

Housing Tax Credit Carryover and Final Allocation Application Training Workshop

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Table of Contents

- Carryover Allocation Application Page 3
- Ten Percent Cost Submission Page 13
- Evidence of Construction Start Page 14
- Placed in Service & Final Allocation Application Page 16
- Affirmative Actions After Reservation (MFA 2016 QAP pp. 44-48) Tab 1
- List of Relevant Doc's on MFA Website Tab 2

Carryover Allocation: Reservation vs. Allocation



- Initially, 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 reservation letter is issued.
- Treasury Regulation 1.42-6 defines documents needed for carryover allocation (see page 6)

Carryover- Internal Revenue Code

- **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

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 you make to lock or not at carryover is irrevocable.

MFA Carryover Application

- Requirements:
 - Updated Project Application & Schedules A-F (w/ changes noted in red);
 - Completion of ‘Assignment of BIN’ form;
 - Architect’s Certification;
 - Green registration, as applicable;
 - Option to lock Credit Percentage form;
 - Certificate of Partnership;
 - Limited Partnership Agmt or Operating Agmt;
 - Recorded deed or executed lease vested in the name of the entity- *this means partnership!*

Carryover Application Requirements, cont.

- Evidence of zoning – if exempt at application;
- Contractor’s resume – if not provided at application;
- 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;
- Special Needs Housing Set Aside Agmt.;
- 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 November 15th
- 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 (*updated*);
 - Exhibit A to above (itemized expenditures);
 - Owner’s Attorney’s Opinion (required form).
- Due no later than August 31, 2017
- *The 10% test is not graded on a curve!*

Construction Start

- Each project issued a carryover allocation must also provide evidence of construction start.
- Requirements
 - Building Permits
 - Contractor's Application and Certificate for Payment (if available)
 - Site Photographs
 - Executed partnership agreement
 - Evidence of National Park Service Approval of the Project's Historic Certification Part 2 (if applicable)
- Also due no later than August 31, 2017

Questions?

Placed in Service and Final Allocation Application Process

- Placement in Service Versus Final Application
 - At a minimum the Placement in Service application must be provided by November 15th (two years from Carryover)
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 should be submitted no later than 120 days from the close of the Project's first taxable year of the Credit Period.

Placement in Service Application

- Requirements:
 - Partial update of the application;
 - Certificate of occupancy for each building or certificate of completion (rehab);
 - Photographs of each building;
 - 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”;
 - Attorney’s opinion (required form);
 - As-Built” Architect Certification (required form);

Final Allocation Application Requirements, cont.

- 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;

Final Allocation Application Requirements, cont.

- Copy of recorded LURA
- Updated service enrichment MOUs/contracts (including financial literacy training)
- Evidence of Green commitment;
- Copy of current rental assistance contract (if applicable)

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 longer;
 - Compliance fees;
 - Set-asides;
 - Special housing needs to be served;
 - Any other such commitments.
 - Can not 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 2016 QAP, Page 39 Section IV.E.3.

Tax Credit Proceeds

- At Initial Application: 12 month average Credit Percentage 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: 12 month average Credit Percentage 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 2016 QAP, Page 38, 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 2016 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

2016 QAP, Page 33, 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?