



# 2023

# 4% Housing Tax Credit and Tax Exempt Bond Process Manual

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# 4% Housing Tax Credits with Local Bond Issuer

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## 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 (BRB) Designations
- ✓ Application Process and Deadlines for Filing the Application
- ✓ Application Fees
- ✓ Issuance of a Determination Notice
- ✓ Post Bond Closure Submission Information

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## How to Request Tax Credits

The Texas Department of Housing and Community Affairs (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 Application and all information required to apply are available throughout the year on the Multifamily Housing Program's "Apply for Funds" page, located at the following link: <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. 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.

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Applications must be presented to the Department in conformity with the Qualified Allocation Plan (QAP) and other rules 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 relevant rules and regulations, the Application may be terminated.

## 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 is 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 so long as there is private activity bond "volume cap" in which the tax-exempt 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, given the rules and requirements are met.

Expertise is essential to participate in the HTC program. Before applying, Applicants should confer with a professional tax advisor who has considerable expertise specific to the tax credit program. Expertise is essential to determine optimal financing strategies and which costs of the 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 HOME program, National Housing Trust Fund, Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, HOME-ARP, and other federally subsidized below market rate loans. All of the aforementioned fund types further complicate the financing structure of a housing tax credit Development and can affect the closing timeline.

## Selecting a Bond Issuer

Applicants can choose from a variety of issuers in the state, which includes 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 2023 program year, local issuers will have approximately \$651 million in volume cap to issue; TSAHC will have approximately \$93 million and TDHCA will have approximately \$186 million. Local issuers only have the authority to issue bonds to Developments that are within their jurisdiction. For example, for a Development located in Harris County, an Applicant could choose to use the Harris County Housing Finance Corporation as the issuer. 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 additional issuing limitations that may pertain to TSAHC, Applicants are encouraged to contact TSAHC directly.

## Texas Bond Review Board Priority Designation of Applications

The Texas Bond Review Board (BRB) 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 Tex. Gov't Code. This is a designation the Applicant selects on the

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Residential Rental Attachment (RRA) form that is published by the BRB. The form is available on the BRB website and is submitted as part of the pre-application process with the issuer. Once the priority designation is submitted to the BRB by the Issuer and a Certificate of Reservation (Reservation) is issued, it cannot be changed without withdrawing the existing Reservation and having it re-issued. The re-issuance of the Reservation will result in payment of another \$5,000 BRB Application Fee. The priority designation is based on the level of AMFI the proposed Development will serve and includes 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.
  
- ✓ **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 primary reason for selecting one priority over another is in instances where numerous Applications are received and the amount of available volume cap is limited. In such instances and pursuant to §1372.0321 of the Tex. Gov't Code, Priority 1 transactions will be ranked above Priority 2 transactions which will be ranked above Priority 3 transactions. The final decision on which Priority to select belongs to the Applicant. This is most applicable during the annual BRB Lottery since post-Lottery Reservations are issued on a first-come, first-served basis as volume cap becomes available.

## Application Process and Deadlines for Filing a 4% HTC Application

Applicants are encouraged to review §11.201(2) of the QAP for specific requirements relating to the timing by which a 4% HTC Application must be submitted. Moreover, the BRB and TDHCA Frequently Asked Questions document on the Department's website ([Multifamily Bond Program \(state.tx.us\)](https://www.tdhca.state.tx.us/multifamily-bond-program)) may also be reviewed. In general, the submission of the parts of the 4% HTC Application required to meet the BRB requirements to have the Certificate of Reservation issued, is determined by the Priority election under the Certificate of Reservation.

The complete application submission dates are tied to the TDHCA Board Meeting dates or target dates for issuance of the Determination Notice, as applicable, for the calendar year and generally provide the Department with a 90-day review period. Submission dates are generally the fifth day of the month. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

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The 2023 TDHCA Board Meeting dates and corresponding submission deadlines are as follows:

Application Submission Deadline	TDHCA Board Meeting*
October 5, 2022	January 12, 2023
November 7, 2022	February 9, 2023
December 5, 2022	March 9, 2023
January 5, 2023	April 13, 2023
February 6, 2023	May 11, 2023
March 6, 2023	June 15, 2023
April 5, 2023	July 6, 2023 (Tentative)
April 5, 2023	July 27, 2023
June 5, 2023	September 7, 2023
July 5, 2023	October 12, 2023
August 7, 2023	November 9, 2023
September 5, 2023	December 7, 2023

\*Board Meeting dates are subject to change.

