

Wisconsin Housing and Economic Development Authority (WHEDA)
Y15 Compliance Policy for Opt-Out Provision

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 are subject to an "extended use period" that lengthened the time that credit properties were required to maintain affordability from 15 to 30 years. In an effort to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also provided an option for owners to exit the program at the end of the initial 15 year compliance period by requesting that the state agency either purchase the property or assist in finding a buyer at a determined "qualified contract price"

Even though the 1989 Act provided the owners with an opt-out provision in year 15, many owners in Wisconsin as well as across the country, gave up their right to an early opt-out in return for additional points in the scoring process. This policy will apply to those properties that are eligible for opt-out at some time prior to the 29th year of usage.

Owners are encouraged to review their copies of applications submitted to WHEDA when applying for an allocation of credits as well as the deed restrictions (LURA) to determine if and when they are eligible to pursue the opt-out provision. If eligible for early opt-out, owners may request WHEDA to find a buyer for the low income portion of a property during, or any time after the year specified in the LURA. Typically, this will range from year 14 to year 25. Owners will be allowed only one opportunity to pursue the Qualified Contract process per property. If WHEDA is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to market rate use.

Owners must notify WHEDA of their desire to sell the property using the process outlined below. Once complete and proper notice has been received, WHEDA has one year to find a buyer for the property at a pre-determined price, not to exceed the Qualified Contract Price (QCP). The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement.

QUALIFIED CONTRACT PROCESS

A. QUALIFIED CONTRACT NOTIFICATION LETTER

The first step in the process for requesting a Qualified Contract is to submit the Qualified Contract Notification Letter, along with all required items listed in the letter. This request may be submitted any time during, or after the year specified in the LURA. Typically, this will range from year 14 to year 25. A copy of the Qualified Contract Notification Letter can be found at www.wheda.com.

Here the owner acknowledges that information submitted may be shared with prospective purchasers, real estate brokers, and agents of WHEDA, and that data provided may be posted on WHEDA's website.

The owner must agree to list the property for sale with a broker who works with affordable multifamily housing properties and cooperate with WHEDA in its efforts to market the property. This may include providing copies of rent rolls, project tax returns, income certifications, repair and maintenance records, operating expenses and debt

service information, and other due diligence documents, as well as allowing access to the property for inspection by WHEDA, its agents, and prospective buyers. Before information is shared with a prospective purchaser, owner may require that they enter into a commercially reasonable form of nondisclosure agreement.

The owner acknowledges and certifies in the notification letter that they have conducted a due diligence review of the calculation of the Qualified Contract Price and are solely responsible for documents and information provided to WHEDA.

The owner also agrees to indemnify, defend and hold WHEDA harmless with respect to WHEDA's use of the project information.

The owner also understands that if WHEDA finds a prospective purchaser willing to present an offer to purchase the property for an amount equal to or greater than the Qualified Contract Price, owner agrees to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property that will allow prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing of the purchase.

B. APPLICATION MATERIALS

1. A fully completed "Calculation of Qualified Contract" Price, including Worksheets A-E and certification by an independent CPA that Calculation Worksheets were completed, or reviewed and approved, by that CPA.
2. A narrative description of the project, including all amenities, suitable for familiarizing prospective purchasers with the property.
3. A description of all income, rental and other restrictions, if any, applicable to the operation of the property.
4. A detailed set of digital photographs of the property for use on WHEDA's website, including the interior and exterior of representative apartments units and buildings, and the exterior grounds, building and common areas.
5. Copies of operating statements for the last three years, detailing operating expenses, debt service, gross receipts, cash flow, debt coverage ratios, etc.
6. A current and complete rent roll.
7. An application fee of one fourth of one percent (.25%) of the Qualified Contract Price or \$20,000, whichever is less.
8. Evidence that the property has been listed with a broker who works with affordable multifamily housing properties.

C. CALCULATION OF QUALIFIED CONTRACT PRICE WORKSHEETS

Before WHEDA will commence marketing a project, owners must complete the "Calculation of Qualified Contract Price" form. This calculation will establish the minimum price at which WHEDA will market your project and present an offer for its purchase.

1. Worksheet A: "Outstanding Debt With Respect to Low-Income Building(s)". The Qualified Contract Price includes the unpaid balance of all secured and unsecured debt with respect to low-income buildings.

2. Worksheet B: "Calculation of Adjusted Investor Equity In the Low-Income Building". The Qualified Contract Price includes the sum of the "Adjusted Investor Equity" with respect to the project. "Adjusted Investor Equity" means, with respect to each calendar year, the aggregate amount of cash that taxpayer invested with respect to the low-income buildings.
3. Worksheet C: "Other Capital Contributions". The Qualified Contract Price includes the amount of other capital contributions made with respect to the project. Do not include amounts included in Worksheets A or B.
4. Worksheet D: "Cash distributions from, or Available from the Project". The Qualified Contract Price is reduced by the total of all cash distributions from, or available from the project.
5. Worksheet E: "Fair Market Value of Non-Low Income Portion of the Buildings" The worksheet requires an appraisal (from a state certified general appraiser), study, methodology, proof or other support for the fair market value of the non-low income portion of the building(s).

