

# 2015

## QUALIFIED ALLOCATION PLAN



**KHC** | Kentucky  
Housing  
Corporation  
*Investing in quality housing solutions.*



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE GOVERNOR

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September 3, 2014

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 2015 State 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)(l)(A)(i) of the Internal Revenue Code of 1986, as amended, I hereby approve the 2015 State Qualified Allocation Plan for the Low Income Housing Tax Credit program.

Kentucky Housing Corporation, the duly authorized state Low Income Housing Tax Credit agency in the Commonwealth of Kentucky, shall use the 2015 State Qualified Allocation Plan to administer the federal Low Income Housing Tax Credit program, effective the date of this approval letter, through December 31, 2015, unless otherwise amended.

Sincerely,

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

Steven L. Beshear

# 2015 QUALIFIED ALLOCATION PLAN

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## Public Notice

**This Qualified Allocation Plan (QAP) adopts the Kentucky Housing Corporation (KHC) Multifamily Finance Guidelines (Guidelines) and all policies, procedures, and requirements contained therein. 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 funding with Low Income Housing Tax Credits.**

## Disclaimer

**The information in this Qualified Allocation Plan is provided as a general overview and should not be relied upon for tax purposes. Applicants are solely responsible for compliance with Section 42 of the Tax Reform Act of 1986, as amended. Each applicant will be responsible for the determination of the amount of Housing Credit for which they apply. KHC recommends that applicants seek professional tax advice prior to submitting an application for Low Income Housing Tax Credits.**

## **Section I. Introduction**

Kentucky Housing Corporation (KHC) is the designated administrator of the federal Low Income Housing Tax Credit (Housing Credit) program for Kentucky under 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 August 7, 2014.

Demand for Housing Credit often exceeds availability. The purpose of this QAP is to reserve 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 (family, elderly, special needs);
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**

Each year, the designated allocating agency for the Housing Credit program is required to publish a Qualified Allocation Plan (QAP) describing the process for the allocation and use of Housing Credit. The plan is intended to provide a fair and competitive process for utilizing Housing Credit to the fullest extent possible for the creation and preservation of rental housing for lower-income households. The requirement for states to develop a plan was established in the Omnibus Reconciliation Act of 1989.

## Requirements of the QAP

Section 42(m) of the Internal Revenue 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
- Contributing to a concerted community revitalization development plan

The Code under Section 42(m) 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.

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

## Fair Housing

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 (AI)

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 unitsizes.

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

## Public Hearing Requirement

The draft QAP is subject to a minimum 14-day public comment period. KHC conducted a public hearing on August 7, 2014, to receive comments and accepted written comments through August 21, 2014, either by a formal letter to the attention of Andrew Hawes or e-mail at [rentalqap@kyhousing.org](mailto:rentalqap@kyhousing.org).

The announcement for the public hearing was published through KHC's eGram system, posted to KHC's Web site, and in accordance 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 Web site 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

The IRC requires that a minimum of 10 percent of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. In addition to the requirements of IRC Section 42(h)(5), a nonprofit must be the general partner or managing member of the project, with a minimum 51 percent ownership interest in the general partner or managing member entity. 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 Finance funding [i.e. tax-exempt bonds, Housing Credit, HOME Investment Partnership Program, Affordable Housing Trust Fund (AHTF), 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 2015 is estimated to be approximately **\$10,074,955**. The total is determined from the following:

- \$2.30 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: Reflects 70 percent of the present value of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings.
- 4 Percent Credit: Reflects approximately 30 percent of the present value of the qualified basis of acquired buildings that are to be substantially rehabilitated.

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication, and marketing. The applicable percentage (that is the 9 percent and 4 percent approximations) of the qualified basis may be claimed annually for ten years as the Low Income Housing Tax Credit. The amount of credit that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

### **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 a maximum 30 percent present value credit 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.

