



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Multifamily Finance Production Division 2009 BOND PRE-APPLICATION SUBMISSION PROCEDURES MANUAL

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I. INTRODUCTION

The Texas Department of Housing and Community Affairs' (the Department) Multifamily Bond Pre-Application Submission Procedures Manual sets forth the basic information needed for filing a Private Activity Bond Pre-Application and briefly outlines the full application process. All portions of the manual must be followed when filing a Pre-Application. This document is meant to serve only as a complementary guide on how to put the Pre-Application together. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the programs they are applying for.

Tax Credits for Tax-Exempt Bond Developments: For Applications involving Tax-Exempt Bonds with the Department serving as the issuer – a Bond Pre-Application will coincide with the 4% Tax Credits. There is not a cumulative ceiling to these types of Applications, however to the extent that there is a bond ceiling governed by the Texas Bond Review Board, the quantity of corresponding 4% Tax Credit Applications is limited. Pre-Application submission deadlines relating to this program are outlined in this Manual.

II. 2008 BOND PRE-APPLICATION WAITING LIST SUBMISSION TIMELINE

The Texas Department of Housing and Community Affairs (the "TDHCA") is accepting additional applications for the 2009 Private Activity Bond Program to be placed on the "waiting list". The applications will be accepted on a monthly basis with deadlines for submission outlined below. All applications must be submitted before 5:00 p.m. CST on the submission date. Applications received each month will be scored and ranked for that month and will be presented to the TDHCA board for inducement the following month. The applications will then be submitted to the Texas Bond Review Board (the "TBRB") to await a reservation in order of descending score. Multiple site applications will be scored on their own merits and the final score will be determined based on an average of all the individual scores. The TBRB will issue reservations on a first come first serve basis (to issuers) after all applications participating in the lottery have been reserved or withdrawn. The reservations will be issued in the order that TDHCA submits.

2009 Waiting List Submission Timeline for the Multifamily Bond Program

Request for Neighborhood Organizations	Submission Dates	Public Comment Deadline	Inducement Board Meeting*
N/A	N/A	N/A	No meeting in January
December 19	January 2	January 27	February 5, 2009
January 22	February 5	March 3	March 12, 2009
March 5	March 19	April 14	April 23, 2009
April 2	April 16	May 12	May 21, 2009
May 7	May 21	June 16	June 25, 2009
May 28	June 11	July 7	July 16, 2009
June 11	June 25	July 21	July 30, 2009
N/A	N/A	N/A	No meeting in August
July 16	July 30	August 25	September 3, 2009
August 27	September 10	October 6	October 15, 2009
October 1	October 15	November 10	November 19, 2009
October 29	November 12	December 8	December 17, 2009

*Board Meeting Dates are subject to change.

III. BOND REVIEW BOARD PRIORITY OF RESERVATIONS

Priority 1

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

Priority 2

- (a) Set aside 80% of units rent capped at 30% of 60% AMFI.
- (b) Up to 20% of the units can be market rate.

Priority 3

- (a) Includes any qualified residential rental development. Market rate units can be included under this priority.

IV. FORMAT FOR SUBMITTING THE MULTIFAMILY BOND PRE-APPLICATION

The Pre-Application for the Private Activity Bond and Housing Tax Credit program consists of one bookmarked electronic copy of the complete Pre-Application and must be submitted in one PDF file on a recordable compact disk (CD-R). The disk should NOT be rewritable to protect the integrity of the data stored on the disk. This electronic copy must be submitted in the following required format:

- The tabs must be correctly bookmarked.
- Files should average less than 100 Kilobytes per page.
- Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above.
- Files should be saved so that "Fast Web View" (or page-at-a-time downloading) is enabled. Text within the PDF file should be searchable using the "Find" command in the PDF viewer.
- The PDF file should be named in the following format -- <file_name>.pdf (e.g., Greens_Crossing.pdf).
- Please note that the PDF format is an open technology and not proprietary to Adobe, therefore other PDF format applications are available to the public. Questions about the electronic submission should be directed to Jason Burr at jason.burr@tdhca.state.tx.us.