D. Review Process

1. Upon receipt of the owner's Notification Letter and application materials, WHEDA will review the submission and notify owner within 15 days acknowledging either that the notification requirement has been met or the submission materials are incomplete.
2. The one year period will begin once all required documentation is received.
3. Marketing of the property will continue through the one year period until such time as title has been transferred or the one year time frame has expired. Marketing efforts will include:
 - Posting the property information on WHEDA's Website
 - Sending property information via WHEDA's subscription service. This list consists of owners of tax credit properties, local and national non-profit and for-profit owners interested in preserving housing, and tax credit investor contacts.
4. The owner must agree to list the property for sale with a broker who works with affordable multifamily housing properties and cooperate with WHEDA in its efforts to market the property.
5. Lack of cooperation will cause the process to cease and the owner will be required to comply with the low income usage requirements for the remaining extended use period.

COMPLETION OF QUALIFIED CONTRACT PROCESS

1. The owner is not required to accept the first of any of the purchase offers; however, if the owner rejects an offer at or above the Qualified Contract Price that has been presented by a qualified purchaser, the development will remain as affordable for the remaining term of the extended use period.
2. The owner must notify WHEDA of any purchase offers and may accept less than the Qualified Contract Price but cannot require a price higher than the Qualified Contract Price.
3. WHEDA must be satisfied that the purchaser is familiar with and prepared to comply with the requirements of the tax credit program. WHEDA may reject purchasers who have failed to demonstrate proficiency with the tax credit program.
4. If an offer is accepted, buyer and owner, and not WHEDA, must adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula, such as mortgage payments that reduce outstanding indebtedness, between the time WHEDA first offers the property for sale and the actual sale closing.
5. If WHEDA is unable to find a buyer pursuant to the Qualified Contract before the expiration of the one year period, the project will no longer be subject to the low income usage restrictions, but will be subject to the requirements of Section 42(h)(6)(E)(ii) that states that for a three year period commencing on the termination of the extended use period, the owner may not evict or terminate tenancy for other than good cause of an existing tenant of any low income unit or increase the gross rent beyond that allowed under the program. The owner will be required at the end of each year of the three year period to provide certification to WHEDA that these requirements have been met.
5. The owner will also be required to provide notice to the existing tenants that the low income use restrictions have been terminated and inform them of their protections during the three year time frame.

Qualified Contract Notification Letter

September 4, 2012

Wisconsin Housing and Economic Development Authority
201 W. Washington Ave., Suite 700
P.O. Box 1728
Madison, WI 53701-1728

Re: Development Name, WHEDA #

Dear

On behalf of _____ (property owner), we hereby request that the Wisconsin Housing and Economic Development Authority (WHEDA) present a "qualified contract" for the purchase of _____ (property name), (the "Project"). This request is made pursuant to Section 42(h)(6)(E)(i)(ii) of the Internal Revenue Code. We understand WHEDA will have one year from receipt of this letter and all of the accompanying information described below, to present a "qualified contract" for the purchase of the Project.

We have enclosed with this request the following documents and information required by WHEDA:

- A fully completed "Calculation of Qualified Contract" Price, including Worksheets A-E and certification by an independent CPA that the Calculation Worksheets were completed, or reviewed and approved, by that CPA;
- A narrative description of the Project, including all amenities, suitable for familiarizing prospective purchasers with the property;
- A description of all income, rental and other restrictions, if any, applicable to the operation of the property;
- A detailed set of digital photographs of the property for use on WHEDA website, including the interior and exterior of representative apartment units and buildings, and the exterior grounds, buildings and common areas;
- Copies of operating statements for the last three years, detailing operating expenses, debt service, gross receipts, cash flow, debt coverage ratios, etc.;
- A current and complete rent roll;
- Application fee of one fourth of one percent (.25%) of the determined Qualified Contract Price or \$20,000, whichever is less.
- Evidence that the property has been listed with a broker who works with affordable multifamily housing properties.

Owner understands that the above information may be shared with prospective purchasers, real estate brokers, and agents of WHEDA and that summary data may be posted on WHEDA website.

