

OCTOBER 30, 2002 DRAFT

STATE ALLOCATION PLAN

FOR THE HOUSING CREDIT PROGRAM

Effective for allocations made after December 31, 2002

until December 31, 2003, unless earlier amended.

SUMMARY

- STATUTORY AUTHORITY** **Section 42 of the Internal Revenue Code (IRC) of 1986, as amended**
- STATE HOUSING CREDIT AGENCY** **Kentucky Housing Corporation (KHC)**
- ANNUAL CREDIT AVAILABLE** **Approximately \$7.5 million in 2003 and \$8 million in 2004, including annual adjustments for inflation and unused and returned Housing Credit from prior years, if any.**
- SET-ASIDES** **Set-asides will be provided for:**
- Projects with qualified nonprofit participants.**
 - Projects financed by the Rural Housing Services (RHS) Section 515 Program.**
 - Projects financed with Hope VI funds.**
- COMPLIANCE MONITORING** **KHC will monitor projects throughout the 15-year compliance period and 15-year extended-use period (affordability period) to ensure adherence to low-income restrictions, Housing Credit Program regulations and project selection criteria.**

INTRODUCTION

Legislative Background

The Low Income Housing Tax Credit (Housing Credit) Program was created by the Tax Reform Act of 1986. The Housing Credit is one of the last remaining tax incentives for the construction, rehabilitation and preservation of low-cost rental housing. Investors in low-cost housing can claim Housing Credit against their federal income tax liability for ten years.

The 1986 Tax Act required that state Housing Credit agencies administer the Housing Credit Program. Kentucky Housing Corporation (KHC) administers the program for Kentucky.

In 1989, Congress passed the Omnibus Budget Reconciliation Act, which produced significant changes in the Housing Credit Program. Among the changes were the requirements that the Housing Credit agency provide only enough Housing Credit to make projects feasible and that Housing Credit be allocated according to a plan that addresses the rental housing needs of low-income households.

In 1993, Congress enacted legislation, which again brought change to the Housing Credit Program. Along with permanent extension of the program, the act included the use of the 70 percent present value credit with HOME funds, clarification of student tenancy rules, prohibition of discrimination against rental assistance recipients and the requirement that Housing Credit agencies consider the reasonableness of the developmental and operational costs in making determinations of the proper amount of Housing Credit to allocate to a project.

In 2001, Congress passed legislation which increased the annual per capita credit to \$1.50 in 2001, and \$1.75 in 2002, with annual adjustments for inflation thereafter, in accordance with the Consumer Price Index (CPI).

The bill extends the credit to that portion of a building used as a community service facility, not in excess of 10 percent of the total eligible basis. This provision is limited to buildings located in Qualified Census Tracts (QCT). A community service facility is defined as any facility designed to serve primarily individuals whose income is 60 percent or less of area median income.

The bill also expands the definition of QCTs to include census tracts with a poverty rate of 25 percent or greater.

THE ALLOCATION PLAN

Tax Law Requirements for the Allocation Plan

Section 42(m) of the Internal Revenue Code requires Kentucky Housing Corporation to allocate Housing Credit according to a plan. The following must be included in the plan.

- A description of the project selection criteria to be used in determining priorities.
- Criteria which give preference to projects:
 - serving the lowest-income tenants.
 - serving qualified tenants for the longest periods.
 - contributing to a concerted community revitalization development plan.
- A description of the procedure for notifying the Internal Revenue Service of noncompliance with the requirements of the program.
- Other elements to be considered in the selection criteria:
 - project location.
 - housing needs characteristics.
 - project characteristics.
 - sponsor characteristics.
 - tenant populations with special housing needs.
 - tenant populations of individuals with children.
 - projects intended for eventual tenant ownership.
 - public housing waiting lists.

Project Selection Process

NOTE: Incomplete applications will be returned to the applicant.

Project Selection Criteria are established with consideration to the tax law requirements stipulated by Section 42(m) of the Internal Revenue Code and the strategic objectives of Kentucky Housing Corporation, as set forth in Kentucky Revised Statutes 198(A). These criteria are reviewed and amended as necessary during the formulation of the Qualified Allocation Plan.

