



# Tennessee Housing Development Agency

Andrew Jackson Building Third Floor  
502 Deaderick St., Nashville, TN 37243

**Bill Lee**  
Governor

**Ralph M. Perrey**  
Executive Director

## NOTICE

TO: Persons Interested in the Multifamily Tax-Exempt Bond Authority Program  
FROM: Multifamily Programs Division  
DATE: October 10, 2022  
SUBJECT: Draft Multifamily Tax-Exempt Bond Authority Program Description for 2022

The following document is the initial draft of the Multifamily Tax-Exempt Bond Authority Program Description for 2023 (the “Draft 2023 PD”). The Draft 2023 PD includes language regarding changes proposed by members of THDA’s Board of Directors, changes proposed by the public, and changes proposed by THDA staff. Staff expect to request approval of the 2023 Multifamily Tax-Exempt Bond Authority Program Description by the THDA Board of Directors at the regularly scheduled meeting in November, 2022.

Changes proposed in this Draft 2023 PD may be accepted, rejected, or modified in any respect. Changes or modifications not currently reflected in this Draft 2023 PD may also be made. By posting this Draft 2023 PD, no representations are being made about any item that may be included, excluded, or modified in the preparation and approval of the final Multifamily Tax-Exempt Bond Authority Program Description for 2023.

Written comments may be submitted by email to [TNAallocation@thda.org](mailto:TNAallocation@thda.org). Please use the subject “DRAFT 2023 PD COMMENT”. **The deadline for submission of comments is 9:00 AM Central Time on Friday, October 21, 2022.**



**MULTIFAMILY TAX-EXEMPT BOND AUTHORITY**  
**DRAFT PROGRAM DESCRIPTION FOR 20222023**

Administered by

The Multifamily Programs Division of  
Tennessee Housing Development Agency

Ralph M. Perrey, Executive Director

Approved [DATE]

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## **Section 1: 2022-2023 Multifamily Tax-Exempt Bond Authority Overview**

The Tennessee Housing Development Agency (“THDA”) is making private activity bond authority available to local issuers to finance multifamily housing units in Tennessee under 26 U.S.C. § 142(d) of the Internal Revenue Code (“Section 142”). The private activity bond authority can be used only for tax-exempt Private Activity Bonds issued to finance qualified residential rental projects through new construction of multifamily rental units, conversion of existing properties to multifamily rental units through Adaptive Reuse/Conversion, or acquisition and rehabilitation of Existing Multifamily Housing, hereinafter referred to as Multifamily Tax-Exempt Bond Authority (“MTBA”).

THDA anticipates two funding rounds as described in Table 6-1 in Section 6.C. THDA will notify program participants by email and information posted to THDA’s website. No applications submitted under this MTBA Program Description will have priority or be considered under any future MTBA Program Description.

Whenever a local jurisdiction takes action that THDA determines to be for the primary purpose of preventing proposed MTBA developments from satisfying applicable program requirements, THDA may lower the amount of MTBA available to that jurisdiction in future MTBA Program Descriptions. Examples include, without limitation, “downzoning”, action restricting utilities or utility connections, action regarding required public roads, or action to preventing issuance of Certificates of Occupancy.

Applicants must apply for MTBA through THDA’s online system, the Tennessee Housing Online Management Application System. Applicants applying for MTBA in THOMAS are deemed to be simultaneously applying for Noncompetitive Low-Income Housing Credits (“Housing Credit”) under 26 U.S.C. § 42 of the Internal Revenue Code (“Section 42”) and must meet the requirements found in the THOMAS User Manual and use the documents found on the THOMAS Documents Page. All MTBA Program Description requirements, application requirements, and Code requirements must be met. If there is any inconsistency or conflict among the requirements, the most stringent of the requirements will apply, as determined by THDA.

When this Program Description calls for some THDA action, including, but not limited to, a determination, adjustment, review, evaluation, or exercise of discretion, all such actions shall be at THDA’s sole discretion, whether specifically so stated or not.

No person or entity who submits an Initial Application shall have any right to an allocation of MTBA under this Program Description based solely on the score assigned to their Initial Application. THDA decisions are final.



## **Section 2: Definitions**

**20/50 Test** – The 20/50 Test is a federal minimum set-aside that may be elected by an Applicant for Housing Credit that requires at least 20% of the units in a Housing Credit Development to be both rent restricted and occupied by households whose income is less than or equal to 50% of area median gross income (“AMI”). This is an irrevocable election made in an Initial Application.

**40/60 Test** – The 40/60 Test is a federal minimum set-aside that may be elected by an Applicant for Housing Credit that requires at least 40% of the units in a Housing Credit Development to be both rent restricted and occupied by households whose income is less than or equal to 60% of AMI. This is an irrevocable election made in an Initial Application.

**Average Income Test** - The average income test is a minimum set-aside that may be elected by an applicant for Noncompetitive Housing Credits. Under this election, at least 40% of the units in a Housing Credit development are required to be both rent restricted and occupied by individuals whose incomes do not exceed the imputed income limitation designated by the applicant. This is an irrevocable election made at Initial Application. The average of the imputed income limitation designated cannot exceed 60% of AMI. The designated imputed income limitations must be in 10% increments as follows: 20%, 30%, 40%, 50%, 60%, 70%, and 80%.

**42(m) Letter** - A letter issued by THDA to successful applicants for Noncompetitive Housing Credits.

**Acquisition** - Acquiring the control of real property and assets.

**Adaptive Reuse/Conversion** - The renovation and reuse of a pre-existing building that has not been used for residential purposes and creates additional affordable housing units. Pre-existing buildings used as hotels or motels are eligible as Adaptive Reuse/Conversion. Adaptive Reuse/Conversion will be evaluated and reviewed as New Construction.

**AMI** - Area Median Income as determined by HUD.

**Applicant** – An applicant for Multifamily Tax-Exempt Bond Authority under this Program Description that will own the proposed development.

**Application** – See “Initial Application”.

**Appraisal** - An opinion of value for land and building cost.

**Basis Boost** - An increase of up to 30% in eligible basis for a building in order to improve the financial feasibility of the building in a Difficult Development Area. In this MTBA Program Description, only areas defined by HUD as Difficult Development Areas are eligible for the Basis Boost.

**Bond** - A financial instrument issued on behalf of a local or state government for the purpose of providing special financing benefits for qualified projects.

**Bond Counsel** - Counsel representing the bond issuer and bondholders.

**Bond Issuer** - A municipality, board, or housing authority with the authority to issue bonds using MTBA for a jurisdiction.



Bond Opinion Letter - A document provided by Bond Counsel representing the issuer that opines that the bonds have been validly issued and, if tax exemption is intended, that the bonds are tax-exempt bonds.

Bond Purchase Agreement Summary Letter - The THDA Template that describes the terms of a bond purchase agreement.

Capital Needs Assessment - See Physical Needs Assessment

Carryover Allocation Application – The application and all related documentation required when a development with a Reservation Notice will not be placed in service in the same year as the Reservation Notice.

Certificate of Occupancy - A document issued by a local government agency or building department certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

Certified Public Accountant - A state licensed accounting professional who provides accounting services and opinions and is committed to protecting the public interest.

Code – Internal Revenue Code of 1986, as amended, and together with Sections 42 and 142, shall include all subsequent tax legislation duly enacted by the Congress of the United States and shall be deemed to include the United States Treasury Regulations in effect with respect thereto (including regulations first promulgated under previous versions of the Code) and shall also include revenue procedures, revenue rulings, or other published determinations of the Treasury Department or the Internal Revenue Service of the United States.

Compliance Period – The period of 15 taxable years, commencing on the first day of the taxable year in which any building that is part of the Housing Credit Development is placed in service or, if deferred by election of the Owner of the Housing Credit Development, the first day of the next calendar year, but only if the building is a qualified low-income building as of the close of the first year of such period. This definition may be revised under the land use restrictive covenants for a longer duration based on Applicant’s election under Section 20 of the Qualified Allocation Plan.

Commitment Fee - A fee charged for a firm commitment of MTBA.

Commitment for Permanent Financing - The commitment for long term permanent financing describing all terms and conditions of such financing.

Competitive Housing Credits - Housing Credits that are available for construction or rehabilitation housing activities as allocated through the competitive process described in the Qualified Allocation Plan.

Concerted Community Revitalization Plan (“CCRP”) - A document that assesses the health and potential prosperity of an area through public interaction and assessment of the physical, social and economic health of the citizenry, businesses, infrastructure and built environment in the area. A CCRP must contain all of the following:

1. A target area with clearly defined geographic boundaries.
2. A defined role for the lead and/or convening organization that will coordinate all other partners’ efforts and monitor plan progress.
3. A steering committee or coalition that is representative of the community and is charged with guiding the process.



