

## **Final Cost Certification Requirements**

All development owners requesting issuance by ADFA of IRS Form(s) 8609 must comply with the following requirements and submit all required documentation. ADFA reserves the right to clarify these requirements as necessary.

All developments placing in service after the effective date of the 2011 Qualified Allocation Plan (November 2010) must submit a complete cost certification package, including all documents and information required herein, **within one-hundred twenty (120) days of placement in service.**

If a complete cost certification package is not submitted within (120) days of placement in service, **ADFA may deny any or all other applications for ADFA resources that are pending or that become pending prior to submission of a complete cost certification package and all fees paid that have accrued as set forth below.**

**A \$15.00 per calendar day late fee shall be assessed for all cost certification packages submitted after the deadline set forth herein.**

**The \$15.00 per calendar day late fee shall also be assessed for all cost certification packages submitted within the time set forth herein but which fail to include all information and documentation required herein to be included with the cost certification package request for IRS Form(s) 8609.**

Further documentation or information that becomes necessary to obtain based upon review of the complete cost certification package may be requested in writing by ADFA and shall be provided to ADFA within 10 calendar days, excluding the day such request is sent by ADFA (which shall be established by date of letter or date that electronic mail is sent from ADFA requesting such information or documentation). **A separate \$15.00 per calendar day late fee will be charged for each day after the provided 10 calendar days that the documentation or information is not submitted to ADFA. This fee accrues until ADFA is in actual receipt of such requested documentation and information.**

**All fees set forth above, and all other fees otherwise due such as but not limited to the allocation fee and the monitoring fee, must be paid before ADFA will proceed with the cost certification review and issuance of IRS Form(s) 8609.**

### **A. REQUIRED DOCUMENTS.**

The development owner is required to submit the following items to ADFA staff for review:

1. Proof of placement in service, as defined by IRS Notice 88-116, for each building in the development. Proof of placement in service is evidenced by:

A. New Buildings:

Certificate(s) of Completion (Occupancy) by proper state or local authority for each building in the development. Temporary Certificates of Occupancy will not

be accepted as evidence of placement in service except if accompanied by a tax counsel opinion which unequivocally opines that such temporary certificates of occupancy, under the circumstances particular to the development for which such Temporary Certificates are submitted, validly evidences placement in service under IRS Section 42. Such tax counsel opinion must specifically state that the opinion may be relied upon by ADFA.

B. Existing Buildings:

(i) Date of transfer to taxpayer, if, on the date of transfer, the building or any unit in the building is ready and available for its intended purpose;

OR

(ii) Date first unit in the building is certified as being suitable for occupancy by the proper state or local authority.

C. Rehabilitation Expenditures:

- (i) Proof that rehabilitation is complete;
- (ii) schedule of rehabilitation expenditures by month;
- (iii) certification that the minimum expenditure requirement of 26 U.S.C. §42(e)(3)(A), and that ADFA's minimum rehabilitation expenditure requirement, has been met;
- (iv) certification of the month in which the federal rehabilitation expenditure requirement was met for each building; and
- (v) certification of the placed-in-service date for the rehabilitation expenditures of each building.

2. Original recorded copy of the development's recorded Land Use Restriction Agreement (LURA) (a copy should be submitted before recording for the Authority's review and approval);

3. A signed Certification from the licensed design architect or licensed engineer confirming:

a. Compliance with the Authority's "Multi-Family Housing Minimum Design Standards" applicable to the development;

b. Compliance with all applicable federal and state building codes and all applicable federal and state accessibility laws;

c. That the certifying architect or engineer has reviewed the development owner's application for housing tax credits and all ADFA-approved changes thereto and that the development as-built includes all amenities that were represented in the application and all ADFA-approved changes of amenities if any;

d. That the certifying architect or engineer has reviewed the development owner's application for housing tax credits and all ADFA-approved changes

thereto and that the development as built contains all advanced energy features that were represented in the application and all ADFA-approved changes of advanced energy features, if any;

e. That the certifying architect or engineer has reviewed the HERS rating report submitted with owner's application for housing tax credits, and the HERS rating report submitted with the cost certification package submitted hereunder, and that all energy features, methods, and all other criteria on which the HERS rating, submitted with owner's application, were adhered to and/or installed in the as-built development. This requirement shall not apply to developments for which credits were awarded in 2009 or before.

4. A signed certification from a certified HERS rater stating the HERS rating of all building(s) within the development as-built and placed in service. This requirement shall not apply to developments for which credits were awarded in 2009 or before.