Applications for allocation, except for open window applications, will be assigned a numerical score in accordance with the project selection criteria (Appendix A). All elements of the application that constitute project selection criteria must be specific. All proposals received will be ranked according to the score assigned. Projects with the greater number of points will receive priority in selection. The number of projects selected will be limited by the amount of Housing Credit available that year. Projects will be scored on the basis of the documentation contained within. Incomplete applications or applications not meeting threshold requirements will be returned.

Projects selected that receive a partial award of Housing Credit, due to limited

availability, will have priority in subsequent years in order to fully fund such projects.

Ties in scoring will be resolved by considering additional project attributes in accordance with the following priorities.

1. Lower total developer's fee
2. Lower project cost per unit (excluding land cost)
3. Smaller projects
4. County of lower median income

Set-Asides

Nonprofit Set-Aside:

The IRC requires that 10 percent of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. Kentucky Housing Corporation will allocate up to 15 percent of the total Housing Credit ceiling amount to nonprofit applicants. In addition to the requirements of IRC Section 42(h)(5), a nonprofit must be the developer and general partner of the project. Applicants must indicate that they are applying for credit from the nonprofit set-aside.

RHS Section 515 Program:

A Housing Credit amount of \$180,000 at the 30 percent present value rate is reserved for projects that have received a funding obligation from RHS.

Hope VI Set-Aside:

A Housing Credit amount of \$500,000 at the 70 percent present value rate is reserved for projects that are financed by Hope VI funds. Projects that need an excess of \$500,000 of Housing Credit may consider issuing tax-exempt debt under their own authority to access 30 percent Housing Credit outside the state's Housing Credit ceiling.

Pools

All remaining Housing Credit, after set-asides described above, will be divided into three pools (open window, urban and rural). Upon determination that any Housing Credit set-aside or pool, other than nonprofit, is not needed for the intended category of projects, such amount of Housing Credit will be transferred to other pools. This transfer of credit will occur after July 30 of the calendar year.

Nonprofit applicants may submit an application to be considered in the nonprofit set-aside and/or an application that competes in their respective urban or rural pool for the same project. Two separate applications and application fees must be submitted if an applicant wants to be considered in the nonprofit set-aside and the urban or rural pool. All allocation and compliance monitoring fees apply to all Housing Credit projects.

Open window pool

Housing Credit in the amount of \$2.5 million will be available after the set-asides are subtracted. Open window applications will be scored using the continuous consolidated funding criteria that will be determined at a later date and applicants must complete a continuous consolidated funding application. Projects that receive Housing Credits in the open window pool must have an extended low-income use period of 35 years and at least 20 percent of the units must be rent and income restricted at the 50 percent income and rent level.

Urban Pool

The urban pool is 50 percent of the remaining credit after set-asides and the open window pool are deducted. For the Housing Credit Program, the following 11 counties are urban.

Boone	Henderson
Boyd	Jefferson
Campbell	Kenton
Christian	McCracken
Daviess	Warren
Fayette	

Rural Pool

Kentucky's remaining 109 counties are classified as rural. The rural pool is 50 percent of the remaining credit after set-asides and the open window pool are deducted.

Annual Selection Schedule

At the beginning of the allocation year, KHC will schedule two competitive application rounds for projects requesting Housing Credit only. This schedule will indicate the Housing Credit amounts available and submission/notification dates for each round. KHC will begin accepting applications in spring 2003 for the open window pool. Applicants who want to access the consolidated funding open window pool through KHC’s Center for Affordable Housing Finance must complete a consolidated funding application.

Competitive (not open window) Proposed Submission Deadline	Award Notification	Credit Available (adjusted for previously mentioned set- asides and open window pool)
April 1, 2003	June 2, 2003	70% of Ceiling 50% Urban 50% Rural
July 16, 2003	August 29, 2003	30% of Ceiling 50% Urban 50% Rural

Recapture of Housing Credit Under Reservation

To ensure the efficient use of the Housing Credit in Kentucky, KHC will require projects that receive Housing Credit reservations 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, or six months after the date of allocation, whichever is later.

Credit returned before September 30 will be divided between the urban and rural pools and allocated to the next highest scoring project(s) in each pool. Credit returned after September 30 will be allocated to partial projects or carried into the next year. Credit returned from two or more projects by the same developer/sponsor will be subject to penalty.

