

Private Activity Bond Authority Review Board

Multi-Family Housing Application Policies and Procedures

What are PAB?

The Private Activity Bond Authority (PAB) Program is Utah's tax-exempt bonding authority that creates a lower cost, long-term source of capital. This Program was created under the Federal Tax Act of 1986 and is administered through the Internal Revenue Service.

PAB are issued by State and local governments to benefit private, for-profit entities that provide public benefits for qualified projects. PAB are exempt from Federal (and sometimes State and local) income tax on the interest payment received by the bondholder.

Applicants are developers who are interested in building or rehabilitating multi-family apartments, which have a large percentage of affordable units compared to market rate units. Requests are carefully reviewed by the board and approved as per their discretion.

Why Use PAB?

- Lower Interest Rates than conventional loans of comparable maturity.
- Higher Loan Amounts (greater leverage) due to lower interest rates.
- Greater Variety of Financing Tools
 - Variable Rate Demand Bonds to provide greater cash flow.
 - Derivative products to customize financing to desired risk tolerance.
- Equity from 4% Low-Income Housing Tax Credits (LIHTC) for MF Housing projects.
 - Provides 25% to 30% more capital as a source of funds.
- 4% Low-Income Housing Tax Credits – MF Projects
 - Unlimited Pool
 - Non-competitive application process

Policy Requirements

Bond Proceeds vs. Operation Requirements

- Private Business Use Test
 - More than 10% of proceeds must be for a private business use.
 - Property financed must be used to secure the payment of more than 10% of the debt service.
- Limitation on Use of Bond Proceeds
 - 95% or more of costs financed with bonds must be for good costs (architect and engineering fees, permits (limited amount) land, depreciable costs, and any expense paid or incurred after the Inducement Resolution date).
 - 5% bad costs include: expenses incurred prior to Inducement Resolution, intangible assets, bond issuance costs and underwriting, loan origination fees.
 - Issuance costs (bond counsel, underwriter and trustee fees) cannot exceed 2% of proceeds.
- Use of 4% Low Income Housing Tax Credit (LIHTC)
 - Multi-family rental projects using volume cap must also use the 4% Low Income Housing Tax Credit (LIHTC); therefore, recipients of volume cap must also meet the requirements of the Qualified Allocation Plan (QAP) administered by Utah Housing Corporation.

- Tenant Income Restrictions
 - The Federal Code requires that a portion of the rental project units financed by tax-exempt bonds be rented to, or if not rented, be vacant and available for, low-income tenants. For each rental situation, the income requirements are adjusted for household size and are determined by HUD. The Code requires that not less than:
 - A.** 20% of the units of a project be occupied by, or vacant and available for, tenants with annual incomes of 50% or less of the “area median income” (AMI), OR
 - B.** 40% of the units of a project be occupied by, or vacant and available for, tenants with annual incomes of 60% or less of AMI.
 - Rent restrictions and income limits must be met annually for 15 years for Federal standards. The Utah QAP also has a specific number of years that the rent restrictions and income limits must be met.
 - Additionally, the Private Activity Bond Authority Review Board may require that all units be “rent restricted” and the remaining units not restricted in “A” or “B” above, be rent-restricted and occupied by individuals whose income averages 80% or less of AMI. An occupant’s income may never exceed 130% of AMI at the time of their initial occupancy. A unit is rent-restricted if the gross rent does not exceed 30% of the imputed income limitation. If the owner utilizes Federal Low-Income Housing Tax Credits, additional income restrictions may apply.
 - Income Certifications
Each qualified tenant’s income must be re-verified at least once each year. Each tenant household will be treated as a qualified tenant unless their household income exceeds a level greater than 140% of the maximum level under which they qualified (50%, 60% or 80%) of median. Tenants need not be evicted if their incomes have raised above qualifying income levels; however, the next project unit that becomes available for rent must be rented to, or if not rented, be vacant and available for, tenants with incomes that will enable the project to remain in compliance. The project owner must maintain records evidencing compliance with the rent and occupancy requirements. The project owner must file reports with the Treasury Department and with UHC, at least annually, certifying the project meets the income set-aside requirements.
- Residential Rental Property
 - Must: 1) have complete facilities within each unit; 2) rent on a non-transient basis; and 3) be available to the general public.
- Financing Restrictions – All Projects
 - No more than 25% of proceeds for land acquisition.
 - Projects financed with bonds must be completed within three (3) years after issuance.
 - 15% Rehab Requirement-Acquisition Financings
 - Fifteen percent (15%) or more of the costs for the building(s) and fixtures must be financed with bonds.
 - Rehabs must be completed within 24 months.

