

2023 Carryover Manual

A Development Owner in receipt of a valid 2023 Commitment Notice must file the 2023 carryover package in order to obtain a Carryover Allocation. If the Development Owner will place the development in service in the same year that the Commitment Notice is issued, the owner must notify the Multifamily Finance Division immediately. Under federal regulations, if IRS Forms 8609 are not issued, or a Carryover Allocation Agreement is not signed by both the Development Owner and the Department by December 31 of the year of the award, the award is treated as if it had not been made. The federal rules for Carryover Allocations are stated in Internal Revenue Code (IRC), §42(h)(1)(E)-(F), and Title 26, Code of Federal Regulations (CFR), §1.42-6. The Department's carryover rules are stated in the 2023 Qualified Allocation Plan (the "QAP"), especially 10 TAC §11.907, and regarding the 10% Test, in the Uniform Multifamily Rules, 10 TAC §10.401(a).

When all conditions and requirements of carryover are satisfied, the Department will execute the Carryover Allocation Agreement and return a copy to the Development Owner. The Department will account for all Carryover Allocations in its annual report to the Internal Revenue Service. The Department will not execute the Carryover Allocation Agreement until all commitment and carryover documentation is determined to be acceptable.

Carryover Documentation Delivery Instructions

All carryover documentation, with the exception of the executed Carryover Allocation Agreement, must be submitted in electronic format via the Department's FTP server by 5:00 p.m., Austin local time, Wednesday, November 1, 2023. **Do not submit paper copies of the carryover package.** Development Owners will receive the Carryover Allocation Agreement via DocuSign. The executed Carryover Allocation Agreement must be delivered to the Department via DocuSign by 5:00 p.m., Austin local time, Wednesday, November 1, 2023, so that all parts of the carryover submission are in the Department's possession by this deadline. These requirements are reflected in 10 TAC §11.2 and 10 TAC §11.907.

If a Carryover Allocation Agreement must be delivered on paper instead of via DocuSign, it must be delivered by 5:00 p.m., Austin local time, Wednesday, November 1, 2023, and it must be the original executed and notarized Carryover Allocation Agreement. The paper document can be delivered to one of the following addresses:

Deliver To: Multifamily Finance Division
(Overnight/hand delivery) Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Regular Mail: P.O. Box 13941
Austin, Texas 78711

WARNING: Applicants sending the agreement via regular mail must account for additional delivery time required for delivery of mail to state offices.

Submit the carryover package as an Acrobat (pdf) file. Staff cannot process carryover package submissions that are on paper. Please note that the Development Owner is responsible for the timely delivery of complete carryover documentation. **Commitments for credits will be terminated if the carryover documentation is not received by Wednesday, November 1, 2023 [§11.2], unless an extension has been approved.** The termination of a commitment is subject to appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list [§11.907(1)].

Instructions for Completing the Carryover Allocation Submission Package

All carryover allocations of 2023 housing tax credits require the use of 2023 carryover forms in the 2023 Carryover Allocation Submission Package. There is a link to this package on the Competitive (9%) Housing Tax Credits page in the Multifamily Finance Division section of the TDHCA website under the heading, 2023 9% HTC Carryover Allocation Information, <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm>. Delivery of the executed Carryover Allocation Agreement document starts with Multifamily Finance Division staff filling out the electronic document with information provided by the Development Owner in the Application, Commitment Notice, and 2023 Carryover Allocation Questionnaire. Staff will transmit the completed electronic document to the Development Owner through Docusign. Regarding the 2023 carryover package:

1. After downloading the electronic Excel template, fill in the applicable areas. Some areas of the forms are unlocked to allow awardees to add additional columns or rows, or format text as necessary. If the space provided is insufficient for the number of characters that must be entered, decrease the font size or append an additional page.
2. All questions are intended to elicit a response. Therefore, please do not omit any requested information. Do NOT include cell references to external spreadsheets. The submission must be entirely self-contained to allow the proper functioning of internal evaluation tools and make all relevant information available to TDHCA.
3. Instructions for converting the completed Excel file to pdf may be found in the 2023 Multifamily Programs Application Procedures Manual that is posted under the heading, "2023 Multifamily Uniform Application Forms" on the TDHCA website at Multifamily Programs\Apply for Funds. Bookmarks are not required in the Carryover Package, but instructions for their creation may be found in the 2023 Multifamily Programs Application Procedures Manual if they are desired.

For questions, contact Ben Sheppard at (512) 475-2122 or ben.sheppard@tdhca.state.tx.us.

Required Forms and Exhibits for the Carryover

If deficiencies are found in a carryover submission, the Department will notify the Development Owner, who will be given three business days to correct the deficiencies, unless a shorter period is necessary to meet the execution deadline. Timely response to a deficiency notice is critical so that the carryover documentation can be processed and the Carryover Allocation Agreement can be fully executed before midnight, December 31, 2023. This is a federal deadline that cannot be extended.

