

# 2019 Carryover Manual

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A Development Owner in receipt of a valid 2019 Commitment Notice must file the 2019 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 2019 Qualified Allocation Plan (the "QAP") and 10 TAC §10.402(f) of the Uniform Multifamily Rules.

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, November 1, 2019. **Do not submit paper copies of the carryover package.** In contrast, Development Owners must submit the executed and notarized original of the Carryover Allocation Agreement on paper. The text of the agreement should be printed on only one side of each page. This executed and notarized original of the Carryover Allocation Agreement must be delivered to the Department by 5:00 p.m., Austin local time November 1, 2019, 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 §10.402(f).

For the executed and notarized Carryover Allocation Agreement:

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 package submissions on paper. **Please note that the Development Owner is responsible for the timely delivery of complete carryover documentation. Late deliveries will be accepted only if an extension has been approved pursuant to 10 TAC §10.402(f).** Commitments for credits will be terminated if the carryover documentation is not received by November 1, 2019, and an extension has not been requested and approved. The termination of a commitment is not appealable (10 TAC §10.402(f)(1)). If the Development Owner uses a postal or courier service to deliver the carryover package and the service fails to deliver by the deadline, then the carryover package will be deemed untimely submitted by TDHCA, and shall not be accepted without an approved extension. Extensions are subject to the penalty stated in 10 TAC §11.9(f).

### Instructions for Completing the Carryover Allocation Submission Package

All carryover allocations of 2019 housing tax credits require the use of 2019 carryover forms in the 2019 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, 2019 9% HTC Carryover Allocation Information, <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm>. Physical delivery of the original, 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 2019 Carryover Allocation Questionnaire. Staff will transmit the completed electronic document as an email attachment to the Development Owner's contact to be reviewed, printed (one-sided, only, please), executed, notarized, and submitted by the carryover deadline. Regarding the 2019 carryover package:

1. After downloading the electronic Excel template, fill in the applicable areas. 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 pertinent information available to TDHCA.

For questions, contact Ben Sheppard at (512) 475-2122 or [ben.sheppard@tdhca.state.tx.us](mailto:ben.sheppard@tdhca.state.tx.us), or Jason Burr at (512) 475-3986, or [jason.burr@tdhca.state.tx.us](mailto:jason.burr@tdhca.state.tx.us).

### Instructions for Converting the Excel file to PDF

When the carryover file is completed in Excel, it must be converted to PDF.

#### Excel 2007 Users:

1. Click the **Microsoft Office Button**  , point to the arrow next to **Save As**, and then click **PDF or XPS**

2. In the **File Name** list, type or select a name for the workbook.
3. In the **Save as type** list, click **PDF**.
4. To open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if a PDF reader is installed.
5. Next to **Optimize for**, do one of the following:
  - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
  - If the print quality is less important than file size, click **Minimum size (publishing online)**.
6. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.
7. Click **Publish**.

#### **Excel 1997-2007 Users:**

1. With the Excel file open go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on **Acrobat** tab in the task bar).
2. Select **Convert to Adobe PDF** from the drop-down list (Excel 2007- select **Create PDF**).

The Adobe PDFMaker box will appear. On the left hand side of the box, all of the sheets within the Excel file will be listed. Select the sheets to be included in the PDF, and click on the **Add Sheets** button.

3. When all sheets selected appear on the right-hand side under **Sheets in PDF** click on the **Convert to PDF** button.
4. Follow the on screen instruction to save the PDF file. The file should be named in the following format: <File Number\_Development Name\_Carryover>.pdf (e.g. 16001\_Austin\_Crossing\_Carryover.pdf).
5. Click **Yes** when prompted “proceed without creating tags?”.

#### **Creating Bookmarks**

Once the file has been converted to PDF, bookmarks may or may not have been created as part of the conversion process. Please keep the bookmark names short (try for about 12 characters or less), do not indent any of the bookmark names (i.e. do not allow an outline format), and keep each bookmark name on a single line (i.e. do not wrap the text). Regarding the foregoing request, please note that typing, “Tab,” before the tab number, or a period (“.”) after it, adds characters that are unnecessary and uninformative. To set the bookmark locations, click on the bookmark icon on the

left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View** → **Navigation Panels** → **Bookmarks**.

