

# 2021 Draft QAP Summary of Comments

*The following is a summary of comments received from July 31, 2020 to August 26, 2020. The comments and KHRC's responses are listed in order of the 2021 Draft QAP. The headings correspond to QAP section headings.*

*The proposed changes made throughout the draft QAP are an attempt to better represent our core values as well as the National Council of State Housing Agencies recommendations. KHRC will be accepting written comments regarding the 2021 Draft QAP until September 18, 2020.*

## Application/Award Process and Fees

### Application/Award Schedule

**Summary of Comments:** Questions regarding due dates and when forms will be available.

Comments suggesting that the August award would force projects to close and start construction in the Spring of 2022 rather than in the Fall of 2021. One commenter noted this could cause an increase in construction costs. Another said that the two-phase application process is unnecessarily burdensome.

**KHRC Response:** KHRC will update the language to make sure due date and form expectations are clear.

In previous stakeholder meetings, KHRC received feedback from multiple groups supporting fall award announcements because few projects can get their required documentation and closing completed prior to winter. The intention is for KHRC to evaluate the proposed site and developer team at preliminary application and to evaluate the rest of the proposal at Full Submission. KHRC believes the two phase application process will reduce application costs because a development team will not need to spend the money on a full application if it does not make it through the preliminary phase, or if the development team decides not to submit a full application after seeing all proposed sites. A two-phase application process will also help KHRC staff use their time efficiently by devoting attention on sites and development teams that are competitive during underwriting.

### KHRC Fees

**Summary of comments:** Comments noting the absence of the 2% consultant fee.

**KHRC Response:** Consultant fees would be part of the developer fee. KHRC will make that clear in future documents.

## 9% LIHTC Limits and Set-Asides

### Limits on Awards

**Summary of Comments:** Comments that by limiting awards to any principal to one per round will reduce smaller applications that could be submitted in rural areas.

Comments that by limiting projects in counties for rural areas and zip codes in metropolitan areas, KHRC is incentivizing developers to submit larger applications.



Comments that the 60% and 40% set-asides for metropolitan and rural will make it more difficult to develop housing in the rural areas.

**KHRC Response:** KHRC does not believe the draft language incentivizes larger developments; in fact, other proposed changes give incentives for developers to apply for underserved areas. In previous years KHRC has not typically awarded multiple projects in one county or zip code in a single funding cycle. The metropolitan and rural set-asides are based on population. The intent of the explicit set-aside is to ensure transparency and that applicants understand the rules and goals *before* they submit applications.

### Rehabilitation Set-Aside

**Summary of Comments:** Comments that the current limit of the lesser than 20% of LIHTCs or 5 projects for rehabilitation proposals is too low. Other commenters stated that by setting firm set-asides KHRC will not be able to exercise discretion in making awards.

**KHRC Response:** The proposed set asides are consistent with the typical new/rehabilitation split in prior years. In early stakeholder meetings, KHRC received feedback that developers would like the QAP to have clear expectations and set-asides. The intent of the explicit set-aside is to ensure transparency and that applicants understand the rules and goals *before* they submit applications.

### New Construction Set-Aside

**Summary of Comments:** Question asking what KHRC will do if there are not enough applications to fulfill the set-aside percentages.

Comment that some of the communities in the counties in the rural set-aside may provide housing for nearby metropolitan areas.

**KHRC Response:** KHRC did not include language in the draft QAP to address what may happen if enough applications are not received and welcomes suggestions.

The metropolitan and rural set-asides were determined by population. The counties that make up 60% of Kansas's population are in the metropolitan set-aside, and the remaining counties comprise the rural set-aside. The intent of the explicit set-aside is to ensure transparency and that applicants understand the rules and goals *before* they submit applications.

### Unique Opportunities

**Summary of Comments:** Questions about whether scattered site proposals would qualify as a Unique Opportunity proposal and whether developers could receive a second award if it is under Unique Opportunity. One commenter suggested removing the LIHTCs used in Unique Opportunities before determining the amount available in the set-asides.

**KHRC Response:** A scattered site proposal will only qualify as a unique opportunity based on the listed considerations. KHRC welcomes additional considerations that should be added to the proposed list. KHRC will consider the question of whether a developer could receive a second award if one is a Unique Opportunity, and how to calculate the set-asides.



