



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**

Building Homes. Strengthening Communities.

**2015
4% Housing Tax
Credit and Tax
Exempt Bond Process
Manual**

221 East 11th Street
Austin, Texas 78701

Table of Contents

4% Housing Tax Credits (HTC) with Local Bond Issuer3
4% HTC with TDHCA as Bond Issuer9
Determination Notice..... 20
Agreement and Election Statement 22
Certification of 4% HTC Applications with New Docket Numbers 24
Post Bond Closure Submission Documents..... 26
Cost Certification 28

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 Filing 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 Multifamily Housing Programs Apply for Funds page 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 the rules and requirements are met.

Expertise is needed to participate in the HTC program. Before applying, Applicants should have consulted with 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 2015 program year, local issuers will have approximately \$420 million in volume cap to issue; TSAHC will have approximately \$60 million and TDHCA will have approximately \$120 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 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/pab2015app.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.
<https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>

- ✓ **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 numerous Applications are received and the amount of available volume cap is limited. 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

Applications designated as a Priority 1 or Priority 2 by the TBRB must receive a notice of reservation prior to submission of the HTC Application. Those designated as a Priority 3 by the TBRB will not be accepted until after the issuer has induced the bonds. Upon receipt of the notice of reservation for the 2015 Program Year for private activity volume cap the required Parts of the HTC Application must be submitted 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 communicate 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 within this timeframe.

- Priority 3 Applications may submit Parts 1-4 of the HTC Application to the Department prior to the Certificate of Reservation being issued; provided that

2015 4% HTC/Bond Process Manual

the bonds have been induced by the issuer. Confirmation of the reservation having been issued not more than thirty (30) days after the Application has been submitted to the Department will be required. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation of the Certificate of Reservation having been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe.

The Application fee, as further described in §10.901(3) of the Uniform Multifamily 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 2015 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 2015 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 2015 TDHCA Board Meeting dates and corresponding 75-day deadlines are as follows:

75 Day Deadline	TDHCA Board Meeting*
November 3, 2014	January 15, 2015
December 5, 2014	February 19, 2015
December 29, 2014	March 12, 2015
January 30, 2015	April 16, 2015
February 20, 2015	May 7, 2015
April 2, 2015	June 16, 2015
April 16, 2015	June 30, 2015
May 1, 2015	July 16, 2015
May 15, 2015	July 30, 2015
June 19, 2015	September 3, 2015
July 31, 2015	October 15, 2015
August 28, 2015	November 12, 2015
October 2, 2015	December 17, 2015

*Board Meeting dates are subject to change.

Once the Certificate of Reservation has been issued by the TBRB, Department staff will notify the Applicant or other designated contact and indicate the possible TDHCA Board meeting dates at which the Application can be presented to the Department’s Board for consideration of a Determination Notice. The Board meeting dates and the corresponding

75-day deadlines are primarily based on the 150-day deadline noted in the Certificate of Reservation. **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 agenda, unless staff can complete its evaluation in sufficient time for Board consideration, otherwise delays may occur. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in §10.201(6) of Subchapter C of the Uniform Multifamily Rules. Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice or may recommend the award be conditioned upon the bond closing occurring within a reasonable timeframe after Board approval. 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 Notice 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.

Applicants that disclose the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of the Uniform Multifamily Rules must submit a \$500 fee for Department review of such characteristics. If an Applicant submits an Application for the same Development Site, the Application Fee assessed will be reduced by \$500.

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 to the Development Owner a notice 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 annual HTC amount, the Notice will include the Determination Notice and Inspection Fee amounts, the Building Identification Numbers, Board Approval Date, the TBRB 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 sixty (60) days after closing. 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 Bonds are not closed by the Certificate of Reservation expiration date or within the timeframe provided by the Board at the time of approval 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 are further explained in §10.402(e) of the 2015 Uniform Multifamily Rules. More information, including instructions for completing the documents is 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 Filing 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 Department's Governing 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 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 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> and can be submitted a few days before the Pre-application.

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. Central Time Zone based on the following submission deadlines:

Submission Dates	Inducement Board Meeting*
December 11, 2014	January 15, 2015
January 15, 2015	February 19, 2015
February 5, 2015	March 12, 2015
March 12, 2015	April 16, 2015
April 2, 2015	May 7, 2015
May 12, 2015	June 16, 2015
May 26, 2015	June 30, 2015
June 11, 2015	July 16, 2015
June 25, 2015	July 30, 2015
July 30, 2015	September 3, 2015
September 10, 2015	October 15, 2015
October 8, 2015	November 12, 2015
November 12, 2015	December 17, 2015

*Board Meeting dates are subject to change.