4. A survey of current conditions, a needs assessment and/or an asset map that defines community assets upfront and clearly identifies challenges to be addressed. The data should include demographics, economic vitality, and public investment.
5. Public meetings and surveys to identify the citizen and business' vision for the neighborhood/target area.
6. Minimum elements the plan should address include Housing, Education, Infrastructure and Economic Development.
7. Defined outcomes and objectives based both on data and community outreach. Outcomes should be realistic and responsive to the interests of the community.
8. A set of strategies to achieve the outcomes.
9. A proposed timeline for implementation of strategies.
10. Proposed funding for implementation.
11. Continued evaluation of progress, allowing periodic assessment of what is working, what is not and where adjustments are needed.
12. Approval of the plan from the appropriate local entity

Conversion of Existing Property - See Adaptive Reuse/Conversion

Conditional 42(m) Letter – A letter issued by THDA to Applicants seeking a determination of 4% Housing Credit in conjunction with uncommitted Multifamily Tax–Exempt Bond Authority.

Consultant - A third-party entity that provides consulting services to MTBA Development Participants. An entity acting in the capacity of Owner, Developer, or General Contractor or which provides technical assistance to the Owner, Developer, or General Contractor is considered a Consultant. Consultants include, but are not limited to, construction management consultants, interior design consultants, relocation specialists, tax credit application consultants, resident certification consultants, HOPE VI consultants, etc. All consulting fees are considered part of the calculation of the maximum allowable Developer fee for each MTBA Development.

Cost Certification - The certification of actual total Development costs for a development and the amount of Housing Credit eligible basis in the Development at the completion of construction for a development.

Cost of Issuance - Costs associated with the issuance of Private Activity Bonds, capped at 2% in accordance with Code requirements. These costs include costs permitted under the Code and the MTBA Commitment Fee.

Credit Period – The 10–year period over which Housing Credit may be claimed. The Credit Period begins on the first day of the taxable year in which any building that is part of a Housing Credit Development is placed in service or, if deferred by election of the Owner of the Housing Credit Development, the first day of the next calendar year, but only if the building is a qualified low–income building as of the close of the first year of such period.

Developer - The legal entity designated as the Developer in the Application as well as all persons, affiliates of such persons, corporations, partnerships, joint ventures, associations, or other entities that have a direct or indirect ownership interest in the Developer entity. Material participation (through Placed In Service) is required for all developers and for all entities that receive any portion of the Developer Fee.

Development Team - Includes any individual or member of the development team including Governors/Directors, Members and Managers/Officers of the Ownership Entity; Officers, Directors, and





Stockholders of the Development Entity and Officers, Directors, and Stockholders of the Property Management Company.

Difficult Development Area (“DDA”) –Any area designated as such by HUD or as so defined by THDA in accordance with Section 42(d)(5)(B)(v). The list is available here: <https://www.huduser.gov/portal/datasets/qct.html>.

Disability –With respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such impairment; or being regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited by law because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. An individual will not be regarded as having such an impairment when the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. For further definition, please see the Americans with Disabilities Act of 1990, as amended.

Downzoning - An effort to change zoning to reduce permitted density of housing and development.

Elderly – see definition of Older Persons.

ENERGY STAR - Energy efficient designation that must be obtained in order to utilize the Energy Star Utility Allowances published on the THDA website.

Evaluation Notice – A notice provided by THDA to request clarification or additional information related to a requested status report on the development, Final Application, quarterly construction report, or certified property management application; during an on-site inspection of the property during construction, after the buildings are placed in service or during the term of the Extended Use Agreement; or other compliance concern identified by THDA in its sole discretion. Failure to respond to successive Evaluation Notices by the Final deadline allows THDA, in its sole discretion, to return or reject the application, recapture the allocation, or issue an event of noncompliance under the terms of the Extended Use Agreement.

Extended Use Agreement – Also known as the Declaration of Land Use Restrictive Covenants for Low–Income Housing Tax Credits (“LURC”), is the agreement executed between THDA and Owner. The LURC:

1. Is binding on Owner and all successors of Owner;
2. Requires the Housing Credit Development to comply with the requirements of Section 42, the Qualified Allocation Plan, the Application, and THDA;
3. Evidences Applicant’s federal election and any requirements pursuant to Applicant’s scoring elections in the Initial Application;
4. Requires that the applicable fraction for each building for each taxable year during the term of the LURC will not be less than the applicable fraction specified the LURC;



5. Prohibits the eviction or termination of the tenancy (except for good cause) of an existing low-income resident or any increase in the gross rent with respect to a low-income unit that is not otherwise permitted;
6. Allows individuals who meet the income limitation applicable to the building (whether prospective, present, or former occupants of the building) the right to enforce in any State court the rights under (1) and (2) above;
7. Prohibits the disposition to any person of any portion of the building to which the LURC applies, unless all of the building to which the LURC applies is disposed of to such person;
8. Prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective resident as such a holder;
9. Is recorded in the real property records of the county in which the Housing Credit Development is located as a restrictive covenant running with the land; and
10. Commences on the first day of the Compliance Period for a term of at least thirty (30) years (the "Extended Use Period").

Existing Multifamily Housing - A multifamily development that will preserve affordable housing units that are rent and income restricted or, through rehabilitation of units that were not previously affordable, create affordable housing units.

Federal Election - For purposes of MTBA; the federal election is the minimum set-aside requirement found under Section 142(d) of the Code; where a certain percentage of the units are designed low income and must be qualified by households earning no more than the associated income limit. For purposes of Noncompetitive Housing Credits; the federal election or test is the minimum set-aside requirement found under Section 42(g)(1) of the Code; where a certain percentage of the units are designed low income and must be qualified by households earning no more than the associated income limit. In the MTBA Program Description; applicants will be held to the federal election required for Noncompetitive Housing Credits.

Final Application – The application and all related documentation required when a Housing Credit Development is to be placed in service and for which IRS Forms 8609 are sought.

Firm 42(m) Letter – A letter issued by THDA to Applicants seeking a determination of 4% Housing Credit in conjunction with a commitment of Multifamily Tax-Exempt Bond Authority.

Grand Divisions – the East, Middle, and West Grand Divisions of Tennessee as described in Tennessee Code Annotated Title 4, Chapter 1, Part 2

Hard Cost - Costs that include expenses directly related to the physical construction of a building such as construction materials and construction labor.

Housing Credit – Low-Income Housing Credit as described in Section 42 of the Code.

Housing Credit Development – the proposed or existing rental housing development for which Housing Credit has been applied for or allocated.

Housing for Older Persons – Housing (i) intended for, and solely occupied by, persons age 62 or older; or (ii) intended and operated for occupancy by at least one person age 55 years or older per unit, or (iii) provided for under any state or federal program that HUD has determined is specifically designed and operated to assist older persons (as defined in the state or federal program).



HUD - The United States Department of Housing and Urban Development.

Incentive Fee - A potentially refundable fee charged to provide an incentive to issue and close the sale of MTBA.

Inducement Resolution – A resolution of the local issuing entity authorizing issuance of tax-exempt bonds by the local issuing entity to finance the proposed development.

Initial Application – The application submitted by an Applicant seeking an allocation of Housing Credit, including, without limitation, all information and documents entered into THOMAS.

IRS – Internal Revenue Service.

Issuer Certification – A certificate provided by a local issuer certifying willingness to issue tax-exempt bonds to finance a proposed development in a form and with substance as shown on the THOMAS Documents Page.

Local Government Notification - Following receipt of Initial Applications, THDA will notify the chief executive officer (or the equivalent) of the local government in whose jurisdiction a development proposed in an Initial Application is to be located. Such individual will have an opportunity to comment on the development proposed in the Initial Application to be located in the jurisdiction, as required by Section 42(m)(1)(A)(ii).

Market Study - An analysis of the market conditions of supply, demand and pricing for a specific property type in specific areas.

Modification - Changes to buildings, units, square footage, scoring items, etc. that determine eligibility for a commitment of MTBA and an allocation of Noncompetitive Housing Credits.

MTBA – Multifamily Tax-Exempt Bond Authority.

No Further Monitoring Status – Housing Credit Developments that are outside of the Section 42 defined Compliance Period that have failed to respond to and/or cure notices for monitoring reviews, non-submittal of annual compliance reports, and noncompliance with program requirements for 180 days from the date THDA provides the notice of noncompliance. Ineligibility will continue until the noncompliance is cured or the LURC expires.

Noncompetitive Housing Credits – 4% Housing Credits made available to qualified developments, subject to the requirements of this MTBA Program Description, when at least the statutorily required portion of the aggregate basis of the building and the land on which the building is located is financed with tax-exempt bonds using MTBA.

