

Housing Tax Credit Carryover, 10 Percent Test, Evidence of Construction Start and Final Allocation Application Training Workshop

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Carryover Allocation: Reservation vs. Allocation



- Initially, the 8609 was only way to allocate credits (no carryover required); the law was amended to allow for a carryover allocation.
- Agencies use Reservation as an internal step. MFA issues preliminary and final reservation letters, then issues a carryover allocation.
- A carryover allocation is required for all projects that will not be placed in service during the year in which a reservation letter is issued. Projects are expected to be placed in service no later than the end of the second year following the year when the carryover allocation is issued.
- Treasury Regulation 1.42-6 defines documents needed for carryover allocation (starting on page 6 of this presentation).

Carryover- Internal Revenue Code



A carryover allocation is an allocation that meets the requirements of § 42(h)(1)(E) or (F):

I.R.C. § 42(h)(1)(E)(i) An allocation meets the requirements of this subparagraph if such allocation is made with respect to a *qualified building* which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

10% Basis Test



A carryover allocation may only be made with respect to a qualified building.

I.R.C. § 42(h)(1)(E)(ii) Qualified Building---For purposes of clause (i), the term “*qualified building*” means any building which is part of a project if the taxpayer’s basis in such project (as of the later of the date which is one year after the date that the allocation was made) is more than 10 percent of the taxpayer’s reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)).

Requirements For Allocation

Treasury Reg § 1.42-6(d)(2)

An allocation pursuant to section 42(h)(1)(E) or (F) is made when an allocation document containing the following information is completed, signed and dated by an authorized official of the Agency—

- (i) The address of each building in the project, or if none exists, a specific description of the location of each building;
- (ii) The name, address and taxpayer identification number of the taxpayer receiving the allocation;

Requirements *(Continued)*

- (iii) The name and address of the Agency;
- (iv) The taxpayer identification number of the Agency;
- (v) The date of the allocation;
- (vi) The housing credit dollar amount allocated to the building or project, as applicable;
- (vii) The taxpayer's reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year in which the allocation is made;

Requirements *(Continued)*

- (viii) The taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year of the allocation and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second following calendar year;
- (ix) The date that each building in the project is expected to be placed in service; and
- (x) The Building Identification Number (B.I.N.) to be assigned to each building in the project.

Election to Lock in Tax Credit Rate

You have the option to lock in the Credit Rate for the construction/rehabilitation expenditures at time of carryover allocation or at date on which the building is placed in service. The decision to lock or not at carryover is irrevocable.

Note: If an election is not made to lock the rate at carryover on the Option to Lock Credit Form, the Credit Rate will be the rate for the month in which the project is Placed in Service.

MFA Carryover Application

- Requirements:
 - Updated Project Application & Schedules A-F (w/ changes highlighted in yellow);
 - Completion of “Assignment of BIN” form;
 - Architect’s Certification + Narrative of Material Changes
 - Option to Lock Credit Percentage form;
 - Certificate of Partnership;
 - Amended and Restated Limited Partnership Agreement or Operating Agreement;
 - Recorded deed or executed lease vested in the name of the entity- *this means partnership!*

Carryover Application Requirements, continued

- Evidence of zoning – if exempt at application;
- Contractor’s resume – if not provided at application or if contractor has changed;
- All financing commitments – construction and permanent, including a letter of intent from equity provider;
- Risk Share financing – HUD Firm Approval Letter required prior to purchase of land and/or buildings;
- For Households with Special Housing Needs projects, Use Certification, Service Coordination Certification, Unit Set-Aside Form, Service Coordination Plan and Budget; along with MOU’s for any qualified service providers;
- Rehabilitation Projects- appraisal & capital needs assessment;
- Historic Projects- NPS approval of historic certification.

Carryover Application



- Copy of application, checklist, sample forms and instructions are available on MFA website at <http://housingnm.org/developers/low-income-housing-tax-credits-lihtc>.
- Submission date 11/15/18- submit Application in conformance with § IV.A.4.b) of QAP (hard copy + electronic copy, tabbed, bookmarked).
- REMEMBER: \$500 extension fee per week for submission of late or missing documents.
- Carryover documents sent out by MFA in early December and **must be returned for MFA's signature before the end of the year.**

10% Cost Test Submission

- Each project issued a carryover allocation must provide evidence that the basis in the project exceeds 10% of the reasonably expected total basis (referred to as the “10% test”).
- Requirements:
 - Independent Auditor’s Report;
 - Exhibit A to above (itemized expenditures);
 - Owner’s Attorney’s Opinion (required form).
- Due no later than September 3, 2019 (first working day following August 31)
- *The 10% test is not graded on a curve!*

Construction Start

- MFA must approve construction start (*§ IV.C.7, p. 41*).
- Applicant Certification required and if there are Material Design Changes, detailed Narrative required. (*2018 Mandatory Design Standards, Part B*).
- Architect Bid Amount Due w/in 20 days of billing (*§ IV.B, p. 38*).
- Each project issued a carryover allocation must also provide evidence of construction start to MFA no later than September 3, 2019.

Construction Start, cont.

- Requirements:
 - Building Permits
 - Contractor's Application and Certificate for Payment (if available)
 - Site Photographs (color)
 - Executed partnership agreement
 - Evidence of National Park Service Approval of the Project's Historic Certification Part 2 (if applicable)

Questions?

