



Tennessee Housing Development Agency

Andrew Jackson Building Third Floor
502 Deaderick St., Nashville, TN 37243

Bill Lee
Governor

Ralph M. Perrey
Executive Director

MEMORANDUM

TO: All Interested Parties

FROM: Multifamily Programs Division

SUBJECT: **DRAFT** Guidance Regarding Implementation of Low-Income Housing Credit Qualified Contract Process

DATE: May 31, 2019

The following document is **draft** guidance regarding implementation of the Low-Income Housing Credit Qualified Contract Process.

Comments regarding the **draft** guidance regarding implementation of the Low-Income Housing Credit Qualified Contract Process, may be sent to TNCompliance@thda.org. ***Please submit comments no later than 9:00 AM CDT on June 7, 2019.***

THDA reserves the right to modify this guidance in any respect, as determined by THDA, in its sole discretion, to be appropriate.

LOW-INCOME HOUSING CREDIT

QUALIFIED CONTRACT REQUEST GUIDELINES

- I. Qualified Contract Process. Section 42 of the Internal Revenue Code of 1986, as amended (“the Code”), contains the basic provisions for handling Qualified Contract requests. However, many provisions have been left to the discretion of the housing credit agencies administering the Low Income Housing Credit (“LIHC”) Program. The purpose of these guidelines is to set forth the policies and procedures owners of developments with federal low-income housing tax credits (“Owner(s)”) under the Tennessee Housing Development Agency’s (“THDA”) LIHC Program must follow in order to request participation in the Qualified Contract process.
- II. Termination of the Extended Use Period.
 1. THDA and Owner enter into an extended low-income housing commitment agreement for a term defined as the **extended use period**. This agreement is the Land Use Restrictive Covenant (“LURC”), which is recorded to encumber the development.
 2. Some owners may have postponed their right or waived their right to participate in the Qualified Contract process for points under the Qualified Allocation Plan (“QAP”) applicable to the development.
 3. If Owner has not postponed or waived their right to participate in the Qualified Contract process, the extended use period terminates if, after the 14th year of the compliance period:
 - i. Owner submits a Notice of Intent to participate in the Qualified Contract process;
 - ii. Owner is eligible to participate in the process;
 - iii. Owner complies with all requirements of the Qualified Contract process; and
 - iv. THDA’s marketing of the development, within the **One-year Period**, does not result in an offer from a prospective buyer to purchase Owner’s interest in the low-income portion of the tax credit development at or below the Qualified Contract price and to continue to operate such as a qualified low-income development.
- III. Definitions.
 1. Compliance Period. The period beginning January 1st of the first year of the **credit period** and ending the end of the fifteenth year of the compliance period. Owner may have extended the compliance period for points under the QAP applicable to the development.
 2. Credit Period. The election of the start of the credit period is made on a building-by-building basis. Owner can choose to start the credit period the year the building is placed in service or defer to the next calendar year.
 3. Extended Use Period. Begins on the first day of the compliance period and ends thirty years thereafter or as otherwise specified in the LURC.
 4. One-year Period.
 - i. The period of time during which THDA shall have the right, but not the obligation, to market the development to find a prospective buyer to offer to purchase Owner’s interest in the low-income portion of the development at or below the Qualified Contract price pursuant to the Code.
 - ii. The One-year Period starts as outlined under Section V.5.

- iii. See Section VIII. for what can cause the One-year Period to suspend.
- iv. See Section IX. for termination and expiration of the One-year Period.

IV. Notice of Intent. If Owner has not waived their right to participate in the Qualified Contract process, then Owner may provide THDA with a Notice of Intent to participate in the process, but not until the year before the end of the Compliance Period, as it is defined in the LURC for the development.

1. The Notice of Intent shall be on the form attached to these guidelines. It must contain original signatures and must include the following documentation and materials:
 - i. nonrefundable processing fee in the amount of \$300.00, payable to THDA in the form required by the QAP;
 - ii. a copy of the recorded LURC and any recorded amendments to the LURC;
 - iii. IRS Form 8609 with Part II completed and Schedule A for each building in the development as submitted to the Internal Revenue Service (IRS) during the first year of the Compliance Period including, for developments with multiple buildings, the date each building was placed in service and the first year in which it claimed credits;
 - iv. documentation of a right of first refusal, if applicable;
 - v. documentation of any additional affordability restrictions imposed by HUD, USDA, other federal, local or state funding, if applicable; and
 - vi. other documentation and materials as deemed necessary by THDA in its sole discretion.
2. Within thirty (30) calendar days of receipt of the Notice of Intent, THDA shall review the packet and provide Owner with a letter stating that:
 - i. all documentation has been received and Owner is eligible to submit a Qualified Contract Request;
 - ii. additional information or documentation is necessary; or
 - iii. the development is not eligible to request a qualified contract.
3. THDA has the sole administrative discretion to conclude that Owner's Notice of Intent lacks essential information. THDA will review any subsequent submissions of requested information within fourteen (14) calendar days of receipt, excluding holidays.
4. THDA's determination of eligibility will not obligate Owner to submit a Qualified Contract Request.
5. If Owner withdraws a Notice of Intent or THDA denies a Notice of Intent because it is premature, Owner may subsequently resubmit a Notice of Intent in accordance with these guidelines
6. Submission and/or approval of a Notice of Intent does not start the One-year Period.