Submit two CD-Rs containing the PDF file along with all the Pre-Application fees to the Department no later than 5:00 p.m. on the submission date as outlined above. Multiple site applications will be required to submit a separate application/CD-R for each site.

Exhibits shown in *italics* are forms, templates or reference material included on the Department's website and in the Pre-Application. The forms, templates and reference materials required to

complete the Pre-Application are listed below and can be found at the following link <http://www.tdhca.state.tx.us/multifamily/bond/applications.htm>.

1. “2009 Multifamily Bond Pre-Application (DOC)”
2. “2009 Templates (DOC)” – Will be referred to as “*Templates*” in the manual.
3. “2009 Multifamily Bond Pre-Application Inserts (XLS)” – Will be referred to as “*Excel Inserts*” in this manual. [Note: this workbook includes multiple sheets; ALL sheets must be completed]
4. “2009 Multifamily Housing Revenue Bond Rules (PDF)”

All required forms may be found on the Department’s website at the links provided above; the names of these forms are presented in *italics*. Each form must be completed; all questions must be answered and spaces completed. If a question does not pertain to the Development, mark “N/A.”

If you have difficulty downloading the files from the website, contact Jason Burr at (512) 475-3986, or jason.burr@tdhca.state.tx.us.

Include all of the following documents:

Tab 1: All forms included in the *Multifamily Bond Pre-Application*

1. *Activity Overview*
 - This form must have an original signature.
2. *Applicant Information*
 - All items must be completed.
 - A second contact must be provided.
3. *Funding Request*
 - Correctly select the appropriate items.
 - If applying for TDHCA HOME funds, indicate if there is a “Special Needs” set-aside.
 - If applying for TDHCA HOME CHDO funds, check the HOME CHDO box.
4. *Populations Served*
 - Note that the “Type of Unit” categories are not mutually exclusive. For instance: for a 200 unit Qualified Elderly Development with 10% of the Units set aside for Persons with Disabilities, the table would read 200 Elderly Units and 20 Units for Persons with Disabilities with corresponding percentages of total Units.

The forms identified in items 5 through 14 below can be found in the *Excel Inserts*, also called “2009 Multifamily Bond Pre-Application Inserts (XLS)” on the website.

5. *Rent Schedule*
 - Note that this is a two-page form.
 - If the Development includes efficiency Units, label these Units as zero (0) bedrooms.
 - If any non-rental income is included, describe the source(s) of the income.

6. *Utility Allowances*

- Form must be completed; if the form is not applicable, indicate such and submit the form. If the Development is all bills paid, indicate such and indicate the utilities and energy source.
- Support documentation must be included (i.e. Current PHA utility allowances sheet or local utility provider estimate specific to development) that clearly identifies the utility costs included in the estimate.

7. *Annual Operating Expenses*

- You must describe any “Other” cost included in any of the expense categories.

8. *30 Year Rental Housing Operating Pro Forma*

- Note: The Applicant must complete this form for all 30 years; however, no Applicant will be determined by the Real Estate Analysis Division as “infeasible” based on any information relating to years 16-30 contained within this document at the time of full application.

9. *Development Cost Schedule*

- Must be signed by Development Owner and Contractor.
- Owner’s Requested Credits must match *Funding Request* on Page 2.

10. *Summary of Sources and Uses of Funds*

- Financing participants must be listed in the right-hand column.
- Total sources of funds must equal total uses of funds.
- Total sources must match *Development Cost Schedule* Total Development Cost.
- Amounts listed must match amounts listed in *Financing Participants*, and the Financing Narrative.

11. *Financing Participants*

- The sources and amounts of funds indicated on this form must match those indicated on *Summary of Sources and Uses of Funds*.

12. Financing Narrative -- §49.9(h)(6)(A).

- Sources and amounts of funds must match *Summary of Sources and Uses of Funds*.

13. Current Market Information

- Evidence must be submitted behind this tab which indicates the rents in the market support the proposed affordable rents.

