



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**

Building Homes. Strengthening Communities.

**2013
4% Housing Tax
Credit and Tax
Exempt Bond Process
Manual**

221 East 11th Street
Austin, Texas 78701

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4% Housing Tax Credits (HTC) with Local Bond Issuer

What you will learn in this section:

- ✓ How to Request Housing Tax Credits
- ✓ Overview of the 4% HTC Program
- ✓ Selecting a Bond Issuer
- ✓ Texas Bond Review Board Priority (TBRB) Designations
- ✓ Application Process and Deadlines for Submitting the Application
- ✓ Application Fees
- ✓ Issuance of a Determination Notice
- ✓ Post Bond Closure Submission Information

How to Request Tax Credits

The Texas Department of Housing and Community Affairs (“the Department”) is the only entity in the State of Texas that has the authority to allocate tax credits under the Housing Tax Credit (HTC) Program. The Applications and all information necessary to apply are available throughout the year on the home page of the HTC Program on the Department’s website. Applications must be completed on behalf of a proposed Development Owner and submitted to the Department for consideration within the specified deadlines as further noted herein.

Applications must be presented to the Department in conformity with the Uniform Multifamily Rules and the Housing Tax Credit Qualified Allocation Plan (the “QAP”) in effect for the program year and must also conform to the requirements of Section 42 of

the Internal Revenue Code. If an Application is submitted for a Development that does not meet the requirements of the aforementioned rules and regulations or other applicable rules and regulations, the Department will terminate the Application.

Overview of the 4% HTC Program

The 4% HTC program is also referred to as the non-competitive tax credit program in that the amount of housing tax credits available are not based on the size of the state's population. Additionally, these applications do not compete regionally against one another in terms of achieving a score high enough to secure an allocation. The 4% housing tax credits are allocated in connection with the "volume cap" associated with tax-exempt bond issues in which the bonds finance at least 50% of the cost of land and buildings in the Development. These bond financed Developments apply under a non-competitive process, and tax credits are, generally, automatically available in conjunction with tax-exempt bond financing provided and rules and requirements are met.

Expertise is needed to participate in the HTC program. Before applying, Applicants should always have consulted a professional tax advisor who has substantial expertise specific to the tax credit program. Specific expertise is necessary to determine optimal financing strategies and which costs of Application and development can be included in eligible basis. Besides housing tax credits, the financing of a development might include grants or loans from the federal HOME program, federal Community Development Block Grant (CDBG) funds for constructing infrastructure, and other federally subsidized below market rate loans. All of the types of funds just named complicate the financing structure of a housing tax credit Development.

Selecting a Bond Issuer

Applicants can choose from a variety of issuers in the state which include local issuers, the Texas State Affordable Housing Corporation (TSAHC) and the Texas Department of Housing and Community Affairs (TDHCA). Local issuers represent the 13 state service regions and have volume cap specifically set-aside for their use. For the 2013 program year, local issuers will have approximately \$383 million in volume cap to issue; TSAHC will have approximately \$55 million and TDHCA will have approximately \$110 million. Local issuers only have the authority to issue bonds to Developments that are within their jurisdiction. For example, if your Development is located in Harris County then an Applicant could choose to use as issuer the Harris County Housing Finance Corporation. The TSAHC and TDHCA have the authority to issue bonds statewide, regardless of location, and can even pool Developments located in multiple cities into one transaction. For any additional issuing restrictions that may apply to TSAHC and/or TDHCA you are encouraged to contact these issuers directly. There is a Housing Finance Corporation (HFC) contact list on the Department's website which can be accessed using the following link: <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm>.

Texas Bond Review Board Priority Designation of Applications

The Texas Bond Review Board (TBRB) administers the Private Activity Bond (PAB) program and has identified priority designations, pursuant to §190.2(d)(1) – (3) of the Texas Administrative Code and §1372.0321 of the Texas Government Code. This is a designation the Applicant selects on the Residential Rental Attachment (RRA) form that is

published by the TBRB. Such form is available on the TBRB website at the following link <http://www.brb.state.tx.us/pab/2013.aspx> and is a form that is usually submitted as part of the pre-application process with the issuer. The priority designation, once submitted to the TBRB by the Issuer, and a Certificate of Reservation is issued, cannot be changed without withdrawing the current Certificate of Reservation and having it re-issued. Such re-issuance of the Certificate of Reservation will result in payment of another \$5,000 TBRB Application Fee. The priority designation is based on the level of AMGI the proposed Development will serve and include the following:

- ✓ **Priority 1 (Must apply for 4% HTC)**
 - (a) Set aside 50% of units rent capped at 30% of 50% AMFI and the remaining 50% of units rents capped at 30% of 60% AMFI; or
 - (b) Set aside 15% of units rent capped at 30% of 30% AMFI and the remaining 85% of units rent capped at 30% of 60% AMFI; or
 - (c) Set aside 100% of units rent capped at 30% of 60% AMFI for developments located in a census tract with median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.
[\(<http://www.ffiec.gov/geocode/default.htm>\)](http://www.ffiec.gov/geocode/default.htm)

- ✓ **Priority 2 (Must apply for 4% HTC)**
 - Set aside 80% of units rent capped at 30% of 60% AMFI.
 - Up to 20% of the units can be market rate

- ✓ **Priority 3 (4% HTC not required)**
 - Includes any qualified residential rental development. Market rate units can be included under this priority.