Other Sources of Funds – sources of funding not related to deferred developer fee, or owner capital contributions, or other permanent contributions that do not require repayment. Examples of Other Sources of Funds include, without limitation, grants from THDA or local governments, grants from local trust funds, and grants from philanthropic foundations. PILOT commitments from a local government, operating subsidies, uncommitted “soft pay” loans, and construction period income will not be considered as Other Sources of Funds.



Owner - The single purpose legal entity (e.g. Corporation, Limited Partnership, Limited Liability Partnership) holding title to the Site.

Public Housing Authority (“PHA”) – A public housing authority created under the Housing Authorities Law, Tennessee Code Annotated Section 13–20–101, et seq.

Physical Needs Assessment – A report prepared by licensed third party provider which contains detailed information about physical needs, deficiencies (including major systems, life safety, and ADA needs) and the capital needs requirements of existing buildings, including a detailed work plan showing all necessary and contemplated improvements and projected costs.

Private Activity Bond - Tax-exempt bonds issued by or on behalf of local or state government for the purpose of providing financing for qualified projects.

Qualified Allocation Plan (“QAP”) – The document prepared pursuant to Section 42(m) of the Code that details THDA’s priorities, process, and requirements regarding the Housing Credit program.

Qualified Census Tract (“QCT”) - Any census tract identified by the Secretary of Housing and Urban Development for the most recent year for which census data are available on household income in such tract. The list is available here: <https://www.huduser.gov/portal/datasets/qct.html>.

Qualified Low Income Buildings - Any building that is part of a Qualified Residential Rental Project at all times during the period which runs from the first day of the Compliance Period and ends on the last day of the Compliance Period.

Qualified Low Income Development - See Qualified Low Income Project

Qualified Low Income Project - Any residential rental property if the project meets the requirements of Section 42 of the Code.

Qualified Low Income Units - Any unit that is occupied by a qualified low income household and is part of a low income housing project at all times during the period that runs from the first day of the Compliance Period and ends on the last day of the Compliance Period.

Qualified Nonprofit Organization - An organization that is described in Section 501(c)(3) or (4) of the Code that is exempt from tax under Section 501(a) of the Code, and that meets the requirements contained in Section 7 of the QAP.

Qualified Residential Rental Projects - As required by Section 142, any residential rental property that meets the Federal Election Test at all times during the Qualified Project Period.

Qualified Project Period - As required by Section 142, the period beginning on the first day on which 10% of the residential units in the project are occupied and ending on the latest of;

1. The date that is 15 years after the date on which 50% of the residential units in the project are occupied,
2. The first day on which no tax exempt private activity bond issued with respect to the project is outstanding, or
3. The date on which any assistance provided with respect to the project under Section 8 of the United States Housing Act of 1937 terminates.



Related Parties – In relation to the Initial Application, any subsequent application or any request for a Modification, related parties include, the Applicant, developer, Owner, entities with commonality of one or more persons with those listed in the Ownership Entity Breakdown, entities with commonality of one or more persons with those listed in the Developer Entity Breakdown, and any of the following:

- a. Any person or entity who has a right to (i) replace the developer, (ii) act as co-developer, (iii) replace any individuals or entities who comprise a developer or co-developer, or (iv) otherwise direct the activities of the developer will be considered a developer for purposes of applying this limit.
- b. Any person or entity who has a right to (i) replace the general partner of the Owner or Applicant, (ii) act as co-general partner of the Owner or Applicant, (iii) replace any individuals or entities who comprise a general partner or co-general partner of the Owner or Applicant, or (iv) otherwise direct the activities of the general partner of the Owner or Applicant will be considered an Owner or Applicant, as the case may be, for purposes of applying this limit.
- c. Any person or entity who has a right to (i) replace the controlling stockholder of the Owner or Applicant, (ii) act as controlling stockholder of Owner or Applicant, (iii) replace any individuals or entities who comprise a controlling stockholder of the Owner or Applicant, or (iv) otherwise direct the activities of the controlling stockholder of the Owner or Applicant will be considered an Owner or Applicant, as the case may be, for purposes of applying this limit.
- d. Any person or entity who has a right to (i) replace the managing member of the Owner or Applicant, (ii) act as co-managing member of the Owner or Applicant, (iii) replace any individuals or entities who comprise a managing member or co-managing member of the Owner or Applicant, or (iv) otherwise direct the activities of the managing member of the Owner or Applicant will be considered an Owner or Applicant, as the case may be, for purposes of applying this limit.
- e. Any person who is a signatory or guarantor of construction financing documents, permanent financing documents, and/or equity syndication documents.
- f. This limit will also apply to any person or entity that is related to any person or entity specified above.

Rural - Counties identified as rural on the THOMAS Documents Page.

Section 42 – Section 42 of the Code, as amended, together with all subsequent legislation duly enacted by the Congress of the United States affecting Section 42, all United States Treasury Regulations in effect with respect thereto (including regulations first promulgated under previous versions of the Code) and all revenue procedures, revenue rulings, or other published determinations of the Treasury Department or the Internal Revenue Service of the United States applicable to Section 42.

Significant Adverse Event (“SAE”) – An occurrence of noncompliance (curable or incurable), program fraud or misrepresentation, or an act that adversely conflicts with THDA’s mission as described in Section 6 of the QAP.

Site – A parcel of land on which the MTBA Development will be developed, described by a unique legal description.

Special Housing Needs – Housing needs served by housing that has been constructed or rehabilitated with special features (e.g. location, design, layout, or on-site services) to help people live at the highest level of independence in the community. For example, the unit may be adapted to accommodate special physical or medical needs; or provide on-site services such as staff support for older persons, individuals with mental health issues, developmental, or other social needs.



Supplemental MTBA – an allocation of THDA MTBA made to a development that has already received an allocation of MTBA, but has not yet placed in service, required to ensure that the 50% threshold as described in Section 42(h)(4)(B) of the Code to qualify for federal 4% Housing Credit can be met.

Supportive Services – Furnished through a contract with supportive service providers to provide Supportive Services, appropriate for a particular special needs population, under a planned program of services. In the case of persons with disabilities or housing for older persons, such services may be designed to enable residents of a Housing Credit Development to remain independent and avoid placement in a hospital, nursing home, or intermediate-care facility.

Supportive Services for Older Persons – Must include at least two of the following services: social and recreational programs, continuing education, information and counseling, recreation, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, or transportation to facilitate access to social services and facilities available to them.

Suburban - Counties identified as suburban on the THOMAS Documents Page.

Tennessee Growth Policy Act – Tennessee Code Annotated Section 6-68-101 et seq. that requires growth plans approved by the Tennessee Advisory Commission on Intergovernmental Relations. Information available here: <https://www.tn.gov/tacir/tennessee-county-growth-plans.html>.

TEFRA Hearing - The public hearing required by the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”).

THOMAS Documents Page - A webpage with necessary forms, templates, guidance, calendar, and links that are utilized through all application submission cycles. The THOMAS Documents Page is incorporated into this MTBA Program Description by this reference as if set forth in this MTBA Program Description verbatim.

THOMAS - The Tennessee Housing Online Management and Application System for all applications involving Housing Credits.

THOMAS User Manual - THDA provided document that gives guidance on the registration and application submission cycles in the THOMAS System. The THOMAS User Manual is incorporated into this QAP by this reference as if set forth in this QAP verbatim.

Total Development Cost - The total of actual costs associated with new construction or rehabilitation development activities, as determined to be reasonable by THDA, in its sole discretion.

Visitability - Design requirements implementing features that make a home accessible, visitable and convenient for everyone. MTBA developments are required to meet Visitability design requirements when the proposed development includes single family units, duplexes, triplexes and townhomes. To meet Visitability design requirements the proposed development must include:

1. Easy Access with a step free entrance of not more than ½ inch from a driveway, sidewalk or other firm surface into the main floor of the home, and;
2. Easy Passage throughout the home with an exterior door that provides a minimum of 32 inches of clear passage (36 inches is preferable) from the step free entrance. All interior passage doorways on the main floor also provide a minimum of 32 inches of clear passage, and;



3. Easy Use with a main floor that includes a kitchen, some entertainment area, at least one (1) bedroom and one (1) full bathroom. The full bathroom will provide at least 30 inches by 48 inches of maneuvering space that allows easy access to the sink, commode and shower or tub.

Uniform Physical Conditional Standards (“UPCS”) - The HUD requirements that govern the physical condition of Housing Credit Developments.

Urban - Counties identified as urban on the THOMAS Documents Page.

Urbanicity - The quality or fact of (an area) being urban. The degree to which a given geographical area is urban. Urbanicity designations can be found on the THOMAS Documents Page.

USDA Rural Development - The United States Department of Agriculture’s Rural Development housing programs.

