



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

All Regional Directors, Field Office Directors
Multifamily Regional Center
Multifamily Program Center/Satellite Office
Directors, Supervisory Project Managers
All Risk Share Lenders

NOTICE H 2024- XX

Issued:

Expires: This notice remains in effect until
amended, superseded or rescinded.

Cross Reference:

SUBJECT: Qualified Contract Loophole in the Low-Income Housing Tax Credit Program

Purpose

This Housing Notice (HN) introduces new guidance pertaining to Federal Housing Administration (FHA) Multifamily rental and Risk Share transactions that receive new Low-Income Housing Tax Credits (LIHTC) pursuant to 26 U.S. Code § 42. Through this HN, FHA is requiring project owners seeking access to FHA Multifamily rental and Risk Share insurance programs to waive their right to use the Qualified Contract (“QC”) provision in the LIHTC statute. This Housing Notice applies to FHA Multifamily rental projects for which a firm commitment has not been issued and Risk Share insurance transactions with Firm Approval Letters (FALs) issued on or after December 31, 2024.

I. Background

The LIHTC Program is the largest source of federal financing for the construction and preservation of affordable housing, but LIHTC on its own rarely builds or preserves homes affordable to households with the lowest incomes. Serving the lowest income households requires rental assistance as well, so HUD is often involved in providing additional rental assistance, as well as financing of LIHTC properties through the FHA Multifamily Insurance Programs, which are typically for a 30-year period. The LIHTC Program requires developers and owners to maintain affordability for 30 years as a condition of the subsidy award. LIHTC affordability restriction periods generally consist of a 15-year compliance period and a 15-year extended-use period. However, the QC provision in the LIHTC regulations allow developers to waive these affordability requirements after only 15 years and convert to market rate without a 15-year extended use period under certain conditions.

The LIHTC Program provides a capital subsidy to developers who agree to rent their properties to qualifying low-income residents at reduced rents for a period of 30 years, including a 15-year tax compliance period and another 15-years of extended use subject to a deed restriction. A number of

these properties also seek mortgage insurance through the FHA Multifamily and Risk Share insurance programs. However, the QC provision in the LIHTC regulation allows LIHTC investors and developers, under certain circumstances, to avoid the affordability requirements after only 15 years resulting in the potential loss of thousands of affordable housing units annually to the program and the housing market. This HN introduces new policy whereby development projects seeking to use FHA Multifamily insurance and Risk Share programs in conjunction with LIHTC financing will be required to waive use of the LIHTC QC provision as a condition of receiving FHA financing.

II. Justification and Implementation

While a number of national affordable housing advocates continue to urge Congress to close this loophole, several state and local Housing Finance Agencies (HFAs) have taken action to stem the loss of affordable housing units in their state. Based on publicly available data through the National Housing Trust, FHA has identified at least 39 HFAs that currently require an owner receiving LIHTC to waive their right to a QC in some shape or form, effectively eliminating this option for LIHTC properties receiving a new allocation. More HFAs are examining this issue, so the number may continue to grow. Many, but not all, of these waiver requests are for the entire 15-year extended use period.

Given the ongoing risk of loss of affordable housing, the impact on the efficient functioning of the FHA insurance programs in support of the affordable housing supply, and the overall effect on the national affordable housing supply, effective December 31, 2024, HUD FHA Multifamily Production is restricting access to its FHA Multifamily rental and Risk Share insurance programs to project owners who agree to waive any right to request a QC. Project owners must demonstrate to HUD's satisfaction that they have unconditionally waived their right to obtain a QC within their LIHTC allocation documents and affirmatively agree to maintain the project as affordable housing for the initial 30-year period.

Policy Assessment

HUD will continue to assess whether this proposed HN is achieving its policy objectives, the loans insured under the policy are furthering HUD's core mission, and the overall risk profile of the FHA portfolio is impacted by this policy implementation. HUD reserves the right to further modify this policy in response to the findings of this assessment.

For questions about this Housing Notice, contact Willie Fobbs III, Director, Office of Multifamily Production at Willie.Fobbs@hud.gov.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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Federal Housing Commissioner