The Priority 3 designation offers the most flexibility in terms of the inclusion of market rate units. One primary reason for selecting one priority over another is in instances where there are numerous Applications received and limited volume cap availability. In such instances and pursuant to §1372.0321 of the Texas Government Code, Priority 1 transactions will be ranked above Priority 2 transactions which will be ranked above Priority 3 transactions. The ultimate decision on which Priority to select belongs to the Applicant.

Application Process and Deadlines for Filing a 4% HTC Application

Applicants that receive a notice of reservation for the 2013 Program Year for private activity volume cap must submit the required Parts of the HTC Application based on the following:

- Priority 1 and Priority 2 Applications will only have a 3 day notice by which to file Parts 1 – 4 of the HTC Application with the Department. It is important to be in communication with your issuer on the timing of the reservation so you will be prepared to submit Parts 1 – 4 of the HTC Application to the Department.

- Priority 3 Applications will have 14 calendar days from the date the Certificate of Reservation is issued by the TBRB to file Parts 1 – 4 of the HTC Application with the Department.

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The Application fee along with Parts 1 – 4 of the Application must be submitted by the required deadline. The submission format of the HTC Application must follow the requirements outlined in the 2013 Multifamily Programs Procedures Manual which can be found on the Apply for Funds page of the Department’s website or at the following link: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

The remaining Parts 5 and 6 of the Application (including Third Party reports), along with any other outstanding documentation, regardless of the TBRB priority designation, must be submitted at least 75 calendar days prior to the TDHCA Board meeting at which the decision to issue a Determination Notice would be made and conform to the requirements identified in the 2013 Multifamily Programs Procedures Manual. The 75-day deadline is tied to the TDHCA Board Meeting dates for the calendar year and will vary for each Application based on when their Certificate of Reservation expires. The 2013 TDHCA Board Meeting dates and corresponding 75-day deadlines are:

| 75 Day Deadline | TDHCA Board Meeting* |
|--------------------|----------------------|
| November 5, 2012 | January 17, 2013 |
| December 10, 2012 | February 21, 2013 |
| N/A | No Meeting in March |
| January 28, 2013 | April 11, 2013 |
| February 25, 2013 | May 9, 2013 |
| April 1, 2013 | June 13, 2013 |
| April 29, 2013 | July 11, 2013 |
| May 13, 2013 | July 25, 2013 |
| N/A | No Meeting in August |
| July 1, 2013 | September 12, 2013 |
| July 29, 2013 | October 10, 2013 |
| August 26, 2013 | November 7, 2013 |
| September 30, 2013 | December 12, 2013 |

*Board Meeting dates are subject to change.

Once the Certificate of Reservation has been issued by the TBRB, Department staff will send a letter to the Applicant or other designated contact indicating the possible TDHCA Board meeting dates at which the Application can be presented to the TDHCA Board for consideration of a Determination Notice. The Board meeting dates mentioned will be based on the 150-day deadline noted in the Certificate of Reservation. This letter will also indicate, based on the Board meeting dates listed, the corresponding 75-day deadlines. **It is ultimately the responsibility of the Applicant to select the appropriate Board meeting and to submit the remaining Parts of the Application by the corresponding 75-day deadline.** If the remaining Parts are not submitted by such deadline, the Department cannot ensure that the Application will be included on the originally requested Board meeting date. The 150-day deadline, as noted in the Certificate of Reservation, will require the Applicant to have closed on the bond financing and will require having received approval of the Determination to issue the HTC.

Application Fees

An Application fee of \$30 per Unit, as further described in §10.901(3) of the Uniform Multifamily Rules, must be submitted with the Application. Applications in which a Community Housing Development Organization (CHDO) or Qualified Non-Profit Organization intends to serve as the managing General Partner of the Development Owner or Control the managing General Partner of the Development Owner, may be eligible to receive a reduction of 10% off the calculated Application fee. Appropriate documentation must be submitted with payment in order to receive the discounted fee.

Issuance of a Determination Notice

If the Department determines that all requirements under the Department's Administrative rules, §2306 of the Texas Government Code and §42 of the Code have been met, the Board shall authorize the Department to issue an appropriate notice to the Development Owner that the Development satisfies the requirements of the Uniform Multifamily Rules and the QAP in accordance with IRC §42(m)(1)(D). Such notice is referred to as the Determination Notice and is typically issued within a few days after receiving Board approval. The Determination Notice sets forth the HTC amount with which the Development is eligible to receive based on the Department's underwriting analysis and information provided in the Application. The actual amount of HTC the Development qualifies to receive will be determined at the time the Cost Certification is submitted to the Department. In addition to the HTC amount, the Notice will include the Commitment and Inspection Fee to be paid, the Building ID Numbers, any conditions placed on the award and due dates for documentation required to satisfy those conditions and due dates for additional documentation relating to any conditions noted that must be submitted to the Department at a later date. The Applicant must execute the Notice and return the original along with all applicable fees and other required documentation as outlined in the Notice no later than thirty (30) calendar days after its Effective Date. The Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe outlined in the Bond Reservation or if the financing or development changes significantly as determined by the Department.

Post Bond Closure Submission Information

No later than sixty (60) calendar days after the bond closing, the Applicant must submit a series of documents to the Department. Such documents include the following: a Management Plan, Affirmative Marketing Plan, evidence that the financing has closed, evidence that the Development Owner or a member of the management company has attended Fair Housing training relating to leasing and management issues, evidence that the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Fair Housing training relating to design issues. Fair Housing training must be for at least 5 hours and be from a Department-approved provider and cannot be older than two (2) years from the date of the submission deadline. More information, including instructions for completing the documents, and the link to the documents on the Department's website are further explained in this Manual.