5. Cost Certification by a Certified Public Accountant which, at a minimum:

a. Utilizes the Development Costs Budget and Development Sources, pages from the Multi-Family Housing Application to certify total development costs and sources, or similar format containing all such information;

b. Certifies, pursuant to 26 USC § 42, the eligible basis, square footage, applicable fraction, and maximum qualified basis for each building in the Development; (Submit both calculations for the applicable fraction based upon the "unit fraction" method and the "floor space fraction" method);

c. The cost certification shall also include in this same schedule the maximum amount of qualified basis for each building within the development, as determined by the applicable fraction and applicable percentage, i.e., the maximum amount of qualified basis for each building, when multiplied by the applicable percentage, shall equal an amount of credits which in total equal no more than the amount of credits allocated by carryover allocation;

d. For each building with rehabilitation expenditures, certifies that the expenditures' requirements of 26 USC § 42(e)(3)(A) and ADFA's \$15,000/unit requirement have been met and identifies the 24-month period allowed under 26 USC § 42(3)(A) for aggregating rehabilitation expenditures;

e. Schedule of rehabilitation expenditures included in the 24-month rehabilitation period, by month, and certification of the date that the rehabilitation placed-in-service, by building, pursuant to IRC Section 42 and related regulations and IRS guidance, that is requested to be stated as the placed-in-service date on each building's IRS Form 8609 for rehabilitation;

- f. Certifies that the Per Unit Cost; Developer's Fee; General Requirements; Builder's Overhead; Builder's Profit; and Rehabilitation Costs Standard are within Program requirements and as represented in the development owner's Multi-Family Housing Application and all ADFFA-approved changes thereto;
- g. For each building financed with tax-exempt bond proceeds, certifies the percentage of aggregate basis of each building that is financed by tax-exempt bond proceeds;
- h. For each building with market rate units, certifies:
  - (i) The cost of each such unit;
  - (ii) The square footage of each such unit;
  - (iii) The average cost per square foot of the low-income units in the development; and
  - (iv) Whether the market rate units are "above the average quality standard of the low-income units" as described in Section 42(d)(3)(B)(i) of the Internal Revenue Code and whether the development owner elected to exclude the excess costs pursuant to Section 42(d)(3)(B)(ii) of the Internal Revenue Code; and
- i. The development budget from the Multi-Family Housing Application, Excel format, shall be utilized to evidence the final development costs. The sources page from the Application, Excel format, shall be utilized to evidence the final development sources.

6. Statement that identifies the first taxable credit year for each building in the development and, if beyond first taxable year for any building, that the development met the minimum set-aside requirements of 26 USC § 42(g)(3)(A) prior to the close of the first taxable credit year for such building(s).

7. List stating the full address and Building Identification Number, assigned at carryover allocation, for each building in the Development.

8. Full name, address, telephone number, Federal Tax ID number, and 1<sup>st</sup> taxable year of the credit period for the development owner.

9. Payment to cover fee for allocation of credits - \$150.00 per low-income unit in the development; and payment to cover the monitoring fee - 8% of annual credit allocation for the development.

10. a. Sources shall equal uses. Applicant shall provide copies of all documents evidencing the financing utilized for the development, which shall be at least equal to the total development costs as certified by the Certified Public Account pursuant to Section A(5) herein; and

b. If financing sources utilized exceeds the amount of certified total development costs, ADFFA may reduce the amount of credits issued via IRS Form(s) 8609 so as to comply with the federal requirement that no more housing credits be issued than necessary in order for the development to be financially feasible.

c. All deferrals of developer fee shall be evidenced in writing and an updated pro forma shall be submitted evidencing that the amount of deferred developer fee is projected to be paid from cash flow within fifteen (15) years from the date the development placed in service. If the total amount of deferred developer fee is not evidenced by the pro forma, based upon reasonable projections and in compliance with all QAP requirements, to be paid back from the development's cash flows within fifteen (15) years from placement in service, Applicant may submit a financing commitment letter evidencing how the total amount of deferred developer fee will be paid to developer within fifteen (15) years from placement in service. If the applicable condition above is not met, the amount of credits issued via IRS Forms 8609 may be decreased and the General Partner must evidence the ability to contribute an amount of equity equal to the equity lost due to the decreased credits prior to ADFA's issuance of IRS Form(s) 8609.

11. Final Site Purchase Agreement.

12. Final Syndication Agreement(s) and all other Capital Contribution Agreement(s).

13. Final Partnership Agreement and all amendments thereto.

14. Evidence of the funding of operating reserves and replacement reserves in the requisite amounts, at minimum.

15. Certification that there has been no change in the development team members represented in the tax credit application. If ADFA has approved a change, a copy of the owner's request and a copy of the approval letter from ADFA shall be included.