Placed in Service and Final Allocation Application Process

- **Placed in Service Versus Final Application**
- On or before November 15th of the 2nd year following carryover allocation, a Placed in Service (minimum requirement) or a final allocation application must be submitted.

Failure to meet this requirement will result in a loss of credits!

- REMEMBER: \$500 weekly extension fee for late or missing documents - extensions granted at MFA's discretion.
- Final Allocation Application is required to issue 8609's
- REMEMBER: Final Allocation Application shall be submitted no later than 120 days from the close of the Project's first taxable year of the Credit Period.

Placed in Service Application



- Requirements:

Submit Application in conformance with § IV.A.4.b) of QAP (hard copy + electronic copy, tabbed, bookmarked).

- Partial update of the application;
- Certificate of occupancy for each building or certificate of completion (rehab);
- Color Photographs of each building and amenities;
- Project Ownership Profile;
- Form 8609 Certification;
- *Recorded* consents from every lien holder for recording of LURA;

Final Allocation Application

- Requirements:
 - Complete updated application and schedules A-1, B, C, D, and F;
 - Schedule “M” Addendum for Final Allocation;
 - Written certification from the equity investor;
 - Owner’s certification Form “A” and Form “A2”;
 - Auditor’s report Form “B”;
 - Certification of Costs Incurred by building Form “C” for owner and general contractor;
 - Attorney’s opinion (required form);
 - As-Built Architect Certification (required form);

Final Allocation Application Requirements, continued

- As-Built Plans (may be submitted electronically on a CD);
- Final Contractor's Pay Application;
- Updated Cash flow analysis;
- Complete executed partnership or operating agmt;
- Compliance Training Certification for both owner and management agent;
- Certification of federal, state and local funds;
- Copies of all other cost certifications;
- First year compliance fee (set aside units x \$45) - may elect to pay entire 15-year compliance period upfront;

Final Allocation Application Requirements, cont.

- Copy of recorded LURA
- Updated service enrichment MOUs/contracts
- Fully executed Deferred Fee Promissory Note, if applicable
- Evidence of HERS rating
- Copy of current rental assistance contract (if applicable)
- For 4 percent LIHTC bond projects, final executed financing documents from all sources
- If project received points under Scoring Criteria #21 Non-Smoking Properties, copy of the relevant Certification

Land Use Restriction Agreement

“LURA”

- I.R.C. Section 42(h)(6) requires imposition of “an extended low-income housing commitment”
- LURA sets forth:
 - Covenants running with the land for a minimum 30 years (or as promised);
 - Compliance fees;
 - Set-asides;
 - Special housing needs to be served;
 - Any other such commitments.
 - Cannot be terminated prior to its term for any reason other than foreclosure.
 - Owner does not have the right to require MFA to present a qualified contract.
- A LURA must be executed and recorded prior to December 31st to claim credits in the year that the buildings are placed in service.

MFA Placed in Service and Final Allocation Application Forms

- LIHTC application packages on MFA's website at:
 - www.housingnm.org/low-income-housing-tax-credits-lihtc

Underwriting Considerations

- Tax Credit Rates
- Developer and Builder Fees
- Cost Limits
- Basis Boost



Tax Credit Proceeds at Application, Carryover and Final

From 2018 QAP, Page 46, Section IV.E.3.

Tax Credit Proceeds

- At Initial Application: 9 percent fixed Credit Percentage and 12-month average Credit Percentage (for acquisition expenses) used in conjunction with the more conservative equity-pricing factor of the syndicator letter of interest or underwriting supplement to estimate Tax Credit proceeds
- At Carryover: Credit Percentage same as above and used in conjunction with the equity-pricing factor of the syndicator letter of intent to estimate Tax Credit proceeds
- At Final: Actual Credit Percentage for month building is Placed in Service, or at Carryover if locked, is used in conjunction with the equity-pricing factor of the partnership agreement to calculate proceeds

Developer and Builder Fees

From 2018 QAP, pp. 43-44, Section IV.D.2.

Increases in Project costs subsequent to the Application Deadline may not result in an increase in any of the fees calculated above for Tax Credit Allocation purposes. These fees may be held to the same dollar amount as approved by MFA during the initial underwriting of the Project. Any changes in the amount of fees through the course of development will require prior approval of MFA and must be justified by a change in scope of the Project. Any change in the scope of the Project that results in increased fees for which an exception is being requested constitutes a change to that Project.

Calculation of Builder Fees

\$4,312,000 Construction Costs before GRT, Profit, Overhead & GR
 6% Allowed percentage for Profit and General Requirements
\$ 258,720 Maximum for Profit and General Requirement

\$4,312,000 Construction Costs before GRT, Profit, Overhead & GR
 2% Allowed percentage for Overhead
\$ 86,240 Maximum for Overhead

Calculation of Developer Fee

**See MFA 2018 QAP Section IV.D.2.b for specific amounts.

For Example:

6,721,500	Total Development Cost
(708,000)	Less: Developer Fee
<u>(95,000)</u>	Less: Reserves
5,918,500	Adjusted Development Cost
<u>14%</u>	Allowed Percentage (depending on # of units)
828,590	Max developer fee*

*This fee includes all consulting fees

Cost Limits

- **New Construction** – 130% of weighted average per new construction unit TDC
- **Rehabilitation** – 100% of weighted average per new construction unit TDC

2018 QAP, Page 39, Section IV.C.2.

Costs that exceed these limits will be excluded when calculating the Tax Credit amount. These limits are binding through Final Allocation.

Questions?