4% HTC with TDHCA as Bond Issuer

What you will learn in this section:

- ✓ Overview of the Private Activity Bond (PAB) Program
- ✓ Pre-Inducement Questionnaire
- ✓ Overview of the Pre-application Process
- ✓ Pre-application Fees
- ✓ Texas Bond Review Board Priority (TBRB) Designations
- ✓ Deadlines for Submitting the Application
- ✓ Application Fees
- ✓ PAB and HTC Application Process
- ✓ General Eligibility Criteria
- ✓ Department Fees Due at Closing
- ✓ Ongoing Department Bond Fees

Overview of the Private Activity Bond (PAB) Program

The Department issues tax-exempt and taxable multifamily Mortgage Revenue Bonds to fund loans to for-profit and qualifying nonprofit 501(c)(3) organizations for the acquisition and Rehabilitation and the New Construction of affordable rental units. Applications for financing may be submitted to the Department for review and a recommendation will then be made to the TDHCA Board. Developments financed through these programs are subject to unit set-aside restrictions for lower income tenants, tenant services, maximum rent limitations and other requirements as determined by TDHCA and the Board.

Pre-Inducement Questionnaire

Prior to submitting a Pre-application, the Department will require the submission of the Pre-Inducement Questionnaire. The purpose of the questionnaire is for the Department to get a preliminary understanding of the proposed Development and to communicate

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with the Applicant the Department's objectives and policies regarding the development of affordable housing throughout the state using tax-exempt bond financing. The Pre-Inducement Questionnaire can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

Overview of the Pre-application Process

The Department accepts Pre-applications monthly based on the TDHCA Board meeting date at which the Inducement Resolution will be considered. All Pre-applications must be submitted before 5:00 p.m. CST based on the following submission deadlines:

| Request for Neighborhood Organizations | Submission Dates | Inducement Board Meeting* |
|---|-------------------------|----------------------------------|
| November 29, 2012 | December 13, 2012 | January 17, 2013 |
| January 3, 2013 | January 17, 2013 | February 21, 2013 |
| N/A | N/A | No Meeting in March |
| February 21, 2013 | March 7, 2013 | April 11, 2013 |
| March 21, 2013 | April 4, 2013 | May 9, 2013 |
| April 25, 2013 | May 9, 2013 | June 13, 2013 |
| May 23, 2013 | June 6, 2013 | July 11, 2013 |
| June 6, 2013 | June 20, 2013 | July 25, 2013 |
| N/A | N/A | No Meeting in August |
| July 25, 2013 | August 8, 2013 | September 12, 2013 |
| August 22, 2013 | September 5, 2013 | October 10, 2013 |
| September 19, 2013 | October 3, 2013 | November 7, 2013 |
| October 24, 2013 | November 7, 2013 | December 12, 2013 |

*Board Meeting dates are subject to change.

The Applicant will be required to send out a Request for Neighborhood Organizations to the local elected official for the city and county where the Development is proposed to be located by the deadline stated above. The specific requirements for these request letters can be found in §12.5(10) of the Multifamily Housing Revenue Bond Rules and §10.203 of the Uniform Multifamily Rules which can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>.

Specific instructions for the Bond Pre-application, including the documentation required as well as the proper format for submission can be found in the 2013 Bond Pre-Application Procedures Manual on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

Once the Pre-application has been submitted, it will be reviewed by staff according to the Pre-application Threshold Criteria and Selection Criteria as outlined in §12.5 and 12.6 of the Multifamily Housing Revenue Bond Rules. The Pre-application will be ranked against other Pre-applications submitted in the same month based on final scores. Multiple site Pre-applications will each be scored based on their own merits and the final score will be determined based on an average of all the individual scores.

A summary of the proposed Development, based on information provided in the Pre-Application, is then presented to the TDHCA Board for consideration of an Inducement Resolution. The Inducement Resolution is the resolution passed in order to communicate the intent of an Issuer to pursue subsequent stages of the review, approval and issuance process to issue bonds for a specific Development. Upon the approval of the Inducement Resolution by the TDHCA Board, the Applicant will move forward in the process and prepare to submit an Application for 4% Housing Tax Credits as dictated by the Certificate of Reservation issued by the TBRB.

Pre-application Fees

The Applicant is required to submit, at the time of Pre-Application, the following fees as further described in §12.10(a) of the Multifamily Housing Revenue Bond Rules:

- ✓ \$1,000 (payable to TDHCA);
- ✓ \$2,500 (payable to Bracewell & Guiliani, the Department's bond counsel); and
- ✓ \$5,000 (payable to the Texas Bond Review Board).

The fee to the Department covers the review and processing of the Pre-application; the fee to Bracewell & Guiliani covers the review and drafting of the Inducement Resolution; the fee to the Texas Bond Review Board covers the review and issuance of the Certificate of Reservation.

