



KANSAS LEGISLATIVE  
**DIVISION** *of*  
**POST AUDIT**

A Performance Audit Report Presented to the Legislative Post Audit Committee

# **Evaluating Monitoring Requirements and Processes for the Federal Low-Income Housing Tax Credit Program**

September 2024

Report Number: R-24-009

# Introduction

Representative Sean Tarwater requested this audit, which was authorized by the Legislative Post Audit Committee at its April 25, 2023 meeting.

## *Objectives, Scope, & Methodology*

Our audit objective was to answer the following questions:

1. How do the Kansas Housing Resources Corporation's (KHRC) requirements and monitoring processes for compliance reports, lease approvals, and rental approvals for the Low-Income Housing Tax Credit program compare to federal and state law?
2. Are KHRC's requirements for reserves and land use restrictive covenants consistent across low-income tax credit housing developments?

The scope of our work included reviewing the compliance process KHRC used as of March 2024. We also reviewed KHRC's land use restrictive covenants and reserve expectations for all projects that received the Low-Income Housing Tax Credit (LIHTC) in 2022 or 2023 and had started construction as of March 2024.

Our method for question 1 included reviewing federal and state law, regulations, and other rules related to the LIHTC. We reviewed KHRC documents and interviewed KHRC staff to understand their compliance monitoring process. We also reviewed best practices for housing credit administration published by the National Council of State Housing Agencies. We compared KHRC's compliance process to federal and state rules, best practices, and internal controls to identify places where their process may have required more than is necessary. We also conducted a survey of developers who received LIHTC from 2016 to 2023 to gather their opinions on KHRC's compliance process.

Our method for question 2 included reviewing the land use restrictive covenants for 16 developments to determine whether KHRC imposed consistent requirements on the developments. We reviewed all 16 developments that were awarded LIHTC in 2022 and 2023 and had a signed covenant. We also reviewed KHRC's operating and replacement reserve requirements for those same 16 developments. We reviewed them to determine whether KHRC's reserve requirements were accurately calculated and consistent across all of the developments.

More specific details about the scope of our work and the methods we used are included throughout the report as appropriate.

## *Important Disclosures*

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform

the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on those audit objectives.

Audit standards require us to report our work on internal controls relevant to our audit objectives. They also require us to report deficiencies we identified through this work. In this audit, we reviewed KHRC's compliance monitoring process and compared it to state and federal law, best practices, and relevant internal controls. We did not identify any deficiencies with the process as designed.

Our audit reports and podcasts are available on our website ([www.kslpa.org](http://www.kslpa.org)).

## **Although KHRC’s compliance monitoring process for the Low-Income Housing Tax Credit is extensive, it largely aligns with federal and state rules and best practices.**

### **Background**

#### **The Kansas Housing Resources Corporation (KHRC) administers state and federal housing programs in Kansas.**

- A 2003 executive reorganization order created the KHRC as a nonprofit public corporation. Prior to the order, KHRC was a division within the Department of Commerce and Housing (now the Department of Commerce).
- KHRC is tasked with overseeing the administration of federal and state housing programs. At the federal level, KHRC oversees programs such as the Community Services Block Grants and the Low-Income Housing Tax Credit. KHRC is also responsible for administering the State Housing Trust Fund and the Affordable Housing Tax Credit, which is a state tax credit.
- In fiscal year 2023, KHRC received about \$304 million in funding from multiple sources. Most funds came from the federal government (\$253 million or 83%). About \$43 million (14%) came from the State Housing Trust Fund. KHRC does not receive a direct state appropriation. The remainder (\$8 million or 3%) is from several sources such as fees for services.
- In 2023, KHRC spent \$264 million, most of which was for federal programs. KHRC spent about \$228 million (87%) on federal program grant expenses. They also spent about \$1.5 million on state program grant expenses. The remainder (\$34 million) was for general expenses such as travel, salaries, and legal fees. KHRC currently employs 76 staff members.

#### **The Low-Income Housing Tax Credit is a federal program meant to encourage the development of rental housing for low-income individuals.**

- The Low-Income Housing Tax Credit (LIHTC) is a federal program that awards federal income tax credits to housing developers to offset the cost of rental developments. In return, developers agree to set aside a certain number of units for individuals whose income is under a particular threshold. The federal government provides a few options regarding how many units a developer will set aside and what the income threshold will be. For example, developers can dedicate 40% of their units for individuals with income equal to or less than 60% of the area’s mean gross income. Additionally, they may agree to other things such as setting aside a unit for individuals experiencing homelessness. In turn, developers then receive 1/10 of their total credits each year for 10 years after the development is occupied.

