



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: September 29, 2021

TO: 2021 Nine Percent (9%) Competitive Tax Credit Recipients

FROM: Carmen Doonan, Development Program Manager

SUBJECT: 2021 Carryover Allocation Documentation

Project owners in receipt of low-income housing tax credit reservations made in calendar year 2021 must receive from the California Tax Credit Allocation Committee (CTCAC) either: (1) IRS Form(s) 8609 if the building(s) have been or will be placed-in-service by December 31 of this year; or (2) a 2021 Carryover Allocation pursuant to IRC Section 42(h)(1)(E), as amended. The Carryover Allocation Agreement is attached and the Exhibits are available on the TCAC website: (<http://www.treasurer.ca.gov/ctcac/requirements/carryover.asp>).

Projects requiring a Carryover Allocation of 2021 Tax Credits must submit all of the following items below. These documents **must be received by TCAC no later than October 29, 2021** in order to receive a Carryover Allocation:

- 1) A completed Carryover Allocation form;
- 2) Federal Tax ID document from the IRS;
- 3) Completed Exhibit A (*unless exercising the 12-month extension, then see below);
- 4) Completed Exhibits C and D;
- 5) Evidence of site control; and
- 6) The applicable allocation fee (refer to Preliminary Reservation Letter).

*Projects will be granted up to 12 months from the date that TCAC executes the Carryover Allocation Agreement to submit evidence that the 10% test has been met and that the land has been purchased or leased.

Please note that when requesting the 12-month extension for meeting the 10% test, you must still submit by October 29, 2021: a Carryover Allocation Agreement, evidence that site control has been maintained from the application filing date through October 29, 2021, and the applicable exhibits.

While all other documentation required to meet the Carryover Allocation requirement is listed in your Reservation Letter and on pages 5 and 6 of the Carryover Allocation Agreement, this memorandum is intended to address: (i) Exhibit A, the verification and documentation requirements regarding costs incurred, (iii) Exhibit C (Electing the Gross Rent Floor form) and (iv) Exhibit D (Owner Acknowledgment of IRC Section 42(h)(6)(E)(ii)).

Exhibit A – Certification of Costs Incurred

(Submit when the 10% test has been met)

Treasury Regulation Section 1.42-6(c)(2) provides instructions to Housing Credit Agencies regarding verifying that costs of more than 10 percent of the reasonably expected basis in the project have been incurred. Internal Revenue Code Section 42(h)(1)(E) now extends the deadline for incurring those costs to no later than 12 months after the date of the Carryover Allocation.

Pursuant to the regulations, TCAC requires project owners to obtain from an attorney or certified public accountant (“tax professional”) a written certification (Exhibit A) to TCAC that: (1) the tax professional has examined all eligible costs incurred with respect to the project; and (2) based upon this examination, it is the tax professional’s belief that the project owner incurred more than 10 percent of its reasonably expected basis in the project no later than 12 months after the date of the Carryover Allocation pursuant to IRC Section 42(h)(1)(E)(ii) as amended. Specifically, the tax professional’s certification must address the following issues:

- The land has been acquired either through purchase evidenced by a deed, (existing building(s) if applicable) or through the execution of a ground lease. As part of this procedure, a tax professional must be satisfied by obtaining and examining copies of the title report, lease agreement, etc., that evidences a valid transfer of the property as required by state law purposes. The tax professional must also verify the acquisition date and the property cost.
- For any costs incurred pursuant to executed fee agreements (i.e., developer, architectural, etc.), an analysis must be done as to the actual services rendered pursuant to such agreement and the agreed upon amounts to be paid for each. Merely making payments to an entity does not constitute an “incurred” cost if the corresponding services have not yet been performed. A review of the overall reasonableness must be made with respect to the portion of any fee being included as of the date of the Carryover Allocation Agreement.
- For other incurred costs to be included (i.e., construction hard costs, soft costs that are to be capitalized, etc.), the project owner must provide evidence reflecting the appropriate amounts and time period covered.
- The report must address that “at a minimum” the requirements of IRC Section 42(h)(1)(E) and Treasury Regulations Section 1.42-6 have been satisfied. To the extent that costs exceeding such requirements have been incurred, as of the date of the Carryover Allocation Agreement or no later than 12 months after the date of the Carryover Allocation, TCAC does not require verification of these excess amounts at this time. For example, if the acquisition of the land (and/or existing building(s), if applicable) would satisfy the requirements, the report could be limited to these costs, even if the TCAC Certification of Costs Incurred form reflects additional costs.
- The report must specify the name of the entity that incurred the cost.

A representative accountant's report covering the above is enclosed, but requires modification. This report must be attached to the TCAC Certification of Costs Incurred in the Carryover Allocation package. The procedures discussed in the representation section of the report must be followed.

Exhibit C - Election to Fix the Gross Rent Floor

Revenue Procedure 94-57 addresses the effective date establishing the gross rent floor, as defined in IRC Section 42(g)(2)(A). In general, the gross rent floor is established on the date of allocation. However, a project owner may elect to establish the project's floor at the placed-in-service date. The procedure for making the election is contained in TCAC's Exhibit C of the Carryover Allocation package, election to fix the Gross Rent Floor. If a project owner does not make an election, the IRS considers the floor to be established on the date of allocation (whether by issuance of Form(s) 8609 or a Carryover Allocation Agreement).

Whether the project owner elects to establish the floor at the time of the Carryover Allocation or at the placed-in-service date, TCAC requires a signed and completed Exhibit C to be submitted with the Carryover Allocation package.

Exhibit D - Owner Acknowledgment of IRC Section 42(h)(6)(E)(ii)

IRC Section 42(h)(6)(E)(ii), which will be incorporated into a regulatory agreement between TCAC and the project owner, requires that the regulatory agreement and the use restrictions contained in it may be terminated due to a transfer of the project to a lender as a result of a foreclosure or instrument in lieu of foreclosure or similar instrument (unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period), provided that the following shall not be permitted before the close of the three (3) year period following such termination.

- (a) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
- (b) any increase in the gross rent of such unit not otherwise permitted under IRC Section 42.

Accordingly, project owners must agree to have their lenders acknowledge that as a condition to an allocation of Tax Credits for a project, the project owner and TCAC must enter into a recorded regulatory agreement which sets forth certain use restrictions affecting the project. The lender must further acknowledge that, among other things, such documents will ensure that if the project is acquired by foreclosure or instrument in lieu of foreclosure, the project will thereafter be subject to a three-year period during which evictions, terminations of tenancy and rent increases for tenants of any low-income units in the project will be restricted.

Evidence of Site Control

If requesting the 12-month extension for meeting the 10% test, evidence that site control was maintained from the application filing date to October 29, 2021. The evidence shall include extensions to closing dates and verification that any payment required to extend the closing date has been made.

If not requesting the 12-month extension for meeting the 10% test, evidence that the land has been purchased or leased by the Limited Partnership must be provided. The evidence shall include a recorded grant deed, lease agreement or preliminary title report.

Please note once again, that Carryover Allocation package along with the applicable exhibits and the allocation fee (refer to Preliminary Reservation Letter) **must be received by TCAC no later than 5:00 p.m. on October 29, 2021.** Please contact the project's [regional analyst](#) with any questions.