicable federal accessibility laws (including Fair Housing Accessibility Guidelines), and the Americans with Disabilities Act Accessibility Guidelines.

All new construction projects must implement KHC's Universal and Minimum Design Standards to ensure energy-efficient design and construction practices are utilized. Rehabilitation projects are encouraged to incorporate KHC's Universal Design standards when it is feasible. For additional information as it pertains to building code requirements, please refer to Chapter 2 Technical Submission Stage and Requirements in the Rental Production Guidelines.

KHC will review project plans and specifications for compliance with applicable laws and guidelines. During the application stage, preliminary plans should be submitted; however, final plans will be required during the technical submission stage. Failure to comply with KHC's review shall be cause for project rejection. KHC also reserves the right to note such failure to cooperate in future applications.

### **Plan Approval**

Project plans must be finalized with authority having jurisdiction approvals (local building department or Kentucky Department of Housing, Buildings, and Construction) submitted at Technical Submission Stage. A letter from the approving authority, on their official letterhead, will be required to indicate the project plans are approved for construction.

## **Capital/Physical Needs Assessment**

All projects involving substantial rehabilitation of existing buildings must provide a capital/physical needs assessment at application stage. The capital/physical needs assessment must be performed by an independent, qualified, architectural or engineering firm to determine whether the existing building(s) and rehabilitation activities are sufficient to ensure that the building(s) and improvements have a useful life of at least 30 years. All capital/physical needs assessments must contain a capital reserve replacement schedule that details scheduled maintenance, improvements, and corresponding expenditures necessary to extend the life of the facility a minimum of 30 years. Projects applying for Rural Development assistance may provide a 20-year needs assessment. Applicants are responsible for fees for such assessments. In the event the analysis does not support the proposed project, KHC reserves the right to reject or seek modification of the proposal. Variances in the work documented in the capital/physical needs assessment will require the approval of KHC staff. Please refer to Rental Guidelines for additional information. KHC will require a subsequent capital/physical needs assessment in year 15 and will require the project to adjust the capital reserve replacement schedule accordingly. This requirement is only applicable for projects which obtain KHC HOME or AHTF gap financing.

Adaptive reuse projects in which a complete interior demolition is proposed need only provide a capital and physical needs assessment which address electrical and mechanical systems, the exterior of the building, windows, roof and all remaining structural components.

## **Minimum Square Footage**

The minimum square footage is outlined below. However, refer to Rental Production Guidelines for Architectural and Design standards for additional guidance.

The minimum heated and cooled net square footage for new construction projects is:

- Single Room Occupancy (SRO) unit – 150 net square feet
- Efficiency Apartment – 400 net square feet
- One-bedroom unit – 600 net square feet
- Two-bedroom unit – 800 net square feet
- Three-bedroom unit – 1,000 net square feet
- Four-bedroom unit – 1,100 net square feet

Rehabilitation projects are encouraged to meet the minimum heated and cooled net square footage, if appropriate.

## **Eligible Uses of Housing Credit**

Eligible properties include:

- One or more rent-restricted dwelling units available for long-term continuous rental use.
- Newly constructed buildings.
- Adaptive reuse projects.
- Substantial building rehabilitation of at least \$20,000 per low-income unit or 20 percent of adjusted basis, whichever is greater.

- Projects that include acquisition and substantial rehabilitation of existing buildings that were last placed in service or underwent a substantial rehabilitation (equals or exceeds 25 percent of basis) no less than ten years prior to acquisition.
- Projects may consist of buildings on scattered sites within the same county. KHC will not allow scattered sites covering multiple counties.

### **Financial Requirements** (Not all-inclusive)

KHC has established financial underwriting guidelines for rents charged, debt coverage ratios, operating deficit reserves, and reserve for replacement requirements. Please thoroughly review the requirements established in the underwriting model and KHC's rental guidelines. If KHC's requirements differ from a syndicator/investor or a federal program's requirement, then KHC may be willing to negotiate a modification to KHC's requirements.

- **Rents Charged:** The rents charged to low-income tenants cannot exceed 30 percent of the applicable income limit adjusted for unit and family size less an allowance for tenant-paid utilities, if applicable. (Section 8 subsidy payments are not included in the tenant rent computation.)
- **Construction Contingency:** The construction contingency should not exceed 10 percent of total construction hard costs. Acquisition of the property should not be included as hard costs. If no contingency is being requested, the applicant must explain the rationale as to why none is required. Furthermore, if no contingency is requested and change orders occur during construction, the applicant is responsible for all such costs. All change orders must be submitted, reviewed, and approved by KHC at the time the change is deemed necessary. KHC will not process change orders that do not follow these procedures. Failure to follow this policy may result in future reductions in scoring. **Please note, KHC does not permit a soft cost contingency.**
- **Debt Coverage Ratio (DCR):** The required DCR in year one must be at least 1.25 and should remain at or above 1.0 through year 15. Projects that do not have any debt associated with the project will satisfy KHC's debt coverage ratio requirements.