Zoning - Written documentation from the appropriate local government authority demonstrating that current zoning and other local land use regulations permit the development as proposed or that no such regulations currently apply to the proposed development in an application for a commitment of MTBA and an allocation of Noncompetitive Housing Credits.





### **Section 3: Program Eligibility**

#### **A. Use of MTBA**

Applicants applying for MTBA must demonstrate that a minimum of 50% of the outstanding principal amount of tax-exempt bonds originally issued using an award of MTBA will remain outstanding as of the placed in service date for the development. On the placed in service date, the outstanding principal amount of tax-exempt bonds originally issued using an award of MTBA must meet the requirements of Section 42(h)(4). Either Bond Counsel or a Certified Public Accountant licensed in Tennessee must certify to THDA that this financing requirement is met.

Recipients of a MTBA Firm Commitment Letter must close, issue and sell bonds no later than 11:59 PM Central Time on the closing deadline specified in the MTBA Firm Commitment Letter and must meet all federal tax requirements for Private Activity Bonds.

#### **B. Eligible Developments**

1. The proposed development must be:
  - a. New construction of multifamily housing;
  - b. Adaptive Reuse/Conversion of an existing property not currently being used for housing; or
  - c. Acquisition and rehabilitation of Existing Multifamily Housing.
2. The proposed development must meet the following requirements:
  - a. Be a Qualified Low Income Development, containing Qualified Low Income Buildings and Qualified Low Income Units.
  - b. Comply with the Fair Housing Act design and construction requirements for units that are considered “covered multifamily dwellings” designed and constructed for “for first occupancy” after March 13, 1991, using one of HUD’s recognized safe harbors.
  - c. Comply with the Americans with Disabilities Act (ADA), as applicable.
  - d. Comply with all applicable local building codes or State adopted building codes in the absence of local building codes.
  - e. Certification from the design architect will be required following the issuance of the MTBA Firm Commitment Letter. Confirmation from the supervising architect will be required prior to any refund of the Incentive Fee as described in Section 11.
3. In order to participate in Group ~~1-4~~ or Group ~~2-5~~ (as described in Section 9.~~A-2B.3~~), or participate in Group ~~A-G~~ or Group ~~B-H~~ (as described in Section 9.~~B-D.1~~), the PHA must be included in the Owner and must materially participate (within the meaning of section 469(h) of the Code) in the development and operation of the project throughout the compliance period.
4. All applicants must waive the ability to participate in the qualified contract request process as described in THDA’s Qualified Contract Process Guidelines, as may be amended (available here: <https://thda.org/pdf/06.01.20-QUALIFIED-CONTRACT-GUIDELINES-REVISED-FOR-VENDOR-NEEDS.pdf>).
5. Initial Applications proposing new construction or Adaptive Reuse/Conversion must include the following:
  - a. Written documentation ~~sufficient to satisfy the requirements of Section 13.A.3 of the 2023 QAP from the appropriate local governmental authority demonstrating that current Zoning and other local land use regulations permit the development as proposed or that no such regulations currently apply to the proposed development at the time of Initial Application~~; and
  - b. Documentation that developments proposing single family units, duplexes, or triplexes meet Visitability design requirements. An architect’s certification will be required at Final Application prior to the issuance of IRS Form 8609(s) and prior to any refund of the Incentive Fee as described in Section 11.





### C. Eligibility Documentation

An Initial Application shall include each of the following:

1. A Market Study ~~performed by an independent third party in compliance with the Market Study Guidelines shown on the THOMAS Documents Page.~~ sufficient to satisfy the requirements of Section 13.A.5 of the 2023 QAP.
2. An Appraisal of the land and buildings sufficient to satisfy the requirements of Section 13.A.6 of the 2023 QAP~~performed by an independent third party in compliance with the Appraisal guidelines shown on the THOMAS Documents Page.~~
3. A Physical Needs Assessment of the proposed rehabilitation activities proposed for an Existing Multifamily Development sufficient to satisfy the requirements of Section 14.B of the 2023 QAP~~performed by an independent third party in compliance with the Physical Needs Assessment guidelines shown on the THOMAS Documents Page.~~
4. A Statement of Application and Certification from the ownership entity in the form and with the substance as shown on the THOMAS Documents Page.
5. A Bond Purchase Agreement Summary Letter fully executed by the bond purchaser in the form and with the substance as shown on the THOMAS Documents Page.
6. A Bond Opinion Letter provided by Bond Counsel certifying that the cost of issuance will be no more than 2% of the original outstanding principal amount of tax-exempt bonds sold to finance the proposed development in a form and with substance as shown on the THOMAS Documents Page.
7. An Issuer Certification.
8. An Inducement Resolution reflecting a MTBA amount no less than the MTBA amount requested in the Initial Application.
9. Evidence of the TEFRA Hearing.

### D. Eligible Development Team Members

THDA prefers Development Teams who have successful Tennessee MTBA and/or Housing Credit experience. Successful Tennessee MTBA and/or Housing Credit experience is evidenced by successful constructing or rehabilitating a recent affordable multifamily housing development that used MTBA and/or Housing Credit, maintaining a good track record in the development and on-going operations of the development, and evidencing the capacity to sustain the development in the ever changing regulatory and rental market.

1. Applications for MTBA and Noncompetitive Housing Credits shall be ineligible under this MTBA Program Description when, as of the Initial Application date, a Development Team or individual members of a Development Team identified in the Initial Application have incurred and failed to cure any and all of the following Major SAE(s) that occurred since January 1, ~~2017~~2018:
  - a. The General Partner/Managing Member/Sole Stockholder being removed from the ownership entity of a prior Housing Credit Development;
  - b. An uncured event of default under the Section 1602 or Tax Credit Assistance Programs;
  - c. A Fair Housing Act violation, including those involving a finding of discrimination by an adverse final decision from a federal court or a complaints that results in a consent decree or a judgement enforcing the terms of a consent decree;
  - d. A foreclosure occurring after December 31, 2018 and involving the loss of units from the affordable housing stock or failure to notify THDA of foreclosure (including a deed in lieu of foreclosure transaction);
  - e. Submitting to the IRS an IRS Form 8609 that was not created by THDA or submitting to the IRS an IRS Form 8609 that has been altered or contains information inconsistent with the IRS Form 8609 created by THDA;
  - f. Failure to meet the federal placed in service deadline for a development that received Housing Credits; or



- g. A development that received Housing Credits being placed in “No Further Monitoring” status by THDA; or
  - h. Uncured noncompliance; or
  - i. Program fraud or misrepresentation; or
  - j. Actions that adversely conflict with THDA’s mission.
2. Applications for MTBA and Noncompetitive Housing Credits shall also be ineligible under this MTBA Program Description when, as of the Initial Application date, any of the following apply to a Development Team or individual members of a Development Team identified in the Initial Application:
- a. Any individual involved in the Initial Application has any one of the following:
    - i. A felony conviction of any type within the last ten (10) years; or
    - ii. A fine, suspension or debarment involving financial or housing activities within the last five (5) years imposed by any federal agency; or
    - iii. A current bankruptcy or a bankruptcy discharged within the last four (4) years or any organization or entity in which the individual had significant control currently is in bankruptcy or had a bankruptcy discharged within the last four (4) years;
    - iv. Individual bankruptcy of a member of the board of directors of an entity that is, or is wholly controlled by, a government entity will not be grounds for ineligibility provided that the individual certifies that he/she will not have substantial decision-making authority with regard to the proposed development; or
    - v. Any suspensions of required state licenses (Tennessee or any other state) within the last ten (10) years.
  - b. An individual currently involved with the developer, development entity, owner, ownership entity, related parties or individuals involved (either directly or indirectly) with the developer, the ownership entity, or related parties (whether formed or to be formed) identified in the Initial Application and who is involved with another Housing Credit Development in Tennessee that has participated in the Qualified Contract Process since January 1, 2022.~~is currently participating in the Qualified Contract Process; prior to the expiration of the one year term, for another Housing Credit Development in Tennessee.~~
  - c. An individual currently involved with the developer, development entity, owner, ownership entity, related parties or individuals involved (either directly or indirectly) with the developer, the ownership entity, or related parties (whether formed or to be formed) identified in the Initial Application is currently participating in a pre-~~2022-2023~~ Housing Credit Development with a first allocation of Competitive Housing Credits in Tennessee for which THDA has not issued IRS Form(s) 8609.
  - d. An individual currently involved with the developer, development entity, owner, ownership entity, related parties or individuals involved (either directly or indirectly) with the developer, the ownership entity, or related parties (whether formed or to be formed) identified in the Initial Application that received an allocation of MTBA in ~~2020-2022~~ but failed to issue and sell bonds by the expiration date (original or extended) of the MTBA Firm Commitment Letter and the MTBA Firm Commitment Letter was not released as described in Section 10-H of this MTBA Program Description.
  - e. An individual who is a member of the Development Team identified in the Initial Application and who is involved with a pre-2023 MTBA development with a first allocation of MTBA in Tennessee, and that pre-2023 development has not yet placed in service.
  - e. If any of the following are true regarding an individual previously or currently involved with the developer, development entity, owner, ownership entity, related parties or individuals involved (either directly or indirectly) with the developer, the ownership entity, or related parties (whether formed or to be formed) identified in the Initial Application for MTBA and



