

BACKGROUND

Pursuant to Ohio Revised Code Section 175.06(A)(1), the Ohio Housing Finance Agency (OHFA) has been designated to serve as the housing credit agency for the state of Ohio and shall perform all responsibilities of a housing credit agency pursuant to Section 42 of the Internal Revenue Code (Code).

The Code and **Internal Revenue Bulletin: 2012-22** contain some of the basic provisions for handling qualified contract requests. The purpose of this policy is to set forth the procedures to be followed by OHFA and the owners of Housing Tax Credit (HTC) developments who are considering making a request for a qualified contract.

The qualified contract is defined in Section 42 (h)(6)(F) of the IRC as a bona fide contract to acquire the non- low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction of

- (i) The sum of
 - (I) The outstanding indebtedness secured by, or with respect to, the building, plus
 - (II) The adjusted investor equity in the building, plus
 - (III) Other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by
- (ii) Cash distributions from (or available for distribution from) the project.

“Adjusted investor equity” is defined in Section 42 (h)(6)(G) as the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to

- (i) Such amount, multiplied by
- (ii) The cost of living adjustment for such calendar year. Cost of living increases in excess of five percent should not be taken into account.

Section 42(h)(6)(E)(i)(II) of the Code provides that the extended use period shall terminate if a housing credit agency is unable to present a qualified contract to a taxpayer who has requested such a contract. The initial compliance period for a development receiving a Housing Tax Credit (HTC) allocation is 15 years. For HTC allocations made in 1990 and after, an extended use agreement required by Section 42(h)(6) of the Code extends the compliance period up to a minimum of 15 additional years.

Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code created a provision that housing credit agencies respond to the request for presentation of a qualified contract for tax credit developments with expiring compliance periods. The qualified contract request may not be initiated until year 15 of the compliance period. The request for presentation of a qualified contract is a request that the housing credit agency find a buyer (who will continue to operate the property as a qualified low-income property) to purchase the property for a qualified contract price (QCP) pursuant to IRS regulations. If the housing credit agency is unable to find a buyer within one year, the extended use period is terminated.

Requesting a qualified contract is a difficult process that involves substantial time and energy on the part of the owner, the management company and OHFA. It may not be the best alternative in every situation. Owners are also encouraged to consider other options. It is hoped that many owners would choose to continue the development under the existing restrictions through the extended use period (second 15 years of compliance).

Alternatively, the owner may sell the development outside of the qualified contract process. In this instance, the purchaser would continue to operate the property with the HTC restrictions.

Many owners have chosen to waive the right to request a qualified contract and have committed to 30 years or more of operation as low-income rental housing. Starting with allocations after 1995, OHFA required through the Qualified Allocation Plan (QAP) that the right to the qualified contract be waived. **Owners should review the Restrictive Covenant, Placed in Service Date and 8b of the 8609s, and respective Qualified Allocation Plan (QAP) to determine whether the development has waived the right to request a qualified contract prior to contacting OHFA.**

If the project also received Housing Development Assistance Program (HDAP) funding or other gap financing, those funding sources may have restrictions that relate to the project that will remain in place through the affordability period and will not be altered by any release granted by OHFA with respect to the Restrictive Covenant. The project should review the requirements associated in any definitive funding agreement and related regulations if the project received other sources of assistance.

QUALIFIED CONTRACT REQUEST

Owners who are eligible and are requesting a qualified contract should send the request along with all required documentation to ohfaprojectchanges@ohiohome.org. Review of the request may take up to 30 days. Owners should be prepared to present a thorough analysis of all current financing and related restrictions.

Request Requirements

1. **Qualified Contract Request Form (PC-E47)**
2. **Qualified Contract Price Workbook (PC-E48)**
 - a. This form must be completed and certified by a certified public accountant, including the valuation of the Non-Low-Income Housing Tax Credit Property.
 - b. Include submission of all documents and other information used to support the QCP
3. The \$1,500 non-refundable fee for processing a qualified contract request
 - a. The fee must be submitted at the time the Qualified Contract Request Form is presented to OHFA, made payable to Ohio Housing Finance Agency.
4. A detailed set of photographs of the development, including the interior and exterior of representative apartment units and buildings and the development grounds. Digital photographs should be included so that they may easily be displayed on OHFA's website.
5. The most recent two years of audited financial statements
6. A current rent-roll
7. All years of tax returns for the ownership entity
8. A copy of the development's ownership agreement (typically an amended and restated Limited Partnership Agreement)
9. Disclosure of Rights of First Refusal, if any
10. If any portion of the land or improvements is leased, include copies of the leases
11. An independent third party appraisal of land and non-low-income portions of the property
12. A third party Physical Needs Assessment
13. Copy of the listing contract, if applicable

OHFA reserves the right to request additional information. The owner may also be asked by OHFA to share, upon request, the documents and other information that were used to prepare the calculation of the Qualified Contract Price (QCP). The owner will be asked to allow OHFA, upon reasonable prior written notice, to visit and inspect the development, including representative apartment units.