### **Tax Exempt Bond Fees**

- Application Fee: \$2,500 per project, to be submitted with the application.
- Issuer Fees: \$2.50/bond or quarter point (if rated A+ or better) **or** \$5.00/bond or half point for private placement of bonds. Half is due at Inducement Resolution, which is non-refundable, and the other half is due at time of bond closing.
- Annual Issuer Fees: \$1.25/bond or an eighth point (covers annual compliance and financial reviews).
- Issuer's Counsel: To be determined but not to exceed \$20,000 (one-time fee paid at closing).
- Kentucky Housing Corporation's out-of-pocket expenses will be a one-time amount of approximately \$5,000.

In addition, if the 4 percent Housing Credit is being requested, all applicable fees as listed in [Section V. Applicable Program Fees](#), should be included. The reservation fee must be paid prior to issuance of the Internal Revenue Service (IRS) 42m letter. If the amount of 4 percent Housing Credit increases between the time the IRS 42m letter is issued and issuance of Form(s) 8609, additional reservation fees will be collected prior to issuance of Form(s) 8609.

## Distribution of Housing Credit for the Current Year

Competitive Pools and Set-Asides	2015 Approximate Amount
<p>A. Competitive Urban Pool</p> <p>\$750,000 – New Construction/Adaptive Reuse*</p> <p>\$2,125,000 – Existing/Acquisition Rehabilitation</p>	\$2,875,000
<p>B. Competitive Rural Pool</p> <p>\$750,000 – New Construction/Adaptive Reuse*</p> <p>\$1,250,000 – Existing/Acquisition Rehabilitation</p> <p>\$875,000 – Rural Development</p>	\$2,875,000
<p>C. Nonprofit Supportive Housing Pool</p> <p>\$750,000 – Recovery Kentucky Set-Aside</p> <p>\$700,000 – Scholar House Set-Aside (Madison County)</p> <p>\$500,000 – Competitive</p>	\$1,950,000
<p>D. Community Impact Pool</p> <p>\$800,000 – Louisville Hope VI Set-Aside</p> <p>\$700,000 – Competitive Urban</p> <p>\$300,000 – Competitive Rural</p>	\$1,800,000
E. Partial Award from 2014 Funding Round	\$331,136
F. Maximizing Outcomes Pool	\$243,819
<b>Total</b>	<b>\$10,074,955</b>

**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 new construction in a Qualified Census Tract (QCT).

## Housing Credit Percentage

KHC will allocate and underwrite all projects that are applying for Housing Credit at the applicable floating credit factor established by the IRS the month prior to applications being submitted. All projects will be eligible to request the 30 percent basis boost. If Congress modifies the formula that produces the rates for the 70 percent present value and 30 percent present value credits after applications are received, but before funding announcements are made, KHC may make adjustments to a project's 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 either the urban, rural, community impact, or nonprofit pool; the sub-pools in each of the four pools are not considered separate "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 (nonprofit, urban, rural or community impact). Development team members are limited to submitting two applications per pool. 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, community impact, urban and then rural. 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 2015 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 their discretion, KHC staff may contact the applicant for clarification of information submitted with the application if it is deemed necessary. KHC will not accept additional documentation or revisions to the application or underwriting model after application submission.**

### I. Competitive Urban Pool

The 2015 urban pool of approximately \$2,875,000 is 50 percent of the remaining Housing Credit after set-asides and other pools are deducted. KHC has designated \$750,000 for new construction/adaptive reuse projects and \$2,125,000 for existing/acquisition rehabilitation projects. Projects must meet a minimum score as outlined in the guidelines in order to be considered for funding. Projects qualified to compete in this pool must be located in areas defined as urban by USDA Rural Development (RD). Applicants can determine if the property is in an urban area by accessing the [RD Property Eligibility Site](#), "Multi Family Housing" and then enter the property address. A copy of the eligibility determination must be provided with the application.

### II. Competitive Rural Pool

The 2015 rural pool of approximately \$2,875,000 is 50 percent of the remaining Housing Credit after set-asides and pools are deducted. KHC has designated \$750,000 for new construction/adaptive reuse projects, \$1,250,000 for existing/acquisition rehabilitation projects and \$875,000 for Rural Development

projects. 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. Projects qualified to compete in this pool must be located in areas defined as rural by USDA Rural Development (RD). Applicants can determine if the property is in a rural area by accessing the [RD Property Eligibility Site](#), “Multi Family Housing” and then enter the property address. A copy of the eligibility determination must be provided with the application.

