

Post-Award Processes and Requirements Handbook

State of New Mexico
4% Low-Income Housing Tax Credit Program

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Housing New Mexico | New Mexico Mortgage Finance Authority (MFA)

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EQUAL HOUSING OPPORTUNITY

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I. Introduction

This Post-Award Processes and Requirements Handbook ("Handbook") is an appendix to the 2027 4% Low Income Housing Tax Credit Qualified Allocation Plan.

Successful Applicants will be notified of New Mexico Mortgage Finance Authority's (Housing New Mexico | MFA) ("Housing New Mexico") allocation decision in the form of a 42(m) Letter (also known as a Determination of Qualification).

42(m) Letters are non-transferable either to another Entity or within the same Entity where there is a change in Control or General Partner interests, except with the express written consent of Housing New Mexico, it being the explicit intention of the QAP to prevent one party from obtaining such a 42(m) Letter in order to sell or broker its interest in the proposal (except for syndication purposes). Because all representations made with respect to the Project Owner, Application, Developer or related party or Entity, or any member of the development team, their experience and previous participation are material to the evaluation made by Housing New Mexico, it is not expected that Housing New Mexico's consent will be granted for such transfers unless a new Application is submitted and scores no less than the original Application, and the transfer would result in a benefit to the Project.

II. Post Award Submittals

From the date of the issuance of a draft 42(m) Letter, the Applicant must continue to timely remit all tax credit program related fees and meet each of the deadlines specified below for follow up activity in order to maintain its compliance with the 2027 4% QAP. **Housing New Mexico has no obligation to provide any further notice to Applicants of these requirements and failure to submit any one or more of the items may cause the 42(m) Letter to be rescinded.** All submissions must be uploaded to Housing New Mexico's Secure File Transfer-HD file sharing site following the "Form of Submission" requirements shown in Section III.B.3 of the 2027 4% QAP. The requirements shown in the 2027 4% QAP, the Design Standards and the Underwriting Supplement (as defined in the 2027 4% QAP) also apply to submittals described in this Handbook.

A. Upon Receipt of 42(m) Letter

The processing fee and any other conditions noted in the 42(m) Letter must be satisfied by the deadlines stipulated in the 42(m) letter. The draft 42(m) Letter will expire three months after it is issued. The final 42(m) Letter will remain valid, so long as the allocation of private activity bond volume cap remains valid. Beginning seven months after the date

the final 42(m) Letter is issued, a $2,500 per week extension fee will be assessed until the Project closes on all construction period financing and begins construction.

Progress Reports

All 4% Projects must submit a quarterly progress report to Housing New Mexico on or before March 31st, June 30th, September 30th, and December 31st each year, beginning with the first of these dates after volume cap has been allocated until construction start, and continuing after construction until the Final Allocation Application has been submitted. The information to be covered in the progress reports will be provided on Housing New Mexico's website. During construction, copies of all architect field reports are required in lieu of the quarterly progress report. Any failure to provide a timely progress report, or failure to provide a complete and accurate report containing the required information, may result in a loss of tax credits.

B. Design Review and Construction Inspections

All Projects will be subject to Housing New Mexico's design review and construction inspections to determine compliance with the Design Standards. Before beginning construction, the Applicant must submit complete final construction drawings, specifications and construction documents for Housing New Mexico review for compliance with the Design Standards. Housing New Mexico staff will make a good faith effort to perform an initial review of construction documents within ten (10) business days after receipt of complete construction documents.

For Rehabilitation and Adaptive Reuse Projects, Housing New Mexico will review the CNA for completeness, consistency with the Application and compliance with the Design Standards.

1. **Prior to commencing construction:**

a. **Applicant must have Housing New Mexico's written approval of complete construction documents;**

b. Applicants must request and receive Housing New Mexico-provided signs/banners in English and Spanish featuring Housing New Mexico's fraud hotline at the Project work site(s), which shall remain in place throughout the duration of construction.

c. Applicants must submit Housing New Mexico's Land Use Restriction Agreement Request form. Housing New Mexico will use the information provided to prepare the LURA.

d. Applicants must close on all Project financing (except the permanent mortgage) and record the LURA in a superior lien position to all permanent financing.

2. **Material Design Changes**
   Differences between the plans and specifications submitted with the Application and those contained in the final construction documents must be approved by Housing New Mexico. The Applicant must submit a detailed narrative of Material Design Changes made to final plans and specifications along with the Change Fee described in Section III.C.9 of the 2027 QAP.

3. **Post Construction**
   Housing New Mexico must approve the final construction inspection in writing prior to issuance of IRS Form 8609.

C. Construction Start:

1. The Applicant must deliver evidence acceptable to Housing New Mexico that construction of the Project has begun. This will include, at a minimum, building permits and site photographs. If available, Applicant shall also submit a copy of the general contractor's application and certificate for payment.

2. The Applicant must deliver an executed partnership agreement.

3. If federal historic tax credits are included in the financing structure of the Project, evidence of National Park Service approval of the Project's historic certification – part 2 must be submitted.