Projects requesting Housing Credit only must meet the DCR requirements established by an investor or governmental entity if the investor or governmental entity accepts a lower DCR. All required DCRs, if lower than KHC's limit, must be reflected in either the syndication agreement or from the governmental entity and the investor or governmental entity must provide its 15 year proforma. **All projects must have positive cash flow through year 15.**

- **Operating Deficit Reserve (ODR):** All applicants will be required, prior to closing, to sign a certification stating that a separate account has been set up for an ODR. The purpose of the reserve is to fund the day-to-day operating expenses and debt service until the project reaches stabilized occupancy.

KHC calculates the minimum ODR requirement as follows:

$$\begin{aligned} & \text{Six months of projected operating expenses} \\ + & \text{Six months of debt service payments} \\ = & \text{Minimum Operating Deficit Reserve Required} \end{aligned}$$

If the equity provider requires a lower amount than KHC's minimum, KHC will negotiate a new ODR amount with the equity provider.

If KHC is funding the ODR account, the full amount is required to be drawn on the final draw.

For purposes of KHC underwriting, the ODR is a total reserve that may include rent-up reserves, lease-up reserves, etc. KHC will hold the ODR account unless otherwise indicated in a syndication agreement, first mortgage lender, or by a federal program.

- **Reserve for Replacement (R4R):** All applicants are required to establish an R4R account per the rental guidelines. KHC will hold the R4R account unless otherwise indicated in a syndication agreement or by a federal program. The R4R annual deposit shall increase at 3 percent annually, or as prescribed by KHC. For projects that KHC holds the R4R account, at the end of the compliance period, KHC will apply any unused R4R account balances to KHC resources committed to the project. In addition, for projects in which the R4R account is held by another entity, any such balance must be submitted to KHC at the end of the IRS 15-year compliance period for capitalization of such an account for the remainder of the HOME and/or AHTF affordability period.

KHC calculates the minimum R4R as the greater of \$275 per unit for new construction or \$325 per unit for rehabilitation developments, as applicable.

- If services are a requirement to live in the housing units, generally these service fees must be included in gross rent.
- The income and rent restrictions apply for a minimum of 30 years plus a three-year vacancy decontrol period. Noncompliance with the restrictions can lead to credit recapture and substantial penalties from the Internal Revenue Service.
- Projects utilizing a tax-exempt bond financed source of debt financing are automatically eligible for 30 percent present value credit (4 percent credit) outside the credit ceiling.
- KHC will award the lesser of the Housing Credit amount determined by KHC or the amount requested by the applicant.
- Please refer to the Novogradac Rent and Income Calculator for the maximum rent and income limits for the Housing Credit program. The calculator is on Novogradac's Web site at <http://www.novoco.com/products/rentincome.php>.

## Technical Assistance

Kentucky Housing has expanded its services to include additional technical assistance opportunities for developers to access to ensure a project's success.

Developers and community officials are encouraged to contact to obtain assistance with projects throughout the development and application process. This assistance is offered to both new and seasoned developers.

In order to submit an application, a member of the development team must have developed, operated, and completed a project that is now in the affordability stage with compliance and has developed at least ten rental units with Kentucky Housing Corporation. However, if no member of the development team meets this qualification, then a member must request application process technical assistance. The individual(s) who will be responsible for the day-to-day activities of the project, once approved, is required to attend the program process technical training.

This type of assistance takes new partners through the process of documentation requirements, scoring criteria, relocation requirements (if applicable), design, and construction requirements, etc. **NOTE:** Requesting or attending technical assistance training does not guarantee the project will be awarded funds. Contact Andrew Hawes, toll-free in Kentucky at (800) 633-8896 or (502) 546-7630, extension 326; TTY 711; or e-mail [ahawes@kyhousing.org](mailto:ahawes@kyhousing.org).

## Application Submission Requirements

One annual application round is scheduled for projects requesting competitive Housing Credit. The schedule below indicates the Housing Credit amount available and the submission/notification dates for the round.

2013 Housing Credit Submission Dates		
Capacity Review	Electronic Submission	Award Notification
<b>Opens: February 1, 2012 Closes: March 31, 2012</b>	<b>April 9, 2012</b>	<b>June 2012</b>

All applicants must submit applications for funding electronically. The application is located at [www.kyhousing.org](http://www.kyhousing.org) under *Housing Production > Multifamily Finance > Application, Guidelines and Underwriting Models*. KHC has enhanced the online application to allow applicants to upload required attachments. Each item must be individually attached in the section provided; please refer to the application checklist in the Rental Guidelines for further guidance on each specific attachment.

In order for the application to be considered complete, the following must be submitted by 5:00 p.m., ET, on the date applications are due, as noted above:

- A fully completed application, submitted online
- All applicable attachments as outlined on the application checklist, uploaded online (if a particular attachment is not applicable, a blank sheet identifying the attachment name and number marked “not applicable” must be submitted in its place)
- A compact disc or flash drive containing a copy of all attachments
- One hard copy set of original plans and specifications

The compact disc or flash drive and the hard copy set of original plans and specifications must be received by 5:00 p.m., ET, on the date applications are due to:

**Kentucky Housing Corporation  
Multifamily Finance Department  
1231 Louisville Road  
Frankfort, KY 40601**

It is the applicant's responsibility to plan enough time for mail, overnight or hand delivery of the disc or flash drive, plans and specifications to ensure they are received at KHC by 5:00 p.m. on the application due date.

