

Tax-exempt Bond Financing for Multi-family Rental Development

(in conjunction with 4% LIHTC)

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Note:

Housing New Mexico | New Mexico Mortgage Finance Authority (MFA) reserves the right to change any information contained within this document at any time, with or without notice. Regular updates will be performed alongside the annual approval of the New Mexico Mortgage Finance Authority’s Qualified Allocation Plan (QAP), which is located on Housing New Mexico’s website. Housing New Mexico expects all users of this document to be diligent in utilizing the most recent version, located at: www.housingnm.org/developers/rental/bond-financing

# General Requirements

## Four Percent Fixed Rate

On December 27, 2020, the Consolidated Appropriations Act, 2021 (“H.R. 133”) was signed into law establishing a minimum credit of four percent for Low Income Housing Tax Credit (LIHTC) projects. The four percent (4%) LIHTC will provide approximately thirty percent (30%) equity into a new or existing project.

The 4% low-income tax credit can bring equity into two types of projects:

1. In conjunction with Private Activity Bonds, 4% low-income tax credits may be used for either new construction or the acquisition/rehabilitation of existing projects. If the project is located in a Qualified Census Tract (QCT) or a Difficult to Develop Area (DDA), a “boost” of 130% may be applied under conditions specified in the QAP. (The 4% acquisition tax credits are not eligible for the 130% “boost”)
2. In combination with the competitive 9% tax credit, the 4% low-income tax credit may be used for the acquisition costs of existing buildings when completing rehabilitation. (The 4% acquisition tax credits in the 9% round are not eligible for the 130% “boost”)

To qualify, the project must comply with the Qualified Allocation Plan (QAP), as laid out by Housing New Mexico.

Note: The acquisition costs of the existing buildings are excluded from the basis boost of 130%.

## Private Activity Bonds

Developers that use private activity bond financing receive 4% annual tax credits for all costs included on eligible basis for new construction and acquisition/rehabilitation projects over a period of 10 years. Any project that is located in areas designated as Difficult to Develop Areas (DDA) or areas within a Qualified Census Tract (QCT) are eligible for an additional 30% in eligible basis (130% boost) for new construction or rehabilitation.

At least 50% of the bonds must cover the aggregate eligible basis plus the cost of the land to be eligible for 4% tax credits.

## Combining 9% Awards with 4% Acquisition Credits

Acquisition/Rehabilitation developments that receive LIHTC awards in the 9% competitive round may utilize the 4% LIHTC credits for the acquisition cost of existing buildings. The 4% acquisition credit is excluded from the QCT/DDA basis boost of 130% percent. For more information on 9% tax credits, please refer to the Qualified Allocation Plan (QAP).

## Application and Processing

Following the submission of a complete development project application by the developer, Housing New Mexico will begin processing the request. Projects which require Private Activity Bond (PAB) Volume Cap allocations should be submitted to Housing New Mexico at least 60 days prior to the New Mexico State Board of Finance's (SBOF) request deadline[[1]](#footnote-1) for the monthly meeting in which the Volume Cap is being requested (because PAB Volume Cap is a competitive resource and typically awarded in the first quarter of each calendar year, this two-month advance deadline would require a request to Housing New Mexico no later than October 15th of the year prior to the year of the desired allocation.) Additional time may be needed to obtain Housing New Mexico’s approval for credit enhancement.

**Housing New Mexico will adopt an inducement resolution, at the earliest available board meeting following the approval for a Draft Determination Letter (42m). If all requirements are met promptly by the developer, the bond closing can occur within 90 to 120 days of the delivery of firm financing and credit enhancement commitments. The second resolution required by Housing New Mexico—the bond resolution itself—cannot be passed until all credit enhancement and financing commitments are in place. The process would proceed as follows:**

