TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
Building Homes. Strengthening Communities.

Multifamily Finance Division
Frequently Asked Questions
4% Housing Tax Credit Developments financed with Private Activity Bonds

1. What is a Private Activity Bond? What is a Housing Tax Credit?

These are two federal tools that enable the production of affordable rental housing for low income persons by providing the developers of that housing with financing incentives. A bond is an interest bearing government or corporate note that obligates the borrower to make scheduled principal and interest payments to the investor and to repay the principal amount of the loan at maturity. Developers use the amount borrowed from investors to build affordable housing and agree to set aside a certain percentage of units for very low, or low income renters, thus keeping rents "affordable" for those who qualify to live in these units. The mortgage payments on the loans are used to repay the investors. Bonds issued under the Private Activity Bond program are primarily tax-exempt however they can be taxable. The bond program is used to provide low interest loans to the development and subsequently has a mortgage on the property.

The Housing Tax Credit is a credit or reduction in tax liability each year for 10 years for owners and investors in affordable-income rental housing that is based on the costs of development and the number of qualified affordable-income units. By providing a credit against tax liability or a dollar-for-dollar reduction in the amount of liability, the housing tax credit is an incentive for individuals and corporations to invest in the construction or rehabilitation of affordable housing for low-income families. The tax credit is used as a cash down payment (or equity) for the development and as long as there are no significant compliance violations, the tax credits do not have a repayment.

The tax credit and bond programs were created under the Tax Reform Act of 1986 to provide incentives for private investment and development of affordable / workforce housing for low-to-moderate income individuals and families to help relieve the financial burden of public housing on the federal budget. The tax credit and bond programs provide financial assistance for a wide range of development including new construction, substantial rehabilitation and the acquisition and rehabilitation of properties. The tax credit program is much like a cash down payment and the bond program provides a lower interest rate on the mortgage on the development. These programs allow the construction of high quality, decent affordable housing.

2. What is the difference between public housing and housing financed with Private Activity Bonds and tax credits? What income levels are served?

In many instances there is a significant difference between tax credit and bond properties and public housing properties. Most developments in the TDHCA rental housing inventory built using Housing Tax Credits and Private Activity Bonds require tenants to have income of at least 2 to 2 ½ times the rent. These housing developments further differ from public housing in that they are privately owned and privately managed and they primarily serve individuals and families with incomes between 50-80% of the area median family income. Most public housing developments serve individuals and families at 30% and below the area median family income. Typically, tenants of tax credits or bond properties may include: school teachers; police officers; firefighters; mechanics; retail employees; single parents who are balancing career and family while attending school; city employees; sales clerks; and retirees. The program's rent and income levels vary from county to county. In Houston, for example, the maximum allowable rent (which includes a utility allowance) for a three bedroom tax credit apartment would be $951. To be eligible to reside in the tax credit unit, a family of four's annual income could not exceed $36,600 at the time they signed the lease.

The Housing Tax Credit and Private Activity Bond programs are **not** rental assistance programs like the Housing Choice Voucher or Section 8 Voucher programs. Tenants who qualify for Housing Choice Vouchers or Section 8 Tenant Vouchers may lease an apartment at a tax credit or bond property, however they must qualify under the same requirements as any other tenant. Federal law requires the property owners to accept tenants with rental assistance vouchers.

3. What is the difference between Tax-Exempt Bonds and a property tax exemption?

This is an important distinction. Tax-Exempt bonds refer to the tax exemption to the bond purchaser not an exemption of property taxes. The purchaser of the bonds is willing to accept a lower rate of return on their investment because they do not have to pay income tax on the profit of the investment. In turn, the lender for the mortgage on the development can charge a lower interest rate to the developer. The developer then uses that lower interest rate to assist in building the development. This is not correlated to a property tax exemption and many Housing Tax Credit and Bond properties pay property taxes; however, the Texas Property Tax Code allows qualified developers / owners to an exemption from paying a portion of the property taxes assessed to a property. Currently, state law does grant a 50% property tax exemption to CHDO's (Community Housing Development Organizations) which are a special type of non-profit that are eligible for the property tax exemption.