Carryover Allocation Agreement.

- The Carryover Allocation Agreement conveys the allocation of tax credits pursuant to IRC §42(h)(1). A Carryover Allocation Agreement will be transmitted to the Development Owner by Department staff for the Development Owner's review and execution. If revisions are necessary, the Development Owner must request Department staff to make them.
 - If the Carryover Allocation Agreement is transmitted via DocuSign, the Development Owner must complete the signing process no later than 5:00 p.m., Austin local time, Wednesday, November 1, 2023, the Carryover Documentation Delivery Date [2023 QAP, 10 TAC §11.2(a)]
 - If the Carryover Allocation Agreement is delivered as a paper document, it must be physically delivered to the Department no later than 5:00 p.m., Austin local time, Wednesday, November 1, 2023 [Carryover Documentation Delivery Date, 2023 QAP, 10 TAC §11.2(a)], on paper (PRINTED ON ONE SIDE PER PAGE, ONLY, PLEASE), as an original document, signed and notarized in ink.
 - Development Owners are responsible for all information in the Carryover Allocation Agreement. Therefore, Owners should review all entries for accuracy. Revisions will be made by Department staff as stated above.
 - The Taxpayer's Reasonably Expected Basis (TREB) stated in the Carryover Allocation Agreement must be a sufficient amount to support the value of the tax credits allocated. Therefore, the TREB minus the land value must be greater than or equal to the eligible basis used in calculating the credit award by the eligible basis method (as opposed to the gap method or owner's request). Generally, TREB includes the value of the site and all items of eligible basis. Other items of cost that can be depreciated or capitalized for tax purposes may also be included. It is important to remember that the limits and exclusions that are applied for underwriting

purposes to “voluntary” eligible basis, “voluntary” costs, demolition cost, contingency amounts, contractor fees, soft costs, and developer fees, generally do not apply to the amounts that should be included in TREB. A CPA or tax attorney should be consulted to assure the validity and sufficiency of the TREB because a TREB that is insupportably low can invalidate the carryover allocation.

- An Election pursuant to §42(b)(1)(A)(ii)(I) to fix the applicable percentage as the rate that is effective in the month that the Department signs the Carryover Allocation Agreement (CAA) is possible if the Development Owner informs the Department that it desires to make such election. The Department will include the language required to implement the election subject to the Department’s sole discretion in view of constraints of time, availability of staff, and reasonable expectation that the IRS will publish applicable percentages for the effective month of CAA execution that exceed 9% and 4% that are the minimum possible applicable percentages established by §42(b)(2)(B) and §42(b)(3). An election requires the Department to execute and notarize the CAA within the same month as the Owner. Because the Department must complete its review of applicable Carryover documentation before signing the CAA, the month that an election will be effective is typically December. [26 CFR §1.42-8, §42(b)(1)(A)(ii)(I), §42(b)(2)(B), §42(b)(3), IRS Notice 2008-106,]
- Nonprofit Organizations are a special concern of the carryover process. An award made in the Nonprofit Set-Aside requires that the “Nonprofit” box on the third page of the Carryover Allocation Agreement be marked. This election, along with the name of the qualified nonprofit organization designated to meet the Nonprofit Set-Aside requirement, will be filled out by Multifamily staff and should be checked for accuracy. The development will have a restriction in its Land Use Restriction Agreement ("LURA") in association with the nonprofit organization’s participation in the transaction.
- Each member of the Development Owner that appears on the signature page must be on record as a legally formed organization in the state in which it was organized. In addition, the legal entity that is the Development Owner must be on record with the Texas Secretary of State. The organization names on the signature page should exactly match the names of the applicable state records in both spelling and punctuation (except that the Department may capitalize all letters of the name where the name is present in the CAA). No part of an organization’s name should be truncated or abbreviated. If the ownership entity name includes the words “Limited Partnership,” it is not permissible to substitute “Ltd.” or “L.P.” If “L.P.” or “LP” is in the name, include or exclude the periods after

each letter as applicable. Submit evidence of legal formation of the ownership entity as detailed in the discussion of Tab 3, below.

- Any errors in the Carryover Allocation Agreement may only be corrected by Department staff.

Carryover Allocation Package.

A complete electronic PDF carryover file must be submitted in the order presented in the Excel file template and detailed below. Tabs in the Excel workbook are forms for the Development Owner to complete and/or placeholders where certain documents must be inserted.

❖ Tab 1: Owner and Development Summary.