If for some reason an applicant cannot upload the required attachments, the required attachments must be submitted on a disc or flash drive rather than paper copies. KHC's maximum file size is 5 megabytes (MB). If a file is larger than 5 MB, it must be separated into smaller files and uploaded. The only exception is for personal financial information, which may be submitted separately, either in paper or on compact disc or flash drive.

All applications must obtain a minimum score as referenced on score sheet as outlined in Scoring Criteria to be considered for funding. The core scoring components are Capacity of the Development Team, Project Design and Location, Ready to Proceed, and Financial Design.

All applications for Housing Credits will need to complete the Rental Housing Application on the Web and supply all required information and documentation in accordance with the guidelines. Please refer to the Rental Production Guidelines for additional guidance pertaining to programmatic requirements and architectural and construction guidelines. All applicants will be required to submit the electronic application and attachments.

## **Application Review Process**

Although KHC will award funds to the highest scoring projects within their respective pools, KHC will make every effort possible to ensure that funds are geographically distributed across the state. **KHC reserves the right to allocate credits to lower scoring applications to ensure equitable allocation of resources in each congressional district throughout the state.**

**NOTE:** Incomplete applications will be returned to the applicant. Additionally, KHC reserves the right to reject any application that does not meet the application requirements. KHC will reject applications which do not submit key documents such as underwriting models, evidence of site control, market study or other documents which KHC determines to be critical for application review. Applicants will not be permitted to submit any documents after the application due date.

**Projects that do not comply with all of the requirements and policies may be subject to reduced scores on future applications due to noncompliance.**

## **Review Process**

Funding is based upon a three-stage process: scoring criteria, financial feasibility, and market need. Applications must pass the first two stages before funding can be determined. Failure to successfully meet the requirements of any stage will result in the rejection of the application.

**Stage 1: Scoring Criteria** – Applications will be scored based upon capacity of the development team, targeting plan, project design, location, readiness to proceed, and financial design. Applicants must receive a *minimum score* as referenced on score sheet in the scoring criteria in order to move to Phase II for all competitive applications. Applications will be ranked according to their assigned score and those with the greater number of points receive priority in the Housing Credit award process. Projects will be reviewed on the basis of the documentation contained within the application and supporting documentation. KHC will review and score each application based on the information presented and will not contact developers for clarification or to obtain missing information. If KHC experiences a problem retrieving attachments that were uploaded to KHC's system, staff will look to the CD or flash drive provided. If KHC is still unable to open an attachment, KHC will contact the developer to have paper copies provided.

Ties in scoring will be resolved in accordance with the following priorities:

1. Combined total points in project design and financial design.
2. Lower amount of Housing Credits per unit.

Once all applications have been reviewed and scored, KHC will make the preliminary project score sheet available to the appropriate contact for each application. Applicants will not be made aware how other applications have scored. KHC will establish a timeframe by which applicants can review their initial scores and offer written feedback as to if they disagree with the preliminary score. Applicants will not be able to submit any additional documentation or a revised pro forma at this time; rather, the review will allow the applicant the opportunity to address any over sites or calculation errors by KHC staff. This new stage in the process may delay final funding announcements for up to one month.

KHC will then make final funding decisions based upon these scores. All funding decisions will be final and will not be subject to appeal.

**Stage II: Financial Feasibility** – A project is financially feasible if **all** federal, state, local, and/or KHC program guidelines are met and the project is still viable. Rents and expenses must be reasonable, the sources and uses must balance, and the debt coverage ratio must adhere to KHC's requirements. A review of the submitted underwriting model, along with information in the application and attachments, will be conducted. The application, underwriting model, and supporting documentation must all be in agreement. If a contradiction exists between the underwriting model and the application, the information in the underwriting model will be used to determine the financial feasibility.

## **Credit Review**

Credit review documentation must be submitted for both the developer and general partner(s) of the ownership entity of the project. If all general partners are not known at the time of application submission, the credit review documentation must be submitted for the developer entity at a minimum. Failure to submit credit review documents will result in KHC

denying the application. KHC reserves the right to request additional financial information as required to conduct this review.

Developers or general partner(s) submitting multiple applications are only required to provide credit review documentation once; however, each application submitted must clearly identify where the submitted documentation can be located if included in different application packet.

For projects allocated KHC resources (not applicable to housing credit only projects), KHC may require a guarantor. The guarantor may be any entity or individual, other than the borrower (if borrower is a single asset entity) and general partner(s)/managing member of the ownership entity, which has adequate financial resources and capacity to accept liability for completion of the project or repayment of all KHC resources in the project in the event of default or termination of the project. Guarantees to KHC are required to be effective for two years from the placed in service date.

All business financial statements should be compilation statements or audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP). If submitting compilation statements, there must be a certification contained with the statements certifying that they meet the requirements for a compilation statement.

All developers, general partner(s), and guarantors (other than individual guarantors) must submit the following:

- Most recent one-year development entity financial statements
- Independent Accountant's Report
- Balance Sheet
- Statement of Operation and Retained Earnings
- Cash flow statement
- Year-to-date development entity financial statement
- Most recent one-year business tax return or Form 990
- Current bank statement supporting cash pledged to the project (if applicable)
- Business Credit Report Certification/Authorization

Individual guarantor(s) must submit the following documentation:

- Three years personal tax returns
- Current personal financial statement
- Current bank statements
- Personal Credit Report Certification/Authorization Form
- KHC Personal Financial Statement (should be prepared electronically and printed. Can be located on KHC's Multifamily Finance Web site at [www.kyhousing.org](http://www.kyhousing.org)).

KHC will order a business credit report from Equifax on all developers, general partner(s), and guarantors where applicable

### ***Development Team Creditworthiness***

If the applicant is applying for funds that require a guarantee, the appropriate financial documents will be reviewed to confirm the ability to guarantee the level of funding requested. If funds are being pledged to the project, bank statements will be reviewed to verify adequate funds are currently available.

If the applicant is applying for funds that do not require a guarantee, the appropriate documents are reviewed to show creditworthiness. The review will verify the applicant's other business ventures and/or personal finances, where applicable, are handled in an effective, efficient manner. Discrepancies between credit reports and financial statements are a red flag. Low Paydex scores for business reports and low FICO scores for personal credit reports are also red flags and may require more information. Near term liabilities that the applicant is not likely to satisfy or financial statements that do not match tax returns are also areas that may require further explanation.

The review is for cash pledged or guarantees provided, as well as to find a track record that the proposed owner/developer has a history of managing finances in an efficient manner in his/her other business practices and is an acceptable risk to KHC to develop this project.

**NOTE: KHC reserves the right to request additional financial information, as needed. KHC deals with all financial information in a confidential manner. This information is never shared with any other entities.**

**Stage III: Market Need** – Market studies (refer to page 31 for additional information) are required to be submitted at the time of application and will be reviewed in accordance with KHC's guidelines. Upon review of the market study, if it is found to have an acceptable market, then the project will continue to move forward. However, if the study is not acceptable, **funds will not be allocated and the application will be denied.** Market studies will only be accepted by firms that are on KHC's approved list. Please refer to technical submission stage of the QAP for additional information pertaining to market studies.

### **Partial Awards**

KHC will not allocate partial awards of 2013 housing credits.

### **Conditional Approval Process**

Funding recommendations are made by the application review team that consists of staff representatives/specialists of the program area within KHC's Multifamily Finance Department, and Design and Construction Department staff.

The recommendations are based on application review as submitted by the applicant with possible minor underwriting adjustments. Once a project is approved for funding, KHC at its sole discretion reserves the right to accept or reject changes to the underwriting model. Projects proposing changes to the underwriting model after award is made will be subject to additional underwriting review. For example: If a project is submitted with an equity letter of intent with credit pricing of \$.75 but later receives pricing of \$.90 then KHC will re-underwrite the project and reduce credit and/or other KHC resources prior to non-KHC resources being reduced. Other examples include changes in interest rates and construction costs.

Staff recommendations are presented to the credit review committee for conditional project approval. Once conditional approval is received, staff will present the funding awards to KHC's Board of Directors. These announcements will be posted on KHC's Web site under Housing Production and will also be sent through KHC's eGrams. Approved projects will receive a conditional commitment letter based upon technical submission requirements.

KHC reserves the right to terminate its obligations regarding any commitment or award if the terms of the application or any part of the transaction are changed in any material respect, such as if any material information submitted to KHC proves to be inaccurate or incomplete in any material respect; or if any material adverse change occurs; or any additional information is disclosed to or discovered by KHC that KHC deems materially adverse in respect of the condition, financial or otherwise, business, operations, assets, nature of assets, liabilities or prospects of applicant or the proposed project.

## **Technical Submission Stage**

### **Reservation Notice**

KHC will send each successful applicant a conditional commitment letter that indicates the initial reservation of Housing Credits and other KHC resources awarded. In determining the initial amount of credit to be reserved, KHC will use costs, incomes, and expenses submitted in the application as determined by KHC to be reasonable. The final amount of credit allocated to each successful applicant may be less than, but may not be more than, the amount requested in the application, the amount specified in the conditional commitment letter, or the amount reflected in a carryover allocation.

### **Deadlines**

- **Housing Credit Reservation Fee**

The Housing Credit reservation fee is due to KHC within two weeks of the date of the conditional awards letter. Failure to pay the reservation fee within the time frame will result in the Housing Credit award being recaptured.

- **Firm Commitment Letters**

If a conditional award has been made, the applicant must provide to KHC, no later than 90 days after the conditional Housing Credit award notification, binding final firm commitment letters from the equity investor and non-KHC subsidy sources that provide:

- 1) The estimated dollar amount of the equity investment or loan amount to be provided to the project;
- 2) The interest rate and term, if loan proceeds are involved;
- 3) The collateral for the project, if a loan is involved; and
- 4) The anticipated pay-in schedule for the equity contributions, subject to final underwriting of the project, and other reasonable adjustment prior to closing.