Calculation of Qualified Contract Price Workbook

Form PC-E48 contains accompanying worksheets A-E as described below:

- **Worksheet A:** A summary of all outstanding secured indebtedness on the low-income building(s).
- **Worksheet B:** Calculation of adjusted investor equity in the low-income building(s) by year.
- **Worksheet C:** Other capital contributions made by the investor in the low-income portion of the building(s). These are contributions that are not included in other calculations, specifically in worksheets A and B.
- **Worksheet D:** Cash distributions from the development by year. This calculation also includes a reporting of the cash held in reserve accounts and owner controlled accounts. The owner's non-cash distributions must also be included. These non-cash distributions will not be applied to reduce the Qualified Contract Price (QCP), but they must be reported.

- **Worksheet E:** Fair market value of the low-income and non-low-income portion of the building(s) and land. This worksheet requires an appraisal, market study or other supporting documentation used to establish the market value of the low-income and non-low-income portions of the building(s) and land.

REVIEW PROCESS

Upon receipt of the owner's request letter, application materials and fee, OHFA will have up to 30 days to review the owners' packet of due diligence materials for completeness. OHFA will send the owner a letter acknowledging that all requirements have been met or request additional documentation. Once the QCP has been approved, OHFA will notify the owner that the one year period to find a prospective buyer for the development has begun. **If a property is not eligible to request a qualified contract, OHFA will issue the owner a letter of denial.**

A request for qualified contract may be submitted only once for each development. If an owner rejects an offer presented under the qualified contract or withdraws its request at any time after the request letter and application materials have been received by OHFA, no other opportunity to request a qualified contract will be permitted.

COMPLETION OF QUALIFIED CONTRACT

It is the owner's responsibility to immediately notify OHFA of all purchase offers made through the end of the last day of the one-year qualified contract period, including the date and terms and whether an offer was accepted or rejected. This includes any transfer or purchase of interest in the ownership entity. The qualified contract period is not assignable or transferable.

1. During the one-year period, OHFA will advertise the property in good faith. OHFA's process to identify an interested purchaser may include, but is not limited to
 - a. Posting the property information on OHFA's website
 - b. Sending out an email to OHFA's email subscriber list
2. Should the owner fail to maintain the required applicable fraction for each building or other noncompliance during the one-year qualified contract period, OHFA reserves the right to rescind approval of the qualified contract application. If the correction of noncompliance does not take place in a reasonable time frame, the qualified contract will be terminated.

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Methods for Ending the Contract

1. Sale of property in Qualified Contract Period

The owner may either accept or reject such offer; however, when the property is sold, it will remain subject to the Restrictive Covenants for the remainder of the extended use period. No further request for a Qualified Contract may be made for such property.

- **Purchase by a qualifying buyer.**

The one-year qualified contract period will immediately terminate when a qualifying contract as defined in IRC Section 42(h) has been presented to the owner.

- **Qualified contract request withdrawn.**

If an owner accepts an offer that is not a qualifying contract, including an offer to transfer or purchase an interest in the ownership entity, OHFA will consider the qualified contract request withdrawn.

When a property is sold, the owner must notify OHFA of the transfer by submitting the [PC-E37 OHFA Disposition of Property Form](#) along with accompanying documentation.

2. Expiration of the one-year qualified contract period.

After the end of the one-year qualified contract period, if the property has not been sold, the owner will be notified by OHFA that the extended-use period has expired. Pursuant to IRC Section 42(h)(6)(E)(ii), existing low-income residents will continue to have the right to rent at the restricted rent levels and may not be evicted or have tenancy terminated for other

than good cause for a period of three years following expiration of the extended use period. The property is subject to inspections by OHFA if deemed necessary to verify compliance.

ADDITIONAL INFORMATION AND DISCLAIMER

During the Qualified Contract process, certain development financial and tenant income information will be needed. Ohio Revised Code Section 175.12(B) states that financial information and data submitted to OHFA by any person in connection with financial assistance is not a public record and shall be treated accordingly.

Ohio Housing Finance Agency does not discriminate on the basis of race, color, creed, national origin, sex, religion, marital status, status with regard to public assistance, disability familial status or sexual or affectional orientation in the provision of services.

OHFA is not obligated to undertake an investigation of the accuracy of the information submitted for the Qualified Contract presentation. OHFA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed or rehabilitated pursuant to the program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the development.

If any information submitted by owners to OHFA is later found to be incorrect in any material respect, it is the responsibility of the owners to inform OHFA and to request a reexamination of the information. OHFA is not acting in the capacity of a real estate agent nor real estate broker. Its role is limited to implementing the Section 42 of the Code requirements and facilitating the presentation of a qualified contract, as defined in Section 42 of the Code. Interested parties should obtain advice from independent sources including consultation with knowledgeable tax professionals and legal counsel.

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