- Additional Financing Restrictions – MF Projects
 - At least 50% of the project’s aggregate basis (land and building) must be financed by bond proceeds (plus earned interest) to be exempt from 9% tax credit competitive allocation process. Any less, the project is not shielded from 9% allocation process and forfeits 4% tax credits.
 - Cannot finance: hotels, motels, student housing, rooming houses, retirement homes, nursing homes, rest homes or trailer parks.
 - Additional restrictions as outlined in Code.

How Does the Financing Work?

- Applicants are responsible for arranging the necessary financing steps, including a buyer for the bonds. **PAB is not a fiscal advisor or an authorized issuer of tax-exempt bonds.**
- Applicants are encouraged to have financing completed at the time of application submission.
- Applicant must detail status of the project’s financing at the time of application.
- Applicants are responsible to provide complete, accurate and verifiable information.
- PAB staff may contact lender to verify financing information.

Transaction Team

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| <ul style="list-style-type: none"> • Issuer • Issuer’s Counsel/Financial Advisor • Bond Counsel • Owner • Owner’s Counsel • Owner’s Financial Advisor • Credit Enhancer • Credit Enhancer’s Counsel | <ul style="list-style-type: none"> • Construction Phase Credit Enhancer and Counsel • Tax Credit Equity Provider and Counsel • Underwriter • Underwriter’s Counsel • Trustee and Trustee’s Counsel • Rating Agency |
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Issuance Process

1. Engage required bond professionals:
 - Issuer.
 - Bond Counsel.
 - Investor for bonds and tax credits.
2. Inducement Resolution
 - Obtain within 60 days from date of expenditures financed with bonds.
 - Especially important if purchasing land with private funds prior to closing.
3. Submit required fees and application with all exhibits.
4. Attend PAB Board Meeting to present project for approval of volume cap.
5. If cap is awarded, PAB sends MF application to UHC for tax credit approval. Applicants applying for tax credits must meet Qualified Action Plan (QAP) requirements. Volume Cap allocation by PAB does not ensure approval for tax credits by UHC.
6. Develop all aspects of transaction.
7. TEFRA Hearing
 - Public Hearing conducted by the issuer of the bonds.
 - Hearing held at least two weeks prior to bond closing.
8. Bond Counsel will prepare documents for closing when financing is finalized.

9. Attend bond closing with issuer. Proceeds from issuance are given to applicant to start construction on project.

Types of Issues

- Public Offering
 - Sale to the general public through the marketplace.
 - Buyer of the bonds may resell them to other investors.
 - Must be rated by one of the three bond rating services – Moody's, Standard and Poor's or Fitch's with AA- or AAA-rating for best interest rates.
- Private Placement
 - Sold to bondholder(s); stays in their own investment portfolio.
 - Bond does not need to be rated; due diligence done by investor.
 - No need for Credit Enhancement. Interest rate may be higher.
 - No need for Trustee or Underwriter.
 - Transaction: 1) takes less time; 2) has fewer hurdles; and 3) is often less expensive to structure.

Work and Costs

- Bond issues involve a substantial amount of work by many parties.
- Costs related to transaction can be substantial, including fees for: application, underwriter, underwriter's counsel, bond counsel, credit enhancement, construction lender, permanent lender, real estate counsel, issuer, and trustee.
- Out of pocket expenses for any of the foregoing, printing costs, rating service costs, etc.