1. Developer and Housing New Mexico staff meet to discuss application and volume cap process.
2. An “Intent to Submit letter and Project Synopsis” is provided to Housing New Mexico at least 30 days prior to application (Expires after 180 days and a new letter will be required).
3. Developer submits an application to Housing New Mexico to issue Low Income Housing Tax Credits (LIHTC) with de minimis errors for financial feasibility, meeting all requirements of the QAP\* with the inclusion of all additional documents and fees.
4. Jurisdictional notices are sent to the Chief Executive Officer in the City or Municipality where the project is located. There is a 30-day waiting period for a response.
5. Housing New Mexico completes a Determination of Consistency with the QAP (“42m” letter or “Draft Determination” Letter[[2]](#footnote-2))
6. Housing New Mexico provides an Inducement Resolution.
7. Developer and Housing New Mexico staff prepare and submit application to the New Mexico State Board of Finance (SBOF) inclusive of all fees[[3]](#footnote-3).
8. Housing New Mexico collects 50% of Cost-of-Issuance[[4]](#footnote-4).
9. SBOF acts on request for Volume Cap and, if successful,
10. The Developer arranges Due Diligence meetings with all financial interests and counsels represented, which will continue to Closing[[5]](#footnote-5).
11. Housing New Mexico publicizes, arranges, and hosts a hearing in accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA).
    1. TEFRA Documents are drafted by Housing New Mexico’s selected Bond Counsel and presented to the State of New Mexico Governor for approval and signature.
12. Housing New Mexico staff presents the request for a Bond Resolution to internal committees and Board of Directors for approval.
    1. Bond Resolution is drafted by Housing New Mexico’s selected Bond Counsel.
13. Upon closing, all documents are executed, and the remaining Cost-of-Issuance is collected.

## Tax Credit Review

If tax-exempt bonds are being issued in conjunction with 4% LIHTC, a complete 4% Tax Credit Application must receive determination that the project is consistent with the QAP\*. Please refer to the applicable year QAP\*, underwriting supplement and mandatory design standards for additional information and requirements.

## Loan Rates and Terms

Loan rates, credit enhancement costs, maturity dates and other loan and bond financing terms are based on current market conditions and negotiated among underwriters, lenders, and credit enhancement providers. The interest rate of the bonds may be influenced by these factors. **Bond financing must not exceed 60 percent (60%) of the project's aggregated basis and cost of land. Further limitations are as stated in the QAP.**

## Bond Rating Requirements

Housing New Mexico's statute requires ratings of “A” or better (as rated by S&P, Moody’s, or Fitch), if the bonds are sold in a public offering. Requirements for private placements will be determined on a case-by-case basis.

## Credit Enhancement Requirements

Numerous alternative sources of credit enhancement are available to the developer who chooses not to use Housing New Mexico's 542(c) program, but the method selected must meet Housing New Mexico's approval. Credit enhancement products offered outside of Housing New Mexico include FHA mortgage insurance, FNMA securitization, and private bank letters of credit. Where letters of credit are the sole credit enhancement, the provider must be specifically approved by Housing New Mexico, and the minimum term would be five years. This requirement is to ensure that the bonds are protected during the riskiest period of the financing—construction, lease up and stabilization—to minimize refinancing and bond redemption risk. Future credit enhancement substitutions must be approved by Housing New Mexico in advance of their use.

## Financing Team

Housing New Mexico independently selects a Bond Counsel to advise the issuance of the bonds. While Housing New Mexico does not require the Developer to have a Fiscal Agent/Trustee or Financial Advisor, it can recommend a known party if one is desired. For publicly sold bonds, an Investment Bank/Bond Underwriter must first be proposed by the Developer and must meet Housing New Mexico's disclosure and conflict of interest provisions.

## Use Restrictions (Federal Set-Aside Requirements)

Projects that receive an allocation of 4% LIHTC in conjunction with the issuance of tax-exempt bonds must meet the “set-aside requirements” of both Section 42 and Section 142 of the Internal Revenue Code. Set-aside options include:

* 20% of units must be reserved for tenants earning no more than 50% of the area median income (AMI), adjusted for family size.
* 40% of units must be reserved for tenants earning no more than 60% of AMI, adjusted for family size.
* Average Income Test (AIT), which requires all units to be designated at various income limits (20%, 30%, 40%, 50%, 60%, 70%, or 80% of AMI), such that the average of all units does not exceed 60% of AMI.

Rent restrictions:

* While bond financing itself does not impose rent limits, tax credits and most other subsidies typically limit rents to 30% of the applicable income limit.

Additional considerations:

* All projects must meet feasibility under the Housing NM’s current “Universal Multifamily Underwriting Supplement”.
* Mandatory Design Standards for Multifamily Housing must be met.

## Regulatory Agreements

The developer will enter into regulatory agreements which establish low-income set-asides, reserve requirements, monitoring and compliance activities and fees. A 60-day cure period will be provided for instances of noncompliance with the terms of the regulatory agreement. Relocation plans are required where displacement is likely, and tenant income surveys may be required during the application process.

## Additional Financing and Subsidies

Additional financing may be derived through the sale of taxable bonds along with the tax-exempt bonds. Projects which meet the criteria of other Housing New Mexico multi-family programs may be eligible for additional subsidies, including the New Mexico Housing Trust Fund (NMHTF), National Housing Trust Fund (NHTF), HOME Rental Assistance, and other available financing sources provided by Housing New Mexico. Further material on each program is available at <https://housingnm.org/developers>.