16. In addition, ADFA will underwrite the Final Cost Certification to ensure continued compliance with all THRESHOLD REQUIREMENTS, ADDITIONAL REQUIREMENTS FOR A COMPLETE APPLICATION, and SELECTION CRITERIA set forth in the applicable Qualified Allocation Plan and all representations evidenced in the owner's Housing Application for Federal Low-Income Housing Tax Credits.

**B. Tax Credit Assistance Program ("TCAP") and Section 1602 Exchange Fund Recipients: Final Cost Certification Requirements**

1. All development owners that received Section 1602 Exchange funds under The American Recovery and Reinvestment Act must comply with all final cost certification requirements set forth in this QAP, except as modified in this subsection.

2. The cost certification prepared by the Certified Public Account must include, in addition to all other requirements set forth in this QAP, a certification of expenditures of all TCAP and Section 1602 Exchange funds and a certification that all development costs for which TCAP funds and Section 1602 Exchange funds were

expended were eligible costs under the respective program (TCAP or Section 1602 Exchange).

3. ADFA shall issue documentation of the placement in service of Section 1602 Exchange funded developments as it deems appropriate; any such documentation shall not be filed by development owner with the Internal Revenue Service unless otherwise requested or required by the Internal Revenue Service.

4. All development owners that received Section 1602 Exchange funds shall pay to ADFA a total monitoring fee, **due within one-hundred twenty (120) days after placement in service**, equal to 8% of the original credit amount awarded in 2007, 2008, or 2009, as applicable, prior to development owner returning such original credit allocation or reservation. The allocation fee shall be \$150.00 per tax credit unit in the development. This requirement shall remain applicable to future awards of Exchange funds, if any, unless otherwise amended.

### **C. Tax-Exempt Bond Developments**

The limitation to the amount of credits awarded or approved as set forth by ADFA in its award letter to tax-exempt bond applicant shall not apply to final cost certifications of developments financed by tax-exempt bonds. The limitation on total credits per development shall not apply to developments financed by tax-exempt bonds. All credits requested by developments financed by tax-exempt bonds must be supported by qualified basis certified by a Certified Public Accountant.

### **D. LAND USE RESTRICTION AGREEMENT (“LURA”).**

Development owners must submit a draft LURA to the ADFA Multi-Family department for review prior to submission of a final LURA (and all attachments and exhibits).

1. The owner of the development will be required to execute and record a Land Use Restriction Agreement (“LURA”) that sets forth those covenants that will restrict the development property for a minimum of thirty (30) years (“the extended use period”). The owner is required to submit a draft copy of the LURA for review and approval by ADFA prior to recording the LURA in accordance with Arkansas law. ADFA will not issue IRS Form(s) 8609 until the LURA has been reviewed and approved by ADFA, properly recorded, and a copy of the recorded LURA, with file-mark, returned to ADFA.

2. The LURA shall state that the owner will comply with all applicable requirements under the Code, this Qualified Allocation Plan, other relevant statutes and regulations and all representations made in the Multi-Family Housing Application. Among other things, the LURA will:

a. State that the owner will not apply for relief under Sections 42(h)(6)(E)(i)(II) and 42(h)(6)(I) of the Code;

- b. Identify:
  - i. each building in the development;
  - ii. the income limit for each low-income unit in the development; and
  - iii. the applicable fraction for each building; and will state that the applicable fraction for any building will not be reduced during the extended use period; and
  - iv. the 1602 percentage if applicable;
  
- c. State that during the term of the LURA, the owner will covenant, agree, and warrant:
  - i. each low-income unit will remain suitable for occupancy;
  - ii. any existing tenant in any low-income unit will not be evicted or have her/his occupancy terminated for other than good cause; and
  - iii. the gross rent of any low-income unit will not be increased except as permitted under Section 42 of the Code;
  
- d. State that, notwithstanding the termination of the “extended use period,” per Section 42(h)(6)(E)(ii) of the Code, for a period of three years following such termination existing tenants in low-income units in the development cannot be evicted (other than for good cause) and the gross rent of such units will not increase other than permitted by Section 42;
  
- e. Authorize individuals who meet the income and rent limitations applicable to the building the right to enforce those limitations in Arkansas courts;
  
- f. Prohibit the disposition of a portion of any building identified in the LURA unless the entire building is so disposed;
  
- g. State that the owner will not refuse to lease any residential unit in the development to a holder of a voucher or certificate of eligibility under Section 8 of the Housing Act of 1937 (42 USC § 1437(f) because of the status of the prospective tenant as such a holder; and
  
- h. State that the LURA is binding on all successors of the owner.