The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the 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(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 2015 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, 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. 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 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 & Giuliani, 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 & Giuliani 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.

If the Applicant intends to disclose, at the time of pre-application, the presence of an undesirable neighborhood characteristic pursuant to §10.101(a)(4) of the Uniform Multifamily Rules, then the Undesirable Neighborhood Characteristic Disclosure Fee of \$500, as required by §10.901(21) must accompany the pre-application.

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/pab2015app.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.

2015 4% HTC/Bond Process Manual

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.
<https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>

- ✓ **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 belongs to the Applicant.

Deadlines for Filing the 4% HTC and PAB Application

Once the Pre-application has been approved by the TDHCA Board, an application for volume cap 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. Applications designated as a Priority 1 or Priority 2 by the TBRB must receive a notice of reservation prior to submission of the HTC Application. Those designated as a Priority 3 by the TBRB will not be accepted until after the bonds have been induced.

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. Upon receipt of the notice of reservation for the 2015 Program Year for private activity volume cap, the required Parts of the HTC Application must be submitted 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 this timeframe.

2015 4% HTC/Bond Process Manual

- Priority 3 Applications may submit Parts 1-4 of the HTC Application to the Department prior to the Certificate of Reservation being issued; provided that the bonds have already been induced. The Certificate of Reservation must be issued not more than thirty (30) days after the Application has been submitted to the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days for the Certificate of Reservation to be issued.

The Application fee, as further described in §12.10(b) of the 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 2015 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 2015 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 2015 TDHCA Board Meeting dates and corresponding 75-day deadlines are as follows:

75 Day Deadline	TDHCA Board Meeting*
November 3, 2014	January 15, 2015
December 5, 2014	February 19, 2015
December 29, 2014	March 12, 2015
January 30, 2015	April 16, 2015
February 20, 2015	May 7, 2015
April 2, 2015	June 16, 2015
April 16, 2015	June 30, 2015
May 1, 2015	July 16, 2015
May 15, 2015	July 30, 2015
June 19, 2015	September 3, 2015
July 31, 2015	October 15, 2015
August 28, 2015	November 12, 2015
October 2, 2015	December 17, 2015

*Board Meeting dates are subject to change.

Once the Certificate of Reservation has been issued by the TBRB, Department staff will notify the Applicant or other designated contact and indicate the possible TDHCA Board meeting dates at which the Application can be presented to the Department’s Board for

consideration of a Determination Notice. The Board meeting dates and the corresponding 75-day deadlines are primarily based on the 150-day deadline noted in the Certificate of Reservation. **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 unless staff can complete its evaluation in sufficient time for Board consideration, otherwise delays may occur. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in §10.201(6) of Subchapter C of the Uniform Multifamily Rules. Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice or may recommend the award be conditioned upon the bond closing occurring within a reasonable timeframe after Board approval. 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 Notice to issue HTC.

Application Fees

An 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 Bond 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.

Applicants that disclosed the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of the Uniform Multifamily Rules at the time of pre-application and submitted the \$500 Undesirable Neighborhood Characteristics Disclosure Fee, then the HTC Application Fee assessed will be reduced by \$500.

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 and receipt of an approved Determination Notice 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 issued, 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 and financial advisor will provide the Applicant with engagement letters based upon the contemplated bond financing structure. Staff will also provide the Applicant with a distribution list of TDHCA-related parties who will be working on the transaction. The Applicant and/or underwriter should update the distribution list with other key parties and distribute to the working group.