- This form must be completed in its entirety.
- The carryover package must communicate the existence of any extension approved and any request or approval of an amendment or ownership change by including the letter of request or the Department's letter of approval behind Tab 7. The documentation associated with these letters of request or approval should not be placed in the carryover package, only the letters, themselves. The requests with supporting documentation should be submitted as separate packages before submission of the carryover package:
 - Development Owner must ensure that all fees associated with all developments in which any Affiliate of the Development Owner was a principal have been paid.
 - Carryover packages submitted after the submission deadline without an approved extension will be terminated pursuant to 10 TAC §11.907(1). A carryover package that has a significant omission may be terminated unless it includes an approved extension.
 - Documentation evidencing the submission or approval of requests for Amendments or Ownership Changes prior to submission of the carryover package is to be included in Tab 7. Do not submit the requests themselves in the carryover package. Owners are cautioned to consult the Post Award Activities Manual at <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm> regarding the process for submission. Documentation of changes in the Application that do not constitute Amendments or Ownership Changes is to be included in Tab 7 as detailed in the discussion of Tab 7 below.
- The Limited Partnership Agreement (LPA) (signature page or pages, only) should be included behind this tab (Tab 1). Do not submit any pages of the limited partnership agreement except the signature page(s) of the original document

showing execution by all relevant parties. **If the LPA has not been signed by the final limited partner investor, do not submit this item.**

❖ **Tab 2: Table of BINs for Developments with Previous Allocations.**

- This tab is not applicable for developments without previous allocations but is required for all developments with previous allocations, regardless of when those allocations were made or whether or not the Development is beyond its affordability period. If the current development contains one or more buildings for which IRS Forms 8609 were issued (or will be issued) in relation to a past award of tax credits, provide the following:
 - Provide a list of all building identification numbers ("BINs") assigned to the buildings of the current allocation and attach the 8609 of each building of the previous allocation. If a building was assigned a BIN in a previous carryover allocation but has never, or not yet, received an 8609, provide the page of the carryover allocation that assigned the BINs and explain the building's current status.
 - If the development of the previous allocation contained any buildings that were assigned BINs in the previous Carryover Allocation Agreement, LURA or 8609s, identify any BINs that will not be used in association with the current carryover allocation. This instruction is applicable, for example, in cases where buildings that were assigned BINs have been destroyed or will not be rehabilitated using tax credits from the current allocation. Explain why the BINs will not be used. Attach a page with a heading such as, "Explanation of Previous BINs Not Used," that includes an explanation. BINs that were assigned in a Carryover Allocation Agreement in excess of the BINs actually needed for the previous development proposal do not need to be explained. Only BINs that were actually assigned to buildings need to be discussed. For example, if a range containing 99 BINs was stated in the Carryover Allocation Agreement, but the development only needed three BINs, then only the BINs among these three applicable BINs that are not to be used in the current carryover allocation agreement must be discussed.

❖ **Tab 3: Employer Identification Number (EIN) Form or Federal Tax Identification Number (TIN) Form and Certificate of Fact from Texas Secretary of State.**

- Submit the document from the IRS showing the EIN or TIN of the Development Owner - not the general partner. The name of the Development Owner must be the same as the name registered with the Texas Secretary of State and stated in the Application and Commitment Notice, unless a change was otherwise approved by the Department. Please do not provide an EIN or TIN for any organization in the ownership structure other than the Development Owner.

- A Certificate of Fact or certificate of authority (i.e., certificate of authority to do business in Texas for entities organized outside Texas), as applicable, from the Texas Secretary of State must be submitted for the Development Owner [10 TAC §11.907(4)]. Documentation of the existence and membership of each organization in the signature block of the Carryover Allocation Agreement must be available on the internet, or from the Development Owner at the request of the Department. The availability of this documentation is required for entities organized in Texas and outside Texas. Any organization name in the carryover execution block should exactly match the name in the entity’s organizational records in both spelling and punctuation. No part of an organization’s name should be truncated or abbreviated in the execution block. As an example, if the ownership entity name includes the words “Limited Partnership,” it is not permissible to substitute “Ltd.” or “L.P.”
- A certificate of Franchise Tax Account Status from the Texas Comptroller of Public Accounts must be available for the organization that is the Development Owner. [10 TAC §11.907(4)]

❖ **Tab 4: Fair Housing Training.**

- Note that the exact language to fulfill this requirement will be provided by the Department in Tab 4 of the Carryover Package. The carryover package must include a statement affirming that, not counting repeated attendance of the same part or phase of a course that is taught in parts or phases, an individual that is identified as part of the ownership structure in the Development Owner organization chart in the application and the on-site or regional property manager will each attend and pass at least five hours of Department approved Fair Housing training courses relating to leasing and management. Submit a similar statement that, not counting repeated attendance of the same part or phase of a course that is taught in parts or phases, the development architect of record or engineer of record responsible for certifying compliance with the Department’s accessibility and construction standards will attend and pass at least five hours of Department-approved Fair Housing training courses relating to design issues. Note that the requirement for this carryover package is for a statement, not evidence of attendance. Please do not submit the documentation itself, submit the statement, only. Certificates of attendance indicating satisfactory completion are due with the 10% Test submission, and must be submitted at that time pursuant to 10 TAC §10.401(a)(6). The fair housing training course dates must not be more than two (2) years prior to the 10% Test submission. *Note: the 10% Test for 2023 Awardees will be processed by the Department’s Asset Management Division, and the instructions for submitting the 10% Test documentation will be part of the Post Award Activities Manual that is posted at the time for submission on the Asset Management page of the Department’s website at the link: <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>.*