The Board meeting dates and the corresponding deadlines are primarily based on the 180-day deadline associated with the Reservation. **It is ultimately the responsibility of the Applicant to determine the appropriate Board meeting or target date for the issuance of the Determination Notice, as applicable, and to submit the Application by the corresponding deadline.** If the Application or Third Party Reports are not submitted by such deadline, the Department cannot ensure that the Application will be included on the originally requested Board meeting agenda or target date for the issuance of the Determination Notice, as applicable, unless staff can complete its evaluation in adequate time for consideration, otherwise delays may occur.

As staff reviews the Application, please note that Administrative Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. The Real Estate Analysis Division is responsible for the underwriting process and will review the Application for financial feasibility and will determine an appropriate funding amount. They will issue Requests for Information as they review an Application and Applicants will be expected to adhere to deadlines to respond as noted therein.

## Application Fees

An Application fee of \$30 per Unit, as further described in §11.901(3) of the QAP, 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 Tex. Gov't Code and §42 of Internal Revenue Code have been met, staff may issue to the Development Owner a notice that the Development satisfies the requirements of the Department's rules and the QAP in accordance with IRC §42(m)(1)(D). Such notice is referred to as the Determination Notice (Notice). Applications that do not include a request for Direct Loan Funds and do not include TDHCA-issued bonds may have the Determination Notice issued administratively by staff and it may not require Board consideration. The Determination Notice sets forth the Department's determination of a specific amount of housing tax credits that the Development may be eligible for 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 annual HTC amount, the Notice will include the Determination Notice Fee amount, Building Identification Numbers (BINs), any conditions placed on the award and due dates for documentation required to satisfy those conditions, and documentation that must be submitted to the Department no later than 60 calendar days after closing. The Applicant must execute the Notice and return an electronic version along with the fee and other required documentation as outlined in the Notice no later than the expiration date stated in the Notice. For additional information relating to how long a Determination Notice is valid, refer to §11.906 of the QAP.

## Post Bond Closure Submission Information

No later than 60 calendar days after the bond closing, the Applicant must submit a series of documents to the Department. Such documents are further explained in §11.906(d) of the QAP. Additional information, including instructions for completing the documents, is further explained in this Manual.

# 4% HTC with TDHCA as Bond Issuer

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## 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 (BRB) Designations
- ✓ Deadlines for Filing the Application
- ✓ Application Fees
- ✓ PAB and HTC Application Process
- ✓ Department Fees Due at Closing
- ✓ Ongoing Department Bond Fees

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## 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 acquisition and rehabilitation, and new construction of affordable rental units. Applications for financing are submitted to the Department for review and a recommendation will then be made to the Department's Governing Board. Developments financed through these programs are subject to unit set-aside restrictions for low-income tenants, tenant services, maximum rent limitations, and other requirements as determined by the Department 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 to 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:



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<http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm> and should be submitted via email a few days before the Pre-application to Teresa Morales at [Teresa.morales@tdhca.state.tx.us](mailto:Teresa.morales@tdhca.state.tx.us) and Liz Cline at [liz.cline@tdhca.state.tx.us](mailto:liz.cline@tdhca.state.tx.us).

## 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. Austin Local Time according to the following submission deadlines:

Submission Dates	Inducement Board Meeting*
December 8, 2022	January 12, 2023
January 5, 2023	February 9, 2023
February 2, 2023	March 9, 2023
March 9, 2023	April 13, 2023
April 6, 2023	May 11, 2023
May 11, 2023	June 15, 2023
June 1, 2023	July 6, 2023 (Tentative)
June 22, 2023	July 27, 2023
August 3, 2023	September 7, 2023
September 7, 2023	October 12, 2023
October 5, 2023	November 9, 2023
November 2, 2023	December 7, 2023

\*Board Meeting dates are subject to change.

The Applicant must identify and notify all Neighborhood Organizations on record with the county or the Secretary of State as of 30 days prior to the Full Application Delivery Date and whose boundaries include the entire proposed Development Site. Such organizations should be listed in the certification form provided in the Pre-Application. The specific requirements for these request letters can be found in §12.5(8) of the Multifamily Housing Revenue Bond Rules and §11.203 of the QAP which can be found on the Department's website at the following link: <http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>.