## Threshold Eligibility

### All Applications and Properties

#### Summary of Comments:

Comments related to the Applicant Experience requirement including a suggestion that KHRC should not require previous participation for the applicant or the proposed management agent. Another comment confirmed that reviewing the previous 5 years is appropriate.

Comment that KHRC does not audit identity of interest development teams - General Contractors, Developers, Management Agents - and the profits they can receive with a finite resource.

Comments about the proposed disqualification of a proposal if the Principal has requested a qualified contract in Kansas after August 5, 2020. Comments include: exercising a LURA option that is a contractual right; some investors require it; the proposal is a bad faith action by KHRC; KHRC should reconsider for at least rural Kansas because these properties cannot charge higher rents due to the market, but opens up more housing options for residents of small towns.

Comment that requiring a legally binding commitment from all funding sources would make projects impossible to complete.

Suggestion to require development costs at preliminary application using the HUD 221 limits.

Comments based on a misunderstanding that the developer must be the managing member/general partner. The developer has to be the applicant. One comment had a miscalculation between invitation to full applications and the due date of full applications; it is not 33 days; it is 63 days.

#### KHRC Response:

KHRC welcomes new developers and applicants to joint venture with experienced ones.

KHRC is open to suggestions related to proposed restrictions or fee limitations for identity of interest development teams.

In regard to Qualified Contract comments, Kansas has a uniquely disproportionate number of properties submitting requests for its population. The past few years, Kansas has as many units of affordable housing *leaving* the LIHTC Program as *entering*. Other equally rural states do not have the same experience, and the conversion can be harmful to tenants. Some parties who request Qualified Contracts then subsequently request new credits for developments in the same community. KHRC takes its role as stewards of Federal dollars and the duty to tenants seriously; therefore, we are attempting to address this concern. The proposal in the draft reflects the National Council of State Housing Agencies' industry Recommended Practices in Housing Credit Administration. KHRC is flexible with properties that are coming out of their initial compliance period after year 16. Where appropriate to local conditions, KHRC will consider replacing or amending the occupancy requirements of the initial LURA to open up more housing options. KHRC recognizes that the option is a contractual right of property owners, but it is KHRC's priority to maintain affordable housing throughout the state, and property owners do not have a contractual right to *new* LIHTCs. KHRC will consider the feedback on this important issue and would welcome suggestions on how to further our goals while addressing owners' concerns.



Requiring funding commitments from funding sources is a standard requirement in most other states (ie., Idaho, Colorado, South Carolina, North Carolina, and Oklahoma). Reviewing documentation of sources is effectively required under Section 42 for KHRC to award the appropriate amount of LIHTCs.

The current draft QAP proposes reviewing the site and the development team in the preliminary review. The intent is to provide efficiencies and avoid unnecessary costs prior to the full application submission. Requiring a development budget at preliminary application would be unnecessary for the initial review, as it would not help KHRC's goals of efficiency for applicants of KHRC staff. The draft QAP does not have pre-set development cost limits, but applicants are encouraged to efficiently and responsibly request KHRC resources through different cost containment measures. HUD no longer publishes 221(d)(3) limits.

## Rehabilitation

**Summary of Comments:** Comment incorrectly noting that there are 33 days from the pre-application to the due date of the full application.

**KHRC Response:** It is not 33 days between the 2 dates, it is 63.

## New Construction

**Summary of Comments:**

Comments regarding the zoning requirement, including many municipalities will not rezone properties for applications not yet approved and that there is significant cost related to rezoning. By requiring appropriate zoning at full application, proposals will not be submitted.

Comments about the Income and Rent Targeting section reducing operating income; that the deeper targets will be difficult to meet for some communities, and that the PHA threshold language will not work because voucher administrators can make limitations. Comment supporting not combining mixed incomes with income averaging and maintaining some cushion.

Comment that the incompatible uses list could affect small towns because many of the items in the list will be within half a mile.

**KHRC Response:**

Requiring that appropriate zoning or land use approvals are in place is typical in other states. Credit awards must prioritize proposals that demonstrate a readiness to proceed. However, commenters provided valid examples where requiring appropriate land zoning at initial application may be infeasible. KHRC is open to suggestions.

