

New York State Homes and Community Renewal
Low Income Housing Tax Credit
Qualified Contract Process Overview
January 2012

This overview is intended to serve as a general description of NYSHCR's Qualified Contract process. It reviews basic terminologies, application and document submission requirements, and a general timeline relative to the submission and review phases of the process. More detailed information concerning fees, data requirements and document submissions are discussed in the corresponding (1) Qualified Contract – Preliminary Application, (2) Qualified Contract Request, and (3) Instructions and Worksheets associated with the Calculation of the Qualified Contract Price.

Key Terms:

- Qualified Contract (QC) – A bona fide contract to acquire a tax credit property at a Qualified Contract Price.
- Qualified Contract Price – The purchase price of the project, calculated in accordance with Section 42 of IRS Code as follows: the non low-income or non-affordable portion of a project for fair market value **plus** the low-income or affordable portion of the project for an amount not less than (I) the applicable fraction multiplied by (II) (a) the sum of: (i) the outstanding indebtedness secured by the building (not to exceed qualifying building costs), (ii) the adjusted investor equity in the building, and (iii) other capital contributions not reflected in the amounts described in (i) or (ii) , reduced by (b) cash contributions from (or available for distribution from) the project. Such cash contributions shall include management incentive fees paid or due to anyone who at the time after the issuance of an IRS Form 8609 had any ownership interest in the project (see QAP language re: Qualified Contract Request below).
- Qualified Contract Request – An owner's request for a Qualified Contract.

- Pursuant to the Qualified Allocation Plans (“QAPs”) of the *New York State Housing Finance Agency* and *DHCR*, a project owner may request only in writing, by certified mail to HFA or DHCR, that HFA or DHCR produce a qualified contract from a buyer who will continue to operate the building(s) for low income use. A request for a qualified contract will be an irrevocable offer to sell during the applicable one year period. If HFA or DHCR presents a qualified contract during the above one year period, such qualified contract shall confer upon the buyer an exclusive right to purchase the project. For the purpose of determining the value of a qualified contract, “cash distributions from (or available for distribution from) the project” as set forth in the Code shall include management incentive fees paid or due to anyone who at any time after the issuance of an IRS Form 8609/final credit allocation had any ownership interest in the project.

Overview:

1. The Omnibus Reconciliation Act of 1989 required that all properties receiving tax credits after January 1, 1990 are subject to an additional use period that extended the minimum affordability period of tax credit properties from 15 years to 30 years. So, beginning in 1990, the 15 year Compliance Period is followed by a 15 year Extended Use Period during which the owner continues to operate the project as a qualified low-income property.
2. Section 42(h)(6)(F) of the Internal Revenue Code provides owners of tax credit properties a means to exit the tax credit program after the initial 15 year Compliance Period. Project owner may request that the NYSHCR seek a buyer via a QC following the initial 15 year Compliance Period. Note: In the initial application for tax credits, owners may have waived the right to request a QC. Owners should review their Regulatory Agreements and other documentation to determine their particular rights. DHCR’s QAP was revised in 2008 to extend the minimum affordability period to 30 years. As a result, owners should check their project specific Regulatory Agreement to determine if they are eligible to apply for a QC.

3. The buyer of the property would be required to continue to operate the property as a qualified low-income property for the remainder of the Extended Use Period.
4. Request for a QC cannot be made until **after** year 14 of the initial Compliance Period, although a Preliminary Application can be submitted as early as six months prior to the QC request.
5. Process Summary:
 - Owner submits written request (i.e., Qualified Contract – Preliminary Application) and non-refundable application fee to NYSHCR.
 - NYSHCR reviews Qualified Contract – Preliminary Application for completeness and eligibility, and responds to owner’s preliminary request.
 - If project is eligible for QC, owner submits a full application (i.e., Qualified Contract Request) along with the non-refundable processing fee as well as a deposit for estimated third party expenses to NYSHCR (if applicable). A full application comprises numerous elements, including the calculation of the QC Price and supporting worksheets, the first year’s 8609, 15 years of audited financial statements of the property, tax returns of the ownership entity, loan documents, title report, environmental reports, a current appraisal of the property and a current market analysis. It is expected that the owner will manage the collection and submission of all required documentation, market analyses, appraisals, etc. and directly engage third parties (where necessary) in the production of such materials. NYSHCR may retain – at the expense of the owner - an accounting or other professional services firm to confirm and/or recalculate the QC Price requested by the owner in the application and/or evaluate other submission elements.
 - In the rare case where NYSHCR is engaging third parties and managing documentation collection, if actual third party expenses exceed the owner’s initial deposit with NYSHCR, the owner remains liable for making additional deposits to cover such additional expenses.
 - Any delay in the submission by the Owner of required documentation and/or non-payment or delay in payment of amounts payable to NYSHCR may result in the extension of the QC Request period or in the termination of the QC Request.
 - Once **all** required materials, fees and expense deposits have been submitted to NYSHCR, NYSHCR and/or its agents have 60 days to review the submission for completeness and accuracy.

- Once QC Request is considered complete by NYSHCR and the QC Price is deemed acceptable to NYSHCR, NYSHCR will notify the owner that the one year period during which a purchaser will be sought has begun. Note: The one year period will not begin until the last submission element has been provided and NYSHCR considers the QC Request complete.
 - NYSHCR will attempt to locate a purchaser through numerous means including, but not limited to, the use of a broker network, existing contacts at property management companies, other existing tax credit property ownership entities, and not-for-profit groups, and/or its internet site. The owner may also attempt to identify a buyer for the property using means subject to pre-approval by NYSHCR.
 - If an owner rejects a viable offer presented under a QC or withdraws its request after applying, no other opportunity to request a QC will be afforded to the owner by NYSHCR and the owner will be required to honor the remainder of the 15 year Extended Use Period.
6. Extended Use Period will end if the NYSHCR is unable to present a QC within one year of finalization of request (or other mutually agreed-upon period of time) that the NYSHCR find a qualified purchaser – i.e., a purchaser who offers to purchase the project for a QC Price and who will operate the project as a qualified low-income property. If the NYSHCR is unable to find a qualified purchaser within one year, the Extended Use Period is terminated. For three years following this termination of the Extended Use Period, the Code requires the owner to (i) continue to honor the maximum tax credit rental limits for existing low-income tenancy, and (ii) notify tenants of the termination and their protections for the three year period. The owner must provide tenants with such notification in writing within 30 days of the beginning of this three year period. During this three year period low-income tenants cannot be evicted without good cause.
7. Beyond the aforementioned 3 year period following the termination of the Extended Use Period, the Owner may still remain subject and accountable to other federal, state or local rent-related and other regulatory restrictions.

