

(Subject to Change Pending U.S. Department of Housing and Urban Development Review)

**Kentucky Tax Credit Assistance Program (TCAP) and
Tax Credit Monetization Program (Exchange)
Application Process and Submission Requirements**

Overview

Kentucky Housing Corporation (KHC) is the designated administrator of federal Low Income Housing Tax Credits (Housing Credits) for the Commonwealth of Kentucky under Section (§) 42 of the Internal Revenue Code of 1986 (Code) and all regulations promulgated thereunder.

The American Recovery and Reinvestment Act (ARRA) of 2009 was signed into law on February 17, 2009. ARRA creates two new sources of funding for affordable rental housing. First, it establishes a Tax Credit Assistance Program (TCAP) which will provide direct funding assistance to eligible tax credit projects. Second, Section 1602 of ARRA establishes a tax credit exchange program (Exchange Program), which permits states to substitute a cash grant in place of an eligible project's Housing Credits awarded under the Code in an amount not to exceed 85 percent of the Housing Credits exchanged times ten. Both of the new programs are intended primarily to supplement qualifying affordable housing developments that have been unable to secure adequate equity commitments from an equity provider; however, it is not KHC's intent for these programs to allow for any alterations to the previously approved project's design and scope of work as originally submitted in the competitive application process.

This document serves to outline the competitive selection criteria for funding, timing of funding rounds, deadlines for expenditures, crosscutting federal regulations, and reporting requirements set forth by Kentucky Housing Corporation concerning the use of TCAP and Exchange Program funds for the completion of affordable residential rental housing.

Definitions

"Award of Housing Credits" means the date upon which KHC issues a signed letter to a specific project stating that Housing Credits have been awarded.

"Completed Project" means an eligible project that has been placed in service as defined by the Code, which must occur by February 16, 2012.

"Eligible Project" as defined by statute are rental housing projects that have received or will receive an award of Housing Credits from KHC under § 42 during the period of October 1, 2006 to September 30, 2009 (federal fiscal years 2007, 2008 or 2009) and require additional funding to be completed and placed into service in accordance with the requirements of the Code.

"Funding Commitment" refers to the written agreement between KHC and the project owner that provides TCAP and/or Exchange funding assistance to a project.

"Good Faith Effort," as it relates to efforts to obtain equity investment in exchange for Housing Credits is defined as submission to KHC of (i) letters declining investment from three sources

including reason(s) for declining; OR (ii) a signed certification from the applicant that at least five potential investors were solicited including the name of the legal entity, contact person, telephone contact, e-mail contact information, and copy of written contact if available and reasons for decline ; OR (iii) proof of successful partial syndication/investment.

Funding Rounds

Applicants requesting TCAP and/or Exchange funding will utilize a single application.

KHC will hold three initial application rounds for funding under TCAP and Exchange Programs as follows:

- Round 1 – Applications submitted by 5:00 p.m. July 1, 2009
- Round 2 – Applications submitted by 5:00 p.m. August 1, 2009
- Round 3 – Applications submitted by 5:00 p.m. September 1, 2009

In the event that funding is depleted prior to the date of subsequent funding rounds, an announcement will be made via eGram and on KHC's Web site that funds have been exhausted and subsequent applications will be held pending the availability of recaptured funds, program income, or additional funding. If an application submitted in an early funding round does not meet minimum requirements to receive funding, the applicant may submit a revised application in a subsequent funding round.

If, after three funding rounds, uncommitted TCAP funds remain, KHC reserves the right to allocate funding to Eligible Projects that meet minimum requirements for funding, including tax-exempt bond-financed projects, or pursuant to a lottery system at KHC's sole discretion.

KHC cannot guarantee that any one project will receive either TCAP and/or Exchange funds. KHC will allocate the minimum amount of TCAP and/or Exchange funds required per project to ensure feasibility. Recipients of TCAP and/or Exchange funds will be required to comply with the requirements as described in this document and in future guidance issued by KHC.

Project Selection Criteria

KHC will distribute TCAP and Exchange funding competitively under the requirements of ARRA and KHC's current QAP. **KHC will limit funding to those Eligible Projects that are expected to be Completed Projects by February 16, 2012.**

KHC will review applications submitted in each funding round based on the availability of resources and selection criteria in this plan.