Noncompetitive Housing Credits for any development receiving an allocation of Competitive or Noncompetitive Housing Credits since January 1, ~~2015~~2018:

- i. Any ~~pre-2022~~ Housing Credit Development with an accepted Reservation Notice, but the proposed Housing Credit development failed to meet the federal allocation timeframes and did not obtain a Carryover Allocation Agreement; or
- ii. Any ~~pre-2022~~ Housing Credit Development with a fully executed Carryover Allocation Agreement, but the proposed Housing Credit development failed to meet the federal allocation timeframes and did not obtain IRS Form(s) 8609; or
- iii. Any ~~pre-2021~~ Housing Credit development for which THDA issued IRS Form(s) 8609, but the Housing Credit development failed to meet the minimum set-aside test for low-income tenants as specified in the LURA by the end of the first year of the Credit Period; or
- iv. Any ~~pre-2021~~ Housing Credit development that THDA determined to be in violation of the requirements of the applicable QAP regarding developer or related party issues; or
- v. Any ~~pre-2021~~ Housing Credit development that involved a “broker” who did not remain involved in the Initial Application through the closing of permanent financing for the Housing Credit development; or
- vi. Any ~~pre-2021~~ Housing Credit development that did not meet the requirements of the applicable QAP regarding submission of permanent financing documentation to THDA; or
- vii. Any ~~pre-2021~~ Housing Credit development that involved a “consultant” who was determined to be a signatory of construction financing, permanent financing or equity syndications documents or provided a guaranty in connection with construction financing, permanent financing or equity syndication; or
- viii. Any ~~pre-2021~~ MTBA Application that received a firm commitment of bond authority but failed to meet the established deadline for issuance and sale of the bonds. Voluntary withdrawal of a MTBA Application in accordance with all applicable program requirements will not cause ineligibility; or
- ix. The application is deemed ineligible pursuant to any other provisions of this MTBA Program Description.

### 3. Requests for Relief

Prohibition of an individual’s participation in programs administered by the Multifamily Programs Division in Tennessee shall be determined by Multifamily Programs staff. Any individual prohibited due to a Major SAE may appeal the determination to the THDA Executive Director and the THDA Board Chair. The determination of prohibition shall be at the sole discretion of the THDA Executive Director and the THDA Board Chair and shall not be appealable to the THDA Board or the Tax Credit Committee of the THDA Board.

## E. Identity of Interests

If an application for MTBA and Noncompetitive Housing Credits involves acquisition of land or buildings, the requirements specified in Section 42(d)(2) of the Code shall apply.

## G. Extended Use Agreements - LURC

A LURC is required for developments using MTBA and Noncompetitive Housing Credits. THDA will provide a LURC based on the terms and elections under Section 142(d) of the Code, Section 42(g)(1) of the Code, the QAP, and this MTBA Program Description. The LURC must be executed and recorded in the county where the development is located. The original LURC must be returned to THDA no later than the date specified in the MTBA Firm Commitment Letter.



#### **Section 4: Federal Election**

- A. Section 142(d) of the Code requires that Qualified Residential Rental Projects have income restrictions on a percentage of the Qualified Low Income Units at all times during the Qualified Project Period. One of the following Federal Elections shall be made in the Initial Application for a MTBA Firm Commitment Letter:
1. 20/50 Test; or
  2. 40/60 Test; or.
  3. Average Income Test (only available to proposed developments with noncompetitive Housing Credit).
- This election is irrevocable once made in the Initial Application.
- B. Developments involving rehabilitation of Existing Multifamily Housing with a prior Housing Credit allocation are restricted to the prior Federal Election.



## Section 5: Program Limits

### A. MTBA Available

1. THDA will make a total of ~~\$378-XX~~ million of MTBA available ~~in the first round. The first round MTBA will initially be available as follows: in early 2023.~~
  - ~~a. East Grand Division: \$126 million;~~
  - ~~b. Middle Grand Division: \$168 million; and~~
  - ~~c. West Grand Division: \$84 million.~~
2. THDA **anticipates** having a second round, subject to availability.

### B. Maximum MTBA Per Development

#### 1. New Construction and Adaptive Reuse/Conversion

Applications proposing New Construction or Adaptive Reuse/Conversion may not receive more MTBA than **the lesser of**:

- a. Forty three million dollars (\$43,000,000); or
- b. 60% of the Development's aggregate basis including land, with all previous phases of the same development included in the aggregate basis.

#### 2. Rehabilitation

All expenditures for Limited Rehabilitation, Moderate Rehabilitation or Substantial Rehabilitation must satisfy all requirements of Section 42(e)(3)(A)(ii) of the Code and all of the following as applicable:

- a. **Limited Rehabilitation** may not receive more MTBA than **the lesser of**:
  - i. Thirteen million seven hundred thousand dollars (\$13,700,000); or
  - ii. 60% of the Development's aggregate basis including land, with all previous phases of the same development included in the aggregate basis.
- b. Developments proposing **Limited Rehabilitation** must be rehabilitated so that, upon completion of all rehabilitation, rehabilitation hard costs must be no less than the greatest of 20% of building acquisition cost or six thousand dollars (\$6,000) per unit. The rehabilitation scope of work must include, at a minimum, all work specified in the Physical Needs Assessment along with corrective actions for all deficiencies noted, with regard to interior and exterior common areas, interior and exterior painting and/or power washing, gutters, parking areas, sidewalks, fencing, landscaping, and mailboxes and the replacement of exterior that is 90% or more vinyl with brick/stone veneer, stucco or fiber cement or hardiplank. The replacement of any of these components of the buildings or the site with a Remaining Useful Life of Less than 15 years, must be included in the scope of work as specified using the Fannie Mae Estimated Useful Life Table. Substantially the same scope of work in all units is required, including, without limitation, painting of the entire unit, consistent flooring throughout the development and matching cabinetry within each unit. Certification from the design architect is required following the issuance of the MTBA Firm Commitment Letter. Confirmation from the supervising architect is required prior to any partial refund of the Incentive Fee pursuant to Section 10.
- c. Developments proposing **Moderate Rehabilitation** may not receive more MTBA than **the lesser of**:



- i. Sixteen million dollars (\$16,000,000); or
  - ii. 60% of the Development's aggregate basis including land, with all previous phases of the same development included in the aggregate basis.
- d. Developments proposing **Moderate Rehabilitation** must be rehabilitated so that, upon completion of all rehabilitation, rehabilitation hard costs must be no less than the greatest of 25% of building acquisition cost or seven thousand dollars (\$7,000) per unit. The rehabilitation scope of work must include, at a minimum, the scope of work as outlined in the Limited Rehabilitation requirements above, all appliances in all units Energy-Star compliant, and all work specified in the Physical Needs Assessment along with corrective actions for deficiencies noted, with regard to drywall, carpet, tile, interior and exterior paint, the electrical system, heating and air conditioning systems, roof, windows, interior and exterior doors, stairwells, handrails, and mailboxes. The replacement of any of these components of buildings or the site with a Remaining Useful Life of less than 15 years must be included as specified using the Fannie Mae Estimated Useful Life Table. It is expected that substantially the same scope of work in all units including painting of the entire unit, consistent flooring throughout the development and matching cabinetry within each unit is accomplished during the rehabilitation. Certification from the design architect is required following the issuance of the MTBA Firm Commitment Letter. Confirmation from the supervising architect is required prior to any partial refund of the Incentive Fee pursuant to Section 10 of this MTBA Program Description.
- e. Developments proposing **Substantial Rehabilitation** may not receive more MTBA than **the lesser of:**
  - i. Twenty-five million dollars (25,000,000); or
  - ii. 60% of the Development's aggregate basis including land, with all previous phases of the same development included in the aggregate basis.
- f. Developments proposing **Substantial Rehabilitation** must be rehabilitated so that, upon completion of all rehabilitation, rehabilitation hard costs must be no less than the greatest of 30% of building acquisition costs or eleven thousand dollars (\$11,000) per unit. The rehabilitation scope of work must include, at a minimum, scope of work as outlined in the Limited Rehabilitation and Moderate Rehabilitation requirements above, as described in the Physical Needs Assessment along with corrective actions for all deficiencies noted, and the major building systems will not require further substantial rehabilitation for a period of at least fifteen (15) years from the required placed in service date. The replacement of any component of buildings or the site with a Remaining Useful Life of less than 15 years must be included in the scope of work as specified using the Fannie Mae Estimated Useful Life Table. Substantially the same scope of work is required in all units including, without limitation, painting the entire unit, consistent flooring throughout the development and matching cabinetry within each unit. Certification from the design architect is required following the issuance of the MTBA Firm Commitment Letter. Confirmation from the supervising architect is required prior to any partial refund of the Incentive Fee pursuant to Section 10 of this MTBA Program Description.