Explicit instructions for the Bond Pre-Application, including the documentation required as well as the proper format for submission can be found in the 2023 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 Requirements and Scoring 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, will be presented to the Department's Governing 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; however approval of the inducement resolution does not guarantee a final Board approval of the Bond Application. Upon the approval of the Inducement Resolution by the Governing 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 (Reservation) issued by BRB.

## 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 and the Schedule of Fees on the Department's website:

- ✓ \$1,000 (payable to TDHCA);
- ✓ \$5,000 (payable to Bracewell LLP, 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 LLP covers the review and drafting of the Inducement Resolution; and the fee to the Texas Bond Review Board covers the review and issuance of the Reservation.

## Texas Bond Review Board Priority Designation of Applications

The BRB administers the Private Activity Bond (PAB) program and has identified priority designations, pursuant to §190.2(d)(1) – (3) of Texas Administrative Code and §1372.0321 of Tex. Gov't Code. This is a designation the Applicant selects on the Residential Rental Attachment (RRA) form that is published by BRB. Such form is available on the BRB website and is required as part of the Pre-Application. Once submitted to BRB by the Issuer and a Reservation is issued, the priority designation cannot be changed without withdrawing the current Reservation and having it re-issued. Such re-issuance of the Reservation will result in payment of an additional \$5,000 BRB Application Fee. The priority designation is based on the level of AMFI 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.
- ✓ **Priority 2 (Must apply for 4% HTC)**
  - Set aside 80% of units rent-capped at 30% of 60% AMFI.

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- 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 primary reason for selecting one priority over another is in instances where numerous Applications are received and the amount of available volume cap is limited. The final decision on which Priority to select belongs to the Applicant. The Department will score and rank all Applications in accordance with §12.6 of the Multifamily Housing Revenue Bond Rules. This is most applicable during the annual BRB Lottery since post-Lottery Reservations are issued on a first-come, first-served basis as volume cap becomes available.

## Deadlines for Filing the 4% HTC and PAB Application

Once the Inducement Resolution has been approved by the Department’s Governing Board, an application for volume cap will be submitted to BRB in the rank order determined by the Department to await a Reservation. The 4% HTC Application and the PAB Application are essentially the same; there is not a separate PAB Application that will need to be submitted to the Department.

Applicants are encouraged to review §11.201(2) of the QAP for specific requirements relating to the timing by which a 4% HTC Application must be submitted. Moreover, the BRB and TDHCA Frequently Asked Questions document on the Department’s website ([Multifamily Bond Program \(state.tx.us\)](https://www.tdhca.state.tx.us/multifamily-bond-program)) may also be reviewed. In general, the submission of the parts of the 4% HTC Application required to meet the BRB requirements to have the Certificate of Reservation issued, is determined by the Priority election under the Certificate of Reservation.

The complete application submission dates are tied to the TDHCA Board Meeting dates or target dates for issuance of the Determination Notice, as applicable, for the calendar year and generally provide the Department with a 90-day review period. Submission dates are generally the fifth day of the month. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. The 2023 TDHCA Board Meeting dates and corresponding submission deadlines are as follows:

Application Submission Deadline	TDHCA Board Meeting*
October 5, 2022	January 12, 2023
November 7, 2022	February 9, 2023
December 5, 2022	March 9, 2023
January 5, 2023	April 13, 2023
February 6, 2023	May 11, 2023
March 6, 2023	June 15, 2023

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April 5, 2023	July 6, 2023 (Tentative)
April 5, 2023	July 27, 2023
June 5, 2023	September 7, 2023
July 5, 2023	October 12, 2023
August 7, 2023	November 9, 2023
September 5, 2023	December 7, 2023

\*Board Meeting dates are subject to change.

The Board meeting dates and the corresponding day deadlines are primarily based on the 180-day deadline associated with the Reservation. **It is ultimately the responsibility of the Applicant to determine the appropriate Board meeting and to submit the remaining Parts of the Application by the corresponding deadline.** If the Application and Third Party reports are not submitted by such deadline, the Department cannot ensure that the Application will be included on the originally requested Board meeting date unless staff can complete its evaluation in adequate time for Board consideration, otherwise delays may occur.

The submission format of the HTC Application must follow the requirements outlined in the 2023 Multifamily Application 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>.

## Application Fees

An HTC Application fee of \$30 per Unit and a bond application fee of \$20 per Unit based on the total number of Units, as further described in §11.901(3) of the QAP and §12.10(b) of the Multifamily Housing Revenue Bond Rules, respectively, must be submitted with the Application. The fees should be submitted as individual, separate payments. For Developments proposed to be structured as part of a portfolio, fees may be reduced on a case by case basis at the discretion of Department staff.