Project selection criteria and weight assigned to each are described below.

Federal rules require that no project shall be eligible for an award of TCAP funds unless at least some Housing Credits remain in the project. For the purposes of KHC's TCAP Program, the

minimum amount of Housing Credits that must remain in the project is twenty-five percent of the original allocation.

Applicants are encouraged to immediately begin discussions with Housing Credit investors to identify an optimal financing structure, which may consist of one or more of the following elements: traditional Housing Credits, TCAP funds and Exchange funds in addition to the funding sources proposed in the original application.

KHC reserves the right to amend financial structures prepared by applicants for credit prices below \$.75. KHC may determine that the new estimated price is too low and require an exchange of credit. Final financial structure will be determined solely at KHC's discretion.

In order to be considered for KHC's TCAP and/or Exchange funds program, applicants MUST meet the following minimum requirements:

1. Projects being submitted for consideration must have already received or will receive an allocation of Low Income Housing Tax Credits (LIHTC), by September 30, 2009. Projects that have already received an allocation will have first priority.
2. All fees due to KHC as a result of the original application, including tax credit reservation fees, must be paid prior to TCAP and/or Exchange Program application.
3. An A-95 Clearinghouse application must have been submitted to the Kentucky Department for Local Government's Intergovernmental Review Process with a copy provided to KHC at application.
4. All technical submission requirements due as a result of the original application and award of LIHTC's or other KHC funds must be submitted to KHC prior to application for TCAP and/or Exchange funds.
5. Developer must provide an updated underwriting model which clearly reflects new funds being requested, as well as any other change to the financial structure of the project along with a brief narrative description of changes made or differences from original underwriting model. Underwriting assumptions must be reasonable to reflect current market conditions.
6. Developer must provide an updated and appropriate project and construction schedule that demonstrates that the project can move forward quickly and that the project can meet required deadlines for certain milestones to avoid instant recapture of funds.

These milestones are as follows:

- | | |
|---|-------------------|
| a. Closing with an equity provider | January 15, 2010 |
| b. Construction start | March 1, 2010 |
| c. 1602 Exchange funds completely drawn | December 31, 2010 |
| d. 75% of TCAP funds drawn | December 31, 2010 |
| e. Total expenditure of TCAP funds | February 16, 2012 |

Pursuant to scoring criteria defined in this document, preference will be given to shovel-ready projects securing the greatest degree of investment. Lowest scoring projects may not be allocated any TCAP or Exchange funds.

At the time of application submission where there might be a possibility of receiving TCAP or any other federal funds, the owner is agreeing not to undertake a "choice limiting" activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds). This includes any activity that will result in a physical change and/or

acquisition, including leasing, or disposition of real property. **Performing a choice-limiting action may disqualify a project from receiving any federal funds.**

Therefore, a commitment of TCAP funds will not be granted until after Environmental Clearance has been given. It will be the responsibility of applicants to submit all required documentation to KHC in a timely manner to complete the Environmental process.

Underwriting Requirements

Applications must include an updated underwriting model with a narrative description of changes made. The ARRA Underwriting model will be made available for download from the Housing Production web page under Rental Production Programs on KHC's website at www.kyhousing.org.

KHC will allocate the minimum amount of TCAP and/or Exchange funds required to ensure project feasibility. Additionally, KHC reserves the right to modify program parameters to ensure the intent of the ARRA stimulus programs is met as well as to incorporate additional guidance that may be provided.

Projects will be held to KHC's established underwriting criteria in addition to the following requirements:

1. Establish an Operating Deficit Reserve equal to 12 months of projected operating expenses and reserve for replacement deposits, plus 12-months of Debt Service Payments. No more than three months' of this amount will be available to the owner as an unsupervised lease-up reserve.
2. Reserve for Replacement must be increased to \$400 per unit.
3. The DCR must remain positive (at or above 1.0 through year 15).
4. KHC will require that all obligations be guaranteed by all ownership entities and/or by all individual owner(s) of all ownership entities. All guarantors must be acceptable to KHC.

KHC will underwrite all projects to ensure projects are not over subsidized.

The maximum amount of TCAP is limited to total eligible basis in the project.

In addition, projects requesting 1602 Exchange funds must submit evidence of making a Good Faith Effort to obtain equity investment. See "Definitions" for an explanation of this requirement.