3. Requests for Exceptions

An applicant may submit a written request for an exception to the maximum MTBA amount listed in this Section 5-A. The written request must include sufficient supporting documentation and information to substantiate the need for additional MTBA as determined by THDA, in its sole discretion. Only one (1) written request for an exception to the maximum MTBA and/or Noncompetitive Housing Credit limit per application will be considered. Written requests for





exceptions to the maximum MTBA and/or Noncompetitive Housing Credit limit may be granted or denied by THDA, in its sole discretion.

#### B. Maximum Amount of MTBA per Developer or Related Parties

1. Prior to July 1, ~~2022~~2023, the maximum amount of MTBA that may be committed to a single applicant, developer, owner, or Related Parties shall not exceed sixty million dollars (\$60,000,000). After June 30, ~~2022~~2023, the maximum amount of MTBA that may be committed to a single applicant, developer, owner, or Related Parties shall not exceed thirty percent (30%) of the maximum amount of MTBA available for ~~2022~~2023. THDA will determine, in its sole discretion, if Related Parties are involved and apply this limitation.
2. MTBA may not be transferred among multiple developments involving the same applicant, developer, owner, or Related Parties.

#### C. Limit on Developer's Fee for MTBA with Noncompetitive Housing Credits

1. Notwithstanding the provisions of Section 3-H of the QAP, the sum of developer and consultant fees reflected in THOMAS on the development costs page may not exceed 25% of total development costs (less cash reserves and the claimed developer fee). See Section C.6. below. (see 5 below).
2. ~~If the sum of developer and consultant fees reflected in the development costs worksheet exceeds the amount allowable for related or unrelated parties (see 2 and 3 below), then all developer and consultant fees in excess of the amount allowable for related and unrelated parties (see 2 and 3 below) must be reflected as deferred fees and included in the sources of permanent financing.~~
32. If the developer and the contractor are **unrelated**, the *non-deferred* developer and consultant fees cannot exceed 15% on the portion of the basis attributable to acquisition (before the addition of the fees), and cannot exceed 15% of the portion of the basis attributable to new construction or to rehabilitation (before the addition of the fees).
43. If the developer and contractor are **related** parties, then the *non-deferred* combined fees for contractor's profit, overhead, and general requirements plus the developer's and consultant's fees, cannot exceed 15% of the portion of the basis attributable to acquisition (before the addition of the fees), and cannot exceed 25% of the portion of the basis attributable to new construction or to rehabilitation (before the addition of the fees).
54. If the **deferred** developer and consultant fees are **greater than** 25% of total development cost (less cash reserves and the claimed developer fee) minus the amount described in ~~32~~ and ~~43~~ above, then the application must include evidence satisfactory to THDA, in its sole discretion, that the deferred developer and consultant fees will be repaid and will not jeopardize the financial feasibility of the development.
6. For purposes of Sections C.1. and C.5., cash reserves and the claimed developer fee are subtracted from the total development costs before the total development costs are multiplied by 25%.
5. ~~For purposes of this Section, cash reserves are excluded from total development costs.~~
76. Documentation on the terms of the deferred developer fee portion must be provided with the Initial Application.

#### D. Limits on Costs of Issuance

As provided in Section 147(g) of the Code, the costs of issuance financed by the proceeds of Private Activity Bonds issued to finance Qualified Residential Rental projects may not exceed 2% of the proceeds of the Private Activity Bond issue.



## Section 6: THOMAS Submission of Applications

### A. Applications

1. All applications involving MTBA, including Firm and Conditional Initial Applications, must be submitted electronically through THOMAS. If THDA determines that THOMAS malfunctions in a way that renders applicants unable to submit applications, THDA will provide alternative instructions via e-mail BLASTS and THDA website postings.
2. All fees required at the time of application, as specified in Section 12, must be received by THDA via wire transfer prior to any determination of eligibility or scoring for any application.
3. Initial Applications must indicate whether the applicant is requesting a MTBA Conditional Commitment Letter or a MTBA Firm Commitment Letter as described in Section 10 of this MTBA Program Description.
4. Initial Applications that do not receive a Commitment Letter in Round 1 must reapply in order to be considered in Round 2.

### B. Supporting Documents

1. Supporting documents as specified on the THOMAS Documents Page and referenced in the THOMAS User Manual as part of an Initial Application for a MTBA Conditional Commitment Letter, a MTBA Firm Commitment Letter, Supplemental MTBA, or subsequent applications must be uploaded into THOMAS as specified in the THOMAS User Manual. These documents include, without limitation, the following:
  - a. Statement of Application and Certification; and
  - b. Issuer Certification; and
  - c. Inducement Resolution; and
  - d. Evidence of TEFRA Hearing; and
  - e. Bond Purchase Agreement; and
  - f. Bond Opinion Letter; and
  - g. Current 30-year pro forma for the proposed development.
2. The THOMAS Documents Page contains required forms and templates for required third party reports.
3. THDA will not accept cost certifications, market studies, physical needs assessments and appraisals prepared by parties THDA has determined are not independent from other members of the Development Team or Related Parties.

### C. Calendar of Events

Table 6-1: Calendar of Events	
Dates	<u>2022-2023</u> Application Rounds
<u>[DATE]</u>	Round 1 Initial Application Submission Window
<u>[DATE]</u>	Round 1 Determinations Announced
<u>[DATE]</u>	Round 2 Initial Application Submission Window
<u>[DATE]</u>	Round 2 Determinations Announced

### D. MTBA Firm Commitment Eligibility Documents

The Initial Application for MTBA must include the following:

1. Statement of Application and Certification; and
2. Bond Purchase Agreement Summary Letter; and





3. Bond Opinion Letter; and
4. Issuer Certification; and
5. Inducement Resolution reflecting a MTBA amount no less than the MTBA amount requested in the Initial Application; and
6. Evidence of the TEFRA Hearing; and
7. Commitment for Permanent Financing; and
8. Written documentation from each service provider that all necessary utilities (i.e., electricity, gas, sewer, and water) are available at the proposed site.

**E. MTBA Conditional Commitment Eligibility Documents**

The Initial Application for MTBA must include the following:

1. Statement of Application and Certification; and
2. Issuer Certification; and
3. Inducement Resolution; and
4. Evidence of the TEFRA Hearing.

**F. Multiple Applications for a Single Development**

Only one application may be submitted and considered for a development. Multiple applications submitted as separate phases of one development will be considered as one development and reviewed as one application. THDA reserves the right to request additional information or documentation, if necessary, to determine if applications submitted will be considered and reviewed as one or more developments.

**G. Multiple Developments Tied to a Single Bond Issuance**

When a single issuing entity proposes a single bond issue to provide financing for multiple developments, the following requirements, at minimum, will apply in addition to all other applicable requirements:

1. A separate and full MTBA electronic application must be submitted for each development; and
2. An application fee as described in Section 11 must be submitted with the application for each development; and
3. If one or more of the developments is outside the jurisdiction of the issuing entity, the application must include documentation satisfactory to THDA, in its sole discretion, that the issuing entity is permitted to, and the jurisdiction in which the development is located consents to, the issuance of the bonds.



## Section 7: Application Review Process

### A. Applications Must Be Complete

1. An application must be complete, as determined by THDA in its sole discretion, based on the requirements in this MTBA Program Description and the on-line application in THOMAS.
2. **The applicant is solely responsible for the submission of an application with complete and current information.**

### B. Information Must Be Current

Appraisal, Physical Needs Assessment, and Market Study information older than six (6) months, as determined by the date prepared and information contained therein will not be considered current. Other documentation, including any commitments, with expiration dates or approval dates that have passed will not be considered current. Applications are incomplete when they include materials that are not considered current.

### C. Review of Applications Requesting a Commitment of MTBA

THDA will issue Evaluation Notices that may request additional documentation and/or information for purposes of clarification of eligibility, scoring and financial feasibility. Evaluation Notices will be issued in the following manner.

Evaluation Notice	Deadline for Response
1	4 business days
2	2 business days
3	1 business day

Applications with uncured deficiencies may be removed from consideration under this MTBA Program Description if the deficiencies are uncured after three Evaluation Notices have been sent. Applicants may resubmit the application in Round 2, but will be subject to a resubmission fee as described in Section 11 of this MTBA Program Description.