Tab 2: Organizational Structure

1. *Applicant Ownership Chart* (use form as template) -- §49.9(h)(9)(A).
 - If a Guarantor that is not an owner exists, a separate chart must be provided.
 - Chart must show the following:
 - a. Name and ownership percentage of each entity and Person with an ownership interest in the Development Owner, General Partner, Special Limited Partner, Guarantor and Developer.
 - b. State the percentage of ownership of each entity and Person in the chart in terms of the entity's or Person's direct ownership of the organization that the entity or Person owns, not in terms of the Development Owner as a whole (See examples of ownership percentages in the example chart).
 - c. Trusts must show trustee and each beneficiary.
 - d. Nonprofit entities, public housing authorities and publicly traded corporations must show name of organization, president, vice president and secretary (executive officers).
 - e. Any person receiving 10% of the Developer Fee must also be included in the chart.
2. *Organization Documents* -- Each entity shown on the organizational chart must provide the following documentation as applicable (§49.9(h)(9)(B)):
 - For entities that are not yet formed but are to be formed either inside or outside the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State must be submitted.
 - For existing entities whether formed inside or outside of the State of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority must be submitted.
 - Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals.
3. *Nonprofit Documentation*: This section must only be completed for Applications involving a Nonprofit.
 - Documents required for all Applications involving a nonprofit General Partner -- §49.9(h)(11)(A).
 - a. *Evidence of Nonprofit Organization and CHDO Participation and List of the Nonprofit Organization's Board Members, Directors and Officers.*
 - b. IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity. If the organization is a Qualified Nonprofit Organization as defined in the tax code, notwithstanding any apparent limitations in the 2009 QAP about the particular parts of the code under which a nonprofit may qualify, submit an IRS determination letter.

Tab 3: Site Control

1. Evidence of Site Control -- §49.9(h)(7)(A)
 - Site control must be valid for the entire period the Development is under consideration, which is:
 - a. At pre-application site control must be properly executed and receipted through the inducement Board meeting date; and,
 - b. At full application, site control must be valid 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. It should be noted that the potential expiration of site control does not warrant the full Application being presented to the TDHCA Board prior to the scheduled meeting.
 - Evidence must be in one of the following forms:
 - a. A recorded warranty deed (with a corresponding executed settlement statement-unless identity of interest transaction)
 - b. A contract for lease (45-year minimum term)
 - c. A contract for sale or purchase option
 - Evidence must be in the name of the Development Owner. If not in the name of the Development Owner, then the documentation must reflect an expressed ability to transfer the rights to the Development Owner.
 - If a contract is provided as evidence of site control, the closing date must be highlighted or flagged. If the date is not explicitly stated, but rather is triggered by other dates or periods, submit an outline of the dates that must be used to derive the closing date.
 - If the contract expires prior to the date the Board will consider for final award, there must be an exclusive option to extend in the contract.
 - Copy of the full legal description
2. Boundary Survey -- §49.9(h)(5)(B)
 - If the tract of land being purchased is larger than the portion being used for the Development; the survey must depict both the larger tract as well as the site to be developed.
 - The survey must clearly identify the location and boundaries of the subject property.
3. *Site Information Form*
 - Sections 1, 2 and 3 must be filled out in its entirety.
4. Name, address and telephone number of the current property owner of real property.
5. Evidence of zoning -- §49.9(h)(7)(B)
 - Zoning must match representation made in *Site Information* form.

- Evidence must include official description or definition of the zoning claimed or proposed.
- Evidence must be in one of the following forms:
 - a. A letter from the CEO of the political subdivision or another local official with appropriate jurisdiction stating the Development is located in a political subdivision which does not have a zoning ordinance. At the time of full application this letter must also state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or the letter must state that there is a need for affordable housing, if no such planning document exists;
 - b. A letter from the CEO of the political subdivision or another local official with appropriate jurisdiction stating that the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or
 - c. A letter stating the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied; and a time schedule for completion of appropriate zoning. Submit a copy of the application for change in zoning as well as proof of delivery in the form of a signed certified or overnight mail receipt, or confirmation from said official.
 - d. For Developments involving Rehabilitation, if the property is currently a non-conforming use as presently zoned, a letter which addresses the following items must be submitted:
 - Nature of non-conformance; detailed narrative must be provided.
 - Applicable destruction threshold.
 - Owner's right to reconstruct in the event of damage.
 - Penalties for noncompliance.