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 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 100,000; 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% of the calculated Application fee. Appropriate documentation must be submitted with payment in order to receive the discounted fee.

## **PAB and HTC Application Process**

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.

Department staff will prepare a preliminary timeline once the Reservation has been issued, the public hearing has been scheduled, and closing dates have been tentatively set, if such timeline has not already been created by a member of the working group. The timeline will be distributed to the working group in an effort to keep the transaction progressing and meeting key target dates. Subsequent to filing the Application, the Department’s bond counsel and financial advisor will provide the Applicant with engagement letters based upon the proposed bond financing structure. Staff will also provide the Applicant with a distribution list of TDHCA-related parties that will be working on the transaction. The Applicant and/or bond underwriter will update the distribution list with other key parties and distribute to the working group.

No later than 35 calendar days after the Reservation is issued, a filing will be made on the Applicant’s behalf by the Department’s bond counsel. The intent of the filing is to solidify the Applicant’s organizational structure, specifically, the identity of the Borrower and General Partner. Once this filing is made, the aforementioned entities cannot be changed. NOTE: The principals that comprise the General Partner are not reflected in the filing and may be modified once the filing is made. Bond counsel will compile the documentation and request the appropriate signatures from the Applicant. The fee to be included with the filing includes one-third of the BRB closing fee, which is based on the amount of volume cap reserved as reflected in the Reservation. The remaining two-thirds of the BRB closing fee is also requested at this time; however, it is not paid until 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, facility rental or deposit and security fee, if applicable. The Department requires the Applicant (or any member of the Development Team as designated by the Applicant) to attend and will schedule the hearing on a date mutually agreed upon by the Department and the Applicant. Bond counsel will draft a hearing notice, which will be publicized in the local newspaper(s), sent to United States, State and

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Local Officials representing the subject Development location, and Neighborhood Organizations of record. The hearing and any public comment made will be transcribed and the transcript will be included in the Board presentation for the proposed Development. The Internal Revenue Service (IRS) issued Revenue Procedure 2022-20, which made permanent the Department's authority to conduct telephonic public hearings for Tax Exempt Bonds in accordance with IRS guidance, unless it is determined by the Department that an in person TEFRA hearing is more appropriate.

Once the complete HTC Application, including all Third Party reports and all applicable fees have been received, the Application will be reviewed for compliance with the requirements of the Department's rules and the QAP. Any additional information, clarification or explanation that is needed will be requested through an Administrative Deficiency. The QAP, specifically §11.201(7), outlines the deficiency process in detail. As staff reviews the Application, please note that Administrative Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure that the Application meets the original target date for a Board meeting or administrative issuance of a Determination Notice, as applicable. The Real Estate Analysis Division is responsible for the underwriting process and will review the Application for financial feasibility and will determine an appropriate funding amount.

Simultaneously with the Department's review of the HTC Application, the working group, including but not limited to Department staff (in its capacity as the issuer), its bond counsel, financial advisor, and disclosure counsel, along with the Borrower and its counsel, bond underwriter and its counsel, limited partner and its counsel, and bond trustee and its counsel will have regular conference calls to solidify the bond financing documents. It is imperative that all parties review and provide comments on the documents as applicable so that the key deadlines relating to filings with the Texas Attorney General's Office and the TDHCA Board are made. Typically, multiple drafts of the bond financing documents should be anticipated before the documents are considered substantially final.

All Third Party final commitments (Credit Enhancer, Tax Credit Equity Provider, 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 14 business days prior to the posting of the Department's Board meeting agenda in order to ensure complete and accurate information is available for Board consideration. Moreover, no later than 14 calendar days before the Board meets to consider the transaction, the Applicant must submit to the Department any required local resolutions pursuant to all applicable program rules.

Upon completion of underwriting, the substantial finalization of the bond financing documents, and the final bond resolution, the Application is presented to the Department's Governing Board for its consideration of 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 terms (*e.g.* bond amount, interest rate, and maturity date) must be identified in the Bond Resolution for Board consideration, and once approved by the Department's Board, cannot be altered. In the case of publicly offered bonds the bond terms can be delegated to the bond underwriter and what is reflected in the Bond Resolution are parameters by which these terms cannot exceed. All documentation that will be presented to the Board will be made available on the Department's website seven days prior to the meeting at the following link: [http://www.tdhca.state.tx.us/au\\_boardcenter.htm](http://www.tdhca.state.tx.us/au_boardcenter.htm). This includes the Real Estate Analysis Underwriting Report detailing the recommended amount of bonds and housing tax credits along with any conditions relating to the award.