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

Approximately \$1,950,000 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 meet a minimum score as outlined in the guidelines in order to be considered for funding.

KHC will allocate:

- \$750,000 as a set-aside for a Recovery Kentucky project in the Somerset area.
- \$700,000 to a competitive Scholar House project in Madison County.
- \$500,000 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:
  - Elderly, homeless, at risk of homelessness, victims of domestic violence, persons with physical disabilities, acquired traumatic brain injury, aging out of foster care, U.S. military veterans, 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 Pool**

Approximately \$1,800,000 (\$800,000 set-aside for the Louisville HOPE VI development, \$700,000 for competitive applications in urban areas, and \$300,000 for competitive applications in rural areas) will be set aside for developments with significant community impact through the creation of new affordable housing units within a defined footprint or neighborhood or projects that create new affordable housing units utilizing Federal Historic Tax Credits. 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 Pool. Projects applying in the Scholar House set-aside cannot apply in the Community Impact Pool.

As a threshold to be eligible to apply in the Community Impact Pool, the mayor or 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. The letter must address the local jurisdiction’s level of participation in developing the scope of the project and specifically identify how the project will meet an identified need in the community as defined in a local revitalization plan, or how the project will address a critical community need through the creation of new housing opportunities.

KHC will only fund one project from the competitive Community Impact Pool in any given county. If more than one application is received for funding from the same local jurisdiction, KHC will contact the local jurisdiction to identify one development as its priority and the other project(s) will not be considered for funding from the Community Impact Pool and the associated application fees will be retained by KHC. Projects must meet a minimum score as outlined in the guidelines in order to be considered for funding.

## **V. Partial Award from 2014 Funding Round**

In order to fully expend the 2014 credit allocation and remain eligible for the National Pool, KHC elected to partially fund a project from the 2014 funding round with \$331,136 of 2015 Housing Credits.

## **VI. Maximizing Outcomes Pool**

The remainder of the annual Housing Credit allocation (approximately \$243,819) 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. The Maximizing Outcomes Pool may also be utilized to increase a project's credit rate to replace HOME and/or AHTF funds if Congress extends or fixes the 9 percent credit rate. 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 indicated below and other factors at the discretion of KHC, in order to meet program policies and goals that were not achieved in the other pools.

Consideration will be given to:

- Projects that address a significant community need or are identified as a priority project by the Governor of the Commonwealth of Kentucky, HUD, Rural Development 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.
- Proposals where a previous phase of the same multifamily development has been successfully constructed, placed in service, and is operating at a high occupancy rate.
- Projects developed in a Qualified Census Tract, Difficult Development Area, or contributing to a community revitalization plan.

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

## **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 later may be allocated to the projects on the waiting list.

If a project returns Housing Credit that was reserved the next highest scoring application on the waiting list may receive first consideration for any award of credits if that project remains financially feasible as submitted.

**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 returned as well. Projects that receive Housing Credit from the waiting list may then also be considered for other returned KHC resources.*

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.

## 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 do not qualify for experience points for capacity team 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 V). 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 finance department. Please refer to the applicable score sheet for a complete listing of the established criteria.

## **Experience and Capacity Review**

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

## **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. The 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.

The following items must be uploaded to the online application system for KHC to complete the capacity review. **All applicant/developers, owners/general partner(s), and guarantors must submit the following documentation based on its organizational structure.**

### **Development Team Member Documentation**

#### **Corporation:**

- Articles of Incorporation and any amendments
- Bylaws and any amendments
- Kentucky Secretary of State Certificate of Existence
- Secretary's Certification for number of shares authorized, number of shares issued to whom and at what price
- Current Financial Statements (two years Balance Sheet, Profit and Loss, and Cash Flow Statements)
- Business Credit Report Authorization
- Most Recent One-Year Business Tax Return
- Corporation's Tax Identification Number