6. Census Tract Map (**Required for all Developments**)

- Must clearly show that the proposed Development is located within the Census tract and it must show other existing tax credit developments.
- Census tract 11 digit numbers must be clearly marked on the map.
- Census tract number must be identical to the census tract number stated in the Department's *2009 Housing Tax Credit Site Demographic Characteristics and Site Information*.

Tab 4: Evidence of Notifications:

1. *Certification of Notifications* -- §49.9(h)(8)(A)
 - The form must be signed, dated and notarized.

- All boxes must be checked on the form.
- In addition to the *Certification of Notification* form please note the following:
 - a. There is a sample *Request for Neighborhood Organizations* and *Public Notification Format* in **Templates** on the Department's website.
 - b. Request for a list of Neighborhood Organizations must be made no later than 14 days prior to submission of the Bond Pre-Application.
 - c. Notifications to elected officials and any neighborhood organizations must be made no later than the date the Bond Pre-Application is submitted to the Department.
 - d. Notifications should be made using a form of delivery that can be tracked. While all letters are not required to be submitted behind this tab, Applicants must keep evidence of all notifications made and be able to provide this evidence to the Department upon request at any time during the Application review.
 - e. Developments located in Extra Territorial Jurisdictions (ETJ) of a city are not required to notify city officials, but county officials must be notified
 - f. A copy of the complete mailing list with names and addresses should be submitted behind this tab.
- Notifications must be made using the language outlined in the *Neighborhood Organization Request Format* and *Public Notifications Format (Written)* available on the Department's website under **Templates**.

2. *Public Notification Information and Certification Form, Pages 1-6*

- Page six of the form must be signed and dated.
- Single-member district – If the city council and/or county commission is a single-member district body, check the box to indicate this and list the single district representative in the space provided; you do not have to list the other members.
- Both single member and at-large district – If the city council or county commission has both district-based and at-large members, indicate so on the form and list the single district representative in the space provided and all at-large members in the spaces provided for all representatives.
- At-large district – List all representatives in the spaces provided.
- The name of the elementary school and high school closest to the development site, address and phone number for each school must also be included on this form for the purposes of scheduling the TEFRA bond public hearing.
- Note: The Department is not responsible for notifying Applicants if information contained herein is inaccurate. It is each Applicant's sole

responsibility to ensure all information contained in this form is accurate and that any errors identified are corrected and proper re-notifications are made.

Tab 5: Program Certifications and Other Documents

1. *Tenant Supportive Services Certification*
 - Part I and II must be completed.
 - Certification form must be signed, does not need to be an original signature.
2. *Proximity of Site to Amenities Certification*
 - Certification form must be signed, does not need to be an original signature.
 - The amenities selected must be consistent with those identified on the local area map submitted behind Tab 6.
3. *Negative Site Features Certification*
 - Option A or B must be selected.
 - Certification form must be signed, does not need to be an original signature.
4. *Mortgage Revenue Bond (MRB) Program Certification Letter*
5. *Mortgage Revenue Bond (MRB) Responsibility of Costs Certification Letter*
6. Letter Selecting a Senior Underwriter
 - The underwriter should be from the Department's approved list currently posted on the website at the following link: <http://www.tdhca.state.tx.us/multifamily/bond/docs/08-MRBApvdUnderwriters.pdf>.
7. *Bond Review Board Residential Rental Attachment*
 - This document can be found on the Bond Review Board website at the following link: <http://www.brb.state.tx.us/pub/pab/2009/09RR.doc>.
 - If multiple site applications, a separate RRA for each site must be submitted.