Texas Bond Review Board Priority Designation of Applications

The Texas Bond Review Board (TBRB) administers the Private Activity Bond (PAB) program and has identified priority designations, pursuant to §190.2(d)(1) – (3) of the Texas Administrative Code and §1372.0321 of the Texas Government Code. This is a designation the Applicant selects on the Residential Rental Attachment (RRA) form that is published by the TBRB. Such form is available on the TBRB website at the following link <http://www.brb.state.tx.us/pab/pab2013app.aspx> and is a form that is required as part of the Pre-application. The priority designation, once submitted to the TBRB by the Issuer, and a Certificate of Reservation is issued, cannot be changed without withdrawing the current Certificate of Reservation and having it re-issued. Such re-issuance of the Certificate of Reservation will result in payment of another \$5,000 TBRB Application Fee. The priority designation is based on the level of AMGI the proposed Development will serve and include the following:

- ✓ **Priority 1 (Must apply for 4% HTC)**
 - (a) Set aside 50% of units rent capped at 30% of 50% AMFI and the remaining 50% of units rents capped at 30% of 60% AMFI; or
 - (b) Set aside 15% of units rent capped at 30% of 30% AMFI and the remaining 85% of units rent capped at 30% of 60% AMFI; or
 - (c) Set aside 100% of units rent capped at 30% of 60% AMFI for developments located in a census tract with median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.
<http://www.ffiec.gov/geocode/default.htm>

- ✓ **Priority 2 (Must apply for 4% HTC)**
 - Set aside 80% of units rent capped at 30% of 60% AMFI.
 - Up to 20% of the units can be market rate

- ✓ **Priority 3 (4% HTC not required)**
 - Includes any qualified residential rental development. Market rate units can be included under this priority.

The Priority 3 designation offers the most flexibility in terms of the inclusion of market rate units. The primary reason for selecting one priority over another is mostly applicable in instances where there are numerous Applications received and limited volume cap availability. In such instances and pursuant to §1372.0321 of the Texas Government Code as well as §12.6 of the Multifamily Housing Revenue Bond Rules, Priority 1 transactions will be ranked above Priority 2 transactions which will be ranked above Priority 3 transactions. The ultimate decision on which Priority to select is that of the Applicant.

Deadlines for Submitting the 4% HTC and PAB Application

Once the Pre-application has been approved by the Department's Board, the application will be submitted to the TBRB in the rank order determined by the Department and as outlined above to await a Certificate of Reservation. The Priority designation selected will trigger the deadlines for submission of the HTC Application.

The 4% HTC Application and the PAB Application are essentially one in the same; there is not a separate PAB Application that will need to be submitted to the Department. Applicants that receive a notice of reservation for the 2013 Program Year for private activity volume cap must submit the required Parts of the HTC Application based on the following:

- Priority 1 and Priority 2 Applications will only have a 3-day notice by which to file Parts 1 – 4 of the HTC Application with the Department. The Department will communicate with the Applicant its intent on submitting the application to the TBRB for a reservation so the Applicant is prepared to submit Parts 1 – 4 of the HTC Application within the required 3-day timeframe.
- Priority 3 Applications will have 14 calendar days from the date the Certificate of Reservation is issued by the TBRB to file Parts 1 – 4 of the HTC Application with the Department.

The Application fee, as further described in §12.10(b) of the 2013 Multifamily Housing Revenue Bond Rules, along with Parts 1 – 4 of the Application must be submitted by the required deadline. The submission format of the HTC Application must follow the requirements outlined in the 2013 Multifamily Programs Procedures Manual which can be found on the Apply for Funds page of the Department's website or at the following link: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

The remaining Parts 5 and 6 of the Application (including Third Party reports), along with any other outstanding documentation, regardless of the TBRB priority designation, must be submitted at least 75 calendar days prior to the TDHCA Board meeting at which the decision to issue a Determination Notice would be made and conform to the requirements identified in the 2013 Multifamily Programs Procedures Manual. The 75-day deadline is

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tied to the TDHCA Board Meeting dates for the calendar year and will vary for each Application based on when their Certificate of Reservation expires. The 2013 TDHCA Board Meeting dates and corresponding 75-day deadlines are as follows.

| 75 Day Deadline | TDHCA Board Meeting* |
|--------------------|----------------------|
| November 5, 2012 | January 17, 2013 |
| December 10, 2012 | February 21, 2013 |
| N/A | No Meeting in March |
| January 28, 2013 | April 11, 2013 |
| February 25, 2013 | May 9, 2013 |
| April 1, 2013 | June 13, 2013 |
| April 29, 2013 | July 11, 2013 |
| May 13, 2013 | July 25, 2013 |
| N/A | No Meeting in August |
| July 1, 2013 | September 12, 2013 |
| July 29, 2013 | October 10, 2013 |
| August 26, 2013 | November 7, 2013 |
| September 30, 2013 | December 12, 2013 |

*Board Meeting dates are subject to change.

Once the Certificate of Reservation has been issued by the TBRB, Department staff will send a letter to the Applicant or other designated contact indicating the possible TDHCA Board meeting dates at which the Application can be presented to the TDHCA Board for consideration of a Determination Notice. The Board meeting dates mentioned will be based on the 150-day deadline noted in the Certificate of Reservation. This letter will also indicate, based on the Board meeting dates listed, the corresponding 75-day deadlines. **It is ultimately the responsibility of the Applicant to select the appropriate Board meeting and to submit the remaining Parts of the Application by the corresponding 75-day deadline.** If the remaining Parts are not submitted by such deadline, the Department cannot ensure that the Application will be included on the originally requested Board meeting date. The 150-day deadline, as noted in the Certificate of Reservation, will require the Applicant to have closed on the bond financing and will require having received approval of the Determination to issue HTC.

Application Fees

A HTC Application fee of \$30 per Unit, as further described in §10.901(3) of the Uniform Multifamily Rules and a \$10,000 Bond Application fee, as further described in §12.10(b) of the Multifamily Housing Revenue Bond Rules must be submitted with the Application. If the Application includes multiple sites the full Application fee will be \$30 per Unit or \$10,000, whichever is greater.