PAB Board Policies And Procedures

1. The PAB Board has approved and adopted the guidelines below, as well as, the Multi-Family Housing Scoring Criteria to evaluate applications by certain criteria as outlined and written in the Federal and State Legislation.
2. PAB reserves the right to change or amend the criteria when deemed necessary and will give sufficient notice to the public.
3. The competitive evaluation criteria are used by the applicants, staff and the PAB Review Board.
4. The PAB Review Board reserves the right to accept or reject the conclusions from the staff's evaluations and recommendations.
5. The Board will exercise its' prerogative in a prudent manner; furthermore, it reserves the right not to allocate any tax-exempt Volume Cap for that purpose.
6. Only those projects that best meet the goals and objectives of the PAB Program will be selected for an allocation.
7. All awards of tax-exempt bonds shall take place at the public PAB Board Meetings.
8. PAB will determine the time and place of the public meetings for the allocation of Volume Cap.
9. Once the PAB Board votes to give the applicant the amount of volume cap requested, the allocation is final; assuming, the applicant has met all requirements of the program and has not misled, falsified or otherwise misinformed the PAB Board.

Application Process

The PAB Program runs on a calendar year from January to December. Meetings are generally held five times per year, on the second Wednesday of the scheduled month.

PAB Staff is willing to assist applicants and answer questions regarding the application process and evaluation **before** the application is submitted. A preapplication meeting can also be arranged with staff. Staff is not allowed to make suggestions, recommendations or otherwise assist an applicant regarding the proposed project.

Applicants are strongly encouraged to do the following actions before submitting their application:

- Begin discussions with appropriate jurisdiction and issuer of the bonds, regarding the Inducement Resolution and TEFRA Hearing.
- Select bond counsel and obtain bond counsel's opinion letter stating the project qualifies to use tax-exempt bonds.
- Initiate discussions with financial institutions willing to issue a letter of credit for the full amount of the bonds to be issued (if public offering).
- Select investment banker; or, if a private placement, the buyer of the bonds. Obtain detailed commitment letters from all financial entities involved.
- Complete the necessary financing steps at the time of submission.
- Contact applicant's principal bank in all instances.

Persons or entities applying for tax-exempt bond financing must comply with the following procedures. Failure to comply with any procedure or requirement can result in disqualification of the application.

The application has been combined with the Utah Housing Corporation (UHC) Low-Income Housing Tax Credit 4% (LIHTC) Application. The application is available by contacting David Seely at UHC, (801)902-8246 or e-mail: dseely@uthc.org. Any questions regarding the bond portion of the application, please contact Jess Peterson at (801) 468-0145 or at jesspeterson@utah.gov. Please visit the Utah Housing Corporation web site at www.utahhousingcorp.org for additional information or you may contact UHC directly at (801) 902-8200.

Applicants are responsible to provide complete, accurate and verifiable information on the application. Two (2) paper copies and one (1) electronic copy sent by e-mail to the PAB Director, of the completed PAB Application, including all applicable exhibits and **application fees** must be delivered no later than 5:00 p.m., on the final date of submission to the Utah Governor's Office of Economic Development, 60 East South Temple, 3rd Floor, Salt Lake City, 84111. Late applications will **not** be accepted for that cycle. Once the application is submitted no further information can be submitted unless requested by staff.

Staff reviews the application, evaluating and scoring it on the criteria established by the PAB Review Board. The scoring guidelines can be found on the PAB web site at <http://business.utah.gov/programs/pab/applications-and-fees/>. PAB Staff will review the application as to its completeness, including contacting the lender and appropriate city and/or county departments. Missing information or fees may delay the application process and/or approval. In the event staff requests additional information or clarification, the applicant has up to 10 working days or the specified date to respond. Failure to do so can result in the rejection of the application for the current round of funding. PAB reserves the right to disqualify any application for incompleteness or other failings. If disqualified, the applicant

will be notified via e-mail or letter. A meeting with PAB Staff can be requested for clarification of the disqualification.

Applicants will have the opportunity to present the details of their project to the PAB Review Board at the scheduled public meeting. Only the applicant can make the presentation. The applicant can invite others to the meeting but unless asked a specific question by the Board, they may not add to the presentation. Applicants will have 5-7 minutes to make the presentation unless extended by the Board.