#### **Limited Liability Company:**

- 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 Current Financial Statements (two years Balance Sheet, Profit and Loss, and Cash Flow Statements). **Note:** *A new LLC will require individual members' financials and credit reports.*
- Business Credit Report Authorization
- Most Recent One-Year Business Tax Return
- LLC's Tax Identification Number

#### **Nonprofit Corporation:**

- Articles of Incorporation and any amendments
- Bylaws and any amendments
- Kentucky Secretary of State Certificate of Existence
- IRS 501(c)(3) status letter
- Current financial statements (two years Balance Sheet, Profit and Loss, and Cash Flow Statements)
- A current listing of the Board of Directors and their current occupations
- A resolution from the nonprofit's Board of Directors that includes language that approves:

- The application being made for specific Multifamily Finance funding (i.e. tax-exempt bonds, Housing Credit, HOME, AHTF, 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.
  - The anticipated percentage of the developer fee that will be shared with another entity.
- Business Credit Report Authorization
  - Most Recent IRS Form 990
  - Organization's Tax Identification Number

**Government Entity:**

- Resolution from Appointing Authority
- Bylaws and any amendments
- Current financial statements (two years Balance Sheet, Profit and Loss, and Cash Flow Statements)

**Partnership:**

- Partnership Agreement (General and/or Limited) and any amendments (Need Certificate of Limited Partnership for LPs)
- Kentucky Secretary of State Certificate of Existence
- Credit Report(s) for general partner(s) (current report reflecting recent transactions)
- Current financial statements (two years Balance Sheet, Profit and Loss, and Cash Flow Statements)
- Business Credit Report Authorization
- Personal Credit Report Authorization
- Partnership's Tax Identification Number
  - **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.

**Description of Affordable Housing Experience**

- A brief narrative describing the experience of the organization with regard to the development of subsidized affordable housing, including the number of projects and units that have been completed and placed into service.

**Out-of-State Development Verification**

- A copy of the out-of-state Housing Finance Agency (HFA) review for developments financed with HFA resources in other states. KHC will evaluate each state's response and may contact a state HFA directly to obtain additional information, as well as request additional information from a developer regarding its activities in another state. KHC may, at its sole discretion, reduce a development team's capacity score for poor performance in another state's multifamily programs.

**General Documents**

- A spreadsheet summary of all projects under construction in any state (or stage of completion), including their present status and expected completion date (developers only).

- A full organizational chart, staff roster, and resumes of key development staff within the organization, focusing on their affordable housing development experience (required for **applicant/developer, consultant, nonprofit, and management company**).
- A narrative identifying any existing identity of interest.
- A narrative explaining the proposed application for the current funding round, including:
  1. The allocation pools in which the single application will compete.
  2. The roles that the various organization(s) will play in the project.

**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

KHC may perform a credit investigation on all development team members (owner, developer, management company, consultants for a project which an application is submitted). 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 2015 competitive cycle or the tax-exempt bonds 4 percent tax credits and removing from consideration for any application where they are identified.

## Capacity Review Time Frame and Response Period 2015

- Applicants will identify the development team when they first access the online application system, which will be available on Friday, September 12, 2014, for the current 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 Friday, November 7, 2014, 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 Andrew Hawes, Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, Kentucky 40601, or by e-mail to [ahawes@kyhousing.org](mailto:ahawes@kyhousing.org).

## **Section V. Applicable Program Fees**

### **Application Fee**

Fee amounts are \$1,500 per pool exclusively for nonprofit applicants and \$2,500 per pool for nonprofit Joint Ventures and For-Profit developers. This nonrefundable 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. The application fee for tax-exempt bond projects is \$2,500 per project. Application fees are non-refundable regardless of reason.

### **Housing Credit Reservation Fee**

A reservation fee of 8 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.

### **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.

### **Extension Fee**

KHC will charge an extension fee if the project does not meet the established deadlines for technical submission or equity closing. Refer to page 34 for a complete listing of the extension fees and policies.

### **Inspection Fee**

KHC will charge a one-time 1/2 percent inspection fee for all Housing Credit projects. The fee will be based on the credit allocation amount awarded to a project. This fee is due and payable before the start of any construction activities and must be incorporated into the project budget.