The approval process on the bonds consists of approval by the Department's Governing Board and the Texas Attorney General's Office. Bond documents and related supporting documents and certificates must be provided to the Texas Attorney General's Office for review at least 17 business days prior to closing. Approval of the documents is affirmed with the release of the Attorney General's opinion at closing. The Department's housing transactions that have no impact to the state's general revenue fund may be exempt from approval by BRB with the exception of housing transactions that request an ad valorem tax reduction or exemption. The consideration of the BRB Planning Session and Board meeting dates are factored into the timeline for closing, should they be required. Once the Department receives approval from BRB, 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). Bond Counsel will coordinate the final 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 is generally a two day process whereby pre-closing typically consists of the review and execution of closing documents and wires of funds initiated; with the sale of the bonds and dispersion of the funds occurring on the following day.

On the tax credit side of the transaction, once approved by the Department's Board, staff is authorized to issue to the Development Owner a notice indicating the Development satisfies the requirements of the QAP and other Department rules in accordance with IRC §42(m)(1)(D). Such notice is referred to as the Determination Notice (Notice) and is typically issued within a few days after receiving Board approval. The Notice sets forth the Department's determination of a specific amount of housing tax credits (HTC) the Development may be eligible for 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 annual HTC amount, the Notice will include the Determination Notice Fee amount, the Building Identification Numbers (BINs), Board Approval Date, BRB Docket Number, any conditions placed on the award and due dates for documentation required to satisfy those conditions, and documentation that must be submitted to the Department 60 calendar days after closing. The Applicant must execute the Notice and return an electronic version along with the fee and other required documentation as outlined in the Notice no later than the expiration date stated in the Notice.

## **Department Fees due at Closing**

The Department, as Issuer, will require an Origination Fee equal to 50 basis points of the issued principal bond amount, a Bond Administration Fee equal to 10 basis points of the issued bond amount (2 years' worth will be due at closing, with the first year fee prorated based on the closing date) and a Bond compliance fee equal to \$25 per Unit (excludes market rent units); which shall be applied to the third year following closing.

## **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 basis points of the outstanding bond amount on its date of calculation and must be paid as long as the Bond are outstanding. There will also be an annual Bond compliance fee of \$25 per Unit (excludes market rent units) and is paid for the duration of the State Restrictive Period under the Bond Regulatory Agreement, regardless of whether or not the Bonds have been paid off and are no longer outstanding.



# Determination Notice

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If the Department determines that all requirements under the Department's Administrative rules, §2306 of Tex. Gov't Code and §42 of Internal Revenue Code have been met, staff may issue to the Development Owner a notice that the Development satisfies the requirements of the Department's rules and the QAP in accordance with IRC §42(m)(1)(D). Such notice is referred to as the Determination Notice (Notice) and is typically issued within a few days after receiving Board approval. Applications that do not include a request for Direct Loan Funds and do not include TDHCA-issued bonds may have the Determination Notice issued administratively by staff and it may not require Board consideration.

The Determination Notice sets forth the Department's determination of a specific amount of housing tax credits that the Development may be eligible for 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 annual HTC amount, the Notice includes the Determination Notice Fee amount, the Building Identification Numbers (BINs), Board Approval Date (if applicable), Effective and Expiration dates, any conditions placed on the award with applicable due dates for documentation required to satisfy those conditions, and documentation that must be submitted to the Department no later than 60 calendar days after closing.

The Applicant must execute the Notice and return an electronic version along with the documentation identified below no later than the expiration date stated in the Notice. For additional information relating to how long a Determination Notice is valid, refer to §11.906 of the QAP. The documentation to be submitted includes the following:

- ✓ Determination Notice 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;
- ✓ Franchise Tax Account Status from the Texas Comptroller of Public Accounts or a statement that the entity is newly formed and no certificate exists;

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- ✓ Evidence in the form of a corporate resolution of who has sufficient authority to sign on behalf of the Applicant and that the sub-entity in Control is consistent with that proposed in the Application;
- ✓ If applicable, evidence in the form of a letter from an attorney identifying the statutory basis for the property tax exemption and whether or not the exemption is reasonably achievable, subject to the appraisal district's review;
- ✓ If applicable, evidence regarding the statutory basis for the proposed Payment in Lieu of Taxes (PILOT) agreement and its terms;
- ✓ Documentation relating to any conditions of the award identified in the Real Estate Analysis Underwriting Report, any conditions from the Executive Award Review and Advisory Committee relating to Previous Participation, or any other conditions of the award that are required to be met at Determination Notice;
- ✓ Documentation relating to any changes to representations made in the application subject to §10.405 of the Post Award and Asset Management Requirements, relating to Amendments and Extensions.