Guarantee Reserves

The establishment of a Compliance Guarantee Reserve account will be required. This account will be initially funded in an amount equal to nine months of total operating expenses, reserve for replacement and total debt service and would be controlled by KHC for fifteen years. If the project meets the affordability and compliance requirements required by ARRA, then up to twenty percent of the reserve balance will be returned to the developer at the end of the fifteen year compliance period. The remaining balance will be retained by KHC to further other affordable housing initiatives.

Additionally, KHC will require that the ownership entity, individual owner(s), principals of all interested entities, etc., or any combination thereof, will be required to provide personal guarantees for 15 years. Appropriate documentation to support the financial ability of the guarantor will be required.

Application Scoring Criteria

Criteria Description	Points
Current Approved Project Score under applicable QAP <ul style="list-style-type: none"> One point for each 25 points in original scoring (Example: original application scored 300 points – project will receive 12 points for this application) 	
Additional LIHTC Housing Credit Equity <ul style="list-style-type: none"> 26 percent or more but less than 40 percent 41 percent or more but less than 60 percent 61 percent or more but less than 80 percent 81 percent or more 	20 30 40 50
Provided assurance of completion	10
Written commitments for all funding sources submitted (except KHC funding)	10
Required proof of preconstruction insurances required by KHC for all types of insurance submitted	10
Building permits submitted	10
Executed owner/contractor agreement submitted (must include Davis Bacon provisions for TCAP requests)	10
Provided Kentucky State Clearinghouse comments from Department of Local Government in reference to Kentucky Intergovernmental Review Process	10
Leverage <ul style="list-style-type: none"> Less than 26% TCAP and/or Exchange Funds Requesting between 26% to 50% TCAP and/or Exchange Funds Requesting between 51% to 75% TCAP and/or Exchange Funds Requesting between 76% to 100% TCAP and/or Exchange Funds 	40 30 20 10

Asset Management

The Recovery Act requires KHC to perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by TCAP.

KHC will be required to perform asset management on projects funded with TCAP and Exchange Program Funds. Any project funded under these programs may be required to enter into a written contract for asset management with KHC. In order to reduce the asset oversight burden on KHC, KHC may enter into agreement(s) with the syndicator, lender or other third party to accomplish the asset management objectives and assure the long term viability of the development. KHC may require a fee for asset management and/or require reserves be established and maintained for the duration of the Compliance Period and Extended Use Period. This fee will be determined at a later date and incorporated into the program guidelines.

Type of Investment

TCAP will be allocated to Eligible Projects in the form of a permanent loan at a minimum of zero percent interest deferred for a term of 15 years (20 years if combined with KHC HOME funding), evidenced by a Promissory Note and secured by a Mortgage lien against the assisted property. KHC reserves the right to change the terms of the TCAP loan funding set forth above as needed for the appropriate financial feasibility of the project. **If the project defaults under applicable program requirements during the 15-year term of the loan (20-year term if combined with KHC HOME funding), KHC reserves the right to demand immediate payment of all loan funds received by the project. In the event of default, KHC reserves the right to establish a default rate of interest in significantly excess of the otherwise applicable rate.** In order to meet federal deadlines for the expenditure of funds, TCAP funds shall be the first funds drawn down on a project containing multiple funding programs and/or sources.

Exchange funds, as required by the U.S. Treasury, will be in the form of grants, provided, however, that performance under the requirements of the Exchange Program will be secured by a recorded Mortgage lien against the assisted property. All projects assisted by either TCAP or Exchange funds will also be subject to a recorded Extended Use Agreement. KHC may require additional written agreements and security documents.

The owner/developer will be required to provide guarantees for the recapture of TCAP/Exchange funds for non-compliance during the 15-year (20 –years if combine with KHC HOME funding) compliance period. KHC will use standard housing credit industry practices as a guide in creating the guarantee requirements.

Federal Grants Requirements

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Recipients of TCAP funds must comply with the following federal requirements as further described in implementation guidance issued by the U.S. Department of Housing and Urban Development (HUD):

- Fair Housing Act
- Title VI of the Civil Rights Act of 1964
- The Age Discrimination Act of 1975
- Affirmatively Furthering Fair Housing
- Section 504 of the Rehabilitation Act of 1973
- National Environmental Policy Act and Related Laws
- The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992
- Davis-Bacon Prevailing Wages
- “Anti-Lobbying” Restrictions
- The Drug-Free Workplace Act of 1988
- OMB Regulations and Circulars: Non-procurement Debarment and Suspension

All funding recipients will be required to execute a written agreement with KHC that certifies that the recipient and all subcontractors will comply with the aforementioned federal requirements.