Applicants awarded Volume Cap may not transfer the award to other projects and/or persons. **All costs incurred in the application or development process are the sole responsibility of the applicant.**

PAB may disallow developments with a conflict of interest, identity or affiliation between any of the principal parties. PAB may consider the applicant’s financial, development and/or management abilities beyond the information provided in the application as factors for selection.

All decisions of the PAB Board are subject to additional conditions, restrictions and requirements as determined by PAB in its sole discretion. Applicants will be notified in writing of the additional requirements.

Volume cap is allocated on a first-come, first-serve basis. The PAB Review Board makes the funding decisions on submitted projects. The Board has 11 members with representatives from State Government, State Housing Agency, and City and County Governments.

Application Fees

Application Amount	1st Time Application Fee	Application Resubmission Fee
Under \$3,000,000	\$1,500	\$ 750
\$3,000,000 - \$5,000,000	\$2,000	\$1,000
Over \$5,000,000	\$3,000	\$1,500

Confirmation Fee
\$300 per million (\$)

Extension Fees
First 90-day extension = \$0
Second 90-day extension = \$2,000
Third 90-day extension = \$4,000
Every 90-day extension beyond three = \$4,000

Volume cap allocations are valid for a period of 90 days. Staff prepares a Certificate of Allocation, which is forwarded to bond counsel and the applicant. Recognizing the complex nature of tax-exempt financing, extensions may be requested by the applicant, which requires Board approval.

Extension Request Process

An applicant awarded Volume Cap is given a Certificate of Allocation, which is good for 90 days. Recognizing the complexity of tax-exempt financing, extensions may be requested if the bonds are not sold within that 90-day period. Approval of the Board is required for all extensions. Extensions are valid for 90 days.

The PAB Board will approve the first 90-day extension request without requiring a fee or imposing any special conditions.

All extension requests after the first extension **must** meet the following:

- Payment of fee for the extension required (see above).
- Completion of the "Multi-Family Project Extension Request Status Report." All information requested and the progress report **must** be submitted at least two (2) weeks before the Board Meeting. Failure to comply with this requirement may result in a denial of the extension request.
- Notify staff of **any** changes to a project, as soon as it occurs. If the changes significantly alter the project, the applicant may be asked to relinquish their current volume cap allocation and submit a new application for volume cap. PAB reserves the right to withdraw the original allocation and evaluate the newer application.
- Submit a revised schedule of activities, if any changes occur with the project.

At the discretion of the PAB Board, applicants may make a brief presentation explaining the need for the extension. PAB reserves the right to postpone a decision for any reason.

If the PAB Board does not grant an extension, the volume cap is automatically relinquished back to the Board. The applicant can compete for an award of volume cap by resubmitting an application and paying the appropriate application resubmission fee if it is for the exact same project.

PAB is committed to a policy, which prohibits discrimination against persons based on race, religion, gender, national origin, handicap, familial status or age in its program.

Compliance

1. Any conditions or restrictions required by PAB must be adhered to.
2. Applicants agree to provide documentation demonstrating compliance.
3. Applicants understand that representations made in the application are binding and subject to verification by PAB or its agent(s). (PAB understands the uncertainty of meeting some representations (sales and cash flow projections, construction costs, financing costs, etc.) and acknowledges the applicant is not strictly held to these representations.)
4. If for any reason, applicants are unable to meet the conditions or restrictions required, they will notify PAB in writing as to the circumstances preventing or modifying compliance. PAB reserves the right to accept or reject explanation.

Additional Information and Helpful Tools

The Private Activity Bond Authority Program Web Site can provide additional information.

<http://business.utah.gov/programs/pab/>

The Multi-Family Housing Application information is available at the following link on the Private Activity Bond web site: <http://business.utah.gov/programs/pab/applications-and-fees/>

The following tools can be found on the Private Activity Bond Authority Program web site. <http://business.utah.gov/programs/pab/helpful-tools/>

- Provider List of Bond Counsel
- Provider List of Financial Advisors
- Pertinent Team Players and Their Roles for tax-exempt bond issues.
- Bond Process Flow Chart
- Information Packet

Questions or Contact:

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