4. The Applicant must deliver evidence that the Project Owner has taken ownership of the land and, if applicable, depreciable real property, that is expected to be part of the Project. For tribal Projects, this would include fully executed master and sub-lease agreements with evidence of filing with the Bureau of Indian Affairs.

5. Applicant must deliver evidence of written approval to begin construction from Housing New Mexico's Architectural Services Representative.

D. At or around the 50% construction completion mark

The Applicant must organize a meeting with Housing New Mexico staff (both Asset Management and Housing Development departments). The Developer, owner, nonprofit representative, management company staff, and any service providers involved in the

Project must be in attendance. This meeting will be required ahead of lease-up. The following materials must be submitted prior to this meeting:

- Related Party Affidavit for the Management Agent
- Compliance Affidavit for the Property Management Agent
- Property Management Agent resume
- Schedule I for the Property Management Agent
- Memorandums of Understanding (MOUs) or service contracts memorializing the service commitments in the Initial Application, if not previously provided.
- Updated Service Provider resumes

E. 30 days after the Project is Placed In Service

Placed In Service Application. Thirty days following completion of construction, a Placed In Service Application must be submitted.

The Placed In Service Application includes:

- Updated Housing New Mexico Universal Rental Development Application;
- Copies of all Certificates of Occupancy (for new construction) or Certificates of Substantial Completion (for rehabilitation)
- If acquisition tax credits are in the capital stack, evidence of the date the Project was Placed In Service for acquisition purposes (Rehabilitation Projects), if not previously submitted;
- Color photos of each of the complete building(s) identified by address and Building Identification Number (BIN);
- A completed Project Ownership Profile (on Housing New Mexico's form);
- A completed Form 8609 Certification (on Housing New Mexico's form);
- A recorded Consent and Agreement to Recording of Land Use Restriction Agreement (LURA) from every lien holder (original signature).

First year compliance and monitoring fees are also due at this time. Upon receipt of an invoice from Housing New Mexico, send payment to New Mexico Mortgage Finance Authority (with tax credit project number and "HTC Compliance Fee") noted on payment, in the amount of the total number of LIHTC Units multiplied by $50, for the first year's compliance monitoring fee (Owner may also elect to pay Compliance Fees for the entire 15-year Compliance Period).

F. Prior to December 31st of the year the Project is Placed In Service

LURA. Prior to December 31st of the year in which the buildings are Placed In Service, the Project Owner must submit an executed and recorded LURA, satisfactory to Housing New Mexico in form and content.

Subordination Agreements from all lenders giving lien priority to the tax credit restrictions in the LURA must be received by Housing New Mexico before IRS Form 8609 will be issued.

G. One year following the date the last building is Placed In Service

Prior to the issuance of IRS Form 8609 certifications for the Project, and no later than one year following the date the last building is Placed In Service, the Project Owner must submit a complete Final Allocation Application, containing all items in the Final Allocation checklist, which include, among other items, the following:

1. Complete an updated Housing New Mexico Universal Rental Development Application for Final Allocation with schedules (A-1, B, C, D and F) indicating in yellow highlight all changes that have occurred or are being proposed subsequent to the time of the last application. Any change greater than 5 percent requires submission of a "narrative" discussing each change (from $XX to $YY) and the reason(s) for the change. All changes are subject to approval by Housing New Mexico.

2. A completed and fully executed Schedule "M" Addendum for Final Allocation.

3. Written certification from the equity investor of a) total gross funds raised (or to be raised) from sale of the tax credits, b) itemization of all costs associated with the syndication, c) total equity payment to the partnership, d) pay-in schedule and relevant benchmarks, e) amount of tax credit expected, and f) gross price paid per dollar of tax credit.

4. Cost Certification. Cost Certifications are required to be prepared as described in Section III of this Handbook. The CPA-prepared Cost Certification must be delivered by the Project Owner prior to the issuance of IRS Form 8609 certifications; the general contractor-prepared Cost Certification (if applicable) may be held in escrow by the project or general contractor, but would be required for audit purposes, as outlined in Section IV of this Handbook. The cost certification consists of the following:

a. Project Owner's certification, on Final Cost Certification, Housing New Mexico Form A (and, if Tax Exempt Bond Financed, Form A2), of actual total Project costs and eligible basis incurred, signed and attested;

b. Accountant's Independent Auditor's Report, Housing New Mexico Form B with correct federal tax identification number, prepared by an independent certified public accountant; and

c. Completed Costs Incurred by Building, Housing New Mexico Form C, showing costs incurred separately for each building.

5. Copy of the signed cost certifications submitted to FHA, lenders, or RD (FmHA), as applicable.

6. Completed Project Owner's attorney's opinion. A Project Owner's independent tax attorney opinion submitted on the firm's letterhead with required text as set forth in the Final Allocation Application package.

