



## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**May 29, 2009**

### **MORTGAGEE LETTER 2009-15**

**TO:** ALL APPROVED MORTGAGEES

**SUBJECT:** Using First-Time Homebuyer Tax Credits

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provides for as much as an \$8000 tax credit to qualified first-time homebuyers. FHA supports this important initiative to promote homeownership. This mortgagee letter provides:

- Basic information on the first-time homebuyer credit obtained from the Internal Revenue Service (IRS) website. Complete information on how the first time homebuyer tax credit works, including the eligibility requirements for the tax credit, the amount of the tax credit that a first-time homebuyer may be eligible to receive, and how a homebuyer may claim the tax credit is available on the IRS website at <http://www.irs.gov/newsroom/article/0,,id=204671,00.html?portlet7>.
- Guidance on how FHA-approved mortgagees and FHA-approved nonprofit organizations as well as Federal, state, and local government agencies or instrumentalities may assist homebuyers that are eligible for the tax credit.

#### **I. About the First-Time Homebuyer Tax Credit**

Please check the IRS website to ensure you have up-to-date information. A brief overview of the tax credit from the IRS website and a copy of IRS Form 5405 (including instructions) are attached for reference.

Pursuant to 31 U.S.C. 3727 and 26 U.S.C. 6402, a refund of the first-time homebuyer credit will be made by the IRS only to the taxpayer, not to a third party. In other words, any refund issued in response to a claim for this credit cannot be assigned by a taxpayer to a third party.

#### **II. FHA Tax Credit Guidance**

##### **Secondary Financing**

Consistent with existing FHA policy, FHA will permit entities covered by Section 528 of the National Housing Act to use the current authority to offer tax credit advances with second liens in a manner consistent with the requirements in 12 U.S.C. 1709(b)(9). Eligible government agencies and instrumentalities of government are described in handbook HUD-4155.1 5.C3 and 5.C4.

*Conditions:*

- The tax credit advance, when combined with the FHA-insured first mortgage may not result in cash back to the borrower.
- The second lien may not exceed the total amount needed for the down payment, closing costs, and prepaid expenses.
- Secondary financing may be “soft” (silent) or require a monthly repayment.
- If payments are required, they must be included within the qualifying ratios and, when combined with the first mortgage, cannot exceed the borrower’s reasonable ability to pay.
- Payments must be deferred for at least 36 months to *not* be included in the qualifying ratios.
- If the tax credit advance loan has a short term for repayment, it must also provide that if the borrower fails to repay by the designated deadline, principal and interest payments begin automatically or the loan converts to a “soft” second.
- The secondary financing may not require a balloon payment before ten years.

Purchase of Tax Credit

FHA-approved mortgagees and FHA-approved nonprofit organizations as well as Federal, state, and local governmental agencies and instrumentalities thereof may purchase the tax credit anticipated by the homebuyer.

*Conditions:*

- The proceeds of the sale of the tax credit may not exceed the anticipated tax credit due the homebuyer based on the computations of form IRS 5405;
- The borