

# Qualified Allocation Plan

FISCAL YEARS 2017-2018





COMMONWEALTH OF KENTUCKY  
OFFICE OF THE GOVERNOR

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August 25, 2016

Ms. J. Kathryn Peters  
Executive Director/CEO  
Kentucky Housing Corporation  
1231 Louisville Road  
Frankfort, KY 40601

Subject: Low Income Housing Tax Credit Program  
Approval of the 2017-2018 Qualified Allocation Plan

Dear Ms. Peters:

In accordance with the recommendation of the Board of Directors of Kentucky Housing Corporation and pursuant to Section 42 (m)(1)(A)(i) of the Internal Revenue Code of 1986, as amended, I hereby approve the 2017-2018 State Qualified Allocation Plan for the Low Income Housing Tax Credit program.

Kentucky Housing Corporation, the duly authorized state housing credit agency in the Commonwealth of Kentucky, shall administer the federal Low Income Housing Tax Credit program pursuant to the 2017-2018 Qualified Allocation Plan, effective with the date of this approval letter, through December 31, 2018, unless otherwise amended.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew G. Bevin".

Matthew G. Bevin  
Governor

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# 2017 – 2018 QUALIFIED ALLOCATION PLAN

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## **Section I. Introduction**

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

The Housing Credit program was created by the Tax Reform Act of 1986. The program is one of the few remaining tax incentives for the creation and preservation of affordable 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 Credit, applicants may not rely on KHC for legal or tax advice.

KHC encouraged input from housing industry professionals and experts active in Kentucky to assist in preparing the current Qualified Allocation Plan (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 June 30, 2016.

Demand for Housing Credit often exceeds availability. The purpose of this QAP is to utilize Housing Credit for the creation and preservation 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:

1. Provide an equitable distribution throughout the Commonwealth and provide a reasonable mix of affordable housing projects, both in number of units and the populations served, e.g. family, elderly, special needs, etc.;
2. Provide as many rental housing projects as possible, considering geographical need, size and cost per unit, and long term viability;
3. Provide opportunities to a variety of qualified sponsors, both nonprofit and for-profit; and
4. Provide only the amount of credit that is deemed necessary for the financial feasibility of a project and its viability as a qualified low-income housing project throughout the credit period.

## **Section II. Qualified Allocation Plan**

This Qualified Allocation Plan (QAP) adopts, and incorporates herein by reference, the Kentucky Housing Corporation (KHC) Multifamily Guidelines (Guidelines), as amended from time to time, and all policies, procedures, and requirements contained therein. KHC anticipates that the Guidelines will be published by September 15, 2016. Applicants are advised that adherence to all provisions in the QAP and Guidelines, as applicable, is a requirement to participate in KHC's multifamily programs. In the event a discrepancy exists between the QAP and the Guidelines, the QAP will prevail for projects funded solely with Low Income Housing Tax Credits.

## Requirements of the QAP

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

- Serving the lowest-income tenants
- Serving qualified tenants for the longest periods
- Projects which are located in qualified census tracts (as defined in 26 U.S.C. §42(d)(5)(B)(ii)(I)) and the development of which contributes to a concerted community revitalization development plan

Section 42(m) of the Code also states that the selection criteria must consider 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.

## Program Administration

In KHC's administration of the Housing Credit program and other state and federal funding programs, KHC must make decisions and interpretations regarding project applications. KHC is entitled to the full discretion allowed by law in making all such decisions and interpretations, and reserves the right to resolve any conflicts, inconsistencies, or ambiguities, if any, in the QAP or Multifamily Guidelines or that arise in administering, operating, or managing the reservation and/or allocation of the Housing Credit Program. KHC will interpret the QAP and Guidelines when reviewing applications for tax credits, and may accept or reject an application based on its interpretation(s). Such discretion shall include, but is not limited to, the right to allocate and issue Housing Credits under the Code, and to take all other actions and impose all other conditions which are required by law or which in the opinion of KHC are necessary to ensure the complete, effective, efficient, and lawful allocation of and utilization of the Housing Credit program. Such conditions may include imposing more stringent conditions for receipt of Housing Credits and other funding sources administered by KHC than are required by the Code or other federal laws applicable to each project throughout the required compliance period and/or other applicable periods.

As the allocating agency for Housing Credits in Kentucky, KHC will evaluate and select projects to receive an allocation of Housing Credit pursuant to the Code, the QAP and the Guidelines, as well as the 2017 Multifamily Questions and Answers (as they may be amended from time to time), as incorporated herein by reference, including all policies, procedures, and requirements contained therein. The QAP and Guidelines are intended to provide sufficient information to prospective applicants, however, due to the complexity of the program and the housing development process in general, not every potential circumstance can be covered. Applicants are strongly encouraged to seek input from KHC's Multifamily

Program staff regarding any situation not explicitly addressed in the QAP or Guidelines prior to submitting an application. However, KHC staff can only provide general review. Applicants remain solely responsible for the contents of their applications.

KHC will determine the appropriate amount of Housing Credit or other KHC resources required by each project through an underwriting process per this QAP and the Guidelines. In order to accurately underwrite a project, KHC must determine that proposed costs are reasonable based on an examination of all soft costs and hard costs identified in the underwriting model. KHC will thoroughly examine building construction, soft costs and land costs, regardless of how the costs are proposed to be paid. KHC may require reasonable additional explanation, documentation or information pertaining to any portion of the application and/or underwriting model even if the QAP and/or Guidelines do not specifically require such information, explanation or documents. All information submitted pursuant to the QAP must be satisfactory to KHC, in its sole and absolute discretion. If KHC requests additional information from an applicant, such information must be promptly submitted within appropriate timeline(s).

KHC's review of submitted applications includes making a determination that the applicant can meet all of the obligations pledged in the application and/or underwriting model. Regardless of the project's competitive score, KHC will not fund or select projects that are not financially viable and sustainable for the entire required compliance period, extended use period and/or affordability period, or that constitute a waste of or risk to federal and/or state resources and/or assets, as determined by KHC.

KHC's decision to allocate Housing Credit and/or other resources to a project in no way warrants or represents to any sponsor, investor, lender, or other person or entity that a project is, in fact, viable. KHC makes no representations to the owner or anyone else regarding adherence to the 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.

## **Amendments to the QAP**

KHC reserves the right to amend the QAP or Guidelines as needed for the purpose of clarification, ensuring compliance with the Code or regulations, or any change necessary to affect the spirit and intent of the Housing Credit program as determined by KHC in its sole discretion. Amendments may reflect changes, additions, deletions, interpretations, or other matters necessary to comply with the Code or regulations. Amendments are not limited to, but may perform such acts as cure ambiguities, supply information on omissions, correct inconsistencies, or facilitate the allocation of Housing Credits that would not otherwise be allocated. All amendments will be effective immediately.

## **Fair Housing**

Pursuant to national and state fair housing laws, KHC reserves the right to examine all applications for possible disparate impacts which may present artificial, arbitrary and/or unnecessary barriers to minorities, as well as for any valid government interest which might be served. KHC further reserves the right to modify and adjust any allocation as it deems appropriate to accomplish its housing goals, including its goal of creating and enhancing housing choices in areas of opportunity (i.e. maximizing leveraging of available program resources, and encouraging geographic distribution).

KHC administers a variety of HUD programs and is required to affirmatively further the purposes and policies of the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968. The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs KHC to take steps proactively to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all.

As part of KHC's Consolidated Plan, KHC is required to undertake fair housing planning, which consists of the following: 1) an Analysis of Impediments (AI) to fair housing choice; 2) actions to cover the effects of the identified impediments; and 3) maintenance of records to support the affirmatively furthering fair housing certification.

### **Analysis of Impediments to Fair Housing Choice**

KHC's AI is a review of impediments or barriers that affect the rights of fair housing choice covering public and private policies, practices, and procedures affecting housing choice. Impediments to fair housing choice are defined as any actions, omissions, or decisions that restrict, or have the effect of restricting, the availability of housing choices, based on race, color, religion, sex, disability, familial status or national origin. Conducting an analysis of impediments is a required component of certification and involves the following:

- An extensive review of a state or entitlement jurisdiction's laws, regulations, and administrative policies, procedures, and practices;
- An assessment of how those laws affect the location, availability, and accessibility of housing;
- An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes; and
- An assessment of the availability of affordable, accessible housing in a range of unit sizes.

KHC's review of impediments revealed that impediments to fair housing choice exist within Qualified Census Tracts (QCT) as defined under section 42(d)(5)(B) of the Internal Revenue Code (IRC). Consequently, this QAP limits the creation of new affordable housing units in QCTs. Please refer to Section XIII. Policies, for additional information.

The decision to limit the creation of new affordable housing units in QCTs does not mean that KHC has determined it will no longer fund or support communities that are located in QCTs or in rural areas or in any other area that is not regarded as presenting what HUD regards as high opportunity areas. KHC believes, in fact, that it must support, when possible, both those low- and middle-income individuals and families who choose to live in and move to high opportunity areas, as well as those low- and middle-income individuals and families who wish to remain in areas they value. KHC believes that seeking to dismantle barriers that prevent Kentucky families from being able to freely choose where they live, and seeking to provide needed housing in communities that are in need of affordable and good homes, are not either/or options. KHC will continue to seek to meet both needs and thereby maximize freedom of housing choice across Kentucky.

### **Public Hearing Requirement**

The draft QAP is subject to a minimum 7-day public comment period. KHC conducted a public hearing on June 30, 2016, to receive comments and accepted written comments through July 7, 2016, either by a formal letter to the attention of Jeremy Ratliff or email 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 website, and in accordance with the Kentucky open records law requirements.

### **Approval Process of the QAP**

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

## Public Information and Open Records Act Requests

Applicants are advised that materials contained in applications for Housing Credit 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 must 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 publish on its website a list of all applications received for the current application round. The list will be made available within two weeks of the current application deadline.

## Nonprofit Participation Requirement

IRC §42(h)(5) requires that a minimum of 10 percent of the total Housing Credit ceiling amount must be made available first only to projects with qualified nonprofit participants and owners. In order to satisfy this requirement, a qualified nonprofit must own an interest in the project (directly or through a partnership). Applicants must indicate that they are applying for Housing Credit as a nonprofit.

A qualified nonprofit organization is one that:

- Is described in §501(c)(3) or (4) of the Code and is exempt from tax under §501(a) of the Code.
- Is not affiliated with or 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.
- Owns at least 51 percent of the general partner or managing member's interest of the ownership entity of the development.
- Receives at least 30 percent of the total developer fee.

To qualify for the nonprofit pool, a qualified nonprofit organization that meets the criteria identified above must materially participate in the development, operation, and management of the project. Material participation shall include, but is not 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.

A nonprofit competing for funding that has or will have an ownership interest in the proposed development must submit to KHC at the time of the application a resolution from its Board of Directors that includes language that authorizes: 1) the application being made for specific multifamily funding [i.e. tax-exempt bonds, Housing Credit, HOME Investment Partnership Program, Affordable Housing Trust Fund (AHTF), National Housing Trust Fund (NHTF) or other KHC resources that may be available]; 2) the amount of ownership interest the nonprofit has in the venture; 3) the nonprofit's specific liabilities in the development; and 4) the percentage of the developer fee the nonprofit will receive and the percentage of the developer fee that will be shared with another entity.

#### **Required Documentation:**

- 1) Resolution authenticated by the secretary of the nonprofit's Board of Directors must be submitted with the capacity team documentation. If the document is approved during a Board of Directors meeting, a quorum must pass and sign the resolution and such resolution shall be incorporated into the minutes of the meeting.
- 2) All nonprofits with any ownership interest in the development and that wish to compete in the nonprofit set-aside must submit a signed Nonprofit Questionnaire with the required attachments and uploaded via the online application.

## **Section III. Available Resources**

### **Amount of Housing Credit Available**

The total amount of Housing Credit expected to be available to Kentucky for 2017 and 2018, respectively, is estimated to be approximately **\$10,300,000**. The total is determined from the following:

- \$2.35 plus the cost-of-living adjustment specified in Section 42(h)(3)(H) multiplied by Kentucky's population; based upon the most current population figures.
- Any unallocated credit from previous years.
- Any returned credit from previous years.
- Any amount allocated to Kentucky by the IRS from the National Pool.

### **Types of Housing Credit Available**

- 9 Percent Credit: For new construction or substantial rehabilitation of qualified low-income buildings.
- 4 Percent Credit: For the acquisition of 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 approximate 4 percent) 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.

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

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined per Section 42(h)(4). If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive 4% Housing Credits calculated against the project's qualified basis without causing a reduction in the state's annual credit authority. Applicants requesting to finance projects with tax-exempt bonds must complete a separate application and will be scored separately.

If the 4 percent Housing Credit is being requested, all applicable fees as listed in Section V. Applicable Program Fees, should be included. The Tax-Exempt Bond Credit Allocation Fee must be paid prior to issuance of the Internal Revenue Service (IRS) 42(m) letter. If the amount of 4 percent Housing Credit increases between the time the IRS 42(m) letter is issued and issuance of Form(s) 8609, additional allocation fees will be collected prior to issuance of Form(s) 8609.

## Distribution of Housing Credit

*\*Note: Projects are limited to applying in no more than two (2) of the four (4) main competitive pools below.*

### FY 2017 and FY 2018 QAP POOLS and APPROXIMATE ALLOCATIONS For 9% Low-Income Housing Tax Credits

Pools	FY2017	FY2018
<b>I. Preservation/Existing Supply</b>	<b>\$3,250,000</b>	<b>\$3,400,000</b>
Urban	\$1,000,000	\$1,000,000***
Rural	\$2,250,000	\$2,400,000
<b>II. New Construction/New Supply</b>	<b>\$3,000,000</b>	<b>\$3,250,000</b>
Urban	\$2,000,000	\$2,250,000***
Rural	\$1,000,000	\$1,000,000
<b>III. Nonprofit Supportive Housing</b>	<b>\$1,470,000</b>	<b>\$1,700,000</b>
Set Aside*	\$720,000	\$1,200,000
Competitive	\$750,000	\$500,000
<b>IV. Community Impact/Historic Adaptive Reuse</b>	<b>\$2,500,000</b>	<b>\$1,850,000</b>
Set Aside**	\$750,000	
Urban	\$1,000,000	\$1,100,000***
Rural	\$750,000	\$750,000
<b>V. Maximizing Outcomes</b> <i>Noncompetitive/KHC Discretion</i>	<b>\$80,000</b>	<b>\$100,000</b>
<b>Total</b>	<b>\$10,300,000</b>	<b>\$10,300,000</b>
Total Urban	\$4,000,000	\$4,350,000
Total Rural	\$4,000,000	\$4,150,000

*\*2017 set-aside is for the Newport Housing Authority's Highland Heights project (Year 2 of a 2-year commitment). The 2018 set-aside is for Louisville Housing Authority's Choice Neighborhoods project.*

*\*\*2017 set-aside is for a project with the VA Hospital in Lexington.*

*\*\*\*Due to the size of the set-aside for the Louisville Housing Authority's Choice Neighborhoods project, any additional allocation(s) for projects located in Jefferson County for 2018 shall be limited to a total of \$800,000 of Housing Credit across all pools.*

**Please Note:** All applicants are limited to applying for no more than the credit allocated to the above pools and set-asides; individual project and Development Team maximum credit caps still apply. 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.

**\*Please refer to KHC's policy regarding the creation of new affordable housing units in a QCT.**

## Housing Credit Percentage

KHC will allocate and underwrite all projects that are applying for Housing Credit at 9.0%, and the applicable floating credit factor for any 4.0% Housing Credits, established by the IRS the month prior to applications being submitted. Any projects located within a Qualified Census Tract (“QCT”) or a Difficult Development Area (“DDA”) will be eligible for the 30 percent basis boost as provided in IRC §42(d)(5)(B). All projects not located within a QCT or DDA may, as determined by KHC in its sole discretion, be eligible to request the 30 percent basis boost. If Congress makes any modifications to the rates for the 4.00% Housing Credits after the QAP has been approved, but before applications are received, KHC may amend the requirements of the QAP and adjust the requirements for the 130 percent basis boost. If changes occur after applications are received, but before funding announcements are made, KHC reserves the right to make adjustments, as KHC, in its sole discretion sees fit, to a project’s Housing Credit percentage to offset the need for KHC gap financing.

## Competitive Pools and Set-Asides

Any qualifying project can apply for Housing Credit through a competitive process and compete through the preservation/existing supply, new construction/new supply, nonprofit supportive housing, and community impact and historic adaptive reuse pools. All pools in which a project is applying must be identified on the application and separate application fees must be submitted. Each project is limited to applying in a maximum of two overall pools (preservation/existing supply, new construction/new supply, nonprofit supportive housing, and community impact and historic adaptive reuse). Development Team members are limited to submitting two applications per pool; however, consultants earning less than 25 percent of the total developer fee and management companies will not be held to this two application limit. 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.

The credit will be awarded to the highest scoring projects from a single pool in the following order: nonprofit supportive housing, community impact and historic adaptive reuse, preservation/existing supply, new construction/new supply. If a 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 2017 and 2018 Housing Credit. KHC may fund a lower scoring nonprofit project if necessary to meet the nonprofit set-aside requirements.

If KHC has sufficient unallocated credit remaining in the pools, KHC will aggregate the remaining credit and then evaluate each of the projects next in line in each pool and will prioritize the projects based on:

1. Projects located in congressional districts that have not received an awarded project, and/or
2. Pools that require the least amount of additional Housing Credit to fully fund the next project in line.

**KHC will score the application as submitted. At the discretion of the Managing Director Multifamily Programs, KHC staff may contact the applicant for clarification of information submitted with the application if it is deemed necessary. Except as provided in the Cure of Application Errors paragraph of Section X. Application Review Process, hereof, KHC will not accept additional documentation or revisions to the application or underwriting model after application submission.**

Projects will be determined to be urban or rural based upon the definitions established by USDA Rural Development (RD). Applicants can determine if the property is in an urban or rural area by entering the project address on the RD Property Eligibility Site, “Multi Family Housing.” A copy of the eligibility determination must be provided with the application.

## **I. Preservation/Existing Supply**

The 2017 and 2018 preservation/existing supply pools will total approximately \$3,250,000 and \$3,400,000, respectively. KHC has designated \$1,000,000 for allocation to the preservation of urban family housing developments in each year and \$2,250,000 and \$2,400,000 in 2017 and 2018, respectively, for allocation to the preservation of rural family housing developments, in each year. Projects must be in excess of 20 years old (more than 20 years past the placed-in-service date), as of the date of application, and meet a minimum score as outlined in the Guidelines in order to be considered for funding. However any project serving seniors and/or special needs tenants may apply in the preservation/existing supply pools if it has been more than 15 years since its placed-in-service date.

## **II. New Construction/New Supply**

The 2017 and 2018 new construction/new supply pools will each total approximately \$3,000,000 and \$3,250,000, respectively. KHC has designated \$2,000,000 and \$2,250,000 in 2017 and 2018, respectively, for new construction projects located in urban areas and \$1,000,000 for new construction in rural areas in each year. Projects must meet a minimum score as outlined in the Guidelines in order to be considered for funding and will only be considered in one of the set-asides of this pool.

## **III. Nonprofit Supportive Housing Pool**

Approximately \$1,470,000 and \$1,700,000 for 2017 and 2018, respectively, will be available for qualified nonprofits that meet the requirements of IRC Section 42(h)(5) and are the developer and general partner in the project. Projects must be permanent supportive housing and meet a minimum score as outlined in the Guidelines in order to be considered for funding.

KHC will allocate:

- \$720,000 to Newport Housing Authority/Highland Heights (from 2017)
- \$1,200,000 to Louisville-Metro Housing Authority/Beecher Choice Neighborhoods Project (from 2018)
- \$750,000 and \$500,000 for 2017 and 2018, respectively, of the Nonprofit Supportive Housing pool is available on a competitive basis for projects providing supportive housing services in at least 50 percent of the units for individuals or families who are:
  - Homeless, at risk of homelessness, survivors of intimate partner violence, persons with physical disabilities, acquired traumatic brain injury, aging out of foster care, persons with AIDS, severe mental illness, or chemical/alcohol dependency and who require access to supportive housing services.

## **Definition of Supportive Housing**

Supportive housing is decent, safe, and affordable community-based housing that provides tenants with the rights of tenancy under state and local landlord tenant laws and is linked to voluntary and flexible support and services designed to meet tenants' needs and preferences. The core value of supportive housing is that people in the populations identified above have the right to live in the most integrated setting possible with access to individualized supportive services.

## **IV. Community Impact and Historic Adaptive Reuse Pool**

Approximately \$2,500,000 and \$1,850,000 for 2017 and 2018, respectively, will be set aside for developments with significant community impact through the preservation of existing affordable housing or through the creation of new affordable housing units, or for the adaptive reuse of historic buildings. Both urban and rural community officials are encouraged to be actively engaged in the development of the scope of a project applying in the Community Impact and Historic Adaptive Reuse Pool.

KHC will allocate:

- \$750,000 to the VA Hospital project in Lexington (from 2017)
- KHC has designated approximately \$1,000,000 and \$1,100,000 in 2017 and 2018, respectively, for community impact and historic adaptive reuse projects located in urban areas and \$750,000 for community impact and historic adaptive reuse projects located in rural areas in each year.

As a threshold to be eligible to apply in the Community Impact and Historic Adaptive Reuse Pool, the chief executive officer, e.g. mayor, county judge executive or equivalent, of the jurisdiction where the project is located must provide a letter detailing the need for the project and address the benefit the project will bring to the community. Please refer to the Thresholds tab of the scoring workbook for specific requirements.

KHC will only fund one project from the Community Impact and Historic Adaptive Reuse Pool in any given jurisdiction. If more than one application is received for funding from the same jurisdiction, KHC will contact the executive official for the local jurisdiction (mayor, county judge executive, or other applicable executive official) to select one development as having priority and the other project(s) will not be considered for funding from the Community Impact and Historic Adaptive Reuse Pool. Any and all associated application fees for those projects not selected as having priority will be retained by KHC. An award made from the Community Impact and Historic Adaptive Reuse Pool does not preclude awards from other funding pools in the same jurisdiction. Projects must meet a minimum score as outlined in the guidelines in order to be considered for funding.

## **V. Maximizing Outcomes Pool**

The remainder of the annual Housing Credit allocation (approximately \$80,000 and \$100,000 in 2017 and 2018, respectively) will be awarded from the Maximizing Outcomes Pool at the discretion of KHC. This pool is non-competitive and applicants may not apply in this pool. 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. This pool may also be utilized to increase a project's credit rate to replace HOME and/or AHTF funds. 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. The manner in which this credit is allocated will be determined by KHC.

Projects will be selected based on the criteria 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 that address a significant community need or are identified as a priority by the Governor of Kentucky, HUD, RD or a local jurisdiction's community revitalization plan.
- 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.
- Projects in which 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 ordinary guidelines to make awards to projects from the Maximizing Outcomes Pool and may allocate Housing Credits outside of the competitive application process to existing buildings that are substantially assisted, financed, or operated under the U.S.

Department of Housing and Urban Development (HUD) or by RD. Projects identified as troubled by KHC, HUD or RD may qualify for funding at KHC's sole discretion. The criteria for these awards may be based on changing market conditions, geographic need, expiring federal funding commitments, or other factors KHC deems significant.

### Partial Awards

KHC will make every effort **not** to allocate partial awards of Housing Credit except to the extent necessary to insure the full utilization of KHC's annual allocation of Housing Credit.

### Waiting List

KHC will establish a waiting list for projects that do not receive a reservation of Housing Credit due to the limited amount of available resources. Housing Credit that becomes available via returned credit or from the National Pool may be allocated to the projects on the waiting list. Housing Credit returned after September 30 will be placed in the Maximizing Outcomes Pool and allocated at KHC's discretion, or carried forward into the next year's QAP.

If a project returns Housing Credit that was reserved, the next highest scoring application on the waiting list will receive first consideration for any award of credits if that project remains financially feasible as submitted. KHC will contact representatives of the waiting list projects when Housing Credit becomes available. Applicants will have a deadline to respond to any potential offer made by KHC.

**Please note:** *If a project returns Housing Credit that was awarded during the current year, then all other KHC resources awarded to the project must be returned as well. Projects that receive Housing Credit from the waiting list may then also be considered for other returned KHC resources.*

## **Section IV. Development Team Characteristics and Review Information**

KHC values Development Teams with the ability to meet key responsibilities in a timely and efficient manner. Development Team members for scoring purposes include the **developer, general partner, consultant, and management company**. KHC defines these roles as:

- **Developer:** The legal entity designated as the developer in the application, as well as all persons, affiliates of such persons, corporations, partnerships, joint ventures, associations, or other entities that have a direct or indirect ownership interest in the development entity.
- **General Partner:** The partner or collective partners, which has general liability for the partnership during construction, lease up, and operation of the project. In addition, unless the context shall clearly indicate to the contrary, if the entity in question is a limited liability company, the term "General Partner" shall mean the managing member or other party with management responsibility for the limited liability company.
- **Consultant:** A person or entity receiving compensation in exchange for providing professional or expert advice and assistance in the application preparation and the project management from the time of an award through the placed-in-service date. The consultant will be the primary point of contact for the project. An agreement or contract with the applicant/developer or the owner/general partner/developer is in place, and the consultant receives compensation based on an hourly rate or an agreed upon percentage of the developer fee charged. The consultant's fee is included in the calculation of the developer fee. Consultants have no ownership interest, nor maintain any ability to control the development *after the development is placed in service*. Consultants are responsible for the overall success of the development and are subject to capacity deductions for not meeting KHC deadlines or for the return of allocated funds.

- **Application Preparer:** A person or entity that receives compensation in exchange for application preparation. An application preparer's responsibility ends when the application is submitted for KHC review. Application preparers are not considered consultants and do not qualify for experience points for Development Team capacity scoring purposes.
- **Management Company:** Is responsible for proving that the tenants in the low-income units meet the eligibility requirements of the Housing Credit program and remain eligible throughout their tenancy [Section 1.42-5(b)][1]. The initial eligibility requirements include, but are not limited to, income eligibility, rent restriction, full-time student limitations, and non-exclusion of Section 8 applicants. In accordance with KHC's policies, each year a tenant remains in a low-income unit, a reexamination or recertification must be performed to ensure the tenant continues to remain Housing Credit eligible. Failure to correctly prove initial eligibility and continued eligibility is noncompliance and puts the Housing Credit owner at risk of losing its credit claim.

***Please note: KHC will limit new applicant/developers or applicant/developers new to Kentucky to one funded project for the current funding cycle. Unless otherwise approved by KHC, new applicant/developers will be limited to one outstanding preliminary award until the initial awarded project is placed in service prior to applying in a subsequent application round for Housing Credit. Applicant/developers who have previous experience with KHC's Housing Credit program are restricted only by the Housing Credit cap (See Section VII). For an applicant/developer to be considered experienced with KHC, they must have constructed and placed in service a KHC Housing Credit property within the past seven years.***

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 foundation.

KHC has specific scoring criteria for Development Team members. The following categories are used for scoring: experience and capacity, monitoring history, financial management and performance with KHC's multifamily department. Please refer to the applicable score sheet for a complete listing of the established criteria.

## **Development Team Capacity Review**

KHC will conduct a review of the experience and capacity of Development Team members prior to application submission. 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. If any of the parties participating in the project have outstanding fees or other payments due to KHC, those obligations must be satisfied prior to submitting a funding application and the party must remain current on any and all fees and obligations due to KHC throughout the application review period.

All applicants must complete the Capacity Scorecard contained within the Universal Funding Application (UFA). The scorecard will assess the capacity and experience of the members of the development team, monitoring history, financial management, and past performance. KHC will review the applicant's self-score and will complete its own capacity assessment and assign a score, which will be returned to the applicant. A minimum of 60 percent of the possible points on the scorecard must be achieved in order to continue with the application process.

## Full Disclosure

KHC requires full disclosure of who is involved in a proposed development, including all entities and individuals in the Development Team organizational structure. Following are the rules of disclosure:

1. Each project participant must include in the application a statement concerning all criminal convictions, indictments, and pending criminal investigations of all members of the development team and must provide dates and details of each circumstance, unless otherwise prohibited by court order, statute or regulation. KHC may perform a full criminal, employment, and credit investigation of all development team participants to verify credit and criminal history.
2. Any relationship between individuals or entities of the Development Team that could constitute a conflict of interest or identity of interest between the parties must be disclosed.
3. Complete organizational charts must be submitted for the owner and developer entity that clearly show all principals down to individuals involved in the ownership and development of the project. Please note that no change to the project owner/developer structure can be made without the express consent of KHC.
4. **All** development fee sharing arrangements must be disclosed. KHC considers all individuals or entities that receive a portion of the development fee to be part of the development structure.
5. **All** guarantor agreements must be disclosed. KHC may determine that a guarantor is actually a real party in interest to either the General Partner and/or Developer entities.
6. **All** consulting agreements, whether direct or indirect, paid or unpaid, shall be disclosed. KHC will review the amount of consulting fee to determine if a consultant is a real party in interest to either the general partner and/or developer entities.
7. **All** pending litigation that could result in suspension or debarment as defined in KHC's policy.
8. Significant non-performance in a government housing program (including Fannie Mae, Freddie Mac, and Federal Home Loan Bank programs) must be disclosed.
9. Any Development Team member that has an adverse credit history including but not limited to a default in the payment of any commercial or personal loan must disclose that information.

## Organizational and Credit Review Documents

All applicant/developers, owners/general partner(s), and guarantors (other than individual guarantors) must submit the following documentation based on its organizational structure. If the ownership entity is yet to be formed, this documentation is not required with capacity review submission. Credit review documents are only required if requesting KHC funds in addition to Housing Credits.

### Corporation:

#### ***Organizational Documents***

- Articles of Incorporation, and any amendments
- Bylaws, and any amendments
- Kentucky Secretary of State Certificate of Existence
- Corporation's Tax Identification Number

#### ***Credit Review Documents***

- Current Financial Statements – 2 years' Balance Sheet, Profit & Loss and Cash Flow Statements
- Business Credit Report Authorization
- Most recent one year business tax return

## **Nonprofit Corporation:**

### ***Organizational Documents***

- Articles of Incorporation and any amendments
- Bylaws, and any amendments
- Kentucky Secretary of State Certificate of Existence
- IRS 501(c)(3) status letter
- A current listing of the Board of Directors and their current occupations.
- A resolution from the nonprofit's Board of Directors that authorizes:
  - The application being made for specific KHC Multifamily funding (e.g. tax-exempt bonds, Housing Credits, HOME, AHTF, NHTF, or other KHC resources that may be available),
  - The amount of ownership interest the nonprofit has in the venture;
  - The nonprofit's specific liabilities in the development; and
  - The anticipated percentage of the developer fee the nonprofit will receive and the percentage that will be shared with another entity
- Nonprofit Questionnaire

**Note: nonprofit organizations are required to have the provision of affordable housing listed as one of their designated purposes in the Articles of Incorporation and/or Bylaws.**

### ***Credit Review Documents***

- Current financial statements – 2 years' Balance Sheet, Profit & Loss and Cash Flow Statements
- Business Credit Report Authorization
- Most recent IRS Form 990

## **Limited Liability Company:**

### ***Organizational Documents***

- Operating Agreement, and any amendments
- Articles of Organization, and any amendments
- Manager Managed or Member Managed (indicate where in Articles or attach)
- Kentucky Secretary of State Certificate of Existence
- LLC's Tax Identification Number

### ***Credit Review Documents***

- Current Financial Statements – 2 years' Balance Sheet, Profit/Loss & Cash Flow Statements
- Business Credit Report Authorization
- Most recent one year business tax return

**Note: A new LLC will require individual members' financial reports and credit reports**

## **Government Entity:**

### ***Organizational Documents***

- Resolution from Appointing Authority
- Bylaws, and any amendments

### ***Credit Review Documents***

- Current financial statements – 2 years' Balance Sheet, Profit & Loss and Cash Flow Statements

## Partnership:

### **Organizational Documents**

- Partnership Agreement (General and/or Limited) and any amendments (need Certificate of Limited Partnership for LPs)
- Kentucky Secretary of State Certificate of Existence
- Partnership's Tax Identification Number

### **Credit Review Documents**

- Current credit report(s) for general partner(s) reflecting recent transactions
- Current financial statements (2 years' Balance Sheet, Profit & Loss and Cash Flow Statements)
- Business Credit Report Authorization
- Personal Credit Report Authorization

**Note: A new Partnership will require individual partners' financial reports and credit reports**

## Foreign Entity:

- In addition to the above, all foreign entities must provide copies of their qualification to do business in the Commonwealth of Kentucky.

**Additional documentation must be uploaded with the application for KHC to complete the capacity and credit review. Please refer to the Multifamily Guidelines for more details.**

***Please note:** In determining whether to award resources and how to score applications, KHC reserves the right to consider any and all issues it believes impact the applicant's ability to successfully complete the project or to properly expend funds. These issues may or may not be addressed in the application, and KHC reserves the right to disqualify any applicant based upon any issue KHC deems to be of such significance as to negatively impact the allocation of credits or KHC resources.*

## Credit Review

### **Development Team Creditworthiness**

At capacity review, KHC will perform a credit investigation on all Development Team members (including, but not limited to, the owner, developer, management company, and consultant) of any project for which an application is submitted, including a request for any KHC funds other than Housing Credits only. In order to be eligible to participate, Development Team members must be current in all outstanding fees owed to KHC including, but not limited to, compliance monitoring fees and Housing Credit allocation fees.

**Project participants that are deemed ineligible as a result of KHC's suspension and debarment policy may not participate in any project that receives KHC resources.**

If an entity is determined to be ineligible to compete for KHC resources, the principals of that entity will also be ineligible. A disqualification under this subsection will result in the individual or entity involved not being allowed to participate in the 2017 and/or 2018 competitive cycle or the tax-exempt bonds 4 percent tax credits and removed from consideration for any application where they are identified.

## Capacity Review Time Frame and Response Period 2017 and 2018

- Applicants will identify the Development Team when they first access the online application system, which will be available on Friday, September 23, 2016, for the 2017 funding round and Friday, May 26, 2017 for the 2018 funding 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 capacity evaluation within two weeks of receipt.
- Applications entered after Thursday, December 1, 2016, for the 2017 funding round and Friday, August 4, 2017 for the 2018 funding round 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 online capacity team section of the online application and reflected on the application. KHC will not consider any changes to the Development Team that do not follow this procedure.
- KHC reserves the right to modify initial capacity team scores provided if KHC receives information after the issuance of the preliminary capacity score that would result in a lower score as determined by KHC's at its sole discretion. Applicants will be given one week to review the initial score and submit a written appeal.

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 by mail to Jeremy Ratliff, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601, or by e-mail to [jratliff@kyhousing.org](mailto:jratliff@kyhousing.org).

## Section V. Applicable Program Fees

**All fees are non-refundable, whether in whole or in part.**

### **Application Fee**

KHC will charge an application fee of \$2,500 per pool exclusively for nonprofit applicants and \$3,500 per pool for nonprofit joint ventures and for-profit developers. This fee must accompany each project application submitted for Housing Credit. If applying in more than one pool with the same application, the appropriate fee is required for each pool. Application fees are non-refundable regardless of reason.

### **Housing Credit Reservation Fee**

A reservation fee of 9 percent of the amount of Housing Credit reserved for a project will be charged and is due to KHC within 2 weeks from the notification of funding.

### **Technical Submission Extension Fee**

Applicants may request up to three 30-day extensions to the technical submission deadline with payment of a \$500 fee per extension request. Extension fees must be paid prior to the expiration date of the technical submission deadline.

### **Closing Extension Fee**

A request for an extension to the closing deadline may be made, and if KHC so approves, the closing deadline may be extended an additional 45 days with 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 the expiration of the current conditional credit award. KHC will increase the extension fee by ½ percent for each additional extension request. All requested extensions may be considered in the capacity scoring in future funding applications to KHC if the extension requests become excessive or routine for the development entity.

### **Early Closing Fee**

Any applicant who proceeds with a loan and/or equity closing prior to KHC issuing its final underwriting approval shall be required to pay an Early Closing Fee of \$7,500 *in addition* to any other fees applicable to and associated with such closing.

### **Unauthorized Early Start Fee**

Any applicant who begins any construction activities prior to receiving a Notice to Proceed from KHC or providing a signed authorization letter to KHC which authorizes an early start, shall be required to pay an Unauthorized Early Start Fee of \$7,500.

### **Market Analysis Review Fee**

KHC will charge a market analysis review fee of \$1,000.00. This fee must accompany each project application submitted for Housing Credit. If applying in more than one pool with the same application, only one market analysis review fee is required (Application fees are non-refundable regardless of reason)

### **Exchange Credit (Swap) Fee**

If an exchange of credit is requested by the applicant after award of an allocation of credit the applicant will be required to pay an Exchange of Credit fee of \$6,000 *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.

### **Initial Inspection Fee**

Projects proposing the rehabilitation of existing rental housing must pay an initial inspection fee of \$500. A KHC construction analyst will conduct an initial inspection of the property to determine if the level of rehabilitation proposed is required or sufficient to keep the property viable.

### **Construction Inspection Fee**

KHC will charge a one-time one percent (1%) construction 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 and must be incorporated into the project budget.

### **Re-inspection Fee**

KHC will charge a re-inspection fee of \$500 under the following circumstances:

- Units for which a KHC inspector must perform more than one final inspection due to the project not being 100% complete.
- Failure to have work ready for inspection at the scheduled site visit appointment time.
- Failure by the Development Team to provide a representative on the project site during the inspection.
- Unsuccessful attempts due to the Development Team not coordinating the inspection with tenants, or other involved parties, which renders the unit inaccessible for inspection.
- A hazard exists at the project site which endangers the welfare of the inspector. Examples: bed bug infestation, poisonous snake infestation, uncontrolled animals, etc.

A re-inspection fee will not be charged provided the KHC construction analyst is given a minimum 48-hour written cancellation or reschedule notice. Additionally, a re-inspection fee will not be charged for follow up inspections to verify correction of deficiencies observed during any previous interim inspection.

All re-inspection fees must be paid to KHC prior to the KHC construction specialist signing future draw requests or issuance of the IRS Form(s) 8609.

### **Carryover Extension Fee**

Projects that do not submit the required carryover documentation by the deadline as outlined in the Carryover Allocation Requirement section will be assessed a one-time \$500 fee.

### **Late Submission of 8609 Application**

Projects that do not submit the 8609 application and all required attachments within 6 months of project completion will be assessed a one-time fee of \$500. The completion date is evidenced by a certificate of occupancy or an architect's certificate of substantial completion (if rehabilitation).

### **Reissuance of 8609 Fee**

Any time KHC is requested to correct and reissue an IRS Form 8609, a \$250 fee per each Form 8609 will be charged. The 8609(s) will not be reissued until the fee is paid to KHC. Necessary corrections that arise as a result of KHC error will not be assessed a reissuance fee.

### **Administrative Waiver Fee**

A \$500 fee will be charged for each waiver granted by KHC to any policy or requirement contained in this QAP or the Multifamily Guidelines. The waiver, if approved, will not be effective until the fee is paid. No fee will be assessed for allowable waivers identified in this QAP or for waiver requests denied by KHC.

### **Changes to Project Design**

If a project owner finds it necessary to change the project design during development (i.e., site plan or location, pledged amenities, revisions to scope of work or materials, number of affordable units, etc.), KHC must be notified in writing and request approval prior to making any changes. KHC will charge \$500 for each project change request.

### **Compliance Annual Report Fee**

An annual fee will be assessed for KHC's compliance monitoring. 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 and the fee schedule is 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 and will apply to all projects participating in the Housing Credit program.

### **Tax Exempt Bond Fees**

- Application Fee: \$3,500 per project, to be submitted with the application.
- Credit Allocation Fee: 9% of the requested 4% credit allocation. If the amount of 4% Housing Credit increases prior to issuance of Form(s) 8609, additional allocation fees will be collected.
- Issuer Fees: \$2.50/\$1,000 of bond principal amount or quarter point for all bond issues rated "A" or better (private placement or publically offered) and \$5.00/\$1,000 of bond principal amount or half point for unrated private placement of bonds. KHC will not consider a deal with unrated bonds in a public offering. Half of this fee is due at inducement resolution and the other half is due at time of bond closing. Once paid, these fees are non-refundable.

- Annual Issuer Fees: \$1.25/\$1,000 face value of outstanding bonds or an eighth point (covers annual compliance and financial reviews). The first Annual Issuer Fee shall be due and payable the first day of the month following the month the project is placed in service.
- Issuer's Counsel: \$1.00 per \$1,000 of principal amount of bonds, with a minimum of \$12,500 (one-time fee paid at closing).
- KHC Administrative Fee: \$5,000 one-time fee.

## **Section VI. Application Thresholds**

### **Thresholds for All Projects**

#### **Capacity Scorecard and Capacity & Credit Review**

Applicant and development team must pass KHC's Capacity Scorecard Review and Capacity & Credit Review processes. Applicants WILL NOT be evaluated for threshold items nor will they be scored if they do not successfully complete Capacity/Scorecard Review.

#### **Complete Application**

The project must meet all application and checklist attachment requirements in accordance with the QAP and Multifamily Guidelines. The application must be fully completed with thorough responses to all questions that are applicable to the project type and KHC resources requested. Current versions of all required attachments must be uploaded to KHC's Universal Funding Application.

#### **Compliance with IRS Code, QAP and Multifamily Guidelines**

All applications must be consistent with the IRS Code Section 42 pertaining to Low Income Housing Tax Credits, KHC's Qualified Allocation Plan and KHC's Multifamily Guidelines, whether or not the specific provision is identified elsewhere as a threshold. If a waiver to any QAP or Guidelines provision has been secured in advance, the approved waiver must also be uploaded with the application. Projects inconsistent with IRS Code, the QAP, and/or Multifamily Guidelines will not meet threshold. Waivers to IRS Code requirements cannot be considered.

#### **Notification of Public Officials**

So that local officials may have an opportunity to comment on the proposed project, applicants must submit, by certified mail or equivalent, the "Notification of Application for Funding" form to the local mayor/county judge executive/other applicable chief executive officer, Kentucky state representative, and Kentucky state senator in the community where the project will be located. A copy of the completed form, along with the return receipt from the certified mail signed by the mayor/county judge executive/other applicable chief executive officer, state representative, and state senator must be uploaded with the application. **Alternative methods of delivery receipt other than a signed receipt will not be accepted.**

#### **Fair Housing & No Disparate Impact**

Applicants must identify how the project will address at least one impediment to fair housing as identified in KHC's Analysis of Impediments to Fair Housing (AI). Projects located in a local HOME participating jurisdiction must also identify at least one impediment in the participating jurisdiction's AI.

#### **Sufficient Market and Minimal Impact on KHC Portfolio**

At KHC's sole discretion, when multiple projects are awarded in one jurisdiction, KHC may require an update of any of the projects' market studies to recognize and consider the other project(s) funded in that jurisdiction and any impact on the market's need for the units proposed. *See KHC's Market Study Guidelines.*

### Qualified Contract

Applicants must agree to forego the option of requesting to utilize the qualified contract process for at least 5 years following the close of the initial 15-year LIHTC compliance period.

### Compliant Underwriting Model (UM)

The UM, as submitted with the application, must be in compliance with the QAP provisions (if requesting Housing Credits) and Multifamily Guidelines. The UM must meet KHC's cash flow and debt service ratio requirements, the Sources and Uses must balance with no funding gaps, and all applicable hard and soft costs must be itemized regardless of how the cost is paid. The amounts budgeted in the UM for developer fee, general requirements, profit, and overhead must not exceed KHC's maximum limits. After its analysis, KHC must approve the UM and all associated attachments in order for the project to be scored.

### Firm Non-KHC Funding Commitments

Applicants proposing other non-KHC sources of construction or permanent financing must submit a firm commitment letter from all outside funding sources identified in the KHC application and underwriting model, with the exception of deferred developer fee. The letter(s) must be specific as to the project seeking KHC funding, the amount and terms of funding, and must be on the funding source's letterhead, signed by the funding provider and dated within the 3 months preceding the KHC application submission date. Loan commitments must list the rate (actual and effective rate, if applicable), term and amount of the loan, and the expiration of the commitment, if applicable. Grant commitments must list the grant amount and expiration, if applicable.

Other non-KHC funds may include, but are not limited to, developer or general partner contributions, assumed debt (such as HUD or RD), Federal Home Loan Bank (FHLB), HUD Choice Neighborhoods, HOME or CDBG funds from a local government, donated goods or services, waived fees/taxes, etc.

Exceptions to the firm commitment requirement may be made for funds proposed from FHLB, CDBG, HOME, and Rural Development provided a letter of conditional commitment or intent to fund is submitted on the funding agency's letterhead. In addition, exceptions to the firm commitment requirement may be made for other funds provided by local, state or federal jurisdictions, provided the developer submits evidence of an application for these funds along with a written guarantee from the developer that if the funds are not awarded, the developer will contribute the amount of funds for which it applied (developer must also include evidence of its financial ability to guarantee the funds).

Projects utilizing Federal and/or State Historic Tax Credits must provide a letter of intent from an investor to purchase the credits. If the letter is for both Federal and State Historic Credits, the letter must identify each credit separately, along with the applicable pricing and equity investment for each. For State Historic Tax Credits, if the owner plans to retain the State Historic Credit themselves, a statement must be provided to this effect. A copy of Part I of the "Evaluation of National Register Status" for both the Federal and State Historic Credits as acknowledged by the Kentucky SHPO and/or National Park Service must also be provided (see application checklist).

**Note: If one or more of the commitment letters does not meet the standards described above, the project will not meet threshold.**

### Firm Equity Commitment

Equity commitments must be specific to the project seeking Housing Credits from KHC and must contain the specific terms for the purchase of credit (credit pricing, amount of annual credit anticipated, total equity investment, pay-in schedule, required reserve account amounts, amounts of required fees and whether the fees are guaranteed or subject to cash flow, etc.). The commitment must be on the equity provider's letterhead, identify the project name and be signed and dated within 3 months of the KHC

application submission due date. **Equity commitments for LIHTC combined with State and/or Federal Historic Credit or any other tax credits must identify each credit amount separately, along with the applicable pricing and equity investment for each type of credit.**

### Zoning

The project site(s) must be properly zoned. If no zoning exists, an evidentiary letter from the governing entity must be submitted.

### Flood Issues

For new construction projects, all portions of the project site(s) essential to tenants (i.e., buildings, parking lots, entrance to the development) must not be located in a flood zone or waterway. Projects rehabilitating currently occupied rental housing may be located in a flood zone if the community participates in the National Flood Insurance Program (NFIP), and the property must have federal flood insurance in an amount sufficient to replace the existing improvements and fixtures in the event of a loss. KHC must be named as an insured on the policy, except for Housing Credit only projects. Rehabilitation of vacant structures in a floodplain is not permitted.

### Capital Needs

All Housing Credit applicants for new construction/new supply, preservation/existing supply, or adaptive reuse projects must submit KHC's Excel spreadsheet "Capital Reserve Replacement Schedule" (CRRS) from a qualified preparer. All preservation/existing supply and adaptive reuse projects, regardless of funding source, must also submit a physical capital needs assessment (PCNA) from a qualified preparer. KHC recommends that the PCNA incorporate the CRRS, but if not incorporated, the CRRS must still be consistent with the PCNA and be completed by a qualified preparer.

### Building Plans & Specifications

Preliminary building plans and outline specifications must be provided. **Submitting a copy of KHC's Minimum Design and Universal Design requirements does not constitute meeting this threshold.**

### Scattered Site Projects

Scattered site projects must be of similar building design and unit type. Urban projects must be within a defined footprint or neighborhood. Rural sites must be located within the same county. Urban and rural (as defined by RD) scattered sites may not be intermingled in one project. Sites located in multiple counties are not permitted except for Tax-Exempt Bond projects.

## Thresholds for Existing Supply/Preservation Pool

### Existing Supply

The project must propose to preserve existing income-restricted affordable multifamily project(s). The rehabilitation of non-income restricted units is not eligible.

### No Single-Family Homes

Single-family homes are not eligible. This does not include townhomes, duplexes, triplexes, or other attached dwellings.

### Documented Need for Rehabilitation

The scope of necessary rehabilitation must be evidenced in the physical capital needs assessment submitted with the application.

### Age

The property shall not have undergone substantial rehabilitation in the last 20 years AND must be at least 20 years old as of the date of application (20+ years since the project placed in service). If 50 percent of

existing units are restricted for seniors and/or special needs populations, the property shall not have undergone substantial rehabilitation in the last 15 years AND must be at least 15 years old as of the date of application (15+ years since the project placed in service).

### **Optimal Utilization of 9% Housing Tax Credits**

If appropriate for the project, KHC reserves the right to redirect applicants away from the 9% LIHTC round and into the less competitive Tax-Exempt Bond financing + 4% Tax Credits route (TEB route) which may be accompanied with KHC debt financing sources. Credit optimization decisions will be made at KHC's discretion. If a project is redirected to the TEB route, it will not continue through the 9% review and scoring process.

## **Thresholds for New Supply/New Construction Pool**

### **New Supply**

Projects in this pool must create new income-restricted multifamily units, either through new construction and/or the acquisition/rehab of existing unassisted/unrestricted (market) units.

### **No Single-Family Homes**

Single-family homes are not eligible. This does not include townhomes, duplexes, triplexes, or other attached dwellings.

### **Project Not Located Within a QCT**

Except as provided in [Section XIII](#) hereof, projects applying within the New Supply/New Construction Pool shall not be located within a QCT.

## **Thresholds for Community Impact Pool (Including Historic Adaptive Reuse)**

### **Proof of Community Impact**

The mayor or county judge executive (or equivalent) of the jurisdiction where the project is located must provide a letter detailing support for the project. For merged city/county jurisdictions, the letter must be from the mayor. Each jurisdiction may submit a letter of support for only one project in this pool. The letter must specifically address:

1. The local jurisdiction's support of the project;
2. How the project will meet an identified need in the community related to affordable housing;
3. How the project will have significant positive community impact in terms of revitalization;
4. For urban projects – how the project is part of a broader revitalization, community development, and/or economic development plan recognized by the local jurisdiction;
5. IF APPLICABLE: How the local jurisdiction is providing material support to the project (waived fees, donated land, infrastructure improvements, and/or financial contribution to the project); and
6. IF APPLICABLE: Statement that the project is located in a target area for which the local jurisdiction has formally adopted a plan for revitalization, community development, and/or economic development.

### **Equity Commitment for Historic Credits (Historic Adaptive Reuse Only)**

Projects utilizing Federal and/or State Historic Tax Credits must provide a letter of intent from an investor to purchase the credits. If the letter is for both Federal and State Historic Credits, the letter must identify each credit separately, along with the applicable pricing and equity investment for each. For State Historic Tax Credits, if the owner plans to retain the State Historic Credit themselves, a statement must be provided to this effect. A copy of Part I of the "Evaluation of National Register Status" for both the Federal and State Historic Credits as acknowledged by the Kentucky SHPO and/or National Park Service must

also be provided (see application checklist). At least 50 percent of the total units must be located in eligible historic buildings. Rehabilitation of existing rental housing is not eligible for points in this category.

## Thresholds for Nonprofit Supportive Housing

### Permanent Housing for Special Populations

Projects competing in this pool must set aside a minimum of 50% of their units for tenant populations including homeless, mentally and/or physically disabled adults, persons with drug/alcohol dependency, foster children exiting the foster care system, survivors of domestic violence, veterans, very low income senior citizens (earning <50% AMI); OR must set aside a minimum of 25% of their units for the Olmstead population.

### Nonprofit Material Participation

The applicant must demonstrate "material participation" by the nonprofit as defined in Section 469 of the Internal Revenue Code.

### Service Plan for Target Residents

Applicants proposing permanent supportive housing must provide a supportive service plan. The plan must thoroughly address all of the following:

1. The population being served and the experience the service provider has serving that population;
2. The service needs of the specific population;
3. The formal and informal methods that will be used to evaluate the success of the development in meeting the individual needs of the residents, as well as, addressing overall issues of the population;
4. How residents will be linked to services not directly offered by the primary service provider; and
5. The sources of funding for the services and how the project plans to sustain supportive service provisions over the life of the compliance period.

Each supportive housing service plan will be evaluated for completeness and likelihood of long term success, and should adhere to KHC's principles of supportive housing.

## Section VII. Housing Credit Application Requirements, Limits, and Information

In addition to the competitive multifamily application requirements, the following guidelines must be adhered to for all 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 program and design guidelines, please refer to the Guidelines.***

### Housing Credit Limits

The maximum annual Housing Credit allocation for all projects cannot exceed the amount as determined by the per-unit limit calculation.

#### **Urban Areas**

The Housing Credit allocation for projects located in urban areas will be limited to \$12,000 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; Choice Neighborhoods; historic/adaptive reuse projects; new construction projects located in areas of opportunity; or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$15,600 per Housing Credit unit.

## **Rural Areas (Any area outside of the urban areas as defined by RD is considered rural)**

The Housing Credit allocation for projects located in rural areas will be limited to \$13,500 per Housing Credit unit except for projects located in **QCTs** or **DDAs**, as designated by the U.S. Department of Housing and Urban Development; historic/adaptive reuse projects; projects located in the Promise Zone counties (Bell, Clay, Harlan, Knox, Leslie, Letcher, Perry and part of Whitley); or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$17,550 per Housing Credit unit.

**Rural Area Example:** Subsidy limit: \$13,500  
\$17,550 (if in a DDA, QCT, or other KHC-defined area)  
40 total units not in any of the bonus areas  
40 x \$13,500 = \$540,000

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

### ***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.

KHC will allocate and underwrite Housing Credits at 9.00% and the applicable floating credit factor established by the IRS the month prior to application submittal for 4.00% Housing Credits. All projects are eligible for the 30 percent basis boost as determined necessary in the sole discretion of KHC.

## **Qualified Census Tracts (QCTs) and Difficult Development Areas (DDAs)**

The current listing of QCTs and DDAs can be found on HUD's website. KHC will utilize the most current listings in effect as published by HUD.

## **Community Service Facility**

A Community Service Facility (CSF) is a space that can be used for purposes to improve the quality of life for community residents including, but not limited to, child daycare, senior programs, and job training provided such services are appropriate and helpful to low-income individuals in the project area. A CSF is defined as a facility to primarily serve low-income individuals in the community whose income is 60 percent or less of area median income. Use of the CSF may not be limited to project residents only; it must be available to any low-income individual in the community. The CSF must be located on the same tract of land as at least one of the buildings in the project. If fees are charged for services provided, they must be affordable to individuals whose income is 60 percent or less of area median income.

Housing Credit projects utilizing a CSF described under IRS Revenue Ruling 2003-77 may be entitled to include the costs associated with a CSF in the calculation of the project's total eligible basis. House Resolution 3221 – The Housing and Economic Recovery Act of 2008, increases the percentage of the CSF eligible basis with respect to which the Low Income Housing Tax Credit may be claimed. No additional credit is awarded for the CSF because the eligible basis attributed to the CSF costs is included in the project's total eligible basis.

Under the provision, Housing Credit projects proposing a CSF must be located in a QCT. The eligible basis attributable to the CSF cannot exceed 25 percent of the project's total eligible basis (without any basis boost), and the total project development cost cannot exceed \$15 million. The costs associated with the CSF must be broken out on a separate Uses Statement within KHC's underwriting model and those costs will not be considered when ensuring a project is within KHC's cost containment limits.

This provision is limited to buildings located in QCTs only. Please note KHC's policy regarding the creation of new affordable housing units in a QCT.

## Maximum Credit Cap Requirements

All users are restricted to a maximum of **\$1,500,000** in annual Housing Credit based on their involvement in projects as the applicant/developer, general partner, guarantor, or any other party receiving 25 percent or more of the developer fee as evidenced in the application, developer/consultant certifications and final cost certifications. In addition, the maximum credit per project is limited to **\$1,250,000**.

**"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.

- Organizations acting as users, general partners, or developers are limited to a maximum of \$1,500,000 in annual Housing Credits based on the determination made by KHC in the capacity of Development Team review.

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 suspended from participating in the Housing Credit program for one year from the date of discovery by KHC, as noted in KHC's suspension and debarment policy.**

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 the current funding round 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 (earning 25 percent of the developer fee or more) 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.**

## 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 are 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. Total development cost includes all costs associated with the project, both hard costs and soft costs, regardless of how the costs are being paid. KHC may waive cost containment guidelines for adaptive reuse projects, historic projects receiving Federal Historic Tax Credits, projects that have federal resources (Choice Neighborhoods, HUD 202, etc.) committed, or projects for which such commitments are being processed. KHC may, on a case by case basis, consider waiver requests for other types of projects; however, these waivers would be subject to payment of the administrative waiver fee. All requests for waivers must be made in writing and approved prior to application submission. A copy of KHC's written approval of the cost containment waiver must be provided with the application to satisfy the threshold requirement. At final cost certification, if the total development cost exceeds the cost containment limit, KHC may entertain a request to waive the cost containment limits and any and all fees applicable to such request shall apply; however, no additional KHC resources will be awarded to the project and KHC reserves the right to consider such violation of the cost containment limits, regardless of whether a waiver was subsequently granted, in future capacity review scoring.

In the underwriting model, the applicant must enter the cost containment limit for the project. KHC's Cost Containment Guidelines can be found on the Multifamily page under "Development" on KHC's website. For additional information on cost containment, refer to the 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 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.

All rehabilitation projects consisting of 12 or more units and total KHC funding of \$250,000 or more will be required to submit a physical capital needs assessment (PCNA) as an attachment to the application. All applications requesting Housing Credit for rehabilitation and adaptive reuse will be required to submit a PCNA, regardless of project size. Projects that were unsuccessful in the most recent previous funding round may resubmit the PCNA that was provided in the previous funding round; however, if funded, the PCNA must be updated at technical submission. Applicants resubmitting a PCNA from a previous funding round must provide a letter or memo indicating that it is a resubmission.

For additional information as it pertains to building and design and construction requirements, please refer to the Guidelines.

KHC will review project plans and specifications for compliance with applicable laws and guidelines. During the application stage, preliminary plans must 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.

## Eligible Uses of 9 Percent 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 more than 20 years prior to the date of application and underwent a substantial rehabilitation (equals or exceeds 25 percent of basis) no less than 20 years prior to acquisition. If 50% of existing units are restricted for seniors and/or special needs populations, the property must be at least 15 years old (15 years since placed in service).

## Underwriting Requirements

*(Not all-inclusive; refer to the Guidelines)*

KHC has established underwriting guidelines for rents, debt coverage ratios, operating deficit reserves, and reserve for replacement requirements. Please thoroughly review the requirements in the underwriting model and the Guidelines. **KHC reserves the right to make any and all modifications to an applicant's Underwriting Model, as KHC deems necessary in its sole discretion, to improve a project's compliance, optimization of funds, and long-term financial sustainability. While KHC reserves this right to modify an applicant's Underwriting Model, it is in no way obligated to may any changes to improve a project's likelihood of receiving funding or Housing Credits.**

The Underwriting Model must show the project is financially feasible after underwriting and any applicable modifications made by KHC staff. Following this analysis, KHC must approve the Underwriting Model and all associated attachments in order for the project to meet threshold and proceed with scoring.

**KHC reserves the right to redirect appropriate applicants away from the 9% Housing Credit round and into the less competitive Tax-Exempt Bond with 4% Housing Credits financing, which may be accompanied with other KHC funds including without limitation, HOME, Affordable Housing Trust Fund, National Housing Trust Fund, and Equity Bridge Loans.**

1. **Rents:** The rents charged to low-income tenants cannot exceed the applicable Housing Credit rent limit, less an allowance for tenant-paid utilities, if applicable. (Section 8 subsidy payments are not included in the tenant rent calculation).
2. **Rent and Income Limits:** The maximum rent and income limits for the Housing Credit program must be calculated using the Novogradac Rent and Income Calculator at [www.novoco.com/products/rentincome.php](http://www.novoco.com/products/rentincome.php).
3. **Maximum Credit Amount:** The maximum amount of Housing Credit for which a project is eligible is the lesser of the equity gap test, the credit per unit test, or the qualified basis test, as calculated on the “Housing Credit” tab of the KHC underwriting model.
4. **Construction Contingency:** The construction contingency must not exceed 10 percent of total construction hard costs. For new construction projects, contingency generally must be less than 5 percent. Property acquisition may not be included as a hard cost. If no contingency is being requested, the applicant must explain the reason why it is not 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. **KHC does not permit a soft cost contingency.**
5. **Debt Coverage Ratio (DCR) – (Threshold):** The required DCR in year 1 must be at least 1.20 and remain at or above 1.10 through year 15. Projects requesting Risk-Sharing funds must have a minimum DCR of 1.25 in year one and remain at or above 1.10 through year 15. Projects that do not have any debt associated with the project, following final underwriting by KHC, shall be deemed to 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 the syndication agreement and the investor or governmental entity must provide its 15 year proforma. **All projects must have positive cash flow through year 15.**

Based on its analysis of the project’s underwriting model and associated supporting documents, KHC reserves the discretion to modify the amounts and terms of any KHC resources requested by the applicant and/or to substitute resources in order to ensure efficient use of Housing Credits and other KHC resources, taking into consideration the project’s financial strength, cash flow and debt service capability.

6. **Operating Deficit Reserve (ODR):** All applicants will be required—at closing or no later than the project’s placed in service date—to sign a certification stating that a separate ODR account has been established. Projects with KHC loan funds must fully fund the reserve account at KHC’s minimum required amount or such greater amount as required by another lender or equity provider no later than the first day of the month following the project’s placed-in-service date. The purpose of the ODR is to ensure that adequate funds are on hand should operating costs (e.g., utilities, maintenance costs, debt service obligations) exceed the project’s ability to pay them with other funds. In addition to being a safeguard during the initial lease-up phase, the ODR is vital to ensuring the long-term financial stability of the project by increasing the project’s ability to absorb or respond to temporary changes in circumstances, such as the unanticipated event of significant unbudgeted increases in operating expenses and/or losses in operating revenues.

KHC calculates the minimum ODR requirement as follows:

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

KHC will hold the ODR escrow unless otherwise required by the equity provider or another lender in the project. If KHC does not hold the ODR, KHC requires to be notified prior to any disbursements from the ODR account.

**For ODR escrows held by KHC:** KHC will require during the first two years that the ODR maintain a minimum balance of 75 percent of the original ODR amount. Requests for disbursements from the ODR account must be submitted to KHC's Asset Management Department on the appropriate form. Each written request must include a specified itemization of the operating expenses and include supporting documentation evidencing the actual cost of each expense.

If at any time during the initial two years the balance in the ODR is below the required minimum balance (75 percent of the original ODR), then a deposit must be made to replenish the ODR to the required minimum balance as cash flow permits; however, at no time may the replenishment take more than three months. The ODR will be replenished prior to making any disbursements to and any other payments to the owner or any party related to the owner.

The balance in the ODR may fall below the minimum required balance after the initial two years; however, the balance in the ODR will remain in place for the life of the loan, available for eligible disbursements, as needed.

If KHC is financing the ODR, the full amount is required to be drawn on the final draw. All applicants will be required to identify the funding source of the ODR on the underwriting model. HOME funds may not be used to fund an ODR.

**For ODR escrows not held by KHC:** All applicants will be required prior to closing to sign a certification stating that an ODR escrow account has been established. If the equity provider or another financing source has a higher reserve requirement and a more stringent ODR policy, KHC will defer to the higher amount and more stringent ODR policy.

KHC reserves the right to waive or modify the ODR requirement on a case-by-case basis.

- 7. Reserve for Replacement (R4R):** All applicants are required to establish an R4R account per the Guidelines. KHC will hold the account unless otherwise required by the equity provider or another lender in the project with a superior lien position. The R4R annual deposit shall increase at 3 percent annually or as prescribed by KHC.

KHC's minimum required R4R is the greater of \$400 per unit, per year or the amount required by the Physical Capital Needs Assessment (PCNA) or Capital Reserve Replacement Schedule (CRRS), as applicable. If the equity provider or another financing source has a higher reserve requirement, KHC will defer to the higher amount. For projects requesting Housing Credit only, KHC may accept a lower minimum R4R amount if the syndicator or equity investor allows a lower minimum amount and it is documented in the partnership agreement.

### **Replacement Reserve Analysis:**

The CRRS projected account balance must, at a minimum, be positive at the beginning of the 15<sup>th</sup> year.

- New construction projects requesting HOME must be positive at the beginning of year 20.
- Projects requesting Housing Credit only may be allowed a lower minimum as described above.
- Risk-Sharing projects will be evaluated on a case-by-case basis due to their higher risk levels.

Projects may be required to make an initial deposit to the R4R account as part of the upfront funding of the project. This will be determined on a case-by-case basis and determined by the PCNA/CRRS. Projects that are required to make an upfront deposit into the replacement reserve must show this amount on KHC's underwriting model.

All PCNA and CRRS studies must provide projections extending to, or beyond, the term of the KHC loan that is being requested. All projects must also include an electronic submission of KHC's Excel spreadsheet "Capital Reserve Replacement Schedule."

All applicants must obtain as realistic a PCNA or CRRS as possible since they can affect the future ability of a project to make R4R draws. KHC has a long-standing policy of requiring a minimum account balance of two years' worth of deposits. KHC will continue to reserve the right to maintain two years' worth of deposits, but future draw approvals are anticipated to be based more upon an approved CRRS if one is available. For example, if after a few years it becomes clear that the project is having significant withdrawals that were not anticipated by the PCNA/CRRS then KHC could require the owner to cover those additional expenses from other sources. In such an instance, KHC also reserves the right to require a new PCNA/CRRS and revise the R4R deposit schedule based upon this new study. The CRRS will be used as a tool to help KHC determine if a draw is requesting eligible items as planned for in the CRRS.

For projects that KHC holds the R4R account, at the maturity date of any KHC HOME and/or AHTF loans, KHC will apply any unused R4R account balance to the remaining balances of the KHC HOME and/or AHTF loans. In addition, for projects in which the R4R account is held by another entity, the reserve account must be assigned to KHC at such time as the R4R account holder (equity investor/syndicator or superior lien holder) no longer has a security interest in the project. Any balance in the R4R account must be remitted 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, if applicable.

All Housing Credit projects that also have outstanding Risk-Sharing, HOME, NHTF, and/or AHTF gap financing through KHC shall submit a subsequent PCNA in year 12 and may be required to adjust their capital reserve replacement schedule based upon said PCNA. Any such adjustment shall be effective beginning the first month of the 16<sup>th</sup> year following placed-in-service.

8. **Services:** Any fees associated with tenant support services must be included in the gross rent.

9. **Affordability Period:** 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.
10. **4% Credits:** Projects utilizing private activity bond volume cap debt financing are automatically eligible for 4 percent credit outside the credit ceiling.
11. **Maximum Credit Award:** KHC will award the lesser of the Housing Credit amount determined by KHC in the underwriting model or the amount requested by the applicant.
12. **Construction Fees (Threshold):** 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%

13. **Developer Fee – 9% Projects (Threshold):** The allowable fees for developers of 9 percent Housing Credit projects are based on the total number of units created or rehabilitated in the project. Developer fees must be the lesser of the total per unit amount listed below or **\$1,200,000**. Consulting fees are considered part of the developer fee.

	New Construction	Rehabilitation	Adaptive Reuse/ Historic Rehabilitation
First 15 units	\$20,000	\$20,000	\$23,500
Next 30 units	\$17,000	\$15,000	\$22,500
Next 30 units	\$12,000	\$12,000	\$18,500
Units above 75	\$7,000	\$7,000	\$8,000

**Developer Fee – Tax-Exempt Bond Projects:**

The allowable fees for developers are based on the total development cost (TDC) of the project. Unless otherwise approved by KHC’s Board of Directors, the developer fee on any Tax-Exempt Bond project may not exceed 20 percent of the total development cost, minus the following deductions:

- a. Developer fee
- b. Consultant fee
- c. Any fees resembling developer or consulting fees

14. **Deferred Developer Fee:** All 9 percent Housing Credit projects, with the exception of projects financed by USDA Rural Development, must defer a minimum of 25 percent of the total developer fee, or the amount that can be repaid within 10 years of operations, before requesting KHC HOME, NHTF, or AHTF funds. Any deferred developer fee that cannot be repaid within 10 years will be deducted from the project’s eligible basis.

## 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 of the current funding round year will be allocated to other pools or set-asides as determined by KHC. Credit returned after September of the current funding round year may be carried into the next calendar year. Credit returned from two or more projects by the same entity will be subject to penalties in future funding rounds.

## 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 terms and conditions, KHC may, at its discretion, rescind the carryover allocation and make the recaptured credit available to other developments.

## Section VIII. Technical Assistance

KHC offers technical assistance opportunities for both new and seasoned developers to ensure a project's success. Developers and community officials are encouraged to contact KHC's Multifamily Department to obtain assistance with projects throughout the application and development process. Technical assistance takes new applicant/developers through the process of documentation requirements, scoring criteria, underwriting, design and construction requirements, etc.

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 a technical assistance meeting prior to submitting an application for funding. The individual(s) who will be responsible for the day-to-day activities of the project, once approved, is required to attend the technical assistance meeting. Developers resubmitting an unsuccessful application from a previous funding round must contact KHC to determine if a technical assistance meeting is required.

***Please note:*** Requesting or attending technical assistance training does not guarantee the project will be awarded funds. For more information, contact Jeremy Ratliff, toll-free in Kentucky at 800-633-8896 or 502-546-7630, extension 707; TTY 711; or e-mail [jratliff@kyhousing.org](mailto:jratliff@kyhousing.org).

## Section IX. Application Submission Requirements

One annual application round is scheduled for projects requesting KHC resources. The following schedule indicates the submission/notification dates for the round.

<b>2017 Application Submission Dates</b>		
<b>Capacity Review</b>	<b>Electronic Submission</b>	<b>Award Notification</b>
<b>Opens: September 23, 2016</b> <b>Closes: December 1, 2016</b>	<b>January 13, 2017</b>	<b>April/May 2017</b>

<b>2018 Application Submission Dates</b>		
<b>Capacity Review</b>	<b>Electronic Submission</b>	<b>Award Notification</b>
<b>Opens: May 26, 2017</b> <b>Closes: August 4, 2017</b>	<b>October 6, 2017</b>	<b>February/March 2018</b>

All applications for funding must be submitted electronically via KHC's [Universal Funding Application](#) system. 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 Multifamily Guidelines for further guidance on each specific attachment.

In order for the application to be considered complete, the following must be submitted by 12 noon, ET, on the date applications are due, as noted above.

- A fully completed application, submitted via the Universal Funding Application.
- All applicable attachments as outlined on the application checklist, uploaded with the application. Any attachments too large to upload must be submitted on a flash drive as outlined below.

The online application will close at **12 noon, ET, on Friday, January 13, 2017** for the 2017 funding round and **Friday, October 6, 2017** for the 2018 funding round. Time is of the essence for application submission, and applicants are encouraged to not wait until the last few minutes to upload additional information or to submit their application. KHC's systems experience a high volume of activity as the application due date and time nears, which may cause for slower submission times.

Applicants who are unable to upload the required attachments due to file size must submit them on a flash drive; no paper copies, please. KHC's maximum file size is 150 megabytes (MB). Files larger than 150 MB may be submitted solely on the flash drive; however, a sheet must be uploaded in its place stating that the applicable document is located on the flash drive. The only exception is for personal financial information, which may be submitted separately, either in paper format or on flash drive. The flash drive must be received by 5 p.m., ET, on **Monday, January 16, 2017** for the 2017 funding round and **Monday, October 9, 2017** for the 2018 funding round at:

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

It is the applicant's responsibility to plan enough time for mail, overnight, or hand delivery to ensure the flash drive is received at KHC by the applicable due date and time.

Please refer to the scoring workbook for any and all scoring components.

## Notice to Applicants

It is the applicant's responsibility to submit all required documentation to adequately support its Application. Any material deficiency in the Application or omission from the mandatory submissions, not cured pursuant hereto, may result in an immediate rejection of the Application. In addition, the Application must meet all eligibility requirements set forth in the Code. Any application which does not contain sufficient information to be reviewed will be returned. KHC reserves the right to reject or return any Application at any time during the allocation process. Applicant's failure to: i) provide complete and/or accurate information during the application process; ii) pay compliance fees; iii) adhere to project attributes pledged on the original application; or, iv) resolve any outstanding issues with any other KHC programs may impact scoring or result in the rejection of the 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.

**Throughout the period beginning with the date of application submission and the date upon which KHC publicly announces the awarded projects, applicants shall immediately notify KHC of any material change to a project and/or any issue(s) that may arise with respect to a project, which may affect the applicant's willingness to proceed with such project. Failure to notify KHC in a timely manner of any such changes and/or issues, may result in the denial of the application, a three-year reduction in capacity scoring of any and all parties who fail to provide such notification to KHC in a timely manner, and/or any other penalties KHC deems appropriate.**

## Section X. 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 geographically and in each congressional district throughout the state.**

**Please note:** KHC will score the application as submitted. At their discretion, KHC staff may contact the applicant for clarification of information submitted with the application if it is deemed necessary. Except as provided in the Cure of Application Errors provision of this section, KHC will not accept additional documentation or revisions to the application or underwriting model after application submission. Incomplete applications will not be reviewed or scored, unless cured pursuant to the terms of this Section X, and KHC reserves the right to reject any application that does not meet the application requirements. KHC will reject applications that do not meet the minimum threshold requirements and/or which do not submit key documents such as underwriting model, evidence of site control, or other documents KHC deems critical for application review. KHC must comply with federal or state regulatory and programmatic requirements of all resources administered; therefore, as new or updated guidance or requirements become available, KHC reserves the right to alter the review process to comply. For example, if during the review process new QCT and DDA designations are published, KHC will review using the most current guidance.

**Projects not complying with all of the requirements and policies may be subject to reduced scores on future applications due to noncompliance. KHC shall penalize projects of any Development Team member involved in a previously funded project, including without limitation any Section 1602 Exchange funded project, experiencing uncorrected material noncompliance issues.**

## Application Review Components

Funding determinations are based upon three review components: 1) **scoring criteria**, 2) **financial feasibility**, and 3) **market need**. Failure to meet the requirements of any review component will result in the rejection of the application and KHC reserves the right to not proceed with the funding determination process with respect to such application.

### **Scoring Criteria**

Applications will be scored based upon capacity of the Development Team, threshold requirements, location characteristics, financial characteristics, and populations to be served. 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 attachments. KHC will review and score each application based on the information presented and, at its discretion, may contact applicants only to clarify information submitted with the application. If KHC experiences difficulties retrieving attachments that were uploaded to the online application system, KHC will contact the applicant.

### **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.

### **Market Need**

A market study is required to be submitted at the time of application and will be reviewed in accordance with KHC's market study requirements. 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 and are only valid six months from the date of the study.

### **Scoring Ties**

Ties in scoring will be resolved based upon the pool-specific tiebreaker criteria contained in the scoring workbook.

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 of 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 underwriting model at this time; rather, the review will allow the applicant the opportunity to address any oversights or calculation errors by KHC staff. KHC will then make final funding decisions based upon these scores. All funding decisions will be final, subject to KHC's Reconsideration and Review Processes.

## Cure of Application Errors

Applicants may remedy no more than two (2) errors contained in any application attachment or required document including up to one (1) omission of any non-KHC document. If more than two errors, including up to one omission, must be addressed, the application will be rejected for not meeting threshold and the application will not proceed to scoring. **The correction of any omission must be made within 24 hours of the time that KHC transmits the notification of such omission. The correction of any error, not**

**an omission, must be made within 48 hours of the time that KHC transmits the notification of such omission. THESE RESPONSE TIMES WILL BE STRICTLY ENFORCED.** For example, if KHC staff sends an email at 10 a.m. on Tuesday notifying the applicant of an omitted document and the document is not uploaded into the UFA or received by KHC staff by 10 a.m. on Wednesday, the application will be rejected for not meeting threshold. This cure period is not intended to be an extension of time for the applicant to procure a required document; it is strictly a cure period. If the document submitted to cure the omission is dated after the date of the application or KHC, in its sole discretion, determines that the document was not in the applicant's possession at the time the application was submitted, the cure will be deemed ineffective and the application will be rejected for not meeting threshold.

## 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.

If more than one project in a given jurisdiction is awarded Housing Credits and/or other KHC resources, KHC reserves the right to require an update of any of the projects' market studies to recognize and take into account the other projects funded in that jurisdiction and any impact on the market's need for the units proposed in their project. Updated market studies must be submitted to KHC within 60 days of the preliminary award letter.

Applicants 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 shall be responsible for handling all issues related to the market analysis. Applicants contracting with market analysts for the benefit of KHC shall be responsible for negotiating the price of the contracted work. Although the applicant 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.

All market studies shall only be valid for six months from the date of the study. Projects that were unsuccessful in the most recent previous funding round may resubmit the market study that was provided in the previous funding round; however, if funded, the market study must be updated at technical submission. Applicants resubmitting a market study from a previous funding round must provide a letter or memo indicating that it is a resubmission.

## Conditional Approval Process

Funding recommendations are made by the application review team that consists of staff specialists within KHC's Multifamily Programs Department and Asset and Account Management Department. 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 KHC's Credit 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 website and will also be sent through KHC's eGram system. Approved projects will receive a preliminary award 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; if any material adverse change occurs; or if 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.

## **Section XI. Technical Submission Stage**

### **Reservation Notice**

KHC will send each successful applicant a preliminary award letter that indicates the conditional reservation of Housing Credits and other KHC-awarded resources. 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 binding agreement 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 preliminary award letter, or the amount reflected in a carryover allocation. Unless otherwise approved, KHC will not issue a final credit reservation letter until the final draft limited partnership agreement has been submitted, final underwriting has been completed, and all required pre-construction/closing documents and conditions have been satisfied (refer to the Guidelines, Pre-Construction/Pre-Closing Stage).