To be considered a multiple site Application such that the Development is structured as part of a portfolio, the Development must meet the following definition of a Project pursuant to §1372.002 of the Texas Government Code:

“Project—

- (a) For purposes of this chapter, a project is:
 - (1) an eligible facility or facilities that are proposed to be financed, in whole or in part, by an issue of qualified residential rental project bonds;
- (c) For purposes of Subsection (a)(1), an application under this chapter may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51 percent or more of the residential units are located:
 - (1) in a county with a population of less than 75,000; or
 - (2) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds.”

Applications in which a Community Housing Development Organization (CHDO) or Qualified Non-Profit Organization intends to serve as the managing General Partner of the Development Owner or Control the managing General Partner of the Development Owner, may be eligible to receive a reduction of 10% off the calculated Application fee. Appropriate documentation must be submitted with payment in order to receive the discounted fee.

PAB and HTC Application Process

The 150-day deadline, as noted in the Certificate of Reservation by the TBRB, will require the Applicant to have closed on the bond financing will require having received approval of the Determination to issue the HTC. This section will provide guidance on the series of events that occur relating to both the bonds and tax credits before the Applicant can close on the financing of the transaction.

The Department staff will prepare a timeline once the Reservation is received, the public hearing has been scheduled and closing dates have been tentatively set. The timeline will be distributed to the working group in an effort to keep the transaction moving forward and meeting key target dates. Subsequent to the filing of the Application, the Department’s bond counsel, disclosure counsel, and financial advisor will provide the Applicant with fee letters based upon the contemplated bond financing structure.

No later than the 35th calendar day after the Certificate of Reservation is issued a filing will be made on the Applicant’s behalf by the Department’s bond counsel, Bracewell & Giuliani. The purpose of the filing is to solidify the Applicant’s organizational structure,

specifically, the identity of the Borrower and the General Partner. No changes will be permitted in these entities once this filing is made. NOTE: The principals that comprise the General Partner are not reflected in the filing and may be changed once the filing is made. Bracewell & Giuliani will compile the documentation and will request the appropriate signatures from the Applicant. The fee to be included with the filing includes 1/3 of the closing fee which is based on the amount of volume cap reserved as reflected in the Certificate of Reservation. The remaining 2/3 of the closing fee will be required at the time of the bond closing. This fee is the responsibility of the Applicant.

The Department will coordinate the scheduling of the TEFRA Public Hearing on behalf of the Applicant. The Applicant will be responsible for all fees associated with such public hearing, including but not limited to, the newspaper legal notice, school rental and security fee, if applicable. The Department requires the Applicant (and anyone else on the Development Team as designated by the Applicant) to attend and will schedule the hearing on a date convenient for the Applicant. The Department typically schedules the hearing in the evening at a public school closest to the proposed Development. Bracewell & Giuliani will draft a hearing notice which will be publicized in the local newspaper(s), the Texas Register and sent to US, State and Local Officials and Neighborhood Organizations of record. The hearing and all public comment will be transcribed by a court reporter and the transcript will be included in the Board presentation for the proposed Development.

Once the complete HTC Application, including all Third Party reports and all applicable fees has been received, the Application will be reviewed for compliance with the requirements of the Uniform Multifamily Rules and the Housing Tax Credit Qualified Allocation Plan (QAP). Any additional information that is needed will be requested through an Administrative Deficiency. The Uniform Multifamily Rules, specifically §10.201(7), outlines the deficiency process and fees associated with any responses submitted after the deficiency notice deadline. The Real Estate Analysis Division is responsible for the underwriting process and will review the Application for financial feasibility.

Simultaneously with the Department's review of the HTC Application, the working group, including but not limited to the issuer, its bond counsel, financial advisor and disclosure counsel, along with the Borrower and their counsel, the bond underwriter and their counsel, the limited partner and their counsel, the bond trustee and their counsel will have regular conference calls to solidify the bond financing documents. It is important that all applicable parties review and provide comments on the documents being circulated so as to meet the appropriate deadlines relating to filings with the Attorney General's Office and the TDHCA Board. Typically, multiple drafts of the legal documents are anticipated before being considered substantially final.

All Third Party final commitments (Credit Enhancer, Tax Credit Equity Provider and Letter of Credit Provider, etc) debt service schedules, detailed sources and uses with costs of issuance breakdown and surveys) must be received by the Department fourteen (14) business days prior to the posting of the TDHCA board meeting agenda in order to insure complete accurate information will be available for Board consideration. Additionally, no later than fourteen (14) days before the Board meets to consider the transaction, the Applicant must submit to the Department any required local resolutions approving the Development pursuant to all applicable program rules.

Upon completion of the underwriting and the substantial finalization of the bond financing documents and the final bond resolution, the Application is presented to the TDHCA Board for their consideration on the issuance of the Bonds and the issuance of a Determination Notice for the housing tax credits. In the instance of privately placed bonds, the bond pricing, interest rate and maturity date of the bonds must be identified in the Bond Resolution for TDHCA Board consideration and once approved by the TDHCA Board cannot be changed. In the instance of publicly offered bonds the bond pricing is determined by the underwriters. All documentation that will be presented to the Board will be made available on the Department's website at the following link: http://www.tdhca.state.tx.us/au_boardcenter.htm seven (7) days prior to the meeting. This may include the Real Estate Analysis Underwriting Report detailing the recommended amount of housing tax credits and any conditions relating to the award.