The intent for the income targeting requirements to reflect what had been the result of point scoring in past years. The percentages for the two minimum set-aside options are mathematically identical.

Selection Criteria: Rehabilitation

**Summary of Comments:** Comment that the draft QAP is not clear how rehabilitation proposals will be selected.

**KHRC Response:** KHRC is proposing that rehabilitation proposals will not be scored. Awards will be based on the evaluation factors listed in section V of the QAP in declining order.



## Selection criteria: New Construction

**Summary of Comments:** Comment that the previous QAPs included nonpoint criteria that gave preference to substantial involvement of women or minorities in the development team and comments from neighborhood groups and organizations that are knowledgeable about the area.

**KHRC Response:** KHRC encourages women and minorities in the development team and welcomes suggestions for how to evaluate substantial involvement. KHRC welcomes feedback from groups, organizations, and/or interested individuals on any submitted proposal. In the 2020 round, KHRC began listing applications on the website to increase transparency and the opportunity to comment. However, providing too much control to those third parties can result in applications not moving forward due to NIMBY or other invalid concerns.

## Applicant's and Principal's Experience

### **Summary of Comments:**

Comments related to the Successful Outcomes section noting developer also being the general partner to be awarded points will penalize non-profits

Commenter noting that this section is not welcoming to outsiders which could diminish the quality of competition and therefore the quality of housing.

Comment that by deducting points for principals that were awarded in preceding Kansas cycle may not prioritize the most qualified developers.

Comments about the penalty related to the property management change language.

### **KHRC Response:**

The developer with experience can be the applicant, and the nonprofit can be a joint venture partner or a consultant. In the last funding round, KHRC received 4 times more applications than awards, and many long-standing developers received none.

Historically, developers received awards in consecutive years is not common. KHRC's goal was to ensure a developer had sufficient capacity at any given time and to spread the limited resource as widely as possible.

KHRC encourages management changes when the current management entity is not best serving the tenants. KHRC also expects the owner to do their due diligence to ensure that the new management entity will meet IRS, HUD, and KHRC requirements. When management entity changes occur frequently or without prior notice to KHRC, it becomes problematic for both KHRC staff and the new management entity. KHRC welcomes suggestions on how to achieve a similar outcome in relation to quality property management entities.

## Underserved Areas

**Summary of Comments:** Comments that by listing underserved areas, KHRC is discouraging development in areas that are growing and have economic development. Underserved areas may be such for a reason. Comments that the draft QAP does a good job of encouraging development across the state.



**KHRC Response:** KHRC is proposing to utilize Enterprise360 to evaluate growth areas, and all proposals will have to complete a market study and submit documentation to show support for a successful development. The State of Kansas, through the Office of Rural Prosperity and the Legislature’s Rural Revitalization Committee, is working to increase housing access to communities across the state, with an emphasis on rural communities, and by proposing additional points to develop in underserved areas, KHRC is furthering this goal.

### Subsequent Phase

**Summary of Comments:** Question why a subsequent phase cannot be across the street for a scattered site development.

**KHRC Response:** KHRC is open to editing the requirements but believes the subsequent phase points should be part of a planned phased development.

### Residential Character

**Summary of Comments:** Comments saying farmland should not be excluded when awarding points for this section.

**KHRC Response:** Other housing programs, including HUD, discourage the conversion of farmland. KHRC agrees with motivations behind those policies. Applicants are not disqualified if converting farmland, but such proposals will not earn points.

### Proximity to Amenities

**Summary of Comments:** Comment that this section is too rigid.

**KHRC Response:** KHRC believes that properties should be near amenities that will improve quality of life and that applicants should understand the rules and goals *before* they submit. KHRC welcomes suggestions for additional Qualified Establishments or another way to meet these goals.

### Below-Market Loans and Support

**Summary of Comments:** Comment to give points for projects in Opportunity Zones. Comments that the Below Market Loans expectations are too restrictive.

Comment that land donation should not be restricted to those from government entities. and that capital contributions from a principal should be eligible for the Other Support section points.

Question about whether HOME funds can go to the principal and then the principal loans the award to the project.