### **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 \$750 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.

### **Other Fees**

Additional fees not outlined above are described in Section XI under [Deadlines and Fees](#).

## Section VI. Application Thresholds

KHC has established the following project requirements that must be met as a threshold to submit an application for funding. If any of the threshold requirements are not met, the application will not be reviewed or scored and will not be eligible for funding. KHC will notify the applicant if one or more of the thresholds are not met and the applicant will have three (3) days to appeal; however, no changes or additions to the original submission can be made to cure threshold deficiencies.

1. The application must be fully completed with adequate responses to all questions that are applicable to the project type and KHC resources requested.
2. All required attachments, including the Notice of Application for Funding and Letter of Support for Community Impact Pool applicants (as described below in Section VII), must be uploaded with the application and provided on a disc or flash drive.
3. All projects requesting HOME funds must have a written commitment of HOME-eligible matching funds of at least 5 percent of the total HOME request.
4. The project's underwriting model, as submitted with the application, must meet KHC's cash flow and debt coverage ratio requirements.
5. The amounts budgeted in the underwriting model for total developer fee, general requirements, profit and overhead must not exceed KHC's maximum limits.
6. The project's total development cost must not exceed the applicable cost containment limit. If a waiver to cost containment has been granted prior to application submission, the written waiver approval must be uploaded with the application.
7. The project must have site control on 100 percent of the project sites, including all scattered sites.
8. Scattered site projects must be located within a defined footprint or neighborhood and be of similar building design and unit type. Sites located in multiple counties or scattered throughout a county are not permitted except for Tax-Exempt Bond projects.
9. 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.
10. The project site(s) must be properly zoned. If no zoning exists, an evidentiary letter from the governing entity must be submitted.
11. All Housing Credit applicants for new construction, rehabilitation or adaptive reuse projects must submit KHC's Excel spreadsheet "Capital Reserve Replacement Schedule" (CRRS) from a qualified preparer. All rehabilitation 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.
12. Preliminary building plans and outline specifications must be provided. The final plans and specs must meet all applicable KHC Minimum Design and Universal Design requirements.

## **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 KHC's Multifamily Guidelines.***

### **Notice of Application for Funding (Threshold)**

(Applicable to all projects)

As a threshold item, all applicants must submit the completed **Notice of Application for Funding** form to evidence that the local mayor/county judge executive and state representative and state senator have been notified of the proposed project and have had an opportunity to comment on the proposed project. The completed form must be uploaded with the capacity review documents via the online application. Please refer to the Multifamily Finance Guidelines for additional information.

### **Letter of Support (Threshold)**

(Community Impact Pool only)

As a threshold to be eligible to apply in the Community Impact Pool, the mayor or 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 note: For merged city/county jurisdictions, the letter must be from the mayor. The letter must address the local jurisdiction's level of participation in developing the scope of the project and specifically identify how the project will meet an identified need in the community as defined in a local revitalization plan or how the project will address a critical community need through the creation of new housing opportunities. If a letter of support is not submitted, the application will be rejected, regardless of final score. Letters of support may not be more than one year old at the time of application.

### **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; Hope VI; historic/adaptive reuse projects; or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$15,600 per Housing Credit unit. KHC has adopted the USDA Rural Development (RD) urban area definition. Applicants can determine if the property is in an urban area by utilizing the [RD Property Eligibility Site](#).

#### **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 secretary of the U.S. Department of Housing and Urban Development; historic/adaptive reuse projects; or projects located in areas defined by KHC as needing an increase in basis, which will be limited to \$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 the applicable floating credit factor established by the IRS the month prior to application submittal. All projects are eligible for the 30 percent basis boost; however, if Congress extends the 9 percent credit rate, KHC may limit the 30 percent basis boost.

### **Difficult Development Areas (DDAs)**

The following counties are designated Difficult Development Areas (counties) for the current funding round. Department of Housing and Urban Development, Federal Register Volume 79, No. 192, October 3, 2014:

- Carlisle
- Jackson
- Metcalfe
- Pike
- Robertson
- Wolfe

## 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 new construction 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 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. Scholar House and Recovery Kentucky set-asides do apply to the maximum credit cap limitations.