- The federal government allocates LIHTC to each state based on the state population. In 2023, the federal government allocated about \$8 million to Kansas. This means, in 2023, KHRC could award up to \$8 million in LIHTC federal income tax credits.
- The federal government requires each state to create a Qualified Allocation Plan that describes how the state will administer LIHTC. KHRC, as the state administering agency, creates this plan each year with public input. It describes things such as the LIHTC application process, eligibility criteria, and the compliance monitoring process.
- KHRC awards 2 types of federal low-income housing tax credits.
  - One type of LIHTC (called the 4% credit) is awarded to projects using federally tax-exempt bond financing. A tax-exempt bond is a type of bond where the interest is exempt from federal income taxes for the bond holder. Projects are eligible for this credit if at least 50% of the project is financed with tax-exempt bonds. These credits do not count against the state's \$8 million LIHTC allocation. In 2023, 12 housing projects in Kansas qualified for this credit.
  - A second type of LIHTC (called the 9% credit) is generally for new construction and rehabilitation projects. This is a competitive award and is awarded from the state's federal allocation. A competitive award means that KHRC chooses which projects will receive the credit based on a scoring system. Not all applicants will receive the award. The tax credit generally cannot exceed \$850,000 per project. For 2023, KHRC awarded credits to 11 housing projects in Kansas.
- In Kansas, developers who receive LIHTC credits also receive a state tax credit. In 2022, the Kansas Legislature passed the Affordable Housing Tax Credit. This credit provides state tax credits in an amount equal to the federal LIHTC tax credit. KHRC also administers this tax credit.

## **LIHTC Compliance**

### **The federal government requires KHRC to monitor housing developments that have been awarded LIHTC to ensure they comply with all applicable rules.**

- The federal government requires that KHRC monitor LIHTC developments for at least 15 years. This includes developments that received the 4% credit and the 9% credit. KHRC must monitor the development to ensure the owners comply with the program rules. If they do not, they may not be eligible to continue to receive tax credits or may have to pay back any credits already received.
- Federal Internal Revenue Code and federal regulations describe the requirements related to the LIHTC monitoring process. The IRS sets the

expectations for how the program will be monitored because the program is a tax credit program. Federal regulation includes requirements for inspections, tenant file reviews, and recordkeeping.

- KHRC also monitors that developments comply with federal Housing and Urban Development (HUD) rules. HUD oversees housing programs at the federal level. Some HUD rules also apply to LIHTC projects because the IRS has directed the LIHTC program to adopt HUD rules. HUD sets the income eligibility thresholds that determine whether tenants qualify for a LIHTC unit. They also set other rules such as inspection criteria and fair housing rules.
- KHRC also monitors for compliance with some state laws. LIHTC is a federal program so Kansas does not have any laws specific to LIHTC. However, it does have some general laws related to rental units such as the Kansas Residential Landlord and Tenant Act. This requires landlords to do things such as document the condition of the unit upon move-in and to provide written notice if they do not intend to return all of a tenant's security deposit.
- The federal rules that direct KHRC to monitor LIHTC projects are a mix of broad and specific requirements. For example, the IRS requires KHRC to do some specific things such as ensuring developers certify their units are suitable for occupancy and conduct inspections every 3 years. Conversely, other requirements allow KHRC discretion in how to ensure compliance. Last, federal regulations specifically permit KHRC's compliance monitoring process to require more than the federal regulations require.

**KHRC has a detailed compliance monitoring process to ensure that development owners comply with federal and state rules and meet all of the requirements they agreed to when they received LIHTC.**

- Although LIHTC are awarded to developers, developers often sell the tax credits. Federal law requires that the entity who received the credit maintain an ownership interest in the property. As a result, the federal government expects KHRC to monitor owners to ensure they are following all applicable rules. In turn, KHRC has developed a monitoring process to fulfill this federal requirement. Owners who receive LIHTC must comply with KHRC's monitoring process to receive their credits.
- Most of KHRC's monitoring process requires owners to submit forms and supporting documentation. Owners must do this annually for 30 years. To submit the required forms and supporting documentation, the owner must upload those documents to an online portal. **Figure 1** shows what KHRC requires from owners for each part of the compliance process. As the figure shows, owners must submit a variety of forms and supporting documentation and complete a few activities.