V. Qualified Contract Request.

1. If Owner is deemed eligible to continue the process, Owner shall submit all documents and materials required for a complete Qualified Contract Request to THDA, including a Qualified Contract Request in the form attached to these guidelines, with original signatures, and with the following materials and documentation:
 - i. non-refundable fee of \$5,000.00, payable to THDA in the form required by the QAP;

- ii. fully completed Qualified Contract Worksheets A - D, together with such documents and additional information indicated on such worksheets attached to these guidelines (collectively, the "Worksheets"); and
 - iii. any other documentation or material that THDA determines, in its sole discretion, is needed to determine a Qualified Contract Amount.
2. THDA will review the first submission of materials within thirty (30) calendar days of receipt and any additional submissions within fourteen (14) calendar days of receipt, excluding holidays.
3. THDA may deny any Qualified Contract Request if Owner fails, within a reasonable period of time, as determined by THDA in its sole discretion, to provide THDA the documentation or material as THDA deems necessary, in its sole discretion, to determine the Qualified Contract Amount. If THDA denies a Qualified Contract Request for this reason, no additional Qualified Contract Requests for the same development will be accepted, and the LURC will continue to apply to the development for the term specified in the LURC.
4. Owner may voluntarily withdraw a Qualified Contract Request. If Owner voluntarily withdraws a Qualified Contract Request, Owner may subsequently resubmit a Qualified Contract Request in accordance with these guidelines.
5. Once THDA receives a complete Qualified Contract Request, along with all requisite documentation and material needed to determine the Qualified Contract Amount, in THDA's sole discretion, then the One-year Period starts.

VI. Qualified Contract Amount.

1. THDA will obtain an appraisal of the development and engage a Certified Public Accountant to determine the Qualified Contract Amount, based on the documentation and material required in connection with the Qualified Contract Request and any other documentation and material THDA may request, in its sole discretion, in accordance with the federal formula contained in Section 42(h)(6)(F)&(G) of the Code.
2. THDA shall provide Owner with notice of the Qualified Contract Amount within forty-five (45) calendar days, excluding holidays, of a complete Qualified Contract Request package, as determined by THDA in its sole discretion.
3. THDA's determination of the Qualified Contract Amount is definitive.

VII. Marketing the Development.

1. Following THDA's determination of the Qualified Contract Amount, THDA will market the development in good faith for the remainder of the One-year Period.
2. THDA shall have the right to engage realtors and use any methods available to THDA to market the development for sale at the Qualified Contract Amount, all at Owner's expense.
3. In connection with marketing the development, Owner shall provide the following documentation to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development:
 - i. a thorough narrative description of the development, including all amenities, suitable for familiarizing prospective buyers with the development;
 - ii. 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 be easily displayed on THDA's website;

- iii. any market studies or appraisals Owner has obtained;
 - iv. such other documentation and material as determined by THDA, in its sole discretion, necessary to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development.
4. THDA will utilize its website, and any other means THDA deems appropriate, to market the development.