Tab 6: Scoring and Amenities

1. *Private Activity Bond Scoring Form*
2. *Relevant Development Information Form (Parts I and II)*
 - This form must be filled out in its entirety so the Department has sufficient information with which to make its notifications.
3. *Parts C and D: Unit and Common Amenities*
 - The unit and common amenities listed on *these two forms* must match those amenities where points were claimed on the self-score form.
 - The overall points awarded for amenities at pre-application must match those points selected at full application.
 - Note: The Department is not responsible for notifying Applicants if information contained herein is inaccurate. It is each Applicant's sole

responsibility to ensure all information contained in this form is accurate and that any errors identified are corrected and proper re-notifications are made.

3. Local Area Map

- Must be legible, at street level and show property location and area services and amenities within a 3 mile radius.
- Services and amenities listed within a 3 mile radius must match those selected on *Proximity of Site to Amenities Certification* in Tab 5.

NOTE: Please note that this list is a guide and is not comprehensive. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the programs they are applying for as well as to read the sections of the 2009 Multifamily Housing Revenue Bond Rules and 2009 Qualified Allocation Plan and Rules.

B. Unbound Items: The following items must be submitted with the Pre-Application, but must not be within the electronic Pre-Application:

- ❖ *Document and Payment Receipt*
- ❖ Pre-Application Fee – The Department will not accept a Pre-Application without the corresponding fee (Non-Profit organizations may receive a 10% reduction of TDHCA fees if 501(c)(3) form is submitted with payment receipt). One check must be submitted payable to TDHCA in the amount of \$1,000, one check payable to Vinson & Elkins in the amount of \$2,000 and one check payable to the Texas Bond Review Board in the amount of \$5,000.
- ❖ A copy of each check must also be submitted.
- ❖ Support/Opposition letters – If the Applicant has received support/opposition letters from elected officials and/ or neighborhood organizations, members of the public, or neighborhood organizations, they can be submitted at the time the Pre-Application is submitted. **Please staple such documents together with a brief cover sheet identifying them as such. DO NOT include these documents within the electronic Application.**

V. PRE-APPLICATION PROCESS

- The Borrower submits an electronic pre-application and pre-application fee to the Multifamily Finance Division. **Deadline to submit pre-applications and initial fees to the Department is 5:00 p.m., by the Submission Date as outlined in this manual.**
- TDHCA staff will review the application and request the submission of additional information as applicable per individual application (***applicant will have three (3) business days to correct any deficiencies***). A pre-qualification analysis will be performed. The application will be scored (by 2009 scoring criteria) and ranked by highest score. Multiple site applications will be scored and ranked on their own merits. The Department will determine the final score for these applications based on an average of all the individual scores for submission to the Texas Bond Review Board.
- A summary of the proposed transaction and the pre-qualification analysis will be presented to the Department’s Board of Directors for approval of an Inducement Resolution the following month the application is submitted. Department staff will then proceed with the application submission to the Texas Bond Review Board.