4. What is the general process for a Housing Tax Credit and Private Activity Bond application that is issued through TDHCA?

Pre-applications are required to be submitted to the Department and are reviewed initially for basic criteria that include good construction quality, reasonable size of bedrooms, quality services, amenities offered and preliminary financial feasibility. The pre-application is then presented to the Department's Governing Board for approval of an "Inducement Resolution." If the resolution is approved, the application is submitted to the Texas Bond Review Board to await a "Reservation of Allocation." Once a reservation is issued by the Bond Review Board, the complete bond transaction must be completed within 150 days or the reservation will be cancelled. Within the 150 day timeframe a public hearing is scheduled and all applicable recipients are notified of the hearing and the anticipated TDHCA Board meeting at which the application will be presented to the Board; and, a full application is submitted to the Department and is reviewed for specific criteria that includes, but is not limited to, assuring good construction quality, rents that do not exceed the maximum allowable amount, quality of supportive services, unit and common amenities offered and compliance with all the

Department's applicable rules including but not limited to the Multifamily Mortgage Revenue Bond Rules, the Qualified Allocation Plan and Rules, and the Compliance Rules. The application is also reviewed by the Real Estate Analysis Division for full financial feasibility and by the Compliance and Asset Oversight Division to ensure compliance with other relevant departmental programs. The application will then be presented to the Department's Governing Board for their review and decision. TDHCA, as an issuer in the Private Activity Program, will then submit a notice to the Texas Bond Review Board of its intent to issue bonds. Once the Texas Bond Review Board approves the issuance, TDHCA will schedule a closing date for the bond transaction and the bond transaction will subsequently be closed. The process for local housing finance corporations that issue Private Activity Bonds is different than that of the Department.

5. What does the developer do for his money?

The federal government created the program as an incentive to encourage developers to build and privately own affordable housing. The developer/owner designs and builds the development and either personally manages or hires a management company to run the property once it is completed and leased to tenants. The developer receives a fee proportionate to the total construction costs. This fee is paid to the developer over a 10-year period of time. The developer/owner is financially liable during the construction and lease-up periods through personal guarantees to the mortgage lender or construction lender. The developer (in the majority of developments) is the private owner and has an incentive to maintain the development so that it will retain its value over the long term (beyond the affordability or compliance period of 15 years). The income derived from a development can be substantial if the development is properly maintained and managed. Consequently, these properties are significant investments for developers/owners.

6. What assurances does the community have that the development is built according to the specifications the developer has promised?

The Department is vigorous in ensuring that all promises are kept by the applicant. TDHCA conducts a final inspection during the construction phase to ensure the development is built according to the specifications outlined in the application. Any material changes to the application must be approved by the Department. In addition, there are several different entities involved with a bond transaction. There is a construction lender that is responsible for the financing during construction. There is a permanent lender (or bond purchaser) and there is a tax credit investor which is the entity that will be buying the tax credits. All three of these entities have a vested financial interest in the development and conduct inspections during the construction of the development.

7. How often does the Department monitor Private Activity Bond and Housing Tax Credit developments?

TDHCA Bond developments are monitored on-site annually by a third party asset management agency. The Department performs desk reviews / audits quarterly for all Bond and Housing Tax Credit developments. Additionally, the Department completes a comprehensive on-site review for all Housing Tax Credit properties every two years. During these on-site visits, the Department monitors for the physical appearance of the property, ensures units are occupied by eligible households, the development is charging the appropriate rent for the household, and that tenants are living in a safe, healthy environment. The U. S. Department of Housing and Urban Development requires a limit of no more than 2 persons per bedroom. Desk reviews are a modified version of an onsite visit. The Department verifies that the required restrictions are met (i.e. low-income, eligible tenants, special needs) and that units are occupied by the correct households. The desk review is based on information the owner submits to the Department. If there are any issues that require attention the Department will notify the owner. In addition, the state requires that reserve accounts for any maintenance and future repairs for the property are funded.