## 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 (Threshold)

While maintaining aesthetic and livable standards, it is KHC's objective to fund as many proposals as possible. Because funds are limited, costs per type of unit and construction costs per square foot are important factors in analyzing applications. KHC has adopted cost containment guidelines to evaluate the total development cost for all projects. The cost containment limits apply to all resources, including Housing Credit only projects. KHC may waive cost containment guidelines for adaptive reuse projects, historic projects receiving Federal Historic Tax Credits, projects that have federal resources (HOPE VI, HUD 202, or HUD 811) committed, or projects for which such commitments are being processed. 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, the project will not be penalized; however, no additional KHC resources will be awarded to the project.

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 Finance Web page under Housing Production on KHC's Web site. For additional information on cost containment, refer to the Multifamily Finance Guidelines.

## Building Requirements (Threshold)

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 KHC's Multifamily Finance 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 Housing Credit

Eligible properties include:

- One or more rent-restricted dwelling units available for long-term continuous rental use.
- Newly constructed buildings.
- Adaptive reuse projects.
- Substantial building rehabilitation of at least \$20,000 per low-income unit or 20 percent of adjusted basis, whichever is greater.
- Projects that include acquisition and substantial rehabilitation of existing buildings that were last placed in service or underwent a substantial rehabilitation (equals or exceeds 25 percent of basis) no less than ten years prior to acquisition.

## Underwriting Requirements

*(Not all-inclusive; refer to KHC Multifamily Finance 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 KHC's Multifamily Finance Guidelines.

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 equitygap 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 1.0 through year 15. Projects requesting Risk-Sharing funds must have a minimum DCR of 1.25 in year one and remain at or above 1.0 through year 15. Projects that do not have any debt associated with the project will satisfy KHC’s debt coverage ratio requirements.

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

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 set up. 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 Multifamily Finance 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 will be required to submit a subsequent PCNA in year 15 and may require the project to adjust their capital reserve replacement schedule accordingly.

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 a tax-exempt bond debt financing are automatically eligible for 30 percent present value credit (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 (Threshold):** 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 project may not exceed 15 percent of the total development cost (20 percent for Tax-Exempt Bond projects), minus the following deductions:
  - a. Developer fee
  - b. Consultant fee
  - c. Any fees resembling developer or consulting fees
  - d. Project reserves (not including any upfront deposit to the Reserve for Replacement)

For projects where there is an **identity of interest** or the appearance of an identity of interest between the developer, consultant, contractor/builder, architect, attorney, nonprofit, or buyer and seller of real estate, KHC expects increased transparency and accountability. Dependent

on the type of identity of interest, the following exclusions will apply:

- Contractor/Builder – contractor profit excluded
- Architect – architect fee excluded
- Attorney – attorney fee excluded

If an identity of interest exists between the developer and two or more of the development team members identified above, then the developer fee will be limited to 10 percent of the total development cost, minus the deductions noted above in 13 a-d.

When an identity of interest exists between the buyer and seller of real estate, the developer fee calculation will exclude the land acquisition cost and the developer fee for buildings will be limited to 5 percent of the building acquisition cost.

***Please note:*** *Identity of interest exists where there is a financial, familial, or business relationship that permits less than arm's length transactions. This includes, but is not limited to, the existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, or stockholders; or family relationships between officers, directors, or stockholders. Refer to KHC's [identity of interest policy](#).*

14. **Deferred Developer Fee:** All Housing Credit projects 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 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**

Kentucky Housing Corporation has expanded its services to include additional technical assistance opportunities for developers to access to ensure a project's success. Developers and community officials are encouraged to contact KHC's Multifamily Finance Department to obtain assistance with projects throughout the development and application process. This assistance is offered to both new and seasoned developers.

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

This type of assistance takes new applicant/developers through the process of documentation requirements, scoring criteria, underwriting, design and construction requirements, etc.

