

LIHTC

10% Test Procedures November 2016

IRS Regulation

Code §42(h)(1)(e); Treas. Reg. §1.42-6 require WHEDA verify the Owner/Taxpayer has satisfied the 10% requirement. WHEDA requires a third-party complete the 10% certification.

For a Carryover Allocation to remain valid, the Owner/Taxpayer "eligible basis" in the project must be more than 10% of Owner/Taxpayer's "reasonably expected basis" in the project by the "Required Date". IRS 1.42-6 defines "reasonably expected basis" as the "*anticipated basis of land and depreciable property, whether or not such amounts are included in eligible basis*".

10% Certification Due Dates

WHEDA Requirement:

The certification must be received 30 days prior to the IRS due date to allow time for review of the documentation. If this due date falls on a weekend or holiday, the certification will be due on WHEDA's last day of business prior to the weekend or holiday.

IRS due dates:

- The "Required Date" is 12 months after the date the LIHTC Carryover allocation was issued for the project.

Examples:

Carryover Allocation issued by WHEDA = June 23, 2010
10% Certification due date per IRS Code = June 23, 2011
WHEDA 10% Certification due date = May 23, 2011

Carryover Allocation issued by WHEDA = October 24, 2010
10% Certification due date per IRS Code = October 24, 2011
WHEDA 10% Certification due date = September 23, 2011 (September 24, 2011 is a Saturday)

Documentation

WHEDA provides a packet for the Owner/Taxpayer containing the required forms to satisfy the 10% Test Certification on www.wheda.com. The packet includes: 1) Instructions, 2) Worksheet for Calculation of 10% Expenditure form, 3) Owner/Taxpayer Certification of 10% Expenditure form, and 4) A sample third-party opinion letter.

To navigate to the packet:

- www.wheda.com
- Developers & Property Managers
- Low Income Housing Tax Credits
- Allocating
- Panel located on the right side of screen scroll down to Forms, Manual, & Resources
- Low Income Housing Tax Credit Forms
- 10% Test Packet

WHEDA Procedures

Initial Carryover Allocations

- Owner/Taxpayer (or third-party preparing the certification) submits fully-completed third-party 10% Test Certification packet.
- Commercial Lending Officer reviews documentation to verify paperwork follows the format in the sample packet (Worksheet for Calculation of 10% Expenditure, Owner/Taxpayer Certification of 10% Expenditure and the third-party (typically a CPA firm) opinion/cover letter).
- Commercial Lending Officer verifies Owner/Taxpayer reached 10% of "reasonably expected basis" by the required due date.

Additional Credit Carryover Allocation (or Second Allocation)

Each Carryover Allocation is regarded by the IRS as a distinctly individual allocation of Credit, since the Credit originates from separate Credit year pools.

The required third-party certification could be waived by the Commercial Lending Officer to reduce costs to the owner/taxpayer **if** the first allocation third-party certification meets the 10% test for the entire (i.e. first AND second allocation costs). The Commercial Lending Officer will review the third-party 10% test for the first Allocation to verify whether, with second Allocation additional costs included, the **entire** 10% requirement is satisfied.

Should the first 10% certification documentation be insufficient to cover the combined 10% expenditure, the Commercial Lending Officer must request a full third-party 10% certification from Owner/Taxpayer.