VIII. Qualified Contract.

1. During the One-year Period, Owner shall immediately notify THDA of all purchase offers made through the end of the last day of the One-year Period, including the date and terms, whether the offer is for an amount equal to or greater than the Qualified Contract Amount or not. This includes any transfer or purchase of any interest in the ownership entity.
2. If a prospective buyer offers to purchase the development for an amount equal to or greater than the Qualified Contract Amount, then the One-year Period will suspend as Owner and the prospective buyer negotiate.
3. If Owner fails to respond to the prospective buyer within fourteen (14) calendar days, the qualified contract terminates and the development remains bound by the provisions of the LURC for the remainder of its term.
4. If the prospective buyer fails to respond to Owner within fourteen (14) calendar days, then the One-year Period restarts unless and until the prospective buyer responds. Once the prospective buyer responds, the One-year Period suspends again, unless the One-year Period has expired.
5. THDA shall be copied on all correspondence between Owner and the prospective buyer through THDA's Program Compliance Manager for the Multifamily Programs Division.
6. Once Owner and the prospective buyer reach an agreement, Owner shall enter into a purchase agreement, which shall allow the prospective buyer a reasonable period of time to undertake normal, additional, and customary due diligence prior to closing.
 - i. Once the purchase agreement is executed, the possibility of terminating the LURC is removed forever and the development remains bound by the provisions of the LURC, unless the closing of the Qualified Contract fails due to the prospective buyer terminating the Qualified Contract.
 - ii. If Owner does not enter into the Qualified Contract, or fails to act upon or otherwise comply with the requirements of the Qualified Contract, or fails to close the sale under the Qualified Contract for any reason other than the prospective buyer terminating the Qualified Contract, the LURC will continue to bind the development for the remainder of the term specified in the LURC and Owner will have no further opportunity to opt out or terminate the LURC.
7. In connection with presenting a Qualified Contract, THDA may request, and upon such request Owner shall be obligated to provide, at Owner's sole expense, additional documentation a prospective buyer may deem necessary to have sufficient information upon which to make a reasonable decision regarding purchase of the development, including without limitation, the following documentation and material:
 - i. a copy of the most recent 12 months and year to date information for Owner's current fiscal year of operating statements for the development which will fairly apprise a prospective buyer of the development's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio;
 - ii. a current and complete rent roll and rent rolls covering the most recent twelve (12) months;
 - iii. copies of all current ground leases, if any portion of the development is on leased land;

- iv. a physical needs assessment of the development;
 - v. a current title report;
 - vi. a current Phase I Environmental Site Assessment;
 - vii. a current certificate of insurance showing sufficient hazard insurance on the development;
 - viii. service contracts for any services, including but not limited to social services for the tenants, utilities, trash collection, extermination, appliance or HVAC servicing, laundry, etc.;
 - ix. any market studies or appraisals Owner has obtained;
 - x. current annual budget;
 - xi. all tenant income certifications, all tenant leases, and all other Section 42 compliance records;
 - xii. current utility allowance calculations;
 - xiii. updates of any other documents previously provided; and
 - xiv. such other documentation and material necessary, as determined by THDA, in its sole discretion, to allow a prospective buyer to have sufficient information upon which to make a reasonable decision regarding purchase of the development.
8. If Owner accepts an offer that is not a Qualified Contract, including an offer to transfer or purchase any interest in the ownership entity, THDA will consider the Qualified Contract Request withdrawn. The development will remain subject to the LURC for the full term of the LURC. No further Qualified Contract Request may be made for such development by Owner or any subsequent purchaser.
 9. Only prospective buyers who are not currently subject to any ban associated with participating in any of THDA's housing programs or in any federal housing program and who demonstrate the experience and capacity to manage the development in accordance with Section 42, the Regulations, and the relevant THDA QAP are eligible. If THDA finds that a prospective buyer is ineligible, THDA will notify the buyer and Owner and the One-year Period will resume.

IX. Termination and Expiration of One-year Period.

1. THDA may terminate the One-year Period if, in its sole discretion, THDA determines there has been non-cooperation or excessive delays by Owner. Upon such termination, no additional Notices of Intent or Qualified Contract Requests may be submitted for the development and the LURC shall continue to apply to the development for its full term.
2. If the One-year Period ends without an offer from a prospective buyer to purchase the development for an amount equal to or greater than the Qualified Contract Amount, THDA will provide a release of the LURC to Owner.
 - i. Notwithstanding such a release, existing low-income residents will continue to have the right to rent at the restricted rent levels and may not be evicted or have their tenancy terminated for other than good cause for a period of three years following the date of the release pursuant to Section 42(h)(6)(E)(ii) of the Code and Section 1.42-18(a)(iv) of the Regulations.
 - ii. During this three-year period, Owner shall submit an annual report to THDA, in a form and manner determined by THDA, in its sole discretion, showing all low-income households that occupied a unit at the date of the release, the respective tenant-paid rent, utility allowance, and move-out date, if applicable, along with a certification that no low-income residents have been evicted or had

tenancy terminated for other than good cause.

- iii. If a development is sold, including a sale or change in ownership interest, during the three-year period from the date of the release, Owner shall notify THDA of the transfer and shall provide such documentation and material as THDA may request.

X. Questions and Submissions.

1. Questions regarding any aspect of this process should be directed to Chuck O'Donnell at 615.815.2215 or CODonnell@thda.org.
2. Submission of Notices of Intent, Qualified Contract Requests, and all other required documentation should be mailed to:

Program Compliance Manager
Multifamily Programs Division
Tennessee Housing Development Agency
502 Deaderick St., 3rd Floor
Nashville, TN 37243