**KHRC Response:** KHRC believes that the positive financial impact of Opportunity Zones themselves do not warrant additional points. Loosening the terms of the below market loans, land donation restrictions, and other support, risks incentivizing the “games” some commenters noted. Developers can request applicant-proposed points at preliminary application.

HOME and HTF loan agreements are between KHRC and the ownership entity, and funds are provided directly to that entity, not through a third party.



## Community Revitalization Plans

**Summary of Comments:** Comment that it is not practical for KHRC to expect small communities to prepare a request for proposal and may not adopt a Community Revitalization Plan unless they are made aware of the importance by a developer.

**KHRC Response:** The intent of the CRP and RFP points is to reward community led efforts. These can and do occur in small towns.

## Supportive Housing, Seniors, or Families

**Summary of Comments:** Comment that it appears senior properties are prioritized over family sites.

Comment that services should be able to be provided by local/regional human services agency.

**KHRC Response:** The intent is for senior and family proposals to have an equal opportunity to earn points. KHRC is open to suggestions for how to achieve that goal. KHRC will also consider the suggestion to note services could be provided by a local/regional human services agency.

## Extended Affordability or Homeownership

**Summary of Comments:** Question why the conversion to homeownership proposals have to be done by a nonprofit. Comment that a 40 year affordability will increase the difficulty in securing a qualified general partner.

**KHRC Response:** The involvement of a nonprofit provides additional protections to the potential homebuyers. The 40-year affordability provision is similar to those in most states and is not a requirement.

## Underwriting Standards

### All applications and Properties

**Summary of Comments:** Comment that if the unused lease-up reserve funds go to replacement reserves it will encourage the management team to spend the entire fund on possibly unnecessary expenses.

Comments that do not support the 18-year minimum loan term; the 20-year proforma standards will be difficult to achieve, and that the operating expenses appear unnecessarily high.

Comment suggested that the section on Equity Pricing is unnecessary and will push down pricing in the state.

Comments and recommendations around the basis boost including allowing the boost in rural communities, and it will be detrimental to only allow the boost for high land costs.

**KHRC Response:** KHRC is open to other uses of unspent lease-up reserve funds, the underwriting operating expenses per unit and replacement reserve expectations.

The 18-year minimum loan term, 20-year proforma standards and Equity Pricing language is standard in other states (i.e., South Carolina, Missouri, and NCSHA's Best Practices). LIHTC allocating agencies have an obligation to consider an equity price in their application underwriting. The approach proposed in the draft is to base it on the input of those who have the most comprehensive, up-to-date understanding: syndicators who work in the state.



KHRC is interested in specific measurable circumstances for allowing a basis boost that could be detailed in the QAP. The Joint Committee on Taxation’s “General Explanation of Tax Legislation Enacted in the 110<sup>th</sup> Congress” (March 2009) asks LIHTC allocating agencies to explain the standards for using of the discretionary basis boost.

## New Construction

### Summary of Comments:

Misunderstanding that KHRC will order appraisals for all projects.

Comment that the developer fee should be increased to \$20,000/unit, and also that the \$18,000/unit seems reasonable.

**KHRC Response:** KHRC will only order an appraisal for applications requesting a basis boost to determine land value only, and this is an eligible project cost. KHRC is open to a larger developer fee.

## Post-Award and Compliance

### Changes

**Summary of Comments:** Comment that KHRC should only require notification, not approval of changing of funding providers, starting construction, and occupying units.

**KHRC Response:** The purpose of this section is to avoid the necessity of KHRC surprising the owner by reducing the allocation when issuing the Form 8609.

### Documentation

**Summary of Comments:** Comment that some communities do not issue Certificates of Occupancy (Cos), so KHRC should consider accepting an architect’s Certificate of Occupancy when the appropriate jurisdiction does not issue COs.

**KHRC Response:** KHRC will consider this change for jurisdictions which do not issue COs.

## Appendix A: Article 10 Criteria

**Summary of Comments:** Request that KHRC not require a market study for rehabilitation proposals until full application.

**KHRC Response:** Intent is to require a Market Study at full application for both new construction and rehabilitation proposals.

## Appendix C: Design Requirements

**Summary of Comments:** Question that the certifications can be obtained through an online training.

**KHRC Response:** Online training is allowed.