Figure 1. As part of the compliance monitoring process, owners must submit a number of forms, complete certain activities, and make documents and the property available for inspection.

Compliance Requirement	Form	Supporting Documentation	Data Entry	Activity
<b>Certification Forms</b>				
<b>Certificate of Good Standing</b> from the Secretary of State certifying that the business is up to date on all filings and fees.				
<b>Owner's Certificates of Continuing Program Compliance</b> attest to the compliance with 20 requirements.				
<b>Financial Information</b>				
<b>Budget Spreadsheets</b> include planned income and expenses.				
<b>Financial Spreadsheets</b> include actual income and expenses.				
<b>Utility Allowance Data Spreadsheets</b> include utility costs for electricity, gas, water, and trash for a sample of units.				
<b>Tenant Information</b>				
<b>Tenant Data</b> is entered using information from Tenant Income Certifications which gather 85 pieces of information including demographics and income for each member of the household.				
<b>Activities</b>				
<b>Training Documentation</b> includes proof of training for owners and management.				
<b>Fair Housing Activity Documentation</b> includes proof of 1 Fair Housing Activity.				
<b>Inspections (a)</b>				
<b>Tenant File Inspections</b> are a review of a sample of Tenant Income Certifications				
<b>Property Inspections</b> of a sample of units to ensure suitability for occupancy				

(a) KHRC conducts the inspections but owners must make forms, supporting documentation, or the physical property available to the inspector.

Source: LPA review of KHRC compliance monitoring requirements.

- Owners must submit 2 certification forms to KHRC. This includes a certificate of good standing and a certificate of program compliance. The certificate of good standing is provided by the Kansas Secretary of State and confirms the business is in good standing in the state. The certificate of program compliance requires the owner to confirm that they comply with 20 different rules or statements. This includes things such as confirming that the unit was rented only to those who qualified, that management has not changed in the last year, and that the owner has not evicted anyone without good cause.
- Owners must submit detailed financial information. This includes multiple forms that detail the development's budget and other financial information. The budget form requires a variety of information including income, administrative expenses, maintenance expenses, and taxes. Owners must also submit supporting documents such as profit and loss statements, year-end bank statements, and supporting documentation related to utility costs.
- Owners must submit certain tenant information for tenants occupying a LIHTC unit. This information is collected on a 6-page form that the tenant and property manager typically work together to complete. It requests 85 pieces of information for each household including name, age, and social security number for each household member. Additionally, it requires extensive financial information such as income from work, child support, alimony, and other assets. The owner must enter parts of this form online annually. Further the form must be maintained and made available to KHRC inspectors. KHRC reviews a sample of these forms every 3 years to ensure that tenants did not exceed the income thresholds to qualify for a LIHTC unit.
- Owners must submit supporting documentation related to completing specific activities. This includes training and fair housing activities. They must submit any certificates they received for training they completed. They also must submit documents showing they completed at least 1 fair housing activity. Fair housing activities are meant to reduce or eliminate barriers to accessing housing. They can include activities such as sponsoring a fair housing seminar or publishing bilingual materials for applicants.
- Additionally, owners must allow KHRC to inspect a sample of LIHTC units every 3 years. KHRC inspects them to ensure their suitability for occupancy. These inspections occur every 3 years in the first 15 years of the development and every 5 years in years 16 through 30.
- Last, owners must also pay an annual compliance fee. The fee is paid to KHRC and is equal to .009 times the annual tax credit amount for the first 15 years of the project. In years 16 through 30 it is .004 times the annual credit amount.

**We compared KHRC's monitoring process to federal rules and best practices to determine whether each aspect of the process was necessary to meet a federal or state rule or best practice.**