The firm commitment letters shall contain normal and customary contingencies for equity and loan commitments, including, but without limitation to, approval of the appraisal, closing of other sources of financing, environmental and title review,

financial condition of the developer, and satisfactory negotiation of partnership and/or loan documents. If the firm commitment letters have not been submitted within the 90-day time frame, the conditional award of credit will expire **automatically** and KHC will recapture the credit and all associated funding. Time is of the essence with respect to the conditional commitment and the award of credits to be made, and all time limitations therein or there under. KHC may strictly enforce requirements imposed upon applicants. Applicants must agree to proceed diligently to closing.

- **Technical Submission**

For projects receiving 2013 credit, all technical submission items must be received at KHC by October 1, 2012. This includes projects forward committed from the October 2011 round and projects awarded from the April 2012 round. Projects may request up to three (3) 30-day extensions with payment of a \$500 fee per extension. Extension fees must be paid prior to the expiration of the deadline.

- **Project Closing**

Applicants receiving 2013 housing credit allocations from the 2012 application round or from the competitive application round on April 9, 2012 have until January 2013 to close with their equity investor. The applicant will receive a checklist that will outline all outstanding or additional documentation needed. If the project does not close in January 2013, KHC's conditional commitment to the project shall expire and be null and void and of no further force and effect. A request for an extension may be made, and if KHC so approves, the closing deadline may be extended an additional 45 days by payment of an extension fee equal to 1 percent of the conditional credit award. The extension fee shall be payable to KHC on or before January 31, 2013 in order to avoid expiration of the conditional credit award.

KHC will not entertain additional requests extensions.

All requested extensions may be considered in the capacity scoring in future funding applications to KHC.

Please note that the initial and final reservations of credit are tentative and may differ in amount from the formal credit allocation to be made either upon placement in service of the project or request for a carryover allocation certificate.

### **Market Study**

KHC maintains an approved Market Analyst List from which developers may select an appropriate firm or individual. KHC reserves the right to remove individuals/firms from this list for any reason. Market analysts submitting a report that materially fails to comply with KHC's requirements or is otherwise unacceptable may, in the sole discretion of KHC, be removed from the list. If reports are received that are not acceptable, the applicant/developer will be informed by KHC if such report is unacceptable.

Applicants/developers will enter into a contract for services directly with the market analyst and, with the exception of questions about KHC standards and/or requirements, the applicant/developer shall be responsible for handling all issues related to the market analysis. Applicants/developers contracting with market analysts for the benefit of KHC shall be responsible for negotiating the price of the contracted work.

Although the applicant/developer is responsible for engaging the market analyst, the report shall identify KHC as the intended user for the purpose of providing KHC a basis for investment and loan underwriting decisions.

**Please Note:** Applicants that have submitted a 2011 market study for the 2012 rental application round, and that may receive 2013 housing credits, must have their 2011 market study updated for the 2013 application round. Additionally, for applications submitted for either the 2012 and/or 2013 rental application rounds, the market analyst must include in their market analysis all allocated projects in the market area for the years 2011 and 2012 and any new projects being proposed in the primary market area. KHC will require an updated market study to be provided to KHC within 60 days of the 2013 housing credit conditional award. If a market study reflects an insufficient market based on the 2011 and 2012 projects awarded, the project will be rejected.

### **Carryover Allocation Requirement**

The Internal Revenue Code requires KHC to verify that a project meets the 10 percent requirement by obtaining a written certification from the project owner, under penalty of perjury, that the project owner has incurred more than 10 percent of the reasonably expected basis in the project.

The carryover allocation requirement is for qualified projects that have not been placed in service within the year in which they received a Housing Credit reservation but have met certain minimum requirements set forth by IRC §42. Projects receiving carryover allocations must be placed in service no later than the close of the end of the year following the calendar year in which the carryover allocation is issued.

A carryover allocation is issued for a specific amount of credit. The applicant must meet the 10 percent carryover allocation requirement, which means at least 10 percent of the total project cost must be incurred and a cost certification must be submitted to KHC on or before the Friday before Thanksgiving each year. The project owner's 10 percent cost certification must be accompanied by a written certification prepared by a certified public accountant, who has examined all eligible costs incurred with respect to the project, that it is his or her belief the project owner has met this requirement.

Costs may include 10 percent of the expected basis amount of the project owner's adjusted basis in land or depreciable real property that is reasonably expected to be part of the project. Also, direct and indirect costs of acquiring, constructing, and/or rehabilitating the project may be included.

Application and compliance monitoring fees are not included in the 10 percent of expected cost basis amount. An amount is included in basis if it is treated as paid or incurred under the method of accounting used by the project owner.

### **Recapture of Carryover Allocation**

KHC retains the right to recapture a carryover allocation of credit to a development prior to the end of the two-year carryover allocation period allowed under the Code. Should the developer or owner fail to comply with all such terms and conditions, KHC may, at its discretion, rescind the carryover allocation and make the recaptured credit available to other developments.

## **Placed-In-Service Stage**

All projects are required to submit final close-out documentation. Applicants will receive a placed-in-service checklist that will outline the documentation that is required at this stage.