8. What is the current size of the staff in the Compliance and Asset Oversight Division at the Department? Approximately how many developments and units does the Department monitor? Who should complaints on tax credit properties be directed to?

The Compliance and Asset Oversight Division currently has 33 employees. Fifteen of those employees are monitors who conduct onsite visits at multifamily rental properties. According to the property inventory that is published on our website, TDHCA has approximately 1,700 Housing Tax Credit properties with approximately 190,000 units. As properties are approved monthly, these numbers continue to change. Any concerns regarding an occupied tax credit property should be directed to James Roper at 512-475-3907.

9. What happens in the event that the developer violates the governing statutes and rules of the Housing Tax Credit and Private Activity Bond Programs?

The enforcement of existing statutes and rules is a priority for TDHCA. Accordingly, if a developer is found to be in violation of these statutes and rules, several outcomes are possible. First, the owner can be debarred from applying for any programs offered by the Department. Second, the Department can file suit against the owner for non-performance on the Regulatory Agreement or the Land Use Restriction Agreement (LURA). Third, there is a risk of losing the tax-exempt status on the bonds and since the bonds are being held by investors, the investors would then have to pay taxes on the income they earn on that investment. Fourth, tax credits can be recaptured by the Internal Revenue Service. If there is a recapture of credits then the owner would have to reimburse everything that had been disbursed by the investor of the tax credits up to that point.

10. In the event the bonds are paid off or the developer decides to sell the property how long will the state continue to monitor these developments?

With every bond transaction there is a Regulatory Agreement and with Housing Tax Credit transactions there is a Land Use Restriction Agreement (LURA). The Regulatory Agreement and LURA are agreements between the Issuer of the bonds (i.e. TDHCA) and the property that sets forth certain restrictions concerning the Development. These restrictions can include, but are not limited to, the following: maximum allowable rents, tenant supportive services, development amenities, tax covenants, and replacement reserve funds created for the purpose of repairs and maintenance. Both of these documents stay in effect for a minimum of 30 years (or longer if the bonds are still outstanding) even if the property is sold; therefore the property is monitored for 30 years. The Regulatory Agreement and LURA are attached to the land and not the owner.

11. Can a developer change the tenant population they committed to serve?

No, the tenant population cannot be changed.

12. What are the conditions that are placed on tenants of affordable housing?

The development owner establishes tenant requirements that they must apply to all tenants equally. For example, criminal and credit background checks might be completed just as they would be for any other tenant in multifamily developments. The development owner, **not** TDHCA, sets the requirements. It is the development owner's responsibility to make sure that all the tenants who are living on the property qualify based on their income. The Department will monitor for income restrictions and tenant occupancy, but the ongoing responsibility is with the owner and the management company they have selected. The development owner can establish procedures up to and including eviction for non-payment of rent which is consistent with state eviction laws that would be applicable to any other apartment complex. The following chart is helpful in identifying the responsibilities of TDHCA and the Developer.

TDHCA	Developer
Review the application for compliance with the Department Rules.	Perform tenant requirements/eligibility and eviction procedures
Underwrite the application for financial feasibility	Provide tenant supportive services
Perform final construction inspections to verify the development is built to the specifications and amenities in the application	Provide safe, decent and affordable housing to all tenants
Perform regular monitoring of the physical condition of the property, that rent and income restricted units are occupied by eligible households and any other restrictions set forth in the LURA	Provide daily inspections and maintenance of the property

13. What types of services are provided on the property?

The management company of a property will generally circulate a survey to all of the tenants to determine the tenant profile and the types of services that would be of interest to the tenants. These services can include, but are not limited to, the following: joint use library center (as evidenced by a written agreement with the local school district), child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized teams ports programs or youth programs, scholastic tutoring and down payment assistance classes. It is important to remember that all or most individuals begin in multifamily housing and it is often the first step to homeownership. Some developers will choose to provide Homebuyer Education classes to help educate the tenants on steps they can take toward home ownership.