7. Completed "As Built" Architect's certification from the Project architect with required text as set forth in the Final Allocation Application package, certified by the Project Owner, that the Project has been built in conformance with the Design Standards, all applicable codes and commitments made in the Initial Application regarding design and building, unless otherwise approved in writing by Housing New Mexico.

8. As-Built Site Plan, Building Floor Plans, and Unit Plans

9. Fully executed final contractor's application and certificate for payment, AIA doc. G702 or equivalent, indicating all hard Construction Costs for the Project.

10. Updated cash flow analysis (15-year pro forma).

11. Complete (with all exhibits attached) copy of the executed partnership or operating agreement.

12. Compliance Training Certificates for both owner and management company with each labelled accordingly for training completed no earlier than two years prior to the date the Applicant submits the Final Allocation Application to Housing New Mexico.

13. Certification identifying all sources of funds, including, but not limited to, federal, state, local funds, GP contributions and third-party loans with details on

each source including type (whether it is a loan, grant, rent subsidy, etc.), terms and amount.

14. Copy of the Recorded Land Use Restriction Agreement (LURA).
15. Fully executed promissory note between Project Owner and Developer for deferred developer fee, if any.
16. HERS Report/Certification prepared and executed by a qualified third-party HERS rater.
17. Copy of the current rental assistance contract, if applicable.
18. Copy of New Mexico Smoke Free at Home certification, as applicable.
19. Evidence that the Project is located within a 2027 QCT/DDA, if applicable.
20. Final executed financing documents from all sources

III. Cost Certification

A. Applicability of Cost Certification

Prior to the issuance of a LIHTC certification (IRS Form 8609), Housing New Mexico will require two Cost Certifications to be prepared, one by an independent CPA and executed by both the CPA and Project Owner, and a second Cost Certification prepared and executed by the general contractor The Cost Certification prepared and executed by the general contractor should reflect real costs to the general contractor, but those costs may not be reflected in the CPA-prepared Cost Certification if the project entered into a Maximum Guaranteed Price or Stipulated Sum Contract for example. In those cases, the owner-incurred costs should be reflected in the CPA-prepared document, regardless of the general contractor costs. The general contractor Cost Certification may not meet Housing New Mexico cost requirements if a Maximum Guaranteed Price or Stipulated Sum Contract was utilized. Therefore, if the project entered into a Stipulated Sum Contract or a Maximum Guaranteed Price, a Cost Certification does not need to be prepared by the general contractor.

B. Cost Certification Requirements

The Form 8609 Cost Certification must meet the following requirements:

1. The CPA preparing the Cost Certification must certify that all costs are related to the Project's development and do not include costs for organization, syndication, professional or consultant fees related to syndication. The CPA shall "test" a minimum of 20% of all costs listed therein. Both the CPA and Project Owner must execute the Cost Certification. In addition, a Cost Certification is required to be prepared and executed by the general contractor if the project is not utilizing a stipulated sum contract. Each Cost Certification must specifically identify those costs listed in any general or "Other" category. The general contractor Cost Certification (if applicable) may be held in escrow by the project or general contractor but must be produced in the event of an audit as outlined in Section IV of this Handbook.

2. All fees, including the developer fee, paid to the Project Owner or Developer or to an Entity with an Identity of Interest with the Project Owner or Developer, must be clearly identified. If all or a portion of the developer fee is deferred, copies of the promissory note or other substantiation of the validity of the fee must be reviewed.

3. If the land is purchased from a related party, the Project Owner must submit an appraisal to substantiate fair market value, which appraisal must include a determination of value based upon any land use restrictions per HUD or other Entity, including Housing New Mexico.

4. Legal fees related to land acquisition must be clearly identified.

5. Interest expense related to land must be clearly identified.

6. The sources of all funding including loans, tax credit proceeds, Project Owner/Developer equity and all other sources must be certified.

C. Authority to Determine Maximum Qualified Basis

Housing New Mexico may challenge the costs provided in the Cost Certification, impose the limitations set forth in this QAP and in its sole discretion, determine the maximum Qualified Basis against which credit is allocated.

IV. Audit Requirements

Beginning with issuance of the 42(m) Letter by Housing New Mexico and during the entire term of the Compliance and Extended Use Periods, Housing New Mexico may perform an audit or other related procedures of any Project that has received an

allocation of tax credits. Projects selected for audit or other related procedures may be chosen at random or based on Housing New Mexico's discretion. An audit or other related procedure may include, but is not limited to, an on-site inspection of all buildings, and a review of all records and certifications and other documents supporting criteria for which the Project Owner received points in the Application for an allocation of tax credits. In addition, Housing New Mexico may audit all costs of a Project, including invoices, all third-party contracts, e.g., construction contract(s), management contract(s), architect and other professional contract(s), all construction pay applications and back up documentation (including, but not limited to, subcontractor invoices), and any other documents deemed necessary to perform the above.

Additionally, all Projects must maintain records of the process used to select general contractors (including any RFPs and Proposals). Written communication with selected general contractor regarding required Cost Certification upon Project completion should be retained.