- The major concern behind the audit question was that KHRC's compliance process might require more than is strictly necessary. Because most of KHRC's monitoring process involves forms, we reviewed the content of each form. We also reviewed KHRC's requirements for supporting documentation and other aspects of the process. We compared each form, documentation, or other requirements to federal rules, state law, and best practices. For each item we then determined whether it was necessary for KHRC to appropriately carry out its oversight responsibilities.
- We determined whether an aspect of KHRC's process was necessary based on 3 criteria:
  - When KHRC's requirement fulfilled a specific state or federal rule, we determined that aspect of the process was necessary. This included requirements that satisfied federal IRS code, HUD rules, or state laws.
  - When federal rules were broad and provided discretion, we determined whether KHRC's process met best practices. The National Council of State Housing Agencies publishes best practices related to compliance monitoring for housing credit programs. If KHRC's process satisfied a best practice we determined that part of the process was necessary.
  - When there was no best practice, we determined whether that aspect of the process was a good internal control. An internal control increases the likelihood that the agency's objectives will be achieved. KHRC's objective is to ensure that federal rules are followed and that owners meet all of the requirements they agreed to when they received LIHTC. If KHRC's process furthered their ability to do those things, we determined that it was necessary. In these cases, we used our professional judgment to determine whether that aspect of KHRC's process represented a good internal control.
- We considered specific aspects of KHRC's process to be necessary even if it only met best practices or internal controls. This is because KHRC has a responsibility to provide appropriate oversight of the LIHTC program. Creating a process that ensures that owners follow the rules and do all the things they said they would do when they received LIHTC represents good oversight and thus, is necessary.
- Last, we only reviewed KHRC's current compliance process. Developments must comply with the current process even if they were awarded tax credits many years ago. Because the compliance period is 30 years, an owner may have experienced multiple processes. We cannot say whether any previous process required activities that were generally necessary or unnecessary.

**Although KHRC's compliance monitoring process is extensive, most of the process is required by federal rules or is otherwise necessary for them to appropriately oversee the program.**

- Most of the process we reviewed was necessary for KHRC to meet a specific federal or state rule or to otherwise appropriately oversee the LIHTC program. **Figure 2** shows the reason each form, documentation, or activity is necessary. As the figure shows, most things KHRC requires satisfies at least 1 federal or state rule or best practice.
  - The 2 certifications KHRC requires are necessary for multiple reasons. Although not required by federal rule, the certificate of good standing is a good internal control for ensuring that the business does not have any outstanding issues (such as unpaid fees). Additionally, the 20 items owners are required to attest to on the certification of continuing program compliance are a mix of federal rules and best practices. For example, the form requires owners to confirm that all units were suitable for occupancy in the last 12 months and that the owner gathered income verification documents from tenants. Federal regulation requires that developers confirm these things.
  - The financial information KHRC requires is necessary to satisfy federal regulations and best practices. Best practices recommend that agencies collect detailed financial data on projects. The purpose is to support agencies' ability to assess the financial feasibility of projects. Further, federal regulation requires KHRC to monitor certain data related to utility costs.
  - The tenant information KHRC requires is necessary for multiple reasons. As mentioned previously, the tenant information KHRC requires is extensive. Some of the information on this questionnaire is required by federal rule. Other aspects are necessary to satisfy best practices or good internal controls. For example, developers must collect detailed information about tenants' income. This is necessary because federal regulation requires tenant income to be below a certain income to qualify to rent these units.
  - Inspections of the physical property and tenant files are necessary because they are required by federal regulation and best practice. Federal regulation requires property inspections to be based on either local codes or a federal framework established by HUD. KHRC inspects based on the HUD framework. It requires inspectors to check for things such as bathtubs that drain properly and that kitchen appliances are in working order. Federal regulations also require that KHRC review tenant files but is largely silent regarding the specifics of that process. As such, KHRC's process is based on best practice.

Figure 2. Most requirements in KHRC's compliance process are necessary to meet federal or state rules, best practices, or internal controls.

Compliance Requirement	Necessary because...(a)		
	Federal or State Rule (b)	Best Practice	Internal Control (c)
<b>Certifications</b>			
Certificate of Good Standing			✓
Owner's Certificates of Continuing Program Compliance	✓	✓	
<b>Financial Information</b>			
Budget Spreadsheets		✓	
Financial Spreadsheets	✓	✓	
Utility Allowance Data Spreadsheets	✓		
<b>Tenant Information</b>			
Tenant Data	✓	✓	✓
<b>Documentation</b>			
Training Documentation			
Fair Housing Activity Documentation			
<b>Inspections</b>			
Tenant File Inspections	✓	✓	
Property Inspections	✓	✓	

(a) Some forms require many types of information. As a result, different types of information on the form may be required for different reasons.

(b) Federal or state rule includes IRS regulations, HUD rules, or federal or state law.

(c) We only considered whether a KHRC requirement was a necessary internal control when state and federal rules or best practices did not require it.