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 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, facility rental or deposit 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 mutually agreed upon by the Department and the Applicant. Bracewell & Giuliani will draft a hearing notice which will be publicized in the local newspaper(s), sent to US, State and Local Officials representing the subject Development location 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 have 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 or clarification that is needed will be requested through an Administrative Deficiency. The Uniform Multifamily Rules, specifically §10.201(7), outlines the deficiency process and any applicable 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 parties review and provide comments on the documents as applicable so the key deadlines relating to filings with the Attorney General's Office and the TDHCA Board are made. Typically, multiple drafts of the bond financing 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 Department's board meeting agenda in order to insure complete and accurate information is available for Board consideration. Moreover, 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, the substantial finalization of the bond financing documents and the final bond resolution, the Application is presented to the Department's Governing 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 parameters (*e.g.* bond pricing, interest rate and maturity date) must be identified in the Bond Resolution for TDHCA Board consideration and once approved by the Department's 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 review at least 17 business days prior to closing. Their approval is solidified with the release of their 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 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 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 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 the Development Owner a notice indicating 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 annual HTC amount 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 annual HTC amount, the Notice will include the Determination Notice and Inspection Fees to be paid, the Building Identification Numbers, Board Approval Date, the TBRB 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 sixty (60) days after closing. 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 Bonds are not closed by the Certificate of Reservation expiration date or within the timeframe provided by the Board at the time of approval or 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, 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;
 - **5%** 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 of the Texas Government Code.
- **Qualified Project Period:** Will generally be the greater of thirty (30) years or the period for which any bonds are outstanding. This is evidenced by a Bond Regulatory and Land Use Restriction Agreement recorded in the real property records of the county in which the Development is located. There will also be an affordability period associated with the housing tax credits and further evidenced by an HTC Land Use Restriction Agreement.
 - **Rent Caps:** Maximum allowable rents for set-aside units are 30% of applicable income limits minus an allowance for utilities. 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. The Owner may change, from time to time, the services offered; however, the overall points selected at Application must remain the same. The tenants must be provided written notice of the elections made by the Development Owner and no fees may be charged.
 - **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 a traveling 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; 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 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 annual HTC amount 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 annual HTC amount, the Notice includes the Building Identification Numbers, Board Approval Date, the TBRB Docket Number, Effective and Expiration dates, 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 sixty (60) days after closing.

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 Bonds are not closed by the Certificate of Reservation expiration date or within the timeframe provided by the Board at the time of approval or if the financing or development changes significantly as determined by the Department. The documentation to be submitted includes the following:

- ✓ Determination Notice Fee;
- ✓ Building 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;

2015 4% HTC/Bond Process Manual

- ✓ Franchise Tax Account Status from the Texas Comptroller of Public Accounts or a statement that the entity is newly formed and no certificate exists;
- ✓ Evidence in the form of a corporate resolution of who has the authority to sign on behalf of the Applicant;
- ✓ Documentation relating to any conditions of the award identified in the Real Estate Analysis Underwriting Report 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 Uniform Multifamily Rules, relating to Amendments and Extensions.

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 and timely 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>.

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

Section 3: 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 a copy 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 sixty (60) days after closing on the bonds as identified previously in this Manual.

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221 East 11th Street
Austin, Texas 78701

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Austin, Texas 78711

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

Certification of 4% HTC Applications with new Docket Numbers

Applications under the 4% HTC program that receive Board approval as evidenced by a Determination Notice, but do not close on the bonds prior to the Certificate of Reservation expiration date (*e.g.* the 150-day deadline), and subsequently have that docket number withdrawn from the TBRB may have their Determination Notice reinstated. 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 will need to receive a new docket number from the TBRB and meet the requirements of §10.201(3)(A) - (C) of the Uniform Multifamily Rules as excerpted below.

(A) 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. It is important to note that reissuance of a Determination Notice will be subject to capture rate provisions pursuant to §10.201(6)(A) of the Uniform Multifamily Rules as well as de-concentration factors pursuant to §11.3 of the Qualified Allocation Plan. The priority of Tax-Exempt Bond Developments are established based on the earlier date associated with the Certificate of Reservation; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the following requirements must be met:

- The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and
- The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) If there are changes to the Application as those referenced in paragraph (A) above or if such changes in the rules pursuant to paragraph (B) are of a material nature, the Applicant will be required to submit a new Application in full, along with the applicable fees to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition, but the Application remains the same pursuant to paragraph (A), a new application and fees will not be required to be submitted; however the application must be presented before the Board for consideration of a re-issuance of the Determination Notice.

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. 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 executed Determination Notice;
- Management Plan;
- Affirmative Marketing Plan;
- 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 submitted must meet the requirements in §10.610 of the Uniform Multifamily Rules regarding Tenant Selection Criteria.

Affirmative Marketing Plan

Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program.

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. The Affirmative Marketing Plan must be in compliance with the Department's Affirmative Marketing Rule in §10.617 of the Uniform Multifamily Rules.

Fair Housing Training

The Development Owner and on-site or regional property manager must attend at least five (5) 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 be dated within the last year as of the date of submission of these documents; and

The Development Lead Architect or Engineer responsible for certifying compliance with the Department's accessibility and construction standards must attend at least five (5) 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 be dated within the last year as of the date of the 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 of Assignment and Assumption of LURA

If the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply") must be submitted.

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. The

2015 4% HTC/Bond Process Manual

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 Post Carryover 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 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.