# Fees and Expenses

The Developer of the Project will be responsible for payment of all direct costs, fees, and deposits.

**Required Bond Fees to Housing New Mexico**

|  |  |  |  |
| --- | --- | --- | --- |
| Fee Description | Rate | | |
| Application Fee\*\*  (due upon submission) | $10 per unit | | |
| Commitment Fee\*\*  (due prior to prep of bond docs) | 0.50% of bond issue amount | | |
| Direct Cost Deposit[[6]](#footnote-6)  (due upon submission of application) | 20% of Financing Team’s fees | | |
| New Mexico State Board of Finance Application Fee\*\*  (based on bond issue size, due upon submission of application) | *Less than $15M* | | $750 |
| *Between $15M and $30M* | | $1,500 |
| *Greater than $30M* | | $3,000 |
| Housing New Mexico Administrative Fee[[7]](#footnote-7)  (annual – paid in advance) | *Long-term* | 0.15% of bonds | |
| *Short-term* | 0.20% of bonds | |

**Other Fees (if applicable)**

|  |  |  |
| --- | --- | --- |
| Fee Description | Rate | |
| Bond Transfer Fee[[8]](#footnote-8)  (due upon request to transfer ownership or with substitution of credit enhancement) | $2,500 | |
| New Mexico State Board of Finance Extension Fee  (if extension is approved) | $750 | |
| If Housing New Mexico provides credit enhancement, additional fees related to loan processing and origination will apply. | Various | |
| Contract Fees (Direct Cost paid directly to third party) | Bond Counsel | Various, based on bond size and structure |
| Fiscal Agent/Trustee |
| Financial Advisor |

# Bond Checklist

This section is intended to be a summary of areas in the New Mexico Qualified Allocation Plan (QAP) where there are different requirements between 9% LIHTC competitive application projects and 4% LIHTC projects associated with tax-exempt bonds. *It is not all inclusive and Applicants should refer to the QAP for further information.*

## General Process

QAP Section VI. “*Processing of Tax-Exempt Bond Financed Project Applications”* includes information specific to 4% Projects.

Applicants apply for private activity bonds through an issuing agency for an inducement resolution. In New Mexico, while there are several local municipalities that are issuing agencies, Housing New Mexico can issue bonds for the entire state.

Applicants apply to Housing New Mexico for a determination of qualification that the project is eligible for 4% tax credits, regardless of who the bond issuing agency is. This letter is also known as a 42(m) letter. Applicants submit the tax credit application to Housing New Mexico and receive a draft 42(m) letter beforeworking with the issuing agency to apply to the New Mexico State Board of Finance (SBOF) for Private Activity Bond (PAB) Volume Cap.

## Application

*Federal Register Notice: 87 FR 64515*

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond issuing agency. A “complete application” means no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

* **De minimis**: Initial Applications that meet all the standards described in Section IV.A.4 in the 2024 QAP under “Content and Format” when initially submitted and that do not require any deficiency corrections.
* **Complete Application** – an Initial Application meeting all of the requirements in Section IV.A.4, Content and Format.

All items in Tabs 1 – 141 from the Tab 1a Checklist are required.

QAP Section VI. describes the processing of tax-exempt bond financed Project Applications.

Tax-exempt bond financed Projects *are no longer required to meet a minimum score* in order to obtain a Letter of Determination. However, they must meet and agree to all eight of the following mandatory criteria in order to be eligible for 4% non-competitive tax credits:

1. Serve a Targeted Population

Can either meet all requirements under the Underserved Populations set-aside found at QAP Section III.D ***OR***

Meet the threshold requirements for one of the three targeted populations found at QAP Section III.E.8 – 10:

Special Housing Needs Housing Priority – QAP Section III.E.8:

* Everything described in QAP Section III.E.8 on pages 30-35 is required except for the supportive services that may be elected for points on pages 33 – 35.

Seniors Housing Priority – QAP Section III.E.9:

* The project must meet the requirements on page 35 and provide a description of the Project’s specific design elements that service the needs of Seniors (Tab 20a).
* The Project must qualify for an exemption from familial status discrimination under the Fair Housing Act, submit a Fair Housing Act Certification for Senior Housing Facilities (Tab 20b) and meet Housing New Mexico’s Mandatory Design Standards as described on page 35.
* The project must comply with Fair Housing Requirements as described at the top of page 37.
* Supportive services are not required. If the applicant elects to provide non-required services, the project must conform to the requirements stipulated on pages 36 - 38 regarding any fees and other documentation regarding the elective services.