## **Section 8: Threshold Requirements and Scoring**

### **A. Threshold Requirements**

Developments requesting Noncompetitive Housing Credits must satisfy the applicable requirements of Section 20 of the QAP.

### **B. Minimum QAP Score**

**An eligible application must propose scoring of at least 60 points under the scoring system specified in Section 20 of the QAP.**

### **C. PD Score**

**1. For purposes of ranking Initial Applications, points awarded according to Section 20 of the QAP will not be considered. Only points awarded according to this Section 9.C will be considered.**

2. Development Team Track Record

a. No individual involved in the Owner Entity or Developer Entity has been involved in a ~~2019-2020~~, ~~2020-2021~~, or ~~2021-2022~~ MTBA application that received and subsequently returned a Firm Commitment Letter.

***10 points***

3. Other Sources of Funds

a. Number of points awarded will be proportional to Other Sources of Funds expressed as a percentage of total development costs (e.g. if Other Sources of Funds expressed as a percentage of total development costs = 23.456%, then 2.3456 points will be awarded). **Points will only be awarded for funds for which a fully executed agreement, award letter, or contract is included with the Initial Application.** Note: points will be carried out four places to the right of the decimal point.

***Up to 10 points***

4. Deepest Rehabilitation

a. Number of points awarded will be proportional to rehabilitation hard costs expressed as a percentage of total development costs (e.g. if rehabilitation hard costs expressed as a percentage of total development costs = 23.456%, then 2.3456 points will be awarded). Note: points will be carried out four places to the right of the decimal point.

***Up to 10 points***

5. In the event of a scoring tie among 2 or more Initial Applications under this Section 8.C, priority will be given to the Initial Application in the census tract with the highest percentage of cost-burdened rental households at or below the 50% AMI, as determined by THDA, in its sole discretion.

## Section 9: Ranking Process

### A. Bundled USDA Rural Development Initial Application

#### 1. Multiple Applications for a Single Development

- a. Multiple applications submitted as separate phases of one development will be considered as one development and reviewed as one application. THDA reserves the right to request additional information or documentation, if necessary, to determine if applications submitted will be considered and reviewed as one or more developments.
- b. Only one application may be submitted and be considered for a development. THDA reserves the right to request additional information or documentation to determine if applications submitted will be considered and reviewed as one or more developments.
- c. A single allocation may be requested for multiple developments provided that **each** of the following conditions applies to **each** development:
  - (i) Development is currently financed through USDA Rural Development.
- d. An application submitted under this Section 9 will be treated as an application for a single development for purposes of applying the limits in Section 5 of this Program Description.
- e. In cases involving a single issuing entity conducting a single bond issuance to provide financing for multiple developments, the following requirements, at minimum, will apply in addition to all other applicable requirements as described herein:
  - (i) A separate and full MTBA electronic application must be submitted for each development; and
  - (ii) An application fee as described in Section 11 must be submitted with the application for each development; and
  - (iii) If one or more of the developments is outside the jurisdiction of the issuing entity, the application must include documentation satisfactory to THDA certifying that that the issuing entity is permitted to, and the jurisdiction in which the development is located consents to, the issuance of the bonds.

### A-B. Round 1

#### 1. MTBA remaining after Section 9.A above will be divided as follows:

- a. East Grand Division: 34% of the MTBA remaining after Section 9.A above;
- b. Middle Grand Division: 44% of the MTBA remaining after Section 9.A above;
- c. West Grand Division: 22% of the MTBA remaining after Section 9.A above.

#### 1-2. All eligible Initial Applications will be separated by Grand Division.

#### 2-3. Within each Grand Division, eligible Initial Applications will be grouped in the following priority order:

- ~~i) Group 1: eligible Initial Applications proposing rehabilitation of public housing;~~
- ~~i) Group 1: requests for Supplemental MTBA (these requests will count against the MTBA for the Grand Division as described in Section 9.B.1 above);~~
- ii) **Group 2:** eligible Initial Applications proposing **rehabilitation of existing housing that IS currently income/rent restricted housing;**
- iii) **Group 3:** eligible Initial Applications proposing **rehabilitation of existing housing that IS NOT currently income/rent restricted.**
- ~~iii)iv) Group 4: eligible Initial Applications proposing rehabilitation of public housing;~~
- ~~iv)v) Group 5: eligible Initial Applications proposing new construction of public housing;~~
- ~~v)vi) Group 6: eligible Initial Applications proposing new construction outside a QCT;~~
- ~~vi)vii) Group 7: eligible Initial Applications proposing new construction in a QCT and covered by a CCRP;~~
- ~~vii)viii) Group 8: eligible Initial Applications proposing new construction in a QCT not covered by a CCRP; and~~



- 3.4. Within each group, eligible Initial Applications will be sorted in descending order by score as determined pursuant to Section 8.C.
- 4.5. THDA will proceed down the list of eligible Initial Applications for each Grand Division, taking into account (without limitation) the limits described in Section 5.A.1, and the grouping and sorting process described in Section 9.AB.1-2 through Section 9.AB.3, making full commitments of MTBA until the point is reached where there is insufficient MTBA remaining in the Grand Division to make a full commitment of MTBA to the next eligible Initial Application. Remaining funds in each Grand Division will be combined to create a pool of funds available in accordance with Section 9.A.5B.6 and Section 9.A.6B.7 below.
- 5.6. THDA will then list all eligible Initial Applications that have not yet received a commitment, regardless of Grand Division, and the statewide list will be grouped according to Section 9.AB.2-3 and sorted according to Section 9.AB.3.
- 6.7. THDA will proceed down the statewide list of eligible Initial Applications, making full commitments of MTBA until the point is reached where there is insufficient MTBA remaining in Round 1 to make a full commitment of MTBA to the next eligible Initial Application. Any remaining funds will be carried forward to Round 2.
- 7.8. No partial commitments will be made.

### **B.C. Round 2**

1. All eligible Initial Applications will be grouped and sorted statewide as follows:
  - i) **Group A:** requests for Supplemental MTBA;
  - ii) **Group B:** eligible Initial Applications proposing new construction outside a QCT;
  - iii) **Group C:** eligible Initial Applications proposing new construction in a QCT and covered by a CCRP;
  - iv) **Group D:** eligible Initial Applications proposing new construction in a QCT not covered by a CCRP; and
  - v) **Group E:** eligible Initial Applications proposing rehabilitation of existing income/rent restricted housing;
  - vi) **Group F:** eligible Initial Applications proposing rehabilitation of existing housing that is not currently income/rent restricted.
  - vii) **Group G:** eligible Initial Applications proposing new construction of public housing;
  - viii) **Group H:** eligible Initial Applications proposing rehabilitation of public housing;
2. Within each group, eligible Initial Applications will be sorted in descending order by score as determined pursuant to Section 8.C.
  - i) THDA will proceed down the statewide list of eligible Initial Applications, taking into account (without limitation) the grouping and sorting process described in Section 9.BC.1 and Section 9.BC.2, making full commitments of MTBA until the point is reached where there is insufficient MTBA remaining in the round to make a full commitment of MTBA to the next eligible Initial Application.
3. THDA will then offer a commitment to the highest ranking eligible Initial Application that requests an amount of MTBA that is equal to or less than the remaining balance after Section 9.BC.2.i.



## **Section 10: Commitment of MTBA**

### **A. MTBA Conditional Commitment Letter**

1. THDA will issue a conditional commitment letter for 2022–2023 MTBA (“Conditional Commitment Letter”) after determining that an eligible applicant has met all applicable requirements of this MTBA Program Description as determined by THDA in its sole discretion.
2. The expiration date of any MTBA Conditional Commitment Letter is December 15, 2022-2023.
3. **A Conditional Commitment Letter DOES NOT GUARANTEE an applicant that THDA will issue a Firm Commitment Letter.**
4. An applicant with a Conditional Commitment Letter must notify THDA of its intent to convert a Conditional Commitment Letter to a Firm Commitment Letter no less than 45 calendar days prior to the date the applicant wishes to receive the Firm Commitment Letter and THDA may issue a Firm Commitment Letter, subject to the availability of MTBA at the time THDA receives such notification and subject to compliance with all requirements for a Firm Commitment Letter.
5. **THDA may issue Conditional Commitment Letters that, in the aggregate, exceed the amount of MTBA available under this MTBA Program Description.**

### **B. MTBA Firm Commitment Letter**

1. THDA will issue a firm commitment letter for 2022–2023 MTBA (“Firm Commitment Letter”) after determining that an eligible application has met all applicable requirements of this MTBA Program Description.
  2. A Firm Commitment Letter will have an expiration date either ninety (90) or one hundred and twenty (120) calendar days from the date of issuance. The expiration date will be determined by THDA, in its sole discretion.
    - a. If the sources of funds include grant funds that are not considered in the PD score, the fully executed agreement, contract, or award letter must be submitted to THDA prior to the issuance of a Firm Commitment Letter.
- Any Firm Commitment Letter issued before September 16, 2022-2023 will expire ninety (90) calendar days from the date of issuance.
- b. Any Firm Commitment Letter issued on or after September 17, 2022-2023 will expire on December 15, 20222023.
3. A Firm Commitment Letter issued before August 17, 20222023, may be extended one time for a maximum of thirty (30) calendar days following the original expiration date. An Extension Fee as described in Section 12 must accompany the extension request. An extension request may be approved or denied by THDA, in its sole discretion.
  4. **THDA will not issue Firm Commitment Letters that, in the aggregate, exceed the amount of MTBA available under this MTBA Program Description.**



**Section 11: Fees, Partial Refunds of Fees, and Fees Retained by THDA**

**A. Wiring Instructions**

All fees should be in the form of an electronic wire.