Owner will cooperate in a reasonable manner with WHEDA and its agents with respect to the Agency's efforts to present a qualified contract for the purchase of the property. Owner understands that prior to the presentation of a qualified contract, property "due diligence" may need to be shared with WHEDA and prospective purchasers, including but not limited to, rent rolls, project tax returns, income

certifications and other Section 42 compliance records, records with respect to repair and maintenance of the property, operating expenses and debt service. Before information is shared with a prospective purchaser, owner may require that they enter into a commercially reasonable form of nondisclosure agreement. Owner will also share with WHEDA, at its request, the documents and other information that were used to prepare the enclosed "Calculation of Qualified Contract Price, including Worksheets A-E. Owner agrees to allow WHEDA, its agents, and prospective purchasers, upon reasonable written notice, to visit and inspect the property, including representative apartment units.

Owner acknowledges and certifies that:

- We have conducted our own investigation and due diligence with respect to the Calculation of the Qualified Contract Price and the Qualified Contract procedures set forth in Section 42(h)(6)(F) of the Internal Revenue Code;
- We are solely responsible for documents and information provided to WHEDA with this notification letter, including the Calculation of Qualified Contract Price form and the exhibits thereto, and any other documents or project information that we may provide to WHEDA and/or share with prospective purchasers at a later time (Collectively, the "Project Sales Information");
- To our knowledge, the project sales information is truthful, accurate and complete and contains no misstatements or misleading information;
- Neither WHEDA nor any its employees or agents have made any independent investigation or review of the accuracy, truthfulness or completeness of the project sales information;
- By submission of this notification letter, we agree to indemnify, defend, and hold the Agency harmless with respect to WHEDA's use of the project sales information.

Owner agrees that WHEDA and its employees and agents shall have no liability to them with respect to the Calculation of the Qualified Contract Price or any other act, omission, or determination by WHEDA with respect to marketing the property or carrying out its responsibilities under Section 42(h)(6)(F) of the Code, so long as WHEDA is acting in good faith.

Owner also understands that if WHEDA finds a prospective purchaser willing to present an offer to purchase the property for an amount equal to or greater than the qualified contract price, owner agrees to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property that will allow prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing of the purchase.

Sincerely,

Attachments

Instructions for Calculation of Qualified Contract Price

Before WHEDA will commence marketing your project, you must complete the "Calculation of Qualified Contract Price" form attached to these instructions (the "Calculation Form"). This calculation will establish the minimum price at which WHEDA will market your project and present an offer for its purchase.

To complete the Calculation Form, you must complete Exhibits A through D and, if the project has market rate units, Exhibit E. The results of Exhibits A through E are then transferred to the Calculation Form to determine the qualified contract price (QCP) for the property.

The Calculation Form is derived from a statutory formula set forth in Section 42 (h)(6)(F) of the Internal Revenue Code. The statutory formula divides the purchase price between the low income portion of the project and the market rate portion of the project, if any. The QCP for the low income portion of the project is equal to the sum of project indebtedness (Worksheet A), investor equity (Worksheet B), and other capital contributions (Worksheet C), reduced by the total cash that has been distributed, or is available for distribution, from the project (Worksheet D).

If the project has any market rate units, the QCP is increased by the fair market value of those units (Worksheet E).

Please remember that the 12 month period for finding a buyer will not commence until the Calculation Form, and Exhibits A through E, are completed and returned to WHEDA with the notification letter and other required materials. The calculation must be prepared or reviewed and approved by an independent third party CPA, who is not an employee of the owner.

WORKSHEET A
Outstanding Debt
With Respect to Low-Income Building(s)
Code Section 42(h)(6)(F)(i)(I)

Instructions

The Qualified Contract Price includes the unpaid balance of all secured and unsecured debt with respect to the low-income buildings. Worksheet A requires you to set forth certain information with respect to each mortgage loan and other project debt: The name of the lender, the unpaid principal balance, the accrued interest, the maturity date, and other relevant information.

In the section marked "Other Information" with respect to each loan, please set forth any information with respect to the loan that may be relevant to WHEDA's efforts to market the project. Examples of relevant information include whether the loan has a "due-on-sale" clause or if any portion of the loan is payable from net cash flow (i.e. "soft" debt). Please also attach to the worksheet an amortization schedule for each loan, if available.

In addition to mortgage debt, you should also list any unsecured long-term debt, the proceeds of which were used directly in the construction, rehabilitation, or operations of the project.

The unpaid principal balance and accrued interest for each loan set forth on this worksheet will be totaled and that total transferred to Section A(i) of the Calculation Form.

WORKSHEET B
Calculation of Adjusted Investor Equity
In the Low-Income Building(s)
Code Section 42(h)(6)(F)(i)(II)

Instructions

The Qualified Contract Price includes the sum of the "Adjusted Investor Equity" with respect to the project. "Adjusted Investor Equity" means, with respect to each calendar year, the aggregate amount of cash that taxpayers invested with respect to the low-income buildings, increased by the applicable cost-of-living adjustment, if any.

