

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

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

Overview

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

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

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

Definitions

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

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

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

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

"Good Faith Effort," as it relates to efforts to obtain equity investment in exchange for Housing Credits is defined as submission to KHC of (i) letters declining investment from three sources; OR (ii) a signed certification from the applicant that at least five potential investors were solicited

including the name of the legal entity, contact person, telephone contact, e-mail contact information, and copy of written contact if available; OR (iii) proof of successful partial syndication/investment.

Funding Rounds

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

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

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

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

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

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

Project Selection Criteria

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

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

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

Federal rules require that no project shall be eligible for an award of TCAP funds unless at least some Housing Credits remain in the project. Similarly, KHC has determined that no project shall be eligible for Exchange funds unless at least some Housing Credits remain in the project.

For the purposes of KHC's TCAP and Exchange Programs, the minimum amount of Housing Credits that must remain in the project is ten percent of the original allocation.

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

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

1. Projects being submitted for consideration must have already received an allocation of Low Income Housing Tax Credits.
2. All fees due to KHC as a result of the original application, including tax credit reservation fees, must be paid prior to TCAP and/or Exchange Program application.
3. An A95 Clearinghouse application must have been submitted to the Kentucky Department for Local Government's Intergovernmental Review Process with a copy provided to KHC at application.
4. All technical submission requirements due as a result of the original application and award of LIHTCs or other KHC funds must be submitted to KHC prior to application for TCAP and/or Exchange funds.
5. Developer must provide an updated underwriting model (or form to be determined by KHC) which clearly reflects new funds being requested, as well as any other change to the financial structure of the project.
6. Developer must provide an updated and appropriate project and construction schedule that demonstrates that the project can move forward quickly and that the project can meet required deadlines for certain milestones to avoid instant recapture of funds.

These milestones are as follows:

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| a. Closing with an equity provider | November 15, 2009 |
| b. 1602 Exchange funds completely drawn | December 31, 2010 |
| c. Total expenditure of TCAP funds | February 16, 2012 |

Applications must include an updated underwriting model (or alternate form to be determined by KHC) together with a narrative description of changes made. Pursuant to scoring criteria defined in this document, preference will be given to shovel-ready projects securing the greatest degree of investment. Lowest scoring projects may not be allocated any TCAP or Exchange funds.

In addition, a project must submit evidence of its Good Faith Effort to obtain equity investment in exchange for Housing Credits.

Application Scoring Criteria

Criteria Description	Points
Current Approved Project Score under applicable Qualified Action Plan <ul style="list-style-type: none"> One point for each 25 points in original scoring (Example: Original application scored 300 points – project will receive 12 points for this application.) 	
Additional Project Equity over minimum amount <ul style="list-style-type: none"> More than 10 but less than 20 percent 20 percent or more but less than 40 percent 40 percent or more but less than 60 percent 60 percent or more but less than 80 percent 80 percent or more 	10 20 30 40 50
Provided assurance of completion	10
Written commitments for all funding sources submitted (except KHC funding)	10
Required proof of preconstruction insurances required by KHC for all types of insurance submitted	10
Building permits submitted	10
Executed owner/contractor agreement submitted	10
Provided response to A95 Clearinghouse Application Letter from Kentucky Intergovernmental Review Process	10
Leverage <ul style="list-style-type: none"> Requesting between 0 to 25 percent TCAP and/or Exchange Funds Requesting between 26 to 50 percent TCAP and/or Exchange Funds Requesting between 51 to 75 percent TCAP and/or Exchange Funds Requesting between 76 to 100 percent TCAP and/or Exchange Funds 	40 30 20 10

Asset Management and Compliance

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

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

Type of Investment

TCAP will be allocated to Eligible Projects in the form of a permanent loan at a minimum of zero percent interest deferred for a term of 15 years (20 years if combined with KHC HOME funding), evidenced by a Promissory Note and secured by a Mortgage lien against the assisted property. KHC reserves the right to change the terms of the TCAP loan funding set forth above as needed for the appropriate financial feasibility of the project. Repayment of TCAP funds may accrue but may not be repaid before February 16, 2012. **If the project defaults under applicable program requirements during the 15-year term of the loan (20-year term if combined with KHC HOME funding), KHC reserves the right to demand immediate payment of all loan funds received by the project. In the event of default, KHC reserves the right to establish a default rate of interest in significantly excess of the otherwise applicable rate.** In order to meet federal deadlines for the expenditure of funds, TCAP funds shall be the first funds drawn down on a project containing multiple funding programs and/or sources.

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

Deferred Developer Fee

A portion of the total developer fee shall be deferred and deposited into a separate account established and maintained by KHC. The percentage of total developer fee to be deposited into this account shall equal the percentage of total development costs represented by TCAP and 1602 Exchange Funds. Twenty percent of the fee so deferred shall be payable at the end of each full year of operation until the entire fee has been disbursed, provided, however, deferred fee shall only be released if, in the discretion of KHC, the following conditions are achieved.

- Within the applicable year, no unit or portion of the project has remained out of compliance with any covenant or requirement arising as a result of the project's designation as affordable housing for an unreasonable time.
- A certified public accountant certifies that the project achieved applicable financial milestones for the year. This certification shall be supported by compiled or audited financial statements. For-profit projects must achieve a 1.15 debt coverage ratio; non-profit projects must achieve positive cash flow.

KHC shall not unreasonably withhold any deferred developer fee.

KHC shall have the right to use any undisbursed deferred developer fee to offset any losses, costs, or expenses accruing to KHC as a result of the property's operations.

If any deferred developer fee remains unpaid ten years after the date the project was placed in service, any remaining funds shall be released upon the developer's written request.

Federal Grants Requirements

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

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

All funding recipients will be required to execute a written agreement with KHC that certifies that the recipient and all subcontractors will comply with the aforementioned federal requirements. Funding recipients will be required to include language in its subcontracts stating that sub-awardees agree to comply with the same requirements.

Funding Commitment and Expenditure Deadlines

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

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

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

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

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

Construction on all successfully funded projects must commence by February 1, 2010, and all developer-established milestones must be met to demonstrate that project completion will be accomplished as set forth in the developer's schedule. In the event a project does not commence construction by the deadline imposed or if KHC inspections reveal that the project has fallen behind schedule and it is unreasonable to expect the project to recover, KHC will recapture the funds and reallocate them to an Eligible Project that is ready to proceed. All funded projects must draw a minimum of 75 percent of funds by December 31, 2010.

Recovery Act Accountability, Transparency, and Reporting Requirements

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

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

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

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

KHC anticipates that quarterly reports will be submitted electronically.

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

Public Comment Period

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

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

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