Funding recipients will be required to include language in its subcontracts stating that sub-awardees agree to comply with the same requirements.

Funding Commitment and Expenditure Deadlines

KHC is required to meet specific commitment and expenditure deadlines for both TCAP and Exchange funds. In order to meet these statutory deadlines, KHC will recapture and reallocate TCAP and Exchange funds in the event that deadlines are not met by any project that receives a notice of funding award. KHC will closely monitor the progress of each TCAP and/or Exchange-funded project to ensure that expenditure deadlines will be met.

Specifically, KHC WILL NOT issue any extension of deadlines for receipt of funding applications, Funding Commitments, technical submission items, construction commencement, placed in service, or other deadlines described herein and in any notice of award or Funding Commitment.

KHC anticipates that all TCAP and Exchange funds will be committed by September 30, 2009 through the three above-referenced competitive funding rounds. Any uncommitted funds remaining as of September 30, 2009 will be committed to Eligible Projects by October 31, 2009 as described above.

Successful applicants will be required to enter into a Funding Commitment with KHC. Failure to execute a Funding Commitment within 30 days or as defined in the Funding Commitment documents provided by KHC will result in a loss of award. Funds will be reallocated to the next highest scoring qualified project in the same or subsequent funding rounds. In the event all funding rounds have been completed, KHC will allocate funds to another Eligible Project in its discretion.

All successful applicants will be required to close with Housing Credit investors, close on all financing sources, and evidence of such to KHC by January 15, 2009. Failure to do so will result in loss of the awarded resources. Funds will be reallocated as described in the preceding paragraph.

Construction on all successfully funded projects must commence by March 1, 2010, and all developer-established milestones must be met to demonstrate that project completion will be accomplished as set forth in the developer's schedule. In the event a project does not commence construction by the deadline imposed or if KHC inspections reveal that the project has fallen behind schedule and it is unreasonable to expect the project to recover, KHC will recapture the funds and reallocate them to an Eligible Project that is ready to proceed.

All TCAP funded projects must draw a minimum of 75 percent of funds by December 31, 2010 and must be fully expended and placed in service no later than December 31, 2010. Projects funded with Exchange funds must be fully expended by December 31, 2010.

Loan Default and Noncompliance

Remedies for loan default or other noncompliance may include, but is not limited to, KHC having the ability to do some or all of the following:

- Declare participants not in good standing;
- Declare owners and related entities (as determined by KHC) ineligible to participate in future KHC programs;
- Change the structure of the ownership entity, including adding or removing members/partners;
- Replace the management company and contractors;
- Initiate foreclosure proceedings; and
- Other remedies as determined by KHC, such as posting a Letter of Credit.

Recovery Act Accountability, Transparency, and Reporting Requirements

All TCAP and Exchange funding recipients will be required to report to KHC, five days after the end of each calendar quarter starting October 10, 2009, information similar to the following:

- The completion status of the project, and
- An estimated number of jobs created and number of jobs retained by the project, and
- Any additional information required by the federal allocating agencies and KHC.

Additional reporting requirements may be imposed pending guidance from HUD and the U.S. Treasury.

TCAP and Exchange funding recipients must submit reports in a format and at such time as prescribed by KHC, HUD, the U.S. Treasury, and the Commonwealth of Kentucky

KHC anticipates that quarterly reports will be submitted electronically.

KHC will identify all projects selected for funding and post the amount of each TCAP and Exchange award on its Web site.

Public Comment Period

KHC has posted these application and submission requirements, along with project selection criteria, on its Web site for a minimum of five days in order to solicit public comment on the same. Comments should be submitted in writing to:

Tammy Stansbury
Director of Housing Finance and Construction
Kentucky Housing Corporation
1231 Louisville Rd.
Frankfort, KY 40601
Email: TStansbury@kyhousing.org

Comments must be received by 4:00 p.m., EDT, Thursday, May 28, 2009.