

# 2021 QAP Summary of Comments

*The following is a summary of comments KHRC received from July 31, 2020 to September 18, 2020. KHRC has reviewed and considered all submitted comments. The final changes made throughout the QAP are an attempt to better represent our core values as well as the National Council of State Housing Agencies' best practices.*

The headings correspond to QAP section headings. Each section has a summary of the comments received and KHRC's decision and rationale related to the comments.

## General Comments

**Summary of Comments:** Comments suggesting KHRC is adding unnecessary administrative burdens throughout the document and KHRC is establishing too rigid set-asides, selection criteria, and underwriting standards.

**KHRC Decision and Rationale:** KHRC does not agree that the administrative additions are unnecessary or overly burdensome. KHRC is charged with being good stewards of the LIHTCs and other funds, and we believe the additions are necessary to effectively run our programs.

## 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. Commenters noted this could cause an increase in construction costs and that the two-phase application process will be unnecessarily burdensome. Some commenters expressed support for the two-phase application process.

Comments that the QAP should address Community Housing Development Organizations (CHDO), including, increasing the HOME funds set-aside for CHDOs and questioning whether there are areas in Kansas not served by a CHDO.

**KHRC Decision and Rationale:** KHRC updated due date language, and the draft application will be published at the same time as the QAP. The final application will be available closer to the preliminary application due date.

KHRC reviewed previous awards and found very few projects began construction the year they were approved. We disagree that a two-phase application process will increase costs. We will commit to announcing funding awards in July.

The QAP notes that an area may be served by a CHDO, but if the county has not completed a project within the previous 7 years, HOME funds are available to non-CHDO developers. Other suggestions related to CHDOs should be addressed in the Consolidated Plan and Annual Action Plan.



## KHRC Fees

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

**KHRC Decision and Rationale:** Consultant fees are part of the allowed developer fee.

## 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 the number of 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. Some commenters said that by placing such limits, KHRC will run the risk of not funding good projects.

**KHRC Decision and Rationale:** KHRC recognizes that the one award maximum could incentivize larger developments, so KHRC changed the limit to the lesser of 10% of the available LIHTC or two awards to a Principal.

KHRC added the word, “generally” to allow flexibility; however, KHRC will only deviate from the stated limits in necessary and exceptional circumstances. KHRC made further changes in response to the comments including that the county limits will apply to new construction and rehabilitation separately, and all metropolitan counties can receive up to two new construction awards.

### Rehabilitation Set-Aside

**Summary of Comments:** Comments that the lesser of 20% of available LIHTC or 5 applications is not enough for the rehabilitation set-aside.

**KHRC Decision and Rationale:** KHRC increased the percentage of LIHTCs to rehabilitation to 25% but kept the number at 5 applications. KHRC added language to note that, “in the event of inadequate demand among eligible applications, KHRC will make additional awards” in other set-asides.

### New Construction Set-Aside

**Summary of Comments:** Comments that the 60% and 40% set-asides for metropolitan and rural will make it more difficult to develop housing in the rural areas. One commenter asked how KHRC would handle not receiving enough applications to satisfy the set-asides. Another noted that some of the QAP defined rural counties are a part of a metro county’s metropolitan area.

**KHRC Decision and Rationale:** The Metropolitan and Rural set-asides are based on population; however, KHRC removed the two smallest metro counties and decreased the Metropolitan Set-Aside percentage to 55%. The five metropolitan counties are the most populated counties in the state and make up 55% of the state population. KHRC added language to note that, “in the event of inadequate demand among eligible applications, KHRC will make additional awards” in other set-asides.

### Unique Opportunities

**Summary of Comments:** Questions about the Unique Opportunities Set-Aside including whether scattered site proposals would qualify, if developers awarded a Unique Opportunity award could get



another award. Also, a request to subtract the Unique Opportunities awards from the available credit when determining the other set-asides.

**KHRC Decision and Rationale:** If a scattered site proposal involves some of the criteria listed in section III(E), then it can be considered in the Unique Opportunities section. KHRC has adjusted the county and Principle maximums, so we did not add the suggestion to subtract the Unique Opportunities awards from the available credit before determining the other set-asides.

## Threshold Eligibility

### All Applications and Properties

#### **Summary of Comments:**

Comments that KHRC should require new construction projects to certify to ENERGY STAR's Residential New Construction program and rehabilitation projects to go a pre-rehabilitation energy analysis and energy audit to identify and install cost-effective energy upgrades.

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 five years is appropriate.

Comments that requiring the applicant to be a developer and serving as a managing member or general partner in the ownership entity is too restrictive and could limit application submissions.

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.

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.

One comment had a miscalculation between invitation to full applications and the due date of full applications; it is not 33 days; it is 70 days.

#### **KHRC Decision and Rationale:**

KHRC updated the energy efficiency requirements for new construction projects from the 2012 International Energy Conservation Code (IECC) to the 2018 IECC, and we believe this is a positive step toward increasing energy efficiency in Kansas's affordable housing.

KHRC increased the period of time we will review experience from five years to seven. KHRC welcomes new developers and applicants to joint venture with experienced ones. The complexity of the LIHTC program generally requires developers to possess a minimum level of development experience and



financial strength. KHRC believe that my requiring joint ventures for inexperienced developers, the proposals will be strengthened.

KHRC did not make any updates to identity of interest development teams but recognizes that such teams should be evaluated. KHRC welcomes suggestions for future QAPs.