Minimum Requirements

If a minimum threshold standard is not met, the application will not be considered for Housing Credit and will be returned to the applicant. All projects will be subject to the following threshold standards.

1. Demonstration of site control is required. An option to purchase, purchase contract, recorded deed, an option to lease or lease agreement for the entire extended use agreement period are acceptable forms of site control. Site control must be valid for at least 60 days from receipt of application. However, open window pool applicants may need site control for a longer period of time.
2. Applicants must provide evidence of construction and permanent financing

commitments. Commitments may be contingent on receiving a reservation of Housing Credit. Projects financed under the RHS Section 515 Program must submit a Multiple Family Housing Obligation-Fund Analysis, Form FmHA 1944-51. Applicants who receive Housing Credits may not apply for additional funds from KHC after receipt of Housing Credits.

3. The Housing Credit subsidy allocated will be limited to \$8,000 per Housing Credit unit. Applications requesting more than \$8,000 per Housing Credit unit will be returned. This provision is not applicable to Hope VI projects which will be subject to cost analysis and limitation on a case-by-case basis.
4. Demonstration of adequate capacity of the developer/development team to construct, maintain and manage the proposed project must be provided. Developer must include a list of all projects completed indicating the type of development and number of units. A list of all projects that are under construction and the expected completion date must also be submitted.
5. Project must demonstrate that energy-efficient design and construction practices will be utilized. Projects could be subject to inspections to ensure that energy-efficient design and construction practices are being utilized. A statement from the project's architect describing the energy-efficient design and construction practices must be submitted with the application.
6. All projects must have a letter of support from the chief executive officer (or the equivalent) of the local jurisdiction within which the project is located. This letter must be a letter of support, not just a letter recognizing the project.
7. Projects must have written endorsement from the local Renaissance Kentucky committee if the project is located within the designated Renaissance area of a gold or silver community.
8. A **preliminary** market study performed by an independent professional market study provider must be submitted with the application. Projects selected for an initial reservation of Housing Credit must submit a final market study performed by an independent professional market study provider supporting the need for the proposed development at the time of reservation. Applicants are responsible for fees for such studies. The market study should reflect adequate need for units for elderly, disabled and families with children as applicable. In the event the analysis does not support the proposed project, KHC reserves the right to reject or seek modification of the proposal.

9. All selected projects involving substantial rehabilitation of existing buildings must provide a capital needs assessment prior to final reservation. The needs assessment will be performed by a qualified architectural or engineering firm to determine whether the proposed existing building and rehabilitation activities are sufficient to ensure that the building and improvements have a useful life of at least 30 years. Applicants are responsible for fees for such assessments. In the event the analysis does not support the proposed project, KHC reserves the right to reject or seek modification of the proposal.
10. Projects eligible for Housing Credit based on acquisition of existing buildings must provide an appraisal supporting the building basis for the Housing Credit requested.
11. All buildings must comply with all state and local building codes including accessibility standards, as well as applicable federal accessibility laws including Fair Housing Accessibility Guidelines and the Americans with Disabilities Act Accessibility Guidelines. Failure to comply may result in negative points. Documentation must be from the project architect. KHC also reserves the right to selectively visit projects during the construction period without prior notice to project owners or developers.
12. Tax-exempt bond-financed projects eligible for Housing Credit outside of the state Housing Credit ceiling are subject to all provisions of this State Allocation Plan except the competitive selection process. All projects larger than 75 units must utilize tax-exempt bond financing.
13. Prior to issuance of final allocation-Internal Revenue Service (IRS) Form(s) 8609, all owners must execute and record land use restrictive covenants (Extended Use Agreement). The Extended Use Agreement will incorporate all project characteristics and attributes represented and pledged in the project application and considered in project selection.
14. Prior to issuance of IRS Form(s) 8609, all projects will be subject to a site visit for the purpose of determining whether the completed improvements are consistent with representations made in the application.
15. Prior to issuance of IRS Form(s) 8609, owners must submit a signed Form 8821, Tax Information Authorization to the IRS with a copy to KHC.
16. Within 30 days after the certificate of occupancy is issued for the last building in the project, the owner must notify KHC and submit a certificate of occupancy for each building in the project.
17. Cost certifications including a Sources and Uses of Funds statement for all projects must be audited by a certified public accountant. Cost certification including a Sources and Uses of Funds statement and **all** other required documentation must be

- submitted within 60 days after placement in service.
18. All projects must have a minimum of 30 years of affordability.
 19. No more than 10 percent of KHC's available Housing Credit, less the set-asides and open window pool, will be awarded to the same developer or to projects where the developer has an identity of interest with the development team.