The approval process on the bonds consists of approval by the TDHCA Board and the Texas Attorney General's Office. Bond documents and related supporting documents and certificates must be provided to Texas Attorney General's Office for approval at least 17 business days prior to closing. The Department's housing transactions that have no impact to the state's general revenue fund shall be exempt from approval by the TBRB with the exception of housing transactions that request an ad valorem tax reduction or exemption. The consideration of the TBRB Planning Session and Board meeting dates are factored into the timeline for closing, should they be required. Once the Department receives approval from the TBRB the transaction can proceed towards closing provided that all necessary approvals from the local municipalities, including building permits, have been obtained, or evidence is provided that the permits are obtainable subject only to payment of municipal fees. Also required at this time will be evidence of available utilities (a letter from the local municipality stating that utilities will be available). Bracewell & Giuliani will coordinate the various filings of the bond documents with the Attorney General's office as well as the registration of the bonds with the Comptroller's office. The closing will take place at the offices of Bracewell & Giuliani in Austin and generally includes a two-day process; pre-closing where all the closing documents are reviewed and signed and the closing day where the bonds are sold and the funds are disbursed.

On the tax credit side of the transaction, once approved by the TDHCA Board, the Board shall authorize the Department to issue an appropriate notice to the Development Owner that the Development satisfies the requirements of the Uniform Multifamily Rules, QAP and other Department rules in accordance with IRC §42(m)(1)(D). Such notice is referred to as the Determination Notice and is typically issued within a few days after receiving Board approval. The Determination Notice sets forth the HTC amount with which the Development is eligible to receive based on the Department's underwriting analysis and information provided in the Application. The actual amount of HTC the Development qualifies to receive will be determined at the time the Cost Certification is submitted to the Department. In addition to the HTC amount, the Notice will include the Commitment and Inspection Fee to be paid, the Building ID Numbers, any conditions placed on the award and due dates for documentation required to satisfy those conditions and due dates for additional documentation relating to any conditions noted that must be submitted to the Department at a later date. The Applicant must execute the Notice and return the original along with all applicable fees and other required documentation as outlined in the Notice no later than thirty (30) calendar days after its Effective Date. The Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe

outlined in the Bond Reservation of if the financing or development changes significantly as determined by the Department.

General Eligibility Criteria

This section outlines some of the general eligibility criteria for Private Activity Bond and Housing Tax Credit Applications; however, the Applicant is encouraged to review the Multifamily Housing Revenue Bond Rules, the Housing Tax Credit Qualified Allocation Plan (QAP) and the Uniform Multifamily Rules and any applicable state and/or federal regulations for a more comprehensive review of the eligibility requirements for the programs for which they are applying.

- The set-aside requirements for the development include the following and must be evenly distributed throughout the development and shall include an even amount of each type of unit.
 - At the Applicant's option, designated at application, at least **20%** of all completed units must be occupied by persons or families whose income does not exceed **50%** of the area median income; **or**, at least **40%** of all completed units must be occupied by persons or families whose income does not exceed **60%** of the area median income. This requirement must be met on or prior to the closing date unless the development is under construction (these are the minimum federal set asides).
 - **100%** of the units must be occupied by persons or families whose income does not exceed **140%** of area median income;
 - **7%** of the units must be designed for and made available to persons with **special needs** pursuant to §2306.513, Texas Government Code;
 - For additional state set aside requirements see §1372, Texas Government Code.
- Qualified Development Period: Will be the greater of thirty (30) years or the period for which any bonds are outstanding. This is evidenced by a Land Use Restriction Agreement recorded in the real property records of the county in which the Development is located.
- Rent Caps: Maximum allowable rents for set-aside units are 30% of applicable income limits minus an allowance for utilities (local Section 8 utility allowances). A schedule of Maximum Allowable Rents by county is available on the Department's website at the following link <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Applicants must obtain a schedule of local Section 8 utility allowances from the local Housing Authority.
- Tenant Services: The Applicant must offer a variety of tenant services to meet the minimum requirements pursuant to §10.101(b)(7) of the Uniform Multifamily Rules. Specific services must be designed to meet the needs of the current tenant profile and will be required to be identified at the time the LURA is submitted to the Department.
- Fair Housing Act: All Developments must comply with the United States' Fair Housing Act which prohibits discrimination in the sale, rental, and financings of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The

Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

- **Debt Coverage:** A minimum 1.15 debt coverage inclusive of all on-going fees, including the Department's fees, or otherwise higher debt coverage required by rating agency, credit enhancer or private placement buyer.
- **Debt Rating:** Minimum of an "A" rating from Standard & Poors ("S&P"), or an equivalent rating from FITCH or Moody's Investor Service, to-be-maintained on an ongoing basis, for publicly offered bonds. Bonds rated less than "A" must be accompanied by an investor letter. Private placements are allowed without a rating but must be placed with institutional investors under an investor letter acceptable to the Department. Ratings may be obtained through the S&P Affordable Housing Program, private credit enhancement, or FHA insurance.
- **Interest Rate:** Market rate for tax-exempt bonds or a negotiated rate on institutional private placements.
- **Amortization:** Generally 20 to 40 years. Term and amortization will be determined by TDHCA if not determined by credit enhancement provider or bond purchaser.
- **Loan Term:** Generally 30 to 40 years depending on property age and condition as limited by remaining useful life of Development.
- **Loan to Value:** Maximum allowable as determined by credit enhancer, rating agency, or bond purchaser (if private placement). The Department's maximum is generally 100% including debt-service reserves as collateral value.
- **Loan to Cost:** Up to 100% financing, including costs of bond issuance and reasonable and customary fees associated with a real estate transaction. No more than 25% of bond proceeds may be used for acquiring land. Eligible Cost of Issuance must not exceed 2% of the aggregate principal amount of the tax-exempt bonds.
- **Recourse:** Generally non-recourse. However, all obligations of the Applicant to indemnify the issuer, to pay certain fees and expenses, and to comply with appropriate tax covenants will be full recourse obligations against the Borrower.
- **Prepayment:** May be subject to a prepayment fee or assumption fee as required by a private placement buyer. TDHCA requires a 0.25% assumption fee in all cases.
- **Cost of Issuance:** The Applicant is responsible for paying **all** costs of issuance including, but not limited to, fees for bond counsel, disclosure counsel, underwriter, underwriter counsel, financial advisor, bond trustee, trustee counsel, rating agency, and credit provider (if any). Depending on transaction size and complexity, costs of issuance generally range from 3% to 5% of the total debt. Costs of issuance over the 2% eligible for tax-exempt financing may be financed with equity or taxable bond proceeds.

Department Fees due at Closing

The Department, as Issuer, will require an Origination Fee equal to 50 basis points (bps) of the issued bond amount, a Bond Administration Fee equal to 10 bps of the issued bond amount (2 years worth will be due at closing) and a Bond Compliance Fee equal to \$25 per Unit.

Ongoing Department Bond Fees

As part of the issuance of private activity bonds, the Department will require an ongoing Bond Administration Fee equal to 10 bps of the outstanding bond amount, paid in arrears. There will also be an annual Bond Compliance Fee of \$25 per Unit, paid in advance.

Determination Notice

Once an Application has been approved by the TDHCA Board, the Board shall authorize the Department to issue an appropriate notice to the Development Owner that the Development satisfies the requirements of the Uniform Multifamily Rules, the QAP and other applicable Department rules in accordance with §42(m)(1)(D) of the Code. Such notice is referred to as the Determination Notice and is typically issued within a few days after receiving Board approval.

The Determination Notice sets forth the HTC amount with which the Development is eligible to receive based on the Department's underwriting analysis and information provided in the Application. The actual amount of HTC the Development qualifies to receive will be determined at the time the Cost Certification is submitted to the Department. In addition to the HTC amount, the Notice includes the Building ID Numbers, the Issuance, Effective and Expiration dates, any conditions placed on the award and due dates for documentation required to satisfy those conditions and due dates for additional documentation relating to any conditions noted that must be submitted to the Department at a later date.

The Applicant must execute the Notice and return the original along with the documentation identified below no later than thirty (30) calendar days after its Effective Date. The Determination Notice Expiration Date may not be extended without prior Board approval for good cause. The Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe outlined in the Bond Reservation or if the financing or development change significantly as determined by the Department. The documentation to be submitted includes the following:

- ✓ Commitment Fee;
- ✓ Inspection Fee;
- ✓ Proof of Final Zoning (if proposed or needed to be changed from Application);
- ✓ Evidence of authority to do business in Texas. For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation and a Certificate of Fact is submitted. If formed outside the state of Texas, a Certificate of Application for foreign qualification in Texas and a Certificate of Fact from the Texas Secretary of State. If newly formed entity and Certificate of Fact is not available, a statement is provided to that effect;
- ✓ Certificate of Account Status from the Texas Comptroller of Public Accounts or a statement that the entity is newly formed and no certificate exists;

- ✓ Evidence of who has the authority to sign on behalf of the Applicant (i.e. can be in the form of a corporate resolution);
- ✓ Documentation relating to any conditions of the award identified in the REA Underwriting Report that are required to be met at Determination Notice.
- ✓ Documentation relating to any changes to representations made in the application.

Delivery Instructions

Deliver To: Multifamily Finance Division
(overnights) Texas Department of Housing and Community Affairs
 221 East 11th Street
 Austin, Texas 78701

Regular Mail: P.O. Box 13941
 Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery.

Agreement & Election Statement

The Development Owner may execute an Agreement and Election Statement for the purpose of fixing the Applicable Percentage with respect to a building or buildings for the month in which the bonds were closed as provided for in §42(b)(2) of the Code. In situations where bonds were issued at the end of the month, the Development Owner can claim the Applicable Percentage for that month provided the election is made not later than 5th day after the close of such month. If the election is not made for the month the bonds closed, the Applicable Percentage will be determined based on the month each building is placed in service.

The Agreement & Election Statement form is provided by the Department in Word format and can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm>. The Department must receive the original executed Agreement and Election Statement.

Instructions for Completing the Agreement & Election Statement

Opening Section: Fill in the blanks as appropriate.

Section 1: Fill in the month in which the Applicable Percentage will be locked.

Section 2: Complete the percentage of Aggregate Basis for each building; attach a schedule to identify additional buildings, if necessary.

Section 3: Check the appropriate box to indicate the Issuer of the bonds.

Section 4: Execute and notarize the form.

Deadlines for Submitting the Agreement & Election Statement

Should the Development Owner elect to execute the Agreement and Election Statement, they are encouraged to return the executed original to the Department simultaneously with the executed Determination Notice. If the bond closing has not occurred prior to the expiration of the Determination Notice then the Development Owner shall submit the executed Agreement and Election Statement with the Post Bond Closure Submission

documents required 60 days after closing on the bonds as identified previously in this Manual.