**Please note:** Requesting or attending technical assistance training does not guarantee the project will be awarded funds. For more information, contact Andrew Hawes, toll-free in Kentucky at (800) 633-8896 or (502) 546-7630, extension 326; TTY 711; or e-mail [ahawes@kyhousing.org](mailto:ahawes@kyhousing.org).

## **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>2015 Application Submission Dates</b>		
<b>Capacity Review</b>	<b>Electronic Submission</b>	<b>Award Notification</b>
<b>Opens: September 12, 2014 Closes: November 7, 2014</b>	<b>December 12, 2014</b>	<b>February/March 2015</b>

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

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

- A fully completed application, submitted online.
- All applicable attachments as outlined on the application checklist, uploaded to the online application.
- A set of original plans and specifications, if not uploaded online, must be submitted on a compact disc or flash drive.
- A compact disc or flash drive containing a copy of all attachments.

The compact disc or flash drive must be received by 5 p.m., ET, on **Monday, December 15, 2014** at:

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

It is the applicant's responsibility to plan enough time for mail, overnight, or hand delivery to ensure the disc or flash drive is received at KHC by 5 p.m. on December 16, 2014. The online application will close at **5 p.m., ET, on Friday, December 12, 2014**. 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 must submit them on a disc or flash drive; no paper copies, please. KHC's maximum file size is 12 megabytes (MB). Files larger than 12 MB may be submitted solely on the disc or flash drive; however, a sheet must be uploaded in its place stating that the applicable document is located on the disc or flash drive. The only exception is for personal financial information, which may be submitted separately, either in paper or on disc or flash drive.

All applications **must** obtain a minimum score as referenced on score sheet as outlined in Scoring Criteria to be considered for funding. The core scoring components are **Capacity of the Development Team; Nonprofit, Disadvantaged and Kentucky-Based Business Participation; Underwriting and Financial Feasibility; Tenant Selection Plan Preferences; and scoring criteria specific to projects proposing rehabilitation or new construction/adaptive reuse and those competing in the Nonprofit Supportive Housing Pool and/or Community Impact Pool.**

All applicants must complete the Uniform Funding Application on KHC's Web site and supply all required information and documentation in accordance with the guidelines. Please refer to the Multifamily Finance Guidelines for additional guidance pertaining to programmatic requirements and architectural and construction guidelines. All applicants are required to submit the electronic application and attachments.

## **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 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. 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. Additionally, 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, market study, or other documents KHC determines to be 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 with members involved in a Section 1602 Exchange funded project that has experienced uncorrected material noncompliance issues.**

## Application Review Stages

Funding is based upon a **three-stage process**: 1) **scoring criteria**, 2) **financial feasibility**, and 3) **market need**. Applications must pass the first two stages before the amount of funding can be determined. Failure to meet the requirements of any stage will result in the rejection of the application.

### **Stage I: Scoring Criteria**

Applications will be scored based upon capacity of the development team, targeting plan, project design, location, readiness to proceed, and financial design. Applicants must receive a **minimum score** as referenced on the score sheet in the scoring criteria in order to move to Stage II for all competitive applications. Applications will be ranked according to their assigned score and those with the greater number of points receive priority in the Housing Credit award process. Projects will be reviewed on the basis of the documentation contained within the application and supporting 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, staff will look to the disc or flash drive provided. If KHC is still unable to open an attachment, KHC will contact the applicant to have paper copies provided.

### **Stage II: Financial Feasibility**

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

### **Stage III: Market Need**

A [market study](#) is required to be submitted at the time of application and will be reviewed in accordance with KHC's guidelines. Upon review of the market study, if it is found to have an acceptable market, then the project will continue to move forward. However, if the study is not acceptable, **funds will not be allocated and the application will be denied**. Market studies will only be accepted by firms that are on KHC's approved list and are only valid one year from the date of the study.

### **Scoring Ties**

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

1. Projects with the highest percentage of total development cost attributed to acquisition and hard costs. The percentage will be carried out two decimal places.
2. Lower amount of Housing Credits per unit.

Once all applications have been reviewed and scored, KHC will make the preliminary project score sheet available to the appropriate contact for each application. Applicants will not be made aware how other applications have scored. KHC will establish a timeframe by which applicants can review their initial scores and offer written feedback as to if they disagree with the preliminary score. Applicants will not be able to submit any additional documentation or a revised 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 and will not be subject to appeal.