Design Minimum Requirements

1. All projects must implement KHC's tier one universal design standards. The architect of record must certify that the project meets this requirement.
2. Gross square footage is defined as the outside-to-outside measurements of all finished areas that are heated and cooled. Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms and game rooms. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that cannot be used as net square footage. The minimum net square footage requirements are:
 - Single Room Occupancy (SRO) unit – 400 net square feet
 - Efficiency Apartment – 450 net square feet
 - One-bedroom unit – 650 net square feet
 - Two-bedroom unit – 850 net square feet
 - Three-bedroom unit – 1,000 net square feet
 - Four-bedroom unit – 1,150 net square feet
3. A landscape plan must be submitted with the application. The landscape plan must be adhered to throughout the compliance and extended use period.
4. A site plan indicating all buildings in the project must be submitted with the application. Projects which display superior building techniques such as the use of brick veneer covering when constructing exterior walls, covering exterior wood surfaces with protective material such as vinyl or aluminum, attractively covering exposed foundations with protective material, use of energy-efficient double pane windows, using diverse house plans for single-family projects and other building enhancement design criteria will receive preferential treatment in the allocation plan.
5. Amenities must be clearly defined in application.
6. KHC reserves the right to inspect all projects. A minimum of three construction inspections may occur and a nominal inspection fee may be charged.
7. Diverse house plans must be used in single-family developments.

Compliance Monitoring Procedure

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

1. The record keeping and record retention provisions of Internal Revenue Service 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 Internal Revenue Service regarding events of noncompliance.

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 and extended use period.

Fee Schedule

Fees apply to all projects that receive Housing Credits.

Allocation Fees

Application Fee: \$500 for exclusively nonprofit applicants; \$750 for all other applicants. This nonrefundable fee must accompany each project application submitted for Housing Credit. Application fee will not be returned for incomplete applications or applications that do not meet minimum threshold requirements.

Housing Credit Reservation Fee: A nonrefundable reservation fee of 5 percent of the amount of Housing Credit reserved for a project will be charged. Payment of the 5 percent reservation fee is due prior to the issuance of the reservation certificate.

Compliance Monitoring Fees

Annual Report Fee: An annual fee will be assessed for this monitoring program. Applicable fees must be submitted with the annual report. The annual fee for projects to be examined by KHC is \$25 per low-income unit. Projects financed under the RHS Section 515 Program, pursuant to a Memorandum of Agreement between KHC and RHS, as long as such agreement exists, will be assessed a fee of \$5 per low-income unit per year except for the first year when the fee will be \$25 per low-income unit. A late filing fee will be assessed as specified in KHC's Housing Credit Compliance Manual.

Recertification Waiver Fee: For eligible projects requesting the Waiver of Recertification in 100 percent low-income buildings, there will be a onetime additional charge of \$25 per unit for each request.

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

Effective Date

This State Allocation Plan is effective for allocations of Housing Credit made after December 31, 2002 and will remain in effect until December 31, 2003, unless earlier amended. Amendments to the Internal Revenue Code and Regulations may necessitate conforming amendments to this plan.

NOTICE TO APPLICANTS

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 KHC programs may impact scoring or result in rejection of application and being barred from further participation in the Housing Credit Program. Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in Housing Credit being recaptured. As a condition of receiving a Housing Credit allocation, an applicant agrees to furnish to KHC a copy of Form 8609 with Part II completed at the end of the first period for which Housing Credit is claimed for each building in the Housing Credit Program. Additionally, any new applicant must receive compliance monitoring training by KHC staff prior to receiving Form 8609.

DISCLAIMER

As the state Housing Credit agency, Kentucky Housing Corporation will evaluate and select projects to receive an allocation of Housing Credit pursuant to this State Allocation Plan. KHC 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. KHC 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 KHC shall be held personally liable concerning any matters arising out of, or in relation to, the allocation of Housing Credit.