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Please note that the Applicant is solely responsible for proper delivery.

Certification of 4% HTC Applications with new Docket Numbers

Applications under the 4% HTC program that receive approval by the Board as evidenced in a Determination Notice, but do not close on the bonds prior to the Certificate of Reservation expiration date (i.e. the 150-day deadline), and subsequently have that docket number withdrawn from the TBRB may have their Determination Notice reinstated.

The Applicant will need to receive a new docket number from the TBRB and meet the requirements of §10.201(3)(A) or (B) of the of the Uniform Multifamily Rule as excerpted below.

The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged. This means that at a minimum, the following cannot have changed:

- site control;
- total number of units;
- unit mix (bedroom sizes and income restrictions);
- design/site plan documents;
- financial structure including bond and HTC amounts;
- development costs;
- rent schedule;
- operating expenses;
- sources and uses;
- ad valorem tax exemption status;

- target population;
- scoring criteria (at Pre-application if TDHCA is Issuer); or
- TBRB priority status including the effect on the inclusive capture rate.

The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged.

The public notifications under §10.203 of the Uniform Multifamily Rules are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable.

If there are changes to the Application as referenced above or if there is public opposition, the Applicant will be required to submit a new HTC Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety in order for a new Determination Notice to be issued.

Deadlines for Submitting the Certification with New Docket Number Form

This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately presented to the Board for consideration. The Applicant must contact the Department to obtain a copy of the *Certification of Tax Exempt Bond Applications with New Docket Numbers* Form.

Post Bond Closure Submission Documents

Documents Required Post Bond Closing

Regardless of the Bond Issuer, the Department will require a series of documents to be submitted not later than sixty (60) calendar days after the closing on the bonds. These documents include the following:

- Copy of the Determination Notice;
- Management Plan;
- Affirmative Marketing Plan Form;
- Evidence of Fair Housing Training;
- Evidence that the Financing has Closed; and
- Agreement and Election Statement (if applicable).

Instructions for Completing the Forms

Management Plan

The Management Plan must clearly state the following and be signed.

1. Prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other prospective tenant;
2. Any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the unit, the housing sponsor may establish other reasonable minimum income requirements to establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8

voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

3. All other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to the prospective tenants uniformly and in a manner consistent with the Texas and Federal Fair Housing Acts and with Department requirements.

Affirmative Marketing Plan Form

The Plan submitted should be the HUD Form that is available at the following link which also includes instructions for completing the form:

<http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>. The form should be completed and signed. If an alternative format for the Affirmative Marketing Plan is being submitted, then the information contained in the Plan must, at a minimum, contain all the information that is included in the HUD Form.

Fair Housing Training

The Development Owner or Management Company must submit evidence of attendance at a Department-approved Fair Housing training relating to leasing and management issues for at least five hours; and

The Development architect or engineer responsible for Fair Housing compliance for the Development must submit evidence of attendance at a Department-approved Fair Housing training relating to design issues for at least five hours, on or before the date the bonds are closed. Certifications must not be older than 2 years from the date of submission of these documents.

Evidence of Closed Financing

The Development Owner must submit evidence that the financing has closed. Such evidence can be in the form of an executed settlement statement.

Agreement and Election Statement

The Development Owner may execute an Agreement and Election Statement for the purpose of fixing the Applicable Percentage with respect to a building or buildings for the month in which the bonds were closed as provided for in §42(b)(2) of the Code. If this Statement was not submitted at the time the executed Determination Notice was submitted to the Department then it should be submitted with these documents, provided the Applicable Percentage was fixed. The Statement should be signed and notarized. The Agreement & Election Statement form is provided by the Department in Word format and can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm>.

Deadline and Method for Submission

These documents must be submitted no later than sixty (60) calendar days after the closing on the bonds and may be submitted via the Department's FTP server, with the

exception of the Agreement and Election Statement which the Department must receive an executed original. The Applicant is encouraged to send staff an email indicating that the documents have been uploaded.

Cost Certification

Deadline for Submission

The Cost Certification documentation for a 4% HTC transaction must be submitted to the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Determination Notice that fails to submit the cost certification documentation by this deadline will be required to request an extension pursuant to §10.405(d) of the Uniform Multifamily Rules.

Documentation Required

The documentation that is required as part of the Cost Certification is detailed in the Cost Certification Procedures Manual which is available on the Department's website at the following link: <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. The Cost Certification package should be submitted in the format outlined in the Manual.

The Cost Certification is handled through the Department's Asset Management division. Each region in the state is assigned a specific Asset Manager and Cost Certification packages should be submitted to the appropriate Asset Manager. The contact list for the Asset Manager regional assignments can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/asset-management/contacts.htm>.

Increases to the Housing Tax Credit Amount

Any increase to the HTC credit amount, from the amount specified in the Determination Notice, at the time each building is placed in service will only be permitted if it is determined by the Department, pursuant to §42(m)(d)(D) of the Code.

Increases to the amount of tax credits that exceed 110% of the HTC amount in the Determination Notice are contingent upon Board approval. Increases that do not exceed 110% of the HTC amount as reflected in the Determination Notice may be approved administratively by the Executive Director pursuant to §10.402(c) of the Uniform Multifamily Rules. Any increase to the HTC amount is subject to the Credit Increase Request Fee which, pursuant to §10.901(11) of the Uniform Multifamily Rules, such request fee shall be equal to 4% of the amount of the credit increase for one (1) year.