Not all capital contributions with respect to the project qualify as "Adjusted Investor Equity". Specifically, cash invested in the project should be included in this Worksheet B only if each of the following is true:

- The cash is contributed as a capital contribution and not as a loan or advance;
- the amount is reflected in the adjusted basis of the project (until there is further guidance from the Internal Revenue Service, WHEDA will interpret this to mean cash contributions used to directly fund adjusted basis and cash contributions used to pay off a construction or bridge loan, the proceeds of which directly funded adjusted basis);
- there was an obligation to invest the amount as of the beginning of the credit period (until there is further guidance from the Internal Revenue Service, WHEDA will interpret this to include cash actually invested before the beginning of the credit period and cash invested after the beginning of the credit period for which there was an obligation to invest at the beginning of the credit period).

With respect to Worksheet B, subsection (i) for each calendar year requires you to set forth the identity of the investor. Typically, this will be the tax credit investor (i.e., the investor limited partner); however, it may include a general partner if the cash investment by a general partner otherwise satisfies the requirements set forth above.

Subsection (ii) requires you to set forth the amount of qualifying cash equity that was invested in the project for that calendar year. This amount should include only cash that was actually contributed to the project that year; it should not include amounts for which there was a mere obligation to invest.

Subsection (iii) requires you to set forth the cost-of-living adjustment percentage and applicable dollar amount for each calendar year. Investment amounts qualifying as investor equity are entitled to a cost-of-living adjustment.

For each calendar year, the amount of "Adjusted Investor Equity" is the sum of the qualifying investment amount and the cost-of-living adjustment. After calculating the investment amount and cost-of-living adjustment, if any, for each year, these amounts are then totaled under "Total Adjusted Investor Equity". This total is then transferred to Section A(ii) of the Calculation Form.

WORKSHEET C
Other Capital Contributions
Code Section 42(h)(6)(F)(i)(III)

Instructions

The Qualified Contract Price includes the amount of other capital contributions made with respect to the project. For this purpose, "other capital contributions" are not limited to cash (at least until there is contrary guidance from the Internal Revenue Service) and, therefore, include "in-kind" contributions such as land. However, if you include any non-cash contributions in this worksheet, please describe in detail the type of contribution, the value you have assigned to the contribution, and your justification for assigning that value.

Do not include in this Worksheet C any amounts included in Worksheets A or B. Further, all amounts included in this worksheet must constitute contributed capital and not be a debt or advance.

This total is then transferred to Section A(iii) of the Calculation Form.

WORKSHEET D
Cash Distributions From, or Available From the Project
Code Section 42 (h)(6)(F)(ii)

Instructions

The Qualified Contract Price is reduced by the total of all cash distributions from, or available from, the project. To assist you in this calculation, we have divided Worksheet D into three sections.

In Section A, set forth all cash distributions with respect to the project for calendar years 1990 through the current year. Generally, this will include all cash payments and distributions from net operating income (i.e., "below the line" distributions and payments, after the payment of operating expenses, debt service, and reserve). Distributions set forth in Section A of the worksheet will include, but not be limited to, (i) amounts paid to partners or affiliates as fees (including investor fees, partnership management fees, incentive management fees and guaranty fees) and (ii) amounts distributed to partners as a return of capital or otherwise. Until guidance is provided by the Internal Revenue Service, WHEDA will not reduce the qualified contract price by payments of deferred developer fee to the extent the amount of fee was within WHEDA's guidelines. However, we require that you list all payments and distributions from net cash flow. If you believe any portion of a payment or distribution should be excluded from the calculation (such as a deferred developer fee), please identify such payments or distributions and provide an explanation of why it should be excluded.

Section A of the worksheet provides for up to five types of distributions of net operating income for each year (items (i)-(v)). If there were more in any calendar year, you will need to attach an addendum to the worksheet setting forth the recipient, characterization and amount of such distribution.

The Qualified Contract Price is reduced not only by cash distributions made with respect to the project but also all cash that is available for distribution. In Section B you are required to set forth amounts held in reserve and other project accounts and the amounts thereof that are available for distribution. Until such time as guidance is provided by the Internal Revenue Service, WHEDA will interpret "available for distribution" to mean all cash held in project accounts, the distribution of which is not prohibited by mortgage restrictions, regulatory agreements or similar third-party contractual prohibitions. An amount currently held in a project account that will become unrestricted and available for distribution on or before the expiration of the one year qualified contract period should be listed as available for distribution in Section B.

Finally, Section C requires you to set forth and describe any non-cash distributions that have been made with respect to the project. Absent unusual circumstances, the amount of "non-cash distributions" will not be applied to reduce the Qualified Contract Price (until contrary guidance from the Internal Revenue Service).

The total of Sections A and B will then be transferred to Section A(v) of the Calculation Form.