### **Pre-8609**

Prior to the issuance of the IRS Form(s) 8609, owners must submit a signed Form 8821, Tax Information Authorization, to the IRS with a copy to KHC, a completed Application for Issuance of Certification of Allocation (Form 8609), and the completed Final Cost Certification. Upon receipt, KHC will determine the best method by which to conduct a pre-8609 project review. The purpose of this review is to go through the various programmatic restrictions with the owner and/or property manager, as well as to ensure that all amenities and provisions as pledged in the application are in place. KHC reserves the right to review these pledges and restrictions with the owner/manager by phone, e-mail, or by conducting an actual on-site inspection. If KHC determines that all such pledges are not in place, issuance of the Form 8609(s) may be denied.

### **Final Cost Certification**

The final allocation amount will be determined by such factors as certified project costs, credit market value, receipt of federal financial assistance, and applicable credit percentages. To receive an IRS Form 8609, owners are required to submit a Final Cost Certification within 30 days after the last building in a project receives its Certificate of Occupancy or before December 1 of the current year, whichever is earlier.

### **Land Use Restriction Agreement (LURA)**

Federal regulations state that no credit shall be allowed with respect to any building for the taxable year unless an extended low-income housing restriction is in effect as of the end of such taxable year. [A Land Use Restriction Agreement (LURA) is required for all projects receiving Housing Credit including bond projects. KHC will prepare the LURA.]

A LURA is to be executed by the project owner and KHC and recorded at the county recorder's office against the project's property committing the project to operate in accordance with the agreements (rent and income limits, special uses of units, extended use restrictions, etc.) made by the applicant and KHC as inducements for the Housing Credit allocation. The LURA is to be recorded at the time the project owner obtains an ownership interest or at the time of permanent closing and is superior to other items.

The LURA will incorporate all project characteristics and attributes represented and pledged in the application and considered in the scoring criteria. The LURA must contain a prohibition against evicting a tenant for other than good cause during the entire 33-year extended use period, including the three-year vacancy decontrol period. Additionally, rents cannot be increased during the three-year vacancy decontrol period for existing tenants.

KHC requires a minimum of 30 days to prepare the LURA and form 8609 after the submission of the pre-8609 inspection packet. To facilitate documentation preparation, the project owner will give KHC a 30-day notice before the project's closing takes place.

## **IRS Form(s) 8609**

A final allocation of Housing Credits will be made (by issuing Form 8609) based on the date that an eligible building or project is placed in service (i.e., available for rental occupancy) as evidenced by a Certificate of Occupancy.

## **Policies**

### **EEOC Requirements**

Owners allocated Housing Credits will be required to develop and implement an outreach program to solicit participation by minority- and women-owned business enterprises. Furthermore, the owner will maintain the records of such outreach program, including the data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more, as well as additional details regarding the amount of the contract, subcontract, and documentation of owner's steps to assure that minority- and women-owned business enterprises have an equal opportunity to compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

Kentucky Housing Corporation supports diversity in the workplace and encourages all partners to actively recruit minority workforce participation in developments that utilize KHC resources. Partners can obtain information on minority workforce development from any source, including the Governor's Office of Minority Empowerment at <http://www.ome.ky.gov>, KY Workforce Investment at <http://workforce.ky.gov>, or from local resources such as the Urban League of Lexington at <http://www.ullexfay.org> or the Louisville Urban League at <http://www.lul.org> which have established workforce development programs.

### **Changes to Project Design**

If a project owner finds it necessary to change the project design during development (i.e., pledged amenities, number of affordable units, etc.), KHC must be notified in writing and request approval prior to making any changes. This includes the substitution of one pledged amenity for another.

### **Inspections**

All projects will be required to participate in a pre-construction conference ***before any construction activities begin, unless waived by KHC due to significant prior experience.*** This includes projects that are not requesting construction financing from KHC. The purpose of the pre-construction conference is to outline basic responsibilities and duties of the various parties throughout the construction and warranty periods. The pre-construction conference will be conducted by KHC's construction specialist and program representative/specialist assigned to the project.

Once the pre-construction conference has been conducted and all construction documents have been received, a Notification of Construction Start-up form must be submitted to KHC prior to the start of any construction. During construction, KHC's construction specialist will inspect the work progress and conduct monthly inspections. For Housing Credit only projects, the construction specialist may choose to only inspect the project at three different stages. The first stage is when footers are poured. The second stage will occur mid-way through construction, and the final stage at construction completion. The number of inspections conducted will be left to the discretion of KHC's Design and Construction

Department. The construction specialist will also inspect for pledged amenities made at application submission.

**For housing credit-only projects, KHC may, at its sole discretion, require and accept an alternative verification of inspection for the three stages of construction, by accepting a copy of an inspection report performed on behalf of the investor or other lender.**

For projects requesting to draw other KHC funds during the monthly inspection, the construction specialist will approve the draw requests for construction costs. All other costs will be approved by the program specialist. KHC will not pay for materials stored off-site. KHC will disburse funds for materials stored on-site if they are properly stored and secure. Draws are limited to one draw per month and must be signed by a KHC inspector. **All change orders to the approved plans and specifications must be submitted to KHC for review and approval at the time the change is needed.** Change orders submitted after the completion of the work to be changed will not be approved, unless prior authorization is given by KHC in writing.