❖ **Tab 5: Evidence of Site Control – Deed or Contract to Purchase or Lease the Land.**

- Complete the form, indicating either an actual closing date or a projected closing date.
- Evidence of site control consistent with 10 TAC §11.204(10) must be included in the carryover submission package. The evidence must be for the same site proposed in the application, unless an amendment of the site has been approved by the Department or by the Board. In addition, the evidence must show that control is already in place and will remain in place until a projected closing date or the 10% Test, whichever is earlier as stated in 10 TAC §11.907(3).
- Evidence should be submitted to show the ability to retain site control through January 1, 2024, or to closing if closing will occur before this date. Submit an executed extension to the contract, closing statement, or deed to meet this requirement, as applicable.

❖ **Tab 6: Resolution of Conditions of the Commitment Notice.**

- Documentation that the conditions stated in the Commitment Notice have been satisfied must be provided behind this tab. For each condition, include a narrative explaining how the documentation submitted satisfies the condition – please include this narrative no matter how obvious the explanation seems. If documentation to clear a condition must be submitted to the Real Estate Analysis Division or another division of the Department, include confirmation from the applicable division that the documentation has been submitted or that the condition has been cleared.

❖ **Tab 7: Documentation of Changes.**

- Changes that constitute amendments of the application or ownership changes put the award in jeopardy. If changes are contemplated that impact the development proposal or information presented in the application, see Tex. Gov't Code §2306.6712 and §2306.6713. In the Multifamily Rules, see 10 TAC §10.405 and §10.406. Submit changes for the Department's review as described in the Post Award Activities Manual.
- Ownership change requests should be made before the carryover submission deadline, and the letter approving the change, or evidence of the Department's receipt of the request, should be included behind Tab 7 of the carryover package. Do not submit the request itself in Tab 7. These requests are governed by 10 TAC §10.406 (relating to Tex Gov't Code §2306.6713) and the related fees are governed by 10 TAC §11.901(14). Consult the Post Award Activities Manual at <https://www.tdhca.state.tx.us/asset-management/pca-manual.htm> for instructions on submitting such a request. Changes in the Developer,

Guarantor or person used to meet the experience requirement are amendments, rather than ownership changes, as discussed below.

- Amendment requests should be made before the carryover submission deadline, and the approval, or evidence of the Department’s receipt of the request, should be submitted behind Tab 7 of the carryover package. Do not submit the request itself. 10 TAC §10.405 governs amendments and 10 TAC §11.901(10) establishes the associated fees. Owners should consult the Post Award Activities Manual at <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm> for descriptions of the types of changes that constitute amendments requiring approval from the Department or the Board.
- Changes in financing, revenues, expenses and costs that will not cause changes in the score of the application generally will not be treated as amendments of the application with respect to the carryover process. The documentation of these requests should be submitted in the carryover package behind Tab 7. The financing, revenue, expense and cost documentation in Tab 7 will be used to review for any effect on scoring and underwriting. Replacements of Application exhibits must be submitted if the original application exhibits no longer reflect the applicant’s anticipated financing, revenues, expenses or costs. In particular, as stated in 10 TAC §11.907(2), “If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.”
- Changes in the development proposal require review for conformity with programmatic requirements and may require additional underwriting review, either of which may affect the allocation of credits. Owners should be sure that any changes reported reflect the anticipated final form of the development proposal to avoid unnecessary delay. If there have been no changes in the development proposal since the time of underwriting the application, the underwriting performed at the time of application will remain effective for the carryover, and there will be no decrease in the carryover allocation from the amount of tax credits recommended in the original underwriting.

Examples of Application forms that may be applicable to reporting changes:

- Rent Schedule
- Utility Allowances
- Annual Operating Expenses
- 15-Year Rental Housing Operating Pro Forma
- Development Cost Schedule

- Scope and Cost Review (only required if rehabilitation is proposed). See 10 TAC §11.306, Scope and Cost Review Guidelines, for a description of requirements.
- Offsite Cost Breakdown
- Site Work Cost Breakdown. This form is required if site work costs have changed, and if that change results in total site work costs exceeding \$15,000 per unit, the form must be accompanied by a CPA letter identifying the part of these costs that can be included in Eligible Basis in the Development Cost Schedule.
- Schedule of Sources of Funds and Financing Narrative. If financing changes, submit the form and amended commitment letters.