Households with Children Priority – QAP Section III.E.10:

* The project must meet the requirements on pages 38-39 and provide a description of the Project’s specific design elements that serve the needs of Households with Children stipulated on the top of page 40 (*See* Tabs 21a and 21b).
* Supportive services are not required. If the applicant elects to provide non-required services, the project must conform to the requirements stipulated on pages 39 - 41 regarding any fees and other documentation regarding the elective services.

1. Achieve a Smoke-Free at Home Certification of Platinum or Gold\*.

4% LIHTC Projects are required to participate in the New Mexico Smoke-Free at Home program. Complete Tab 23 indicating that the Project Owner will obtain either platinum or gold certification (as applicable).

* New Construction Projects: must agree to participate and obtain the Smoke-Free at Home NM Platinum Certification (no smoking or use of electronic cigarettes at any time on any part of the property);
* Rehabilitation and/or Adaptive Reuse Projects: must agree to participate and obtain the Smoke-Free at Home NM Gold Certification (no smoking or use of electronic cigarettes is permitted at any time on any part of the property);

The Project must have appropriate space for the provision of smoking cessation classes.

More information on the Certification programs may be found at <https://www.smokefreeathomenm.org/get-certified-today/>.

\*In order to receive Certification, Applicants will be required to complete three steps as detailed on the Smoke-Free at Home website, including the submission of a Letter of Intent, a Lease Addendum, and a Violation Policy. Proof of the applicable certification must be submitted with Project’s 8609 Application.

1. Meet all of 2024 Mandatory Design Requirements Standards for Multifamily Housing (including HERS ratings), unless granted a waiver.

The architect’s certification at Tab 10e must be submitted. If the Applicant is requesting a waiver, complete Tab 11a and submit the applicable fee.

1. It must be located within 15 minutes’ driving distance of a facility in which fresh produce is available.

Complete Tab 16a Locational Efficiency Score Worksheet with address of facility.

At Tab 16b, insert Google map showing driving distance to facility described at Tab 16a.

1. Market Study must indicate a vacancy rate in the Primary Market Area of less than 10%.

Submit the Tab 13a Certification of Qualified Professional with the Market Study.

1. Must market to local Public Housing Authorities.

Insert letter to PHA Director of Jurisdiction for the Project from the Applicant verifying this commitment at Tab 22.

1. Include a preference for Veterans in the Tenant Selection Criteria.

Insert Veteran’s Preference form certifying that the Tenant Selection Criteria will include a preference for active duty, Honorably Discharged or retired US military Veterans at Tab 24.

1. Must be at least Moderate Rehabilitation (if applicable)

The level of rehabilitation (as applicable) must be at least a Moderate Rehabilitation as defined in the Glossary (Section XI. of this QAP.)

## Underwriting

4% projects are subject to Housing New Mexico’s Universal Multifamily Initial Underwriting Supplement.

The following **does not** apply to 4% Tax-Exempt Bond Projects:

* State Designated Basis Boost in IRC Section 42(d)(5)(v)
* **Carryover Allocations** are not issued for tax-exempt bond projects with 4% tax credits. The allocation is made upon the issuance of 8609s.
* 10% Test

The following **does** apply to 4% Projects:

* **Maximum number of credits** limited to amount required for feasibility, but not otherwise capped.
* **Basis Boost for Qualified Census Tract (QCT) or HUD-designated Difficult Development Area (DDA)** - Projects located in a HUD-designated Qualified Census Tract (QCT) or a HUD-designated Difficult Development Area (DDA) may be eligible for a 30% basis increase (basis boost). Documentation of this status must be included in the Application. In no case will a Project’s Eligible Basis attributable to the acquisition of an existing building be increased. (*See* Sections IV.E.5. and IV.E.6 for further information.)
* **Cost Limits** – The Construction Cost Limits provided in Section IV.C.2 apply to all Projects, including 4% Projects. However, applicants should note that the definition of Total Development Cost in the Glossary excludes the costs of issuance on line 65 of the Schedule A development budget. • **4% Floor** - The Consolidated Appropriations Act of 2021, passed by Congress on December 21, 2020, permanently fixed the floor of the 4% credit at 4%. The amount of the annual tax credit is calculated to yield a present value of 30% (in the case of 4% credits) of Qualified Basis, as adjusted by Housing New Mexico.
* **Rehabilitation of an existing building**. To qualify for tax credits under the Code, rehabilitation expenditures includable in Qualified Basis must exceed the greater of 1) at least 20% of the Qualified Basis of the building being rehabilitated or 2) at least $8,300 per low-income Unit being rehabilitated, as adjusted annually by the IRS. Projects financed with tax-exempt bonds are eligible for 4% credits only.
* **Acquisition/rehabilitation of an existing building**. The maximum Applicable Credit Percentage for acquisition of an existing building that will be subsequently rehabilitated is 4%. To qualify for tax credits for the acquisition, the Code requires that rehabilitation expenditures includable in the Qualified Basis must exceed the greater of 1) at least 20% of the Qualified Basis of the building being rehabilitated or 2) at least $8,300 per low-income Unit being rehabilitated, as updated by IRS Revenue Procedure annually. Projects financed with tax-exempt bonds are eligible for 4% credits only.
* **Applications for 4% LIHTC Projects** must submit the final version of the displacement/relocation assistance plan, including a sample tenant letter, with the Initial Application.
* **Federal Grant financed Projects with reduction in Eligible Basis**. In the case of a Project financed with Federal Grants, whether a newly constructed or rehabilitated building, the Project Owner shall exclude the amount of the Federal Grants from Eligible Basis.
* **Developer Fee** shall not exceed 14% of Total Development Cost (*See* QAP Glossary and QAP Section IV.D.2 for further information.) The maximum developer fee is locked in at 8609 issuances for 4% projects.
* Bond Cap request may not exceed 60% of the Total Development Cost.
* **Section 811**. 4% Projects looking to participate in the 811 PRA program are welcome to apply with the expectation of availability, however they are not eligible for the 5% boost to the capped developer fee.
* **Equity Pricing**. For 4% credits the equity-pricing factor to be used at Final Allocation will be the actual equity-pricing factor contained in the Project’s syndication agreement and the Applicable credit percentages, if rates ever exceed 4%, are determined at either the month the tax-exempt obligations are issued or Placed in Service date.
* **Hybrid 9%/4% Developments.** QAP Section II.U includes information regarding hybrid Projects.
* **Processing Fees**. Prior to the release of the Letter of Determination by Housing New Mexico Staff, a processing fee of 8.5% of the approved annual credit will be due.
* **Average Income election**. Projects electing the Average Income election under Section 42(g)(1)(C) must meet the set-aside requirements of both Section 42 and Section 142 of the Code.

1. \* The Qualified Allocation Plan (QAP) can be found at <https://housingnm.org/developers/lihtc/qaps>

   Monthly meeting agenda and request deadline can be found at <https://www.nmdfa.state.nm.us/board-of-finance/monthly-meetings/> [↑](#footnote-ref-1)
2. \* The Qualified Allocation Plan (QAP) can be found at <https://housingnm.org/developers/lihtc/qaps>

   Expires within six months of issuance [↑](#footnote-ref-2)
3. Housing New Mexico requires this fee upon submission of Developer application, also detailed in section “Fees and Expenses”. Detail for fees can be found at <https://www.nmdfa.state.nm.us/board-of-finance/monthly-meetings/submission-requirements/>. [↑](#footnote-ref-3)
4. See section “Fees and Expenses” for Cost-of-Issuance [↑](#footnote-ref-4)
5. Housing New Mexico offers a reputable financial advisor, if desired, to initiate and lead all interests towards closing [↑](#footnote-ref-5)
6. \*\* Non-refundable, even if project becomes unsuccessful

   Direct cost deposit due at submission of application in the amount of twenty percent (20%) of Financing Team’s fee schedule. This will be credited back to the Developer in the final closing invoice (The Developer will be responsible for the full payment of fees to the Financing Team, not excluding the 20% deposit) [↑](#footnote-ref-6)
7. Housing New Mexico Administrative Fee:

   Bond issues that include long-term maturity will have an administrative fee of fifteen basis points (0.15%) paid annually in advance; based on the original bond issuance amount (not declining). If bonds are fully prepaid within 15 years of closing, the borrower pays Housing New Mexico the present value (discounted at the bond yield) of the fees that would otherwise have been paid if the bonds had remained outstanding in Year 15.

   Bond issues that are fully redeemed after stabilization (short-term) will have an administrative fee of twenty basis points (0.20%), due in advance at time of closing. [↑](#footnote-ref-7)
8. If a transfer of ownership or substitution of credit enhancement occurs, a transfer fee of $2,500, plus direct cost reimbursement, is due at submission of request. [↑](#footnote-ref-8)