In addition, there could be a pre-8609 inspection that will be conducted by compliance monitoring staff to determine if pledged amenities and/or other non-construction related attributes pledged during the application process have been provided.

### **Subsidy Layering Review**

A subsidy layering/financial review will be required on all projects that receive, either directly or indirectly, financial assistance from RD or HUD.

KHC is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project.

The subsidy layering review will include a review in the amount of equity capital contributed to a project by investors and a review of project costs including developer's fees, consultant fees, contractor's profit, syndication costs and rates, etc.

### **Identity of Interest**

For projects where there is an identity of interest or the appearance of an identity of interest between the developer, consultant, contractor/builder, architect, attorney, or nonprofit agency, KHC expects increased transparency and accountability. At KHC's discretion, it may take actions to limit an entity's involvement or compensation if it believes there to be either an actual or an appearance of inappropriate accountability among the development team.

**Note:** Identity of interest exists where there is a financial, familial, or business relationship that permits less than arm's length transactions. This includes, but is not limited to, the existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders.

## **Material Participation by Nonprofit Organizations**

For partnerships, turnkey, or joint ventures that have, as a general partner or co-general partner, a local tax-exempt nonprofit organization that applies for Housing Credits through the nonprofit set-aside, KHC expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Nonprofit participates in the activity for more than 500 hours during the tax year.
- Nonprofit's participation constitutes substantially all of the participation in the activity of all individuals (including non-owners) for the tax year.
- Nonprofit participates in the activity for more than 100 hours during the tax year and its participation is not less than the participation of any other taxpayer for such year.
- Nonprofit activity is a significant participation activity for the tax year and the taxpayer's participation in all significant participation activities during the year exceeds 500 hours. A significant participation activity is one in which the taxpayer has more than 100 hours of participation during the tax year but fails to satisfy any other test for material participation.
- The nonprofit materially participated in the activity for any five of the ten tax years immediately preceding the year in question.

Based on all facts and circumstances, the nonprofit participates in the activity on a regular, continuous, and substantial basis during the tax year. To satisfy the facts-and-circumstances test, a nonprofit must participate in an activity for more than 100 hours. The nonprofit's management services are not taken into account unless no other individual is compensated for management services and no other individual performs management services exceeding the hourly total of such services.

## **Recapture of Housing Credit under Reservation**

To ensure the efficient use of the Housing Credit in Kentucky, KHC will require all projects that receive Housing Credit reservations, including set-aside projects, to confirm that the Housing Credit will be eligible for allocation to the project (more than 10 percent of costs incurred) by the end of the calendar year. A 12-month extension may be granted upon request.

Credit returned or unallocated before September 30, 2013 will be allocated to other pools or set-asides as determined by KHC. Credit returned after September 30, 2013 in the allocation year, may be carried into the next calendar year. Credit returned from two or more projects by the same entity will be subject to penalty.

## **Qualified Contract Process**

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credit after December 31, 1989 are subject to an "extended use period," which lengthened the time Housing Credit properties were required to maintain affordability from 15 to 30 years. In efforts to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also provided an option for owners to exit the program at the end of the initial 15-year compliance period by requesting that the state agency either purchase the property or assist in finding a buyer at a determined qualified contract price.

Owners are encouraged to review their copies of applications submitted to the agency when applying for an allocation of credits, as well as any deed restrictions, including the LURA, to determine if and when they are eligible to pursue the opt-out provision. Eligible owners must notify KHC of their desire to sell the property using the process outlined in this document. Once complete and proper notice has been received, KHC has one year to find a buyer for the project at a pre-determined price, not to exceed the qualified contract price. The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement.

The project and owners should be in compliance with all programmatic requirements to be eligible to apply for the opt-out provision. The qualified contract may be suspended or terminated due to any mortgage defaults or encumbrances on the property or an IRS audit or investigation that may adversely affect the sale of the property.

Owners will be allowed only one opportunity to request the qualified contract process per property. If KHC is unable to find a buyer pursuant to a qualified contract, the property may be converted to other uses.

### Other Resources

If other local, state, and/or federal resources were used in the development or operation of the Housing Credit property, the termination of the extended use agreement will only be valid for the Housing Credits. The current and/or future owner of the property will still be required to uphold the income, rent, or restrictions that are required for the other funding sources for the remainder of the mortgage, note, or deed restriction covering those funds.

If the owner does not get a qualified contract and the property has project-based rental assistance, the project-based rental assistance contract will be terminated.

### Fees and Conditions for Qualified Contract Termination

There will be a nonrefundable administration fee for processing a qualified contract request. In the event that additional third-party reports are required by a potential buyer or KHC, the qualified contract process will be suspended during the time needed to prepare the reports. The cost of the additional reports will be at the expense of the property owner. All payments for service must be made within a timely manner. Non-cooperation by the property owner in the participation of third-party reports will lead to the termination of the qualified contract process. Non-cooperation by the property owner on any issues of the qualified contract will also result in the termination of the process and will result in the owner being required to comply with the property low-income usage requirement for the remaining extended use period.

