

PUBLIC SUBMISSION

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Section 42 Qualified Contract Provisions

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General Comment

Comments on Proposed Rule on Section 42 Qualified Contract Provisions

1. The proposed rule provides that both the non low-income and low-income portion of land underlying the improvements on a Section 42 property will be valued at fair market value, regardless of whether the building is entirely low-income. The use of "ground leases" is gaining favor for Section 42 developments, and in these cases, the land will not be sold as part of the Qualified Contract sale. Ground leases give the tenant the right to use of the property until the lease terminates. Usually, the ground, and all improvements located there, will revert to the landlord when the lease terminates. Lease terms in on Section 42 deals will always be at least as long as the Extended Use Agreement and at least five years beyond the maturity date of the last mortgage to mature. While the value of leased land should not be included in the QC purchase price, the Housing Finance Agency should be required to ensure that the terms of the lease will not interfere with closing on a QC purchase.

2. Under Section 1.42-18 (d) (1) of the proposed regulation, HFA's are given administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. The HFA may require essential information from the owner before beginning the one-year period to find a buyer. The regulation should require that HFA's publish a list of such requirements before accepting applications for qualified contracts. The regulation should place a deadline on the preparation of HFA Qualified Contract Guidelines so that the statutory authority of owners to request such contracts is not unnecessarily delayed.