Table 11 - 1: Wiring Instructions	
Bank:	US Bank
ABA:	064000059
BNF:	THDA Clearing Housing
BNF A/C:	151203673398
BNF ADDRESS:	502 Deaderick Street Andrew Jackson Building, Third Floor Nashville, TN 37243
OBI:	Housing Credit/Bond Application Fees + TN ID Number(s). Applicants may send one wire to cover multiple applications however, applicants must enter the applicable TN ID Number(s) in the OBI field on the wire.

Applicants are encouraged to send the wire confirmation to [thomas@thda.org](mailto:thomas@thda.org).

**B. Application Fee**

An Application Fee of one thousand five hundred dollars (\$1,500) must be submitted to THDA at the time an application is submitted, except as provided in the subsequent paragraph. **THE APPLICATION FEE IS NOT REFUNDABLE.** If the fee is not submitted at the time an application is submitted, THDA will not review the application and will notify the applicant that the application has been rejected.

Initial Applications that do not receive a Commitment Letter in Round 1 and that reapply in Round 2 are not required to submit a second Application Fee for Round 2.

**C. Resubmission Fee**

A Resubmission Fee of seven hundred and fifty dollars (\$750) must be submitted to THDA if an application is resubmitted after rejection for uncured deficiencies based on requests for additional documentation and/or information for purposes of clarification as specified in the Evaluation Notice described in Section 7. **THE RESUBMISSION FEE IS NOT REFUNDABLE.**

**D. Conditional Commitment Letter Fee**

A Conditional Commitment Letter Fee of five thousand dollars (\$5,000) must be submitted in order for the Conditional Commitment Letter to be processed. **THE COMMITMENT FEE FOR A CONDITIONAL COMMITMENT LETTER IS NOT REFUNDABLE.**



**E. MTBA Firm Commitment Letter Fee and Incentive Fee**

1. Following issuance of a Firm Commitment Letter, Initial Applications must submit a Firm Commitment Letter Fee and an Incentive Fee in order for the Firm Commitment Letter to be processed.
2. Fees for a ninety (90) day Firm Commitment Letter:
  - a. The Commitment Fee is an amount equal to 1% of the MTBA approved by THDA.
  - b. The Incentive Fee is an amount equal to 20% of the Commitment Fee.
3. Fees for a one hundred and twenty (120) day Firm Commitment Letter:
  - a. The Commitment Fee is an amount equal to 1.5% of the MTBA allocated to the local issuer.
  - b. The Incentive Fee is an amount equal to 20% of the Commitment Fee.
4. **THE COMMITMENT FEE FOR A FIRM COMMITMENT LETTER IS NOT REFUNDABLE.**

**F. Refund of Incentive Fee Following Issuance of MTBA**

1. The following documentation, without limitation, must be submitted by the applicable deadlines to be eligible for a refund of the Incentive Fee:
  - a. Documentation from Bond Counsel (including, without limitation, a closing confirmation letter) must be submitted no later than the expiration date of the Firm Commitment Letter;
  - b. Acceptable proof that all units are constructed and the development is placed in service must be submitted no later than two years after the expiration of the MTBA Firm Commitment Letter;
  - c. Acceptable proof that all forms to be filed by the Bond Issuer have been completed and filed to THDA's satisfaction must be submitted no later than two years after the expiration of the Firm Commitment Letter.
2. If the bonds were issued and sold on or before 11:59 PM Central Time on the date specified in the Firm Commitment Letter without a receiving an extension and all the conditions of Section 11 (above) have been met, THDA will refund the **FULL** Incentive Fee.

**G. Release of Commitments and Refund of Incentive Fee**

If recipients of Conditional Commitment Letters or Firm Commitment Letters release the MTBA allocated to them before the deadline in the Firm Commitment Letter when bonds will not be sold using the MTBA, THDA will refund a percentage of the Incentive Fee to support the earliest release of the committed MTBA. Voluntary withdrawal of a MTBA Commitment Letter in accordance with all applicable program requirements will not cause ineligibility as described in Section 3 of this MTBA Program Description, but will affect scoring as described in 8.C.2 of this MTBA Program Description.

Phase	90 - Day Commitments	120 - Day Commitments	Amount Refunded
A	days 1 - 30	days 1 - 45	100%
B	days 31 - 60	days 46 - 90	50%
C	days 61 - 89	days 91 - 119	25%
D*	days 90 - 119	days 120 - 149	0%

\* only applicable if a deadline extension is granted by THDA





**I. Incentive Fee Retained by THDA**

1. If a request for an extension to the deadline for closing the sale of the bonds beyond 11:59 PM Central Time on the original date specified in the Firm Commitment Letter is approved in accordance with Section 10, THDA will **RETAIN** the **FULL** amount of the Incentive Fee.
2. If the bonds are not issued and sold by the expiration date (original or extended) of the Firm Commitment Letter, and the Firm Commitment Letter has not been released as described in Section 11-H, and no extension has been requested or granted as described in Section 11-H, THDA will **RETAIN** the **FULL** amount of the Incentive Fee and a MTBA application for the development may not be resubmitted in ~~2022~~2023.
3. If the bonds are issued and sold, but the development is not placed in service, THDA will **RETAIN** the **FULL** amount of the Incentive Fee.

**J. Monitoring Fee**

Developments that receive MTBA and Noncompetitive Housing Credits are subject to all monitoring fees set out in Section 5 of the QAP.

**K. Modification Fee**

Developments that receive MTBA and Noncompetitive Housing Credits and request modification are subject to Modification Fees as set out in Section 5 of the QAP. Payment of this fee does not guarantee approval of proposed changes or modifications.

**L. Extension Fee**

Developments that receive MTBA and Noncompetitive Housing Credits and request an extension are subject to Extension Fees as set out in Section 5 of the QAP. Payment of this fee does not guarantee approval of an extension.

**M. Requests for Refunds**

If the applicant is eligible for any refund as described in Section 11-G or Section 11-H above, the applicant must submit a written request for a refund. The written request for a refund must be submitted no later than 1 year after the issuance date reflected on IRS Form(s) 8609. If the last day to submit a written request for a refund is not a THDA business day (e.g. weekend or holiday), the deadline will be the following THDA business day.



## **Section 12: Noncompetitive Housing Credits**

- A. THDA will determine eligibility for Noncompetitive Housing Credits and the amount of Noncompetitive Housing Credit to be allocated to a development, up to the maximum amount permissible with MTBA financing. Any development seeking Noncompetitive Housing Credits must apply for and is subject to the applicable QAP in the same calendar year in which MTBA is committed. An application for Noncompetitive Housing Credits is subject to eligibility and threshold requirements as well as fees, including monitoring fees, found in the applicable QAP. **Receipt of a Firm Commitment Letter does not guarantee receipt of Noncompetitive Housing Credits.**
- B. If an Initial Application for Competitive Housing Credits and an application for MTBA and Noncompetitive Housing Credits are submitted for the same development, the Initial Application for Competitive Housing Credits will be deemed ineligible.
- C. The maximum obtainable rents supported by the Market Study must be proposed for the proposed development and must support reasonable operating expenses and maximum mortgage debt service prior to Noncompetitive Housing Credits filling any financial “gaps”. This may require additional financing from other sources over and above the maximum amount of MTBA or Noncompetitive Housing Credit committed to the development by THDA.



**Section 13: Requests for Supplemental MTBA**

- A. Allocations of Supplemental MTBA are subject to availability of MTBA.
- B. Requests for Supplemental MTBA may be submitted outside the time periods specified in Table 6-1.
- B. Any Firm Commitment Letter for an allocation of Supplemental MTBA under this Program Description will expire on December 15, 2023.



**Section 1314: Controlling Document**

Although there is one application for MTBA and Noncompetitive Housing Credits; the MTBA Program Description applies to the MTBA and the ~~2022-2023~~ QAP applies to the Noncompetitive Housing Credits.