In regard to Qualified Contract comments, Kansas has a uniquely disproportionate number of properties submitting requests for its population. In the past few years, Kansas has as many units of affordable housing *leaving* the LIHTC Program then are *entering* it. Other equally rural states are not experiencing the same trend. Also, 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 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 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 revised the final QAP so Principals that request a Qualified Contract after August 5, 2020 will receive a 10-point penalty but will not be disqualified.

Requiring funding commitments from funding sources is a standard requirement in many 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, but KHRC removed the term, "legally binding."

The QAP does not have pre-set development cost limits, but KHRC will post limits for new construction applications no later than one month prior to the full application deadline. The cost limits will be determined based on data we have received through public input, cost certifications, and third-party data. 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 Decision and Rationale:** It was not 33 days between the two dates, and it is now 70.

## New Construction

**Summary of Comments:**

Comment that the list of Incompatible Uses should not mean an automatic disqualification.

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.

#### **KHRC Decision and Rationale:**

KHRC agrees with the comment that there may be circumstances that some uses may not present harm to proposed housing sites. KHRC added flexibility by including the word “may” rather than “will” and will evaluate each site on a case by case basis.

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, so KHRC added documentation that can be submitted if the site is not properly zoned. If a proposal is awarded, but does not have proper zoning, the reservation of tax credits will be contingent upon the land use approval.

The intent for the income targeting requirements was 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. KHRC did not remove the requirement that the 40% AMI units in metro areas and 50% AMI units in rural areas have rents that are within the PHA voucher threshold. In communities across Kansas, Housing Choice Voucher holders are unable to utilize their vouchers, and by placing the stated rent limit, KHRC can open housing opportunities to households.

#### **Selection Criteria: Rehabilitation**

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

**KHRC Decision and Rationale:** 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.

Comments that KHRC should add available points to developers who are CHDOs.

**KHRC Decision and Rationale:** 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 Not in My Back Yard (NIMBY) or other invalid concerns.



KHRC is required by law to allocate 15% of the state's HOME funds to CHDOs.

## Applicant's and Principal' 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 Decision and Rationale:**

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 four times more applications than awards, and many long-standing developers received none.

KHRC removed the deduction for developments with a developer or ownership entity member/partner that was awarded in the preceding competitive cycle.

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, the new management entity, and the tenants. KHRC changed the penalty to say that if "management companies are changed without notifying and submitting required documentation to KHRC at least 30 days prior to the change," the 10 point deduction will occur.

## 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. One request to consider senior, family, and special needs developments differently when determining underserved areas.

**KHRC Decision and Rationale:** KHRC is proposing to utilize Opportunity360 to evaluate growth areas, and all proposals will have to complete a market study and submit documentation to show support for a successful development. KHRC did a desktop review of counties that would qualify for underserved area points and found that 14 rural underserved counties have increasing population and have Opportunity360 scores that would be competitive with the applications awarded in the previous funding round. Also, 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 Decision and Rationale:** KHRC edited the requirement to allow subsequent phases that are within .25 miles of the previous phase(s). The subsequent phase has to 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 Decision and Rationale:** KHRC agrees with motivations behind policies that curb development on farmland. KHRC updated the QAP to say proposals can receive points if “the site will be within city limits on land that is in or committed to urban development and will not involve conversion of Important Farmland, as both are defined in the Farmland Protection Policy Act (FPPA) at 7 CFR 658.2(a).”

## Proximity to Amenities

**Summary of Comments:** Comment that this section is too rigid and that driving distances are inconsequential in rural areas.

**KHRC Decision and Rationale:** 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 their proposals.

## 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 Decision and Rationale:** 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. KHRC did not make any changes to this section of the QAP. 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.



Comment that applicants should be able to receive points for Neighborhood Revitalization Plans (NRP).

**KHRC Decision and Rationale:** The intent of the CRP and RFP points is to reward community led efforts. These can and do occur in small towns. Developer led points are available in the Opportunity Areas section.

KHRC added a clarification that if a NRP meets the criteria of a Community Revitalization Plan, then the applicant is eligible for the points.

### 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 Decision and Rationale:** Senior and family proposals have an equal opportunity to earn points. KHRC added that services can be provided by a nonprofit agency to receive Supportive Housing points.

### Extended Affordability or Homeownership

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

**KHRC Decision and Rationale:** KHRC did not make changes to this section. 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:**

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.

Comments that the minimum operating budget per unit is too high.

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.

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

#### **KHRC Decision and Rationale:**

KHRC reduced the pro-forma requirement to show a DCR of 1.15 for 15 years, reduced the operating expenses per unit to \$3,200, and the loan term to 15 years.

KHRC listed other acceptable uses of unspent lease-up reserve funds, including adding to the operating reserve account or to pay real estate and property insurance costs.



## New Construction

### Summary of Comments:

Misunderstanding that KHRC will order appraisals for all projects. Comments and recommendations that KHRC should allow basis boost for rural communities.

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

**KHRC Decision and Rationale:** 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 will allow for a basis boost up to 30% for proposals in rural counties as defined in the QAP. KHRC increased the Developer Fee new construction limit to \$20,000 per unit.

## 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 Decision and Rationale:** The purpose of this section is to avoid the necessity of KHRC surprising the owner by reducing the allocation when issuing the Form 8609. KHRC did note that notification is only required at the start of construction and unit occupancy.

### 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 Decision and Rationale:** KHRC will allow COs by the architect when the jurisdiction does not issue.

## Appendix A: Article 10 Criteria

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

**KHRC Decision and Rationale:** 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 Decision and Rationale:** Online training is allowed.