Source: LPA analysis of KHRC compliance monitoring requirements, federal code, and best practices.

Kansas Legislative Division of Post Audit

**However, we did find two minor areas where KHRC's requirements are not necessary to meet a state or federal rule, a best practice, or an internal control.**

- We identified two activities KHRC requires as part of the compliance monitoring process that are not required by any federal or state law, best practice, or internal control.

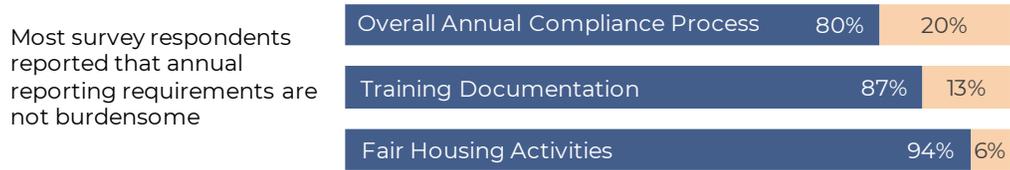
- KHRC requires that owners submit training certificates annually. Owners must submit any training certificates they (or the property manager) received during the year through an online portal.
- KHRC also requires that each property owner complete a fair housing activity and submit supporting documentation annually.
- However, neither of these activities are required by federal or state rule or are otherwise necessary for KHRC to appropriately monitor compliance with LIHTC's rules.
  - KHRC does not require developers or owners to receive any type of training. As such, requiring proof of training that is not required appears unnecessary. KHRC officials told us that they ask for training certificates so they can more effectively provide resources and support.
  - Additionally, federal rules do not require owners to complete a fair housing activity. Under HUD requirements, KHRC is responsible for completing fair housing activities. These activities are directed by the Kansas Fair Housing Taskforce. KHRC coordinates and chairs the taskforce although other agencies, such as the Department of Commerce, are also represented. The taskforce recommends that KHRC require owners to complete 1 fair housing activity annually. However, this is only a recommendation and there are no federal or state rules or best practices that require owners to conduct such activities.
- Generally, these tasks do not appear onerous or unreasonable. However, they are not tied to any state or federal rule, best practice, or internal controls for the LIHTC program.

**Developers who responded to our survey generally reported that KHRC's compliance monitoring process was not burdensome to complete.**

- We surveyed developers to get their opinions on how easy or burdensome it is for them to comply with KHRC's LIHTC compliance monitoring process. We asked their opinions on several specific compliance activities. For example, we asked specifically about how easy or burdensome completing fair housing activities is. We also asked them about the process as a whole and provided an opportunity for them to comment on any issues outside of the compliance process.
- We sent surveys to all 87 developers who received a LIHTC from 2016 to 2023. Of the 87, 19 responded. This is a response rate of 22%. However, only 13 respondents answered every question. As a result of the low response rate, we cannot project these results to all developers. **Appendix B** provides additional information about the survey responses.