### **Appraisals**

Projects requesting 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. KHC must be named as an intended user of the appraisal. 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. If the project is requesting Housing Credit only, these appraisals do not need to meet KHC's appraisal requirements or need to be ordered from KHC's contract appraisers; however, the appraisal must still provide a separate value for the land and KHC must be named as an intended user. The acquisition cost shown on the underwriting model cannot exceed the appraised value of sites to be acquired. Scattered site projects cannot apply the appraised value of leased sites to the acquisition cost of purchased sites.

For rehabilitation and preservation developments that qualify for acquisition Housing Credit, a developer's fee will be allowed on a portion of the acquisition cost that is basis eligible. In cases where there is an identity of interest between the seller and buyer of vacant land, KHC will require evidence of the original purchase price. If the acquisition cost of the land is higher than the original purchase price and is not substantiated in the appraisal, KHC may require the use of the original purchase price. 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 and other sources of KHC funds totaling \$250,000 or more **must** choose an appraisal firm or individual listed on KHC's approved list and the appraisal must meet KHC's appraisal requirements, including recognition of the favorable financing value of any below-market subsidy financing. The list of KHC-approved appraisers is available on KHC's website, [www.kyhousing.org](http://www.kyhousing.org), under Development, Multifamily, Underwriting Resources, Appraisals.

Applicants 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 shall be responsible for handling all issues related to the appraisal. Applicants contracting with appraisers for the benefit of KHC shall be responsible for negotiating the price of the contracted work.

Although the applicant 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. Developers may request the lending institution to be listed as an authorized user of the appraisal in addition to KHC to prevent two appraisals from being conducted. If two appraisals are obtained, then KHC must receive a copy of the second appraisal for comparison. The developer will need to have large discrepancies addressed by both appraisers.

## Construction Plan Approval

Project plans must be finalized with approvals from the authority having jurisdiction (local building department or Kentucky Department of Housing, Buildings, and Construction) submitted at the 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.

## Project Deadlines

Following are the associated project deadlines; please refer to Section V., Applicable Program Fees, for the fee schedules.

### Housing Credit Reservation Fee

The Housing Credit reservation fee is due to KHC within two weeks of the date of the preliminary award letter. Failure to pay the reservation fee within this timeframe will result in the Housing Credit award being recaptured. The fee amount is equal to 9 percent of the Housing Credit conditional award.

### Technical Submission

All technical submission items must be received by KHC no later than 90 days from the date of the preliminary award letter. Projects may request up to three, 30-day extensions with payment of the applicable extension fees. Extension fees must be paid prior to the expiration of the deadline.

### Firm Commitments

If a conditional award has been made, the applicant must provide to KHC with its technical submission, binding final firm commitment letters from the equity investor and non-KHC funding sources that provide:

1. The estimated dollar amount of the equity investment or loan amount 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.
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 not limited 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 firm commitment letters have not been submitted by the technical submission deadline, 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 preliminary award and the award of credits to be made and all time limitations therein or thereunder. KHC may strictly enforce requirements imposed upon applicants. Applicants must agree to proceed diligently to closing.

## Project Closing

Applicants will have one year from the date of KHC's preliminary approval letter to close with their equity investor and on all KHC loans associated with the project. The applicant will receive a checklist that will outline all outstanding or additional documentation needed. If the project does not close by this date, KHC's preliminary award to the project shall expire and be null and void and of no further force and effect. Applicants may request an extension to the closing deadline with payment of the applicable extension fees. Extension fees must be paid prior to the expiration of the deadline.

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.

## 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 prior to 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.

## Section XII. 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.

## 8609 Application

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. **This documentation must be submitted to KHC no later than 6 months from the project's construction completion date, as evidenced by a certificate of occupancy or an architect's certificate of substantial completion (if rehabilitation)**. Upon receipt, KHC will determine the best method by which to conduct a pre-8609 project review with the owner and/or property manager of the various programmatic restrictions, 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. In addition, if a project has not met all of its requirements, including document submission and satisfactory construction completion, issuance of the 8609s will be delayed.

### **Final Cost Certification (Included with 8609 Application)**

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, along with a final accounting of all project costs, and KHC's Certification of Sources and Uses within 6 months after the last building in a project receives its Certificate of Occupancy or before December 1 of the current year, whichever is earlier. The cost certification must be submitted with the other documentation in the 8609 application. Please refer to KHC's Cost Certification Guidelines for additional requirements.

### **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 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 request is typically submitted to KHC with the 8609 application; however, the LURA can be requested at any time after the final partnership agreement has been executed.

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 application packet.

### **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. KHC requires at least 15 days to finalize and mail the 8609(s) to the owner. KHC reserves the right to withhold the issuance of a Form 8609 for any development or building that is determined at KHC's sole discretion **not to have been constructed in accordance with the representations** contained in the development descriptions and certified by the architect.

As a condition of receiving a Housing Credit allocation, the applicant agrees to furnish to KHC 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.

## **Section XIII. Policies**

### **New Affordable Housing Units in Qualified Census Tracts**

A QCT is any census tract (or equivalent geographic area defined by the U.S. Census Bureau) in which at least 50 percent of households have an income less than 60 percent of the AMGI or where the poverty rate is at least 25 percent.

KHC's findings reflect that QCTs have benefited over the years with the creation of affordable housing developments with the Low Income Housing Tax Credit (Housing Credit) program under IRC section 42 and other public housing programs. Treasury regulation §1.42-9(a) mandates compliance with HUD directives including Title VIII of the Civil Rights Act of 1968.

To meet the requirements of the Fair Housing Act and Treasury regulation §1.42-9(a), KHC has restricted the creation of new affordable housing units in QCTs. KHC will now require developments that propose the creation of new units in QCTs to undergo a thorough review and justification process prior to accepting an application for funding. Developments must demonstrate one of the following to be eligible:

- 1) The creation of new affordable units in a QCT must be part of a written plan adopted by the local jurisdiction. The requirement of a written plan may be satisfied by a community revitalization plan. However, the requirement is not that the written plan be a community revitalization plan. The written plan must have been in existence prior to an application for funding and must have been created or updated within the last 5 years. The plan must be consistent with the Fair Housing Act. Projects located in a HOME Participating Jurisdiction (PJ) must also obtain a certification from the PJ in which the property is located. The certification must specifically identify the proposed development and state that the creation of new affordable units in a QCT is consistent with its AI and certification to HUD.
- 2) Developments proposing new affordable housing units in a QCT located in the state jurisdiction covered by KHC's AI will not be accepted. Developers may request a waiver of this requirement prior to seeking funding from KHC. Waivers will be granted on a case-by-case basis at KHC's sole and absolute discretion. All waiver requests must be sent to KHC's legal department and include detailed information on the project, existing affordable housing developments located within the QCT and within the market area as determined by a third party market analyst. Additionally, KHC will require letters from community officials and affordable housing organizations which discuss the community's existing affordable housing, the rationale for the creation of new units in a QCT, and the availability of affordable rental housing in their community in locations outside of the QCT. KHC will reject waiver requests that appear to violate fair housing laws (24 CFR 100). Applicants who received a QCT waiver in the most previous funding round, but whose project was not selected for funding, may submit updated documentation demonstrating that no changes have occurred in the community and request that KHC consider reissuing the QCT waiver.

KHC will continue to allow Housing Credits in QCTs for the preservation of existing affordable housing developments that have been previously assisted by federal or state programs.

### **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.

KHC 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>, Kentucky 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.

## Inspections

All projects will be required to participate in a pre-construction conference **before any construction activities begin**. 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 assigned to the project.

At the pre-construction conference, the developer will be required to provide the KHC [Pre-Construction Conference form](#), which will be signed by the developer, contractor and KHC construction specialist. The developer may indicate their desired date for the start of construction; however, KHC will notify the developer when all conditions have been satisfied and construction is authorized to begin. This is the developer's Notice to Proceed.

KHC will not issue a Notice to Proceed with construction until the following conditions have been met:

- Pre-construction conference has been conducted.
- All pre-construction and closing documents have been received and approved.
- All applicable loan and equity closings have occurred.

Once these conditions have been satisfied, KHC will return the Pre-Construction Conference form to the developer, signed and dated by the KHC project specialist. **No construction of any kind may begin until the fully executed form is returned to the developer, which serves as the developer's Notice to Proceed.** Any applicant who begins any construction activities prior to receiving a Notice to Proceed from KHC or providing a signed authorization letter to KHC which authorizes an early start, shall be required to pay an Unauthorized Early Start Fee of \$7,500. Refer to the Multifamily Guidelines for additional information.

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 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, but 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 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 written authorization is given by KHC.

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.

## Identity of Interest

An identity of interest relationship exists if any officer, director, board member, or authorized agent of any Development Team member (including, but not limited to, the developer, consultant, general contractor, architect, attorney, management agent, nonprofit agency, seller of the project real estate, etc.):

1. is also an officer, director, board member, or authorized agent of any other Development Team member;
2. has any financial interest in any other Development Team member's firm or corporation;
3. is a business partner of an officer, director, board member, or authorized agent of any other Development Team member;
4. has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any other Development Team member or company providing services to the project; or
5. advances any funds or items of value to the sponsor/borrower.

**All projects that include an identity of interest, as defined above, must indicate the specific identity of interest in the application for KHC resources. Failure to disclose identities of interest will result in disciplinary action per KHC's suspension and debarment policy.**

## Conflict of Interest

A conflict of interest exists in situations in which a public official or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of the public or a designated individual, exploits the relationship for personal benefit, typically pecuniary.

In certain relationships, individuals place their trust and confidence in someone to act in their best interests. When an individual has the responsibility to represent another person—whether as administrator, attorney, appraiser, market analyst, consultant, government official, or trustee—a clash between professional obligations and personal interests arises if the individual tries to perform that duty while at the same time trying to achieve personal gain. The appearance of a conflict of interest is present if there is a potential for the personal interests of an individual to clash with fiduciary duties. KHC will not allow individuals or businesses to participate in or provide a service to the project that have a conflict of interest in the project.

## Qualified Contract Process

The Omnibus Budget Reconciliation Act of 1989 states 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 (QCP).

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 must 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 result in the termination of the process and the owner will be 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 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 year 14 of the compliance period. For example, if the property owner's 15-year compliance period ended on March 1, 2015, the property may have requested a qualified contract starting in January of 2014 through December 31, 2014. 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 property owner is required to submit the following to notify KHC of intent to request qualified contract information (also located on KHC's website):

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

The Housing Credit property must 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 website [www.kyhousing.org](http://www.kyhousing.org) under Asset Management, Housing Credit Program Tools.

**Notwithstanding anything contained herein to the contrary, as provided in the application threshold requirements no owners may request the QCP prior to the 20<sup>th</sup> anniversary of the placed-in-service date for any property funded pursuant to the terms of this QAP.**

### **Section XIV. Compliance Monitoring Procedures**

KHC's compliance monitoring procedure, which is in accordance with IRC Section 42(m)(1)(B)(iii), 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, KHC's Compliance Department has established procedures with reduced fees for monitoring payments. Please refer to the compliance monitoring requirements after 15 years in the Compliance Guide on KHC's website.

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 ongoing 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.

## **Section XV. Effective Date**

This Qualified Allocation Plan is effective for allocations of Housing Credit made after December 31, 2016, and will remain in effect until December 31, 2018, unless amended. Amendments to the Internal Revenue Code and Treasury Regulations may necessitate conforming amendments to this plan.

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