VI. FULL APPLICATION PROCESS

- All approved pre-applications will be submitted to the Texas Bond Review Board in the ranked order determined by the Department and outlined in §35.6(b) of the 2009 Multifamily Housing Revenue Bond Rules. **If a development receives a Reservation of Allocation, the complete bond transaction must be closed within 150 days after the reservation date, or the reservation will be cancelled.** (Note: if the transaction does not close within the 150 days the full fees to the Texas Bond Review Board must be paid unless the application is withdrawn by the 120th day)
- Priority 1 and 2 applications on the waiting list that receive a “Notice of Reservation” will have three (3) days to submit the volumes I & II (one hard copy and one electronic copy) of the Housing Tax Credit application, including the Tax Credit application fee of \$30/unit and the Bond application fee of \$10,000. For multiple site applications the bond application fee will be \$10,000 or \$30/unit, whichever is greater (in addition to the HTC fee). Priority 3 applications will be required to submit volumes I and II within 14 days of the bond reservation date. The volume III, market study, environmental site assessment, appraisal and property condition assessment (if applicable), regardless of the bond priority, will be due sixty (60) days prior to the board meeting at which the application will be presented. One hard copy and one electronic copy must be submitted. ***Failure to meet the sixty day deadline may result in the application not being presented at the originally requested Board meeting or may result in an unfavorable recommendation to the Board by Department staff. These dates are posted on the Department’s website at the following link:*** <http://www.tdhca.state.tx.us/multifamily/htc/docs/09-60DayDeadlines.pdf>.
- Department staff will prepare a Critical Path Schedule once the Reservation is received, the public hearing has been scheduled and closing dates have been set that will be forwarded to the working group on the transaction.
- Department staff will schedule a date, time and location for a public hearing to be conducted by TDHCA staff. Vinson & Elkins will draft a hearing notice which will be publicized in the local newspaper(s), the Texas Register and sent to US, State and Local Officials and Neighborhood Organizations of record.
- Department staff will send public notifications within fourteen (14) days of receipt of the Volume I and II of the Tax Credit Application to US, State, Local Officials and Neighborhood Organizations notifying them of the proposed development and the public hearing. ***The Applicant must post a sign on the proposed site within thirty (30) days of the Tax Credit Application Volume I and II submission. The hearing information must be included on the sign at least thirty (30) days prior to the hearing date.*** Signage requirements and language are referenced in the “Signage Requirements” of the application package (the sign must be maintained on the property site until the day the Department’s Board takes final action on the Application). **In areas where the Public Notification Sign is prohibited by local ordinance or code**, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign, as set out in the application package. The final Application must include a map of the proposed Development site and mark the 1,000 foot or local zoning ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an

exact copy of the notice that was mailed; and complete Section B of the Notification Certification form. Evidence must be provided affirming the signage violation to the local code and the local zoning notification requirements.

- Subsequent to the filing of the application, the Department's Bond Counsel, Disclosure Counsel, and Financial Advisor will provide the applicant with fee letters based upon the contemplated bond structure.
- The Multifamily Finance Production Division initiates the Department's due diligence which includes, but is not limited to, site visits to the property and comparables, historical and proforma cash flow analysis, review of Applicant's qualifications and credit underwriting, and review of third-party reports (appraisal, market study, phase I environmental and engineering).
- The Department, its Bond Counsel, the financial providers, and the rest of the working group will draft legal documents. Typically, three drafts of the legal documents are anticipated before being considered substantially final.
- The approval process of the bonds consists of approval by the TDHCA Board and the Texas Attorney General's Office. The Department's housing transactions that have no impact to the state's general revenue fund, shall be exempt from approval by the Texas Bond Review Board with the exception of housing transactions that request an ad valorem tax reduction or exemption.
- *It is imperative* that 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) be received by TDHCA fourteen (14) business days prior to the posting of the TDHCA board meeting agenda in order to insure complete accurate information will be available for Board consideration. The TDHCA Board will consider the bonds for approval as well as tax credits. The TDHCA Board will consider the approval of the Department's due diligence and final bond documents, and in the instance of privately placed bonds, the pricing, interest rate and maturity date of the bonds.
- Bond pricing is determined by the underwriters for publicly offered structures.
- No later than fourteen (14) days before the Board meets to consider the transaction, the Applicant must submit, to the Department, written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions and any required local resolutions approving the development.
- Bond documents and related supporting documents and certificates **must** be provided to Texas Attorney General's Office for approval at least 17 business days prior to closing.
- When necessary, the Department's Board of Directors or Executive Director will provide approval of final bond pricing.
- Prior to the closing of the bonds, all necessary approvals from the local municipalities, including building permits, **must** be 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).
- Transaction closes, the bonds are sold and funds are disbursed.

- The Department will provide the Bond Review Board with a final report of the transaction.

VII. ELIGIBILITY CRITERIA

- Applications for properties located throughout the state of Texas can be submitted from the following types of applicants: Non-profit, Limited Distribution, Builder-Seller, Co-Operative, Investor-Sponsor, or Profit Motivated Single Asset Entities. The types of properties that can be eligible include substantial rehabilitation or new construction of multifamily properties with a maximum of 252 units for new construction. Those new construction developments proposed in rural areas are limited to 80 units.
- The set-aside requirements for the development include the following:
 - (1) 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).
 - (2) **100%** of the units must be occupied by persons or families whose income does not exceed **140%** of area median income;
 - (3) **7%** of the units must be designed for and made available to persons with **special needs** pursuant to §2306.513, Texas Government Code;
 - (4) For additional state set aside requirements see §1372, Texas Government Code.