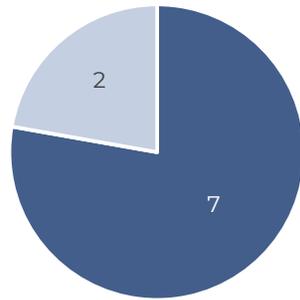
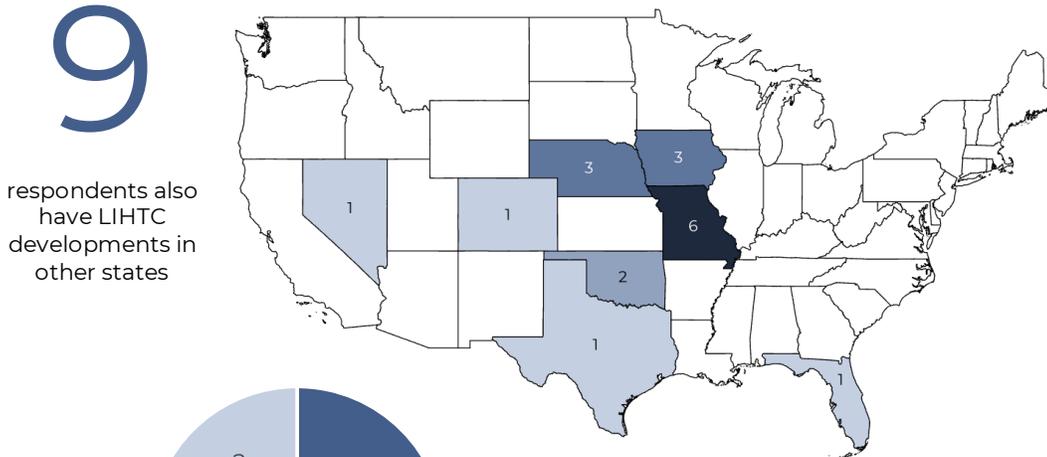
- We asked respondents to tell us how easy or burdensome KHRC’s overall compliance process is. 15 out of 19 respondents answered this question. **Figure 3** shows the results of the survey. As the figure shows, 12 (80%) reported that overall the process was either easy or neither easy nor burdensome. The remaining 3 (20%) reported the process was somewhat burdensome. All 3 of those respondents reported that the overall process was time consuming.
- We also asked about the requirement to submit training certificates and complete fair housing activities. We asked about these tasks specifically because these were tasks we identified as not being tied to a federal or state rule, best practice, or internal control. We asked respondents to tell us how easy or burdensome these activities were. As **Figure 3** shows:
  - 13 of 15 (87%) reported that submitting training certificates was either easy or neither easy nor burdensome. Only 2 (13%) reported that the task was burdensome. The 2 who said that the task was burdensome reported that it was time consuming or costly.
  - 15 of 16 (94%) reported that completing fair housing activities was either easy or neither easy nor burdensome. Only 1 (6%) reported that the task was burdensome. The person who reported that the task was burdensome reported that it was time consuming and costly.
- We also asked respondents about their experiences with the compliance monitoring processes in other states. As **Figure 3** shows, 9 of 16 respondents reported they had completed developments in other states. Some have completed developments in multiple states. The most common were Missouri, Nebraska, and Iowa. All 9 respondents reported that the compliance process in Kansas is either about the same or less burdensome than in other states.

Figure 3. Most respondents reported that KHRC's compliance process was not burdensome (a).



■ Easy/Neither Easy nor Burdensome    ■ Burdensome

Respondents with LIHTC developments in other states were most commonly developing in Missouri, Iowa, and Nebraska

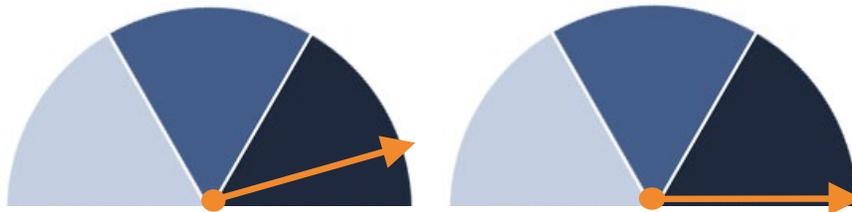


Most respondents said KHRC's requirements were similar to those in other states

■ Less Burdensome    ■ About the Same    ■ More Burdensome

11 of the 13 respondents believed that the requirements in the land covenants were appropriate.

All 13 respondents believed that the required reserve replacement amount was "about right".



(a) We sent the survey to 87 developers. 19 provided at least a partial response for a response rate of 22%.

Source: Survey of LIHTC recipients (audited).

## **Other Findings**

### **We identified 2 additional federal programs that are similar to LIHTC but require lease and rent approvals that LIHTC does not.**

- One of our audit objectives refers to lease and rent approvals. Lease and rent approval rules require owners to seek approval from KHRC before leasing a unit or increasing the rent. Neither the state nor federal government have such requirements for the LIHTC program.
- KHRC officials told us two related programs do have lease and rent approval requirements. The federal government established both programs in 2009 as part of the American Recovery and Reinvestment Act. Both programs provided grants to finance construction or rehabilitation of low-income buildings.
  - The Tax Credit Assistance Program provided grants to 9 housing projects that received LIHTC between October 1, 2006, and September 30, 2009
  - The Credit Exchange Program provided grants to 18 projects (1 project also received a grant through the Tax Credit Assistance Program). A development was not required to receive LIHTC to be eligible for this program.
- KHRC oversees compliance for both of these programs. This includes annual financial reporting, providing tenant information, and property inspections.
- However, we did not further evaluate these programs or their requirements because they are outside the scope of this audit.

