



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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25% Test Guidance for 4% Housing Tax Credit and Private Activity Bond Developments

On July 4, 2025, Congress passed the One Big Beautiful Bill Act (H.R. 1) which permanently lowers the Private Activity Bond (PAB) threshold from 50% to 25% for properties placed in service after December 31, 2025, provided at least 5% of the aggregate costs are financed with PABs.

As a result of this federal change, the Texas Department of Housing and Community Affairs (TDHCA) has received inquiries regarding the implementation of the new threshold for projects to qualify for the 4% Housing Tax Credit (HTC). By way of background, the Texas Bond Review Board (BRB) administers the PAB program in Texas. Their governing statute, Chapter 1372 of the Tex. Gov't. Code, identifies priorities under which reservations of bond volume cap among issuers can be issued for Qualified Residential Rental Projects. The Priority Designations are included below and the decision under which Priority to file is that of the applicant.

Priority Designation	Set-Asides Required
Priority 0	Supplemental Bond Allocations
Priority 1a	50% of the Units at 50% AMFI; 50% of the Units at 60% AMFI
Priority 1b	15% of the Units at 30% AMFI; 85% of the Units at 60% AMFI
Priority 1c	100% of the Units at 60% AMFI ¹
Priority 2	80% of the Units at 60% AMFI
Priority 3	Any qualified residential rental development. ²

The guidance that follows provides a summary of what current state law requires and therefore what TDHCA's requirements will be; however, applicants are encouraged to seek guidance from counsel for specific scenarios that may apply to their project(s).



Pursuant to Tex. Gov't Code §1372.0321(e), for PAB applications reserved under the Priority 0, 1 or 2 designation, before BRB will reserve PAB authority for the project, BRB must receive evidence from TDHCA that a 4% HTC application for the project has been submitted to TDHCA. Applications reserved under Priority 3 do not require confirmation of a 4% HTC application submission. TDHCA does not currently have a requirement that limits the 25% test further. The aforementioned provisions apply regardless of whether a PAB or HTC application is filed for the 2025 program year or in a subsequent year.

Applicants should also note Tex. Gov't Code §1372.037(b), which in certain years limits the amount of bonds issued to no more than 55% of the reasonably expected aggregate basis of the project, plus land. Applicants should seek guidance from counsel regarding whether they meet the statutory limitation placed on projects at closing to ensure compliance with §1372.037(b). Moreover, applicants are encouraged to reach out to the BRB directly with questions relating to the different priority elections (contact info below). Applicants who have an identified bond issuer should also reach out to the issuer with questions relating to the different priority elections and requirements related thereto, or any issuer-specific guidelines or requirements.

Texas Bond Review Board

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¹ For projects located in a census tract with median family income that is greater than the AMFI of the county, MSA, or PMSA that the census tract is located in.

² If filed as Priority 3/1D and PAB application was submitted as part of the Lottery, evidence of a 4% HTC application will be required if bond reservation is issued on or after June 1 of the program year. This priority election is allowed for projects located in a county, MSA or PMSA with AMFI at or below the statewide MFI.