All set aside units must be evenly distributed throughout the development and shall include an even amount of each type of unit.

- **Qualified Development Period:** Will be the greater of thirty (30) years or the period for which any bonds are outstanding. This is evidenced by a Land Use Restriction Agreement recorded in the real property records of the county in which the Development is located.
- **Rent Caps:** Maximum allowable rents for set-aside units are 30% of applicable income limits minus an allowance for utilities (local Section 8 utility allowances). A schedule of Maximum Allowable Rents by county is available from the Department. Applicants must obtain a schedule of local Section 8 utility allowances from the local Housing Authority.
- **Tenant Programs:** The Applicant must offer a variety of tenant programs through a Tenant Services Program Plan, which is an annual requirement of the Loan and Regulatory Agreements. Specific programs must be designed to meet the needs of the current tenant profile, and must be approved annually by the Department on a case by case basis.
- **Fair Housing Act:** All developments must comply with the United States' Fair Housing Act which prohibits discrimination in the sale, rental, and financings of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

- Debt Coverage: A minimum 1.15 debt coverage inclusive of all on-going fees, including the Department's fees, or otherwise higher debt coverage required by rating agency, credit enhancer or private placement buyer.
- Debt Rating: Minimum of an "A" rating from Standard & Poors ("S&P"), or an equivalent rating from FITCH or Moody's Investor Service, to-be-maintained on an ongoing basis, for publicly offered bonds. Bonds rated less than "A" must be accompanied by an investor letter. Private placements are allowed without a rating but must be placed with institutional investors under an investor letter acceptable to the Department. Ratings may be obtained through the S&P Affordable Housing Program, private credit enhancement, or FHA insurance.
- Interest Rate: Market rate for tax-exempt bonds or a negotiated rate on institutional private placements.
- Amortization: Generally 20 to 40 years. Term and amortization will be determined by TDHCA if not determined by credit enhancement provider or bond purchaser.
- Loan Term: Generally 30 to 40 years depending on property age and condition as limited by remaining useful life of Development.
- Loan to Value: Maximum allowable as determined by credit enhancer, rating agency, or bond purchaser (if private placement). The Department's maximum is generally 100% including debt-service reserves as collateral value.
- Loan to Cost: Up to 100% financing, including costs of bond issuance and reasonable and customary fees associated with a real estate transaction [see "Definitions" for eligible costs]. 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.
- Tax Credits: Use of 4% tax credits will require conformance to Housing Tax Credit guidelines. A separate application for tax credits must be made in accordance with the 2009 Qualified Allocation Plan.
- Origination, Administration and Compliance Fees: Refer to §35.8 of the 2009 Multifamily Housing Revenue Bond Rules or Fee Schedule on the Department's website.
- Underwriter Selection Policy: The Applicant may choose an approved underwriter, and co-senior or co-managing underwriters, if applicable, from the Department's list of approved underwriters. The borrower will indicate the selection of underwriter(s) in writing at the time of application.

On privately placed or non-underwritten transactions, the Applicant chooses a firm from the same list to act as placement agent at the request of the Department.

- Third Party Service Providers: All other third-party service providers involved in the transaction will be chosen and/or approved by the Department.

- **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.
- **Market Study & Appraisal:** Market and development feasibility analysis performed by a market appraiser, acceptable to the Department. See 10 TAC §1.33, Texas Government Code for rules and guidelines.
- **Phase I Environmental Site Assessment:** A Phase I Environmental Site Assessment is required. Asbestos and lead based paint testing is considered on a case-by-case basis. An Operations & Maintenance program or abatement may be required. See 10 TAC § 1.35, Texas Government Code for rules and guidelines.