14. How does the Housing Tax Credit and Private Activity Bond Program work with respect to the one-mile rule in statute?

A proposed application for a new development cannot be constructed, within one linear mile (measured by a straight line on a map) or less from another tax credit property that (a) was awarded tax credits within the last three years and (b) serves the same type of household as the new development regardless of whether the Developments serve families or elderly individuals and (c) is new construction. The only scenario in which this rule can be void is if a development receives prior approval from the governing body of the appropriate municipality or county containing the Development through a resolution from that governing body. This rule applies to developments located in Dallas, Tarrant, Harris and Bexar counties.

15. How often are the members of the TDHCA Governing Board selected and appointed?

The Board members are selected and appointed by the Governor and confirmed by the Senate. They serve six year terms and rotate out every two years.

16. How does the TDHCA Governing Board make its decisions regarding Housing Tax Credit and Private Activity Bond applications?

The TDHCA Governing Board takes its role in developing and overseeing affordable housing very seriously and carefully examines all staff recommendations regarding these applications. In making the decisions, the Board may evaluate, consider, and apply its discretion which may include a variety of factors such as: the developer market study; the location, the compliance history of the developer, the financial feasibility, the appropriateness of the development's size and configuration in relation to the housing needs of the community in which the development is located, the development's proximity to other low income developments, the availability of adequate public facilities and services, the anticipated impact on local school districts, zoning and other land use considerations, any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes, and other good cause as determined by the Board.

17. What are some of the reasons why the Department’s Governing Board has denied some tax credit applications?

The Board has denied applications based on the financial feasibility of a development, concentration of affordable housing in certain areas, and the demographics of the census tract in which the development is located. Each Board member has the authority to use their own discretion in making decisions.

18. If I want to give further input to the Department or Board, how would I do that?

Each board meeting booklet is posted on the Department's website 7 days prior to the meeting. In order for any comments to be included in these materials, persons making comment must ensure that the Department receives them at least 4 days prior to the web publication. Additionally, Board meetings are public hearings and open to the public. Interested persons are encouraged to make comments directly to the Board at these meetings. Public comment is taken at the beginning of each meeting as well as with each agenda item.

19. Will information I submit be provided directly to the Board or only summarized?

The transcript from the public hearing, in its entirety, is included in the Board package that is given to each Board member. Additionally, information is provided to the Department's Board each month to prepare them for the Board meeting. All comments and materials received are carefully read by staff and a summary of the comments received are also included in the materials that are presented to the Board.

20. Are there references that the public can access to further explain the impact of affordable housing on property values, area schools and crime?

The home page of the TDHCA website (www.tdhca.state.tx.us) has a link on the left side of the screen titled "Resources for Neighborhoods". This link contains information on affordable housing as it relates to property values, crime, impact on local school districts and impact on the economy. These studies are not affiliated with the Department.

21. Below are some definitions of common bond terminology.

Callable bonds – Bonds can be called if it is paying a higher coupon rate than the current market interest rates.

Refunding – Issuance of Refunding Bonds, the proceeds of which are used to repay the original bonds.

Trust Indenture – An agreement between the issuer and the trustee containing the terms and procedures for payment of the bonds.

Regulatory Agreement – An agreement entered into between the borrower, the bond issuer and the trustee specifying the income and rent restrictions a project owner must comply with for the bonds to retain their tax exempt status.

22. Who do I call if I have more questions?

For additional information on the Private Activity Bond program or the 4% Housing Tax Credit program you can contact Teresa Morales at 512-475-3344 or teresa.morales@tdhca.state.tx.us.