### **KHRC's land use restrictive covenants and reserve requirements were consistent across the 16 projects we evaluated.**

#### **KHRC requires owners to sign a land use restrictive covenant and maintain financial reserves as a condition of receiving LIHTC.**

- KHRC requires all development owners to sign a land use restrictive covenant for each LIHTC development. The covenant is an agreement between the owner and KHRC that documents the restrictions placed on the property in order to receive tax credits. It describes things such as the location of the development and the number of units that will be considered low-income. It also requires that even if the owner sells the property, the property will remain a LIHTC development for 30 years.

- Federal regulation requires a restrictive covenant but does not specifically indicate what must be in it. Nevertheless, KHRC has incorporated several things in federal regulation into this document. This includes a commitment to maintain a certain number of units as low income, a requirement to only evict tenants for good cause, and a requirement to ensure units are suitable for occupancy. Other elements of the covenant are best practices or good internal controls for ensuring the development is financially feasible for 30 years. For example, owners must agree to fix damage and to not demolish or materially alter the development.
- Additionally, KHRC requires owners to have financial reserves for each project. Reserves are money the owner sets aside to maintain the property over time. KHRC requires 3 types of reserves:
  - Lease-up reserves are meant to help cover costs while the development is being built and prior to units being leased. KHRC requires these reserves to be equal to at least \$300 per LIHTC unit. However, once a development is at 93% occupancy the money in this account can be used for other purposes.
  - Operating reserves are meant to ensure low-income projects, which might not increase rent to keep pace with upkeep costs, remain viable for 30 years. KHRC requires these reserves to be equal to at least 6 months of the development's operating expenses.
  - Replacement reserves are to help pay for major property expenses. KHRC requires replacement reserves to be equal to \$300 per LIHTC unit, increasing 3% annually for 15 years. The required amount of replacement reserve for the first 15 years is set in the land use restrictive covenant.
- Federal regulations do not require reserves. However, KHRC requires reserves because they are a best practice suggested by the National Council of State Housing Agencies to ensure the project remains financially and physically viable. The amount of operating and replacement reserves KHRC requires are similar to the amounts suggested by best practices. Although best practices do suggest lease up reserves, they do not set a specific amount. Further, KHRC told us that most banks will require an owner to maintain reserves as a condition of a loan.

**The 16 land use restrictive covenants we reviewed laid out consistent requirements across all of the projects we reviewed.**

- We reviewed the covenants for all 16 projects that were awarded LIHTC in 2022 and 2023 and had a signed covenant as of March 2024. The covenants are not prepared until construction begins. We reviewed 16 (out of 34) covenant terms to determine whether they were consistent across all 16 projects. We chose the terms that required the owner to take a particular action or required an action for a specific period of time. This included terms

such as the length of the compliance period, requirements to make repairs to the property, and an agreement to comply with all of KHRC's policies.

- For the 16 items we reviewed, the covenants imposed the same requirements on all 16 projects. For example, all 16 projects required compliance with fair housing laws and that the covenant would remain in effect for 30 years.
- Additionally, as part of the survey discussed in objective 1, we asked developers their opinions on the covenants. We asked if they thought any of the covenant restrictions were inappropriate. 13 respondents answered the question. As **Figure 3** shows, 11 of the 13 (85%) reported that they thought the terms in the covenant were appropriate. The 2 respondents who reported they thought the terms were inappropriate did not clearly note what aspect of the covenant they thought was inappropriate.
- Last, we only reviewed covenants that were signed to ensure that we reviewed the terms that the owner had agreed to. Developers do not sign the covenant until construction begins. As such, it is possible there is a difference between projects that were able to begin construction relatively soon after being awarded LIHTC and others that took more time. If this difference exists, our work is unlikely to detect it.

### **The minimum reserve amounts KHRC required were consistent across the 16 projects we reviewed.**

- We reviewed the replacement and operating reserves for all projects that received LIHTC in 2022 and 2023 and had begun construction by March 2024. We did not review the lease-up reserves because those reserves are required for only a limited amount of time. We reviewed the operating and replacement reserves to determine whether the required amounts were consistent across each development.
- The reserve amount KHRC required was consistent across all 16 developments we reviewed.
  - All 16 developments we reviewed had at least 6 months of operating expenses, which is KHRC's minimum requirement for operating reserves. However, the percentage of reserves ranged from just over 6 months to nearly 12 months of reserves. This is because owners can choose to set aside more than KHRC requires. Additionally, an owner's bank may require certain reserves as part of its loan terms.
  - All 16 of the developments we reviewed had at least the minimum amount of replacement reserves required for each year. The required amount is \$300 per LIHTC unit with an increase of 3% annually for 15 years. However, 2 developments had larger replacement reserve amounts than KHRC required. KHRC officials told us that in both these cases, the larger reserve

amount was not a KHRC requirement and may have been required by the owner or bank.