If bookmarks have already been created for each tab within the Excel file, edit them to eliminate any indentures (subcategories) by dragging and dropping the bookmarks as necessary so that all are aligned on the left side. To re-set the locations of the bookmarks, go to the page of the document that is to be bookmarked, right-click on the corresponding bookmark for the page selected, and click, “**Set Destination.**” When prompted, “set the destination of the selected bookmark to the current location,” select, “**Yes.**”

If bookmarks were not already created within the Excel file, go to **Document** → **Add Bookmark**. Right-click on the first bookmark and re-name it for the appropriate form or exhibit. Then, set the location using the instructions above.

To delete any extra or unnecessary pages, identify the appropriate page number(s). On the Adobe Acrobat Task Bar, click on Document and select Delete Pages from the drop down list. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following items prior to submission:

- ✓ Each tab should be bookmarked.
- ✓ Files should average less than 100 kilobytes per page.
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above.
- ✓ Files should be saved so that “Fast Web View” (or page at a time downloading) is enabled.
- ✓ Text within the PDF file should be searchable using the “Find” command in the PDF viewer.

For difficulties in using the Microsoft Excel based template, contact Ben Sheppard by email at [ben.sheppard@tdhca.state.tx.us](mailto: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 five 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 prior to January 1, 2020.

### **Carryover Allocation Agreement.**

- The original of 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.

- The Carryover Allocation Agreement must be submitted to the Department before expiration of the carryover deadline, on paper (printed on one side per page, only, please), signed and notarized in ink, as an original document.
- 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 original of the Carryover Allocation Agreement must be physically delivered to the Department no later than 5:00 p.m., Austin local time, November 1, 2019, the Carryover Documentation Delivery Date (2019 QAP, 10 TAC §11.2).
- The Taxpayer’s Reasonably Expected Basis (TREB) stated in the Carryover Allocation Agreement must be sufficient in 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.
- The Carryover Allocation Agreement includes a check-box for electing to fix the applicable percentage on the date that the Carryover Allocation Agreement is signed by the Department. Fixing the applicable percentage applies to acquisition credits, only. The applicable percentage that will be applied to the new construction and rehabilitation eligible basis is permanently fixed at nine percent under IRC §42(b)(2). Owners must either mark the election box or leave it blank, as applicable. If the owner does not elect to fix this rate, the applicable percentage will be determined at cost certification after the development is placed in service. If an owner chooses to elect, the Owner must use the applicable federal rate of the month in which the election is made under IRC §42(b)(2)(A)(ii) and meet the requirements of 26 CFR §1.42-8. If there is an election to fix the rate, the Department must execute the Carryover Allocation Agreement in the same month as the Development Owner. The applicable percentage will be the Applicable Federal Rate for the month that these two signatures are made. Therefore, the executed document must be delivered to the Department at least ten (10) calendar days before the end of the month in which the owner signs it. It will be necessary to submit two Carryover Allocation Agreements to make the election, one at the deadline for submitting the carryover package and another after the carryover package is reviewed by Department staff.

- 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 Finance Division 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). 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. Some tabs in the Excel workbook are forms for the Development Owner to complete while others are 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 §10.402(f)(1). A carryover package that has a significant omission may be terminated unless it includes an approved extension.
- Documentation evidencing the submission 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 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 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 ("BIN") 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 BIN 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 or a similar official document 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. Documentation of the organization and existence 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 entities 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 §10.402(f)(4)]

❖ **Tab 4: Fair Housing Training.**

- The carryover package must include a statement affirming that a member of the Development Owner identified in the owner organization chart in the application and the on-site or regional property manager will each attend at least five hours of Department approved Fair Housing training courses relating to leasing and management. Submit a similar statement that the development architect of record or engineer of record responsible for certifying compliance with the Department's accessibility and construction standards will attend 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 are due with the 10% Test submission, and must be submitted at that time pursuant to 10 TAC §10.402(g)(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 2019 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 §10.204(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 §10.402(f)(3).
- Evidence should be submitted to show the ability to retain site control through January 1, 2020, or to closing if closing will occur before this date. Submit an executed extension to the contract or deed to meet this need, 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(a) 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 §10.901(17). Consult the Post Carryover 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 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, submitted behind Tab 7 of the carryover package. Do not submit the request itself. 10 TAC §10.405(a) governs amendments and 10 TAC §10.901 establishes the associated fees. Owners should consult the Post Carryover Activities Manual at <http://www.tdhca.state.tx.us/asset-management/pca-manual.htm>. The manual provides a description 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 is to 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 §10.402(f)(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
- Property Condition Assessment (only required if rehabilitation is proposed). See 10 TAC §10.306 Property Condition Assessment 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.

- Summary of Sources and Uses of Funds. If financing changes, submit the form and amended commitment letters.