Owners who elect to exercise their option year must complete and submit all required documentation within 120 days of requesting a qualified contract. The application fee can be submitted at initial request or with the required documentation but no later than the 120 days past the initial request. The initial request time starts at the beginning of each calendar year in the 14<sup>th</sup> year of the compliance period. For example, if the property owner's 15-year compliance period ended on March 1, 2009, the property may have requested a qualified contract starting in January of 2008 through December 31, 2008. From the point that KHC and the property owner agree upon the contract sale price, the one-year time period starts to find a qualified contract. Please note that the owner may request a qualified contract from KHC only one time.

The information that the property owner is required to submit to notify KHC of intent to request qualified contract information is listed below and located on KHC's Web site:

- Qualified Contract Notification Letter
- Calculation of Qualified Contract Price Worksheets

The Housing Credit property should be in compliance with all regulatory agreement requirements. The qualified contract may be suspended or terminated due to any defaults, liens, or encumbrances on the property or IRS audit or investigation that may adversely affect sale of the property.

KHC will review the owner's packet of materials. This will require staff and the owner to work closely together to ensure that all required information has been submitted and a QCP has been set. The one-year period begins once this step is complete. KHC will complete this initial review within 90 days after receipt of all required documentation.

For additional information pertaining to the qualified contract process and documentation, please refer to KHC's Web page [www.kyhousing.org](http://www.kyhousing.org) under Housing Production, Multifamily Finance, Housing Credit Program.

## Compliance Monitoring Procedure

KHC has adopted a compliance monitoring procedure in accordance with IRC Section 42(m)(1)(B)(iii). The compliance monitoring procedure is detailed in KHC's Housing Credit Compliance Guide and includes:

1. The record keeping and record retention provisions of IRS Final Regulation Section 1.42-5(b).
2. The owner's annual certification requirement of Regulation Section 1.42-5(c)(1).
3. The on-site review of certifications and support documentation for at least 20 percent of the low-income units in each property at least once every three years in accordance with Regulation Section 1.42-5(c).
4. The on-site inspection provision of Regulation Section 1.42-5(d).
5. The notification of noncompliance provisions of Regulation Section 1.42-5(e), whereby notice is made to owners and the IRS regarding events of noncompliance.
6. The established programs of the projects serving special needs will be monitored on an ongoing basis to determine accordance with the original proposal. Homeless special needs groups will be expected to document program outcomes and results.

The compliance monitoring procedure applies to all projects that receive or have received an allocation of Housing Credit and will continue throughout the 15-year compliance period. During the extended use period, the Compliance Monitoring Department has established procedures with reduced fees for monitoring payments. Please refer to the compliance monitoring requirements after 15 years in the Compliance Guide as noted on KHC's Web site.

Due to the complexities of the Housing Credit program in regard to long-term compliance, KHC strongly encourages the management company of each project to attend on-going training. KHC will periodically provide such training, which may/may not have an associated fee. It is the responsibility of the owner to ensure that the selected management company remains adequately versed in the Housing Credit program.

## **Effective Date**

This Qualified Allocation Plan is effective for allocations of Housing Credit made after December 31, 2011, and will remain in effect until December 31, 2013, unless amended. Amendments to the Internal Revenue Code and Treasury Regulations may necessitate conforming amendments to this plan.

*Remainder of page intentionally left blank.*

\*\*\*\*\**Notice to Applicants and Disclaimer on following page*\*\*\*\*\*

**NOTICE TO APPLICANTS  
KENTUCKY HOUSING CORPORATION  
LOW INCOME HOUSING TAX CREDIT (HOUSING CREDIT) PROGRAM**

**Incomplete applications will be returned to the applicant.**

It is the applicant's responsibility to submit adequate documentation to support their score. An applicant's consistent failure to provide complete and/or accurate information during the application process, failure to pay compliance fees, failure to live up to attributes pledged on the original applications or any other Kentucky Housing Corporation programs may impact scoring or result in rejection of application and being barred from further participation in the Housing Credit program. Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in Housing Credit being recaptured. As a condition of receiving a Housing Credit allocation, an applicant agrees to furnish to Kentucky Housing Corporation a copy of Form 8609 with Part II completed at the end of the first period for which Housing Credit is claimed for each building in the Housing Credit program. Additionally, any new applicant must receive compliance monitoring training by Kentucky Housing Corporation staff prior to receiving Form 8609.

---

**DISCLAIMER**

**As the state Housing Credit agency, Kentucky Housing Corporation will evaluate and select projects to receive an allocation of Housing Credit pursuant to this Qualified Allocation Plan. Kentucky Housing Corporation will determine the appropriate amount of Housing Credit required by each project through an underwriting process.**

**These decisions in no way warrant or represent to any sponsor, investor, lender, or other that a project is, in fact, viable. Kentucky Housing Corporation makes no representations to the owner or anyone else regarding adherence to the Internal Revenue Code, Treasury Regulations, or any other laws or regulations governing the Housing Credit program.**

**No member, officer, agent or employee of Kentucky Housing Corporation shall be held personally liable concerning any matters arising out of, or in relation to, the allocation of Housing Credit.**