## 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 county is awarded Housing Credits and/or other KHC resources, KHC reserves the right to require the lower scoring projects to update the project's market study to recognize and take into account the other projects funded in that county 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 one year 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 Finance Department and Design and Construction 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 Web site 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 Multifamily Finance 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. 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.

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, unless there is an identity of interest between the seller and buyer, in which case none of the land acquisition cost and only 5 percent of the building acquisition costs will be included in the developer fee calculation. 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 Web site, [www.kyhousing.org](http://www.kyhousing.org), under Housing Production, Multifamily Finance, [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.

## Deadlines and Fees

### 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 8 percent of the Housing Credit conditional award.

### Technical Submission

For projects receiving Housing Credit through this funding round, all technical submission items must be received at KHC by **August 3, 2015**. Projects may request up to three, 30-day extensions with payment of a \$500 fee per extension. 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 there under. KHC may strictly enforce requirements imposed upon applicants. Applicants must agree to proceed diligently to closing.

### Project Closing

Applicants receiving Housing Credit allocations from the current funding round have until **December 1, 2015** to close with their equity investor. The applicant will receive a checklist that will outline all outstanding or additional documentation needed. If the project does not close by this date, KHC's preliminary award to the project shall expire and be null and void and of no further force and effect.

A request for an extension may be made, and if KHC so approves, the closing deadline may be extended an additional 45 days 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.

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 before Thanksgiving each year. The project owner's 10 percent cost certification must be accompanied by a written certification prepared by a certified public accountant, who has examined all eligible costs incurred with respect to the project, that it is his or her belief the project owner has met this requirement. Costs may include 10 percent of the expected basis amount of the project owner's adjusted basis in land or depreciable real property that is reasonably expected to be part of the project. Also, direct and indirect costs of acquiring, constructing, and/or rehabilitating the project may be included.

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

## **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.

### **Pre-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. 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 Pre-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 30 days after the last building in a project receives its Certificate of Occupancy or before December 1 of the current year, whichever is earlier.

## Land Use Restriction Agreement (LURA)

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

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

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

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

## IRS Form(s) 8609

A final allocation of Housing Credits will be made (by issuing Form 8609) based on the date that an eligible building or project is placed in service (i.e., available for rental occupancy) as evidenced by a Certificate of Occupancy. KHC requires at least 15 days to finalize and mail the 8609(s) to the owner.

## Section XIII. Policies

### New Construction 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 community revitalization plan that specifically identifies the proposed project. The community revitalization plan (or its equivalent) must have been in existence prior to an application for funding. The plan must be consistent with the Fair Housing Act; or

- 2) Developments that receive a certification from an entitlement jurisdiction 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.
- 3) 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).

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

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

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

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

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

### **Identity of Interest**

An identity of interest relationship exists if any officer, director, board member, or authorized agent of any development team member (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.**

### **Developer Fee Limitations**

When an identity of interest exists between the developer, consultant, owner, architect, general contractor, and/or the buyer/seller of real estate, the developer fee will be subject to the reductions as defined in KHC's developer fee policy in the [Underwriting Requirements](#) section of this QAP.

Failure to disclose required 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, 2012, the property may have requested a qualified contract starting in January of 2011 through December 31, 2011. 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 Web site):

- 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 Web page [www.kyhousing.org](http://www.kyhousing.org) under Housing Production, Asset Management Compliance Monitoring, Housing Credit Program.

## **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 as noted on KHC's Web site.

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

### **Section XV. Effective Date**

This Qualified Allocation Plan is effective for allocations of Housing Credit made after December 31, 2014, and will remain in effect until December 31, 2015, unless amended. Amendments to the Internal Revenue Code and Treasury Regulations may necessitate conforming amendments to this plan.

*Remainder of page intentionally left blank.*

\*\*\*\*\**Notice to applicants and disclaimer on following page*\*\*\*\*\*

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

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

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

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**DISCLAIMER**

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

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

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