## Delivery Instructions

Electronic delivery should be used for all required items with the exception of the Determination Notice Fee. The items should be submitted in one pdf file via the Department's ServU HTTPS file server. The Applicant must send staff an email indicating that the documents have been submitted.

The Fee should be submitted via overnight mail or regular US Mail to the applicable address below. Please note that the Applicant is solely responsible for proper and timely delivery.

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

# Withdrawal of Certificate of Reservation for 4% HTC Applications

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If the Certificate of Reservation from the BRB has been withdrawn prior to the issuance of a Determination Notice, the Applicant is required to notify the Department before 5:00 p.m. on the business day after the withdrawal. The Application will be suspended if a new Certificate of Reservation has not been issued by the TBRB within five business days following the date of withdrawal. The Application will be terminated on the fifth business day following the date of suspension if the new Certificate of Reservation has not been issued by the TBRB. Once the new Certificate of Reservation is issued, the Applicant must ensure that the Application is complete as submitted and closing under the Certificate of Reservation must be feasible. The Department will determine whether the existing Application can still be utilized for review or whether a new Application and payment of another Application Fee will be necessary. The Department will not prioritize processing the new Application over other Applications that are under review, regardless of the stage of review the Application was in prior to termination, and the original Board meeting selection or targeted date for the issuance of the Determination Notice may not be maintained.

# Post Bond Closure Submission Documents

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## Documents Required Post Bond Closing

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

- copy of the executed Determination Notice,
- evidence of Fair Housing Training,
- evidence that the Financing has closed,
- confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement, and
- an initial construction status report consisting of items (1)-(6) of §10.401(b) of the Post Award and Asset Management Requirements.

## Instructions for Completing the Forms

### Fair Housing Training

The Development Owner (must be an individual that can be identified as part of the ownership structure on the Development's Organization Chart) and on-site or regional property manager must attend and pass at least five hours of a Department approved Fair Housing training. A list of approved trainings can be found on the Department's Fair Housing web page under TDHCA Approved Fair Housing Training "Property Owner and Managers."

Certifications must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; and

The Development Lead Architect or Engineer responsible for certifying compliance with the Department's accessibility and construction standards must attend and pass at least five hours of a Department approved Fair Housing training. A list of approved trainings can be found on the Department's Fair Housing web page under TDHCA Approved Fair Housing Training "Architect and Engineers." Certifications must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed.

### 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.

### Initial Construction Status Report

The Development Owner must submit the initial Construction Status Report. Additional information can be found in §10.401(b) of the Post Award and Asset Management Requirements and Asset Management Post Award Activities Manual on the Department's website at the following link: <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>.

### Contract Monitoring and Tracking System

Provide evidence that the required CMTS Filing Agreement has been submitted to the Department's Compliance Division pursuant to §10.607(a) of the Compliance Rules. The form can be found at the following link to the Compliance Monitoring & Tracking System page: [https://www.tdhca.state.tx.us/comp\\_reporting.htm](https://www.tdhca.state.tx.us/comp_reporting.htm)

### **Deadline and Method for Submission**

These documents must be submitted no later than 60 calendar days after the closing on the bonds and may be submitted via the Department's ServU HTTPS file server. The Applicant must send staff an email indicating that the documents have been uploaded.

# Cost Certification

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## 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 first year of the Credit Period. Any Development 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(c) of the Post Award and Asset Management Requirements.

## Documentation Required

The documentation that is required as part of the Cost Certification is detailed in the Post Award Activities 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 in 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 in the amount of tax credits that exceed 120% of the HTC amount reflected in the Determination Notice are contingent upon Board approval. Increases that do not exceed 120% of the HTC amount as reflected in the Determination Notice may be approved administratively by the Executive Director or designee pursuant to §10.401(d) of the Asset Management Requirements. Any increase in the HTC amount is subject to the Credit Increase Request Fee which, pursuant to §11.901(8) of the QAP.