



ARIZONA DEPARTMENT OF HOUSING

REG-114084-04

September 7, 2007

Internal Revenue Service
CC:PA:LPD:PR (REG-114084-04)
Room 5203
P.O. Box 7604
Ben Franklin Station,
Washington D.C., 20044

**LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH**

SEP 18 2007

RE: Arizona Department of Housing Comments to Proposed Section 42 Qualified Provisions,
RIN 1545-BC20

Greetings:

The State of Arizona, Arizona Department of Housing ("ADOH"), the allocating agency for low income tax credits in the State of Arizona, hereby submits its comments to the Section 42 Qualified Contract Provisions proposed by the Internal Revenue Service in its Notice of Proposed Rulemaking dated June 19, 2007.

Specific Requests for Comment by the Issuing Agency

1. Whether low income buildings ever sold without the underlying land?

ADOH has no knowledge of any sale of a low income building without the land. In the event that low income buildings would be sold without the underlying land, the buildings would have to be sold pursuant to an appraisal of the value of the underlying land considering the restrictions placed on the parcel. The appraiser should be in good standing and certified by the appropriate certifying agency.

2. The treatment of leased land and the prevalence of leased land in low-income housing credit transactions.

In Arizona, leased land projects are restricted to tax credit development on Indian Trust Lands and developments in which a local government entity is the landowner. In such cases there is little or no incentive for exercising qualified contract rights under the Code.

3. Examples of forms of cash distributions from or available for distribution from the project that should or should not be included in the regulatory definition.

ADOH supports the language of the proposed regulation—the definition of cash distribution to owners and related parties should be as broad as possible and no exclusions should be enumerated.

4. Whether low-income housing is owned by other than a corporation or partnership . . . and if so, what rules should apply for determining the amount of cash distributions from the project.

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ADOH has no comment because it is unaware of any instance in which a low income building is not owned by a corporation or a partnership within its jurisdiction.

5. The extent of Agency and state authority in providing more stringent requirements than the provisions contained in section 42(h)(6)(F).

The language of the rule should be carefully drafted to foreclose argument that allocating agencies do not have authority to require tax credit applicants to waive their rights to qualified contracts.

6. The authority of the allocating agency to require in agreements a fair market value cap that would restrict any qualified contract price to fair market value.

ADOH believes that it would advance the public interest for the IRS to restrict the qualified contract price to fair market value by using "do not manipulate" language in proposed section 1.42-18(c).

General Comments

7. Qualified Contract Price

- a. The proposed rule should be revised to clearly establish fair market value rather than a return on the owner's investment as the linchpin for determination of the qualified contract price. Concerns about the results of FMV pricing on the qualified contract price should be resolved in favor of preserving affordable properties.
- b. ADOH agrees that valuation of the non-low income portion should take into account recorded restrictions.
- c. In the event that the building remains on the market for a while, FMV should be adjusted down as a means of clarifying how to lower the price for the purpose of paragraph (c)(1).
- d. The Service should provide examples of how the Service will enforce anti-abuse rules to prevent manipulation.

8. Consideration of Qualified Contract Requests

- a. States should retain authority to limit qualified contract requests to properties in compliance.
- b. The rule should preserve States' authority to require the owner to secure waiver of the right to first refusal under paragraph (d)(1)(vi).
- c. Required Submissions
 - i. Language should be added to paragraph (d) permitting the allocating agency to deny requests for qualified contracts when the owner is unable to support the qualified contract price by audited financials since the low income building was placed in service.

- ii. Allocating agency should have authority to deny a request if the owner fails to provide information specifically requested by the agency such as:
 - 1. non-profit status of owners
 - 2. identification of other subsidies on the property
 - 3. due diligence reviews
 - 4. market studies

9. Allocation of Risk of Failure of the Sale

- a. The rule should provide that the owner waives its right to terminate the extended use period in the event that a sale does not close after a bona fide offer is made by a qualified contract purchaser. Indicia of a bona fide offer should include the following:
 - i. Offer made in good faith
 - ii. Legally binding on buyer
 - iii. Buyer has full capacity (legal and financial) to close
 - iv. Offer is based on due diligence determination
 - v. Offer provides adequate period for parties to review
 - vi. Offer provides a firm date for closing, manner of payment, earnest money requirements,
 - vii. Dispute resolution provisions in event of breach including seller's right to damages for loss of right to terminate extended use period.
- b. Allocating agencies should retain broad discretion to fashion dispute resolution mechanisms in the QAP.

The Arizona Department of Housing greatly appreciates the Service's consideration of these comments to the proposed rule for qualified contracts.

If ADOH can be of additional assistance, please do not hesitate to contact me.

Sincerely,



Randy Archuleta
Rental Programs Administrator

cc: Jack Malgeri, IRS