PROJECT SELECTION CRITERIA FOR ALL PROJECTS EXCEPT OPEN WINDOW

A. Housing Needs Characteristics	% of applicable limit	Points	Score
1. Project will charge rents less than the applicable rent limit.	95-99%	3	_____
	90-94%	5	_____
	85-89%	7	_____
	84% or less	10	_____
2. a. Owner will elect to restrict all Housing Credit units to the 50 percent income and rent limits. The 20/50 minimum set-aside must be elected on the Form 8609 that is filed with the IRS.		20	_____
	OR		
b. Owner will elect to restrict half of the Housing Credit units to the 50 percent income and rent limits. The 40/60 minimum set-aside must be elected on the Form 8609 that is filed with the IRS.		15	_____
	OR		
c. Owner will elect to restrict 20 percent of the Housing Credit units to the 50 percent income and rent limits. The 40/60 minimum set-aside must be elected on the Form 8609 that is filed with the IRS.		10	_____
B. Project Characteristics			
1. Small Project.	Number of Housing Credit units		
	20 or fewer	10	_____
	20-29	7	_____
	30-40	5	_____

NOTE: When any projects are a continuation or an expansion of other Housing Credit projects, the total of all units on the same or adjacent sites will be considered in the above criteria. Small project points will only be awarded to one scattered-site project located in the same county and submitted by the same developer per round.

2. Project located in a distressed Appalachian county (as designated by the Appalachian Regional Commission) or in a county with a median income that is below the statewide nonmetropolitan median income.	20	_____
3. Project has commitment of funds from Federal Home Loan Bank's Affordable Housing Program.	10	_____
4. Projects display superior building techniques.		
a. Brick veneer covering 30 percent of exterior walls.	10	_____
b. Covering exterior wood surfaces with protective material and covering exposed foundations with protective material. Paint is not considered a covering material.	5	_____
c. Using double-pane windows.	5	_____
d. Other building enhancements outlined in application.	5	_____

NOTE: Application must clearly outline design features of project to qualify for these points. Applications will be scored as they are submitted.

C. Sponsor Characteristics/Participation of Tax-Exempt Organizations and/or Governmental Entities

1. Project is exclusively developed by a qualified minority or female-owned and managed for-profit development entity.	15	_____
2. Project has tenant-based or management services provided by an experienced, qualified nonprofit organization (excluding applications from the nonprofit set-aside).	10	_____
3. a. Total developer fee is 10 percent or less of total project cost excluding developer fee.	10	_____

OR

b. Total developer fee is 11 or 12 percent of total project cost excluding developer fee.	5	_____
4. Project involves the acquisition and/or rehabilitation of a project to prevent foreclosure and/or loss of the project for use by low-income households. Defined as those projects eligible for waiver under IRC Section 42(d)(6) or projects	15	_____

that have previously received Housing Credits and the compliance period has ended.

D. Tenant Populations with Special Housing Needs

1. a. The entire project will be restricted for use by persons 62 or older. All occupants must be 62 or older even if they are the spouse of someone 62 or older. 20 _____

OR

- b. Eighty percent of the units in the project are occupied by at least one person who is 55 years of age or older. The project must publish and adhere to a policy that demonstrates an intent to house persons who are 55 or older.

OR

2. The entire project is restricted for use by persons with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. Tenants must have a record of such impairment and/or be regarded as having the impairment. 10 _____

E. Public Housing Waiting Lists

- Project meets local rental housing needs as indicated by public housing waiting lists. 5 _____

F. Compliance

- | | | |
|---|-----|-------|
| 1. Developer, owner or general partner has identity of interest with other Housing Credit projects or other KHC-administered programs that have outstanding unresolved issues of noncompliance and/or unresolved code violations as of the date of the application. | -10 | _____ |
| 2. a. Developer, owner or general partner has returned credit on two projects in any year. Penalty will be imposed for 24 months beginning with date of application. | -20 | _____ |
| OR | | |
| b. Developer, owner or general partner has returned credit on more than two projects in any year. Penalty will be imposed for 24 months beginning with date of application. | -30 | _____ |