- As part of our survey, we asked developers their opinions on the amount of reserves KHRC requires. As **Figure 3** shows, all 13 developers who responded to the question reported they thought the reserve amounts KHRC requires is “about right.”

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## Conclusion

Federal regulations impose a number of rules and restrictions on LIHTC developments. Further, KHRC’s compliance process requires extensive paperwork, documentation, and other activities. This means that developers who receive LIHTC have many expectations and restrictions that non-LIHTC developments might not have. However, in exchange, they receive significant income tax credits to offset the cost of their developments. KHRC is tasked with ensuring that developers and owners comply with federal and state rules and do all the things they said they would do when they received the credit. Although detailed, KHRC’s compliance process is designed to ensure that federal rules are followed and best practices are implemented.

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## Recommendations

We did not make any recommendations for this audit.

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## Agency Response

On June 7, 2024 we provided the draft audit report to the Kansas Housing Resource Corporation. Its response is below. Agency officials generally agreed with our findings and conclusions.

### **KHRC Response**

Kansas Housing Resources Corporation (KHRC) appreciates the Legislative Post Audit Committee’s interest in and review of the Low-Income Housing Tax Credit (LIHTC) Program, as well as this opportunity to respond. We commend the staff at Kansas Legislative Division of Post Audit for a thorough and thoughtful review of this vital and technical program and KHRC’s administration of it.

KHRC is pleased to see LPA’s determination that KHRC’s LIHTC Program requirements and processes align with applicable law and industry best practices and that KHRC’s application of the requirements is consistent and equitable. The

Federal (and now State) LIHTC Program is a cornerstone of KHRC's mission of helping Kansans find the safe, affordable housing they need and the dignity they deserve. Since its inception, the LIHTC Program has funded over 30,000 affordable homes and invested over \$2 billion in Kansas communities. Last year alone, with the new State LIHTC, KHRC funded 2,200 new homes with a total development budget of \$540M.

KHRC remains committed to administering an effective and efficient program that serves the housing needs of Kansans and their communities while furthering economic development and rural revitalization. We welcome input from policy makers and stakeholders through the Qualified Allocation Plan process which occurs annually and determines how the LIHTC program is administered. Thank you for the review of and support for this vital program as we Unlock Home for Kansans.

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## **Appendix A – Cited References**

This appendix lists the major publications we relied on for this report.

1. Recommended Practices in Housing Credit Administration (2023). *National Council of State Housing Agencies*.

## Appendix B – Survey Results

This appendix includes the results of the survey questions not otherwise discussed in the report.

### Appendix B.

#### Developers' opinions on whether reporting requirements are burdensome.

Requirement	Easy/Neither Easy nor Burdensome	Burdensome (a)
Completing Tenant Income Certification forms	83%	17%
Submitting data online through Procorem (b)	88%	13%

#### Developers' preference on Tenant Income Certification form review.

Preference	Respondents
KHRC continues to require developments to upload scanned documentation	10
KHRC does on-site reviews of hardcopy documentation	1
No preference	3
<b>Total</b>	<b>14</b>

#### Developers' opinions on the effect of requirements they marked as burdensome. (c)

Requirement	Time-Consuming	Costly	Limits Tenants' interest	Other
Completing Tenant Income Certification forms	3	3	2	0
Submitting data online through Procorem (b)	2	0	N/A	1
Completing Fair Housing Activities	1	1	N/A	1
Submitting Training Documentation	2	1	N/A	1
Completing the Overall Compliance Process	3	1	N/A	1

(a) 3 out of 18 respondents reported that completing tenant income forms was somewhat burdensome. 2 out of 16 respondents reported that submitting data online through Procorem was somewhat burdensome.

(b) Procorem is KHRC's online portal.

(c) Respondents could choose all options that applied. No respondents chose the options of: It reduces the number of low income units I develop, It limits my ability to offer lower rents to low-income households, or It makes me less likely to apply for the LIHTC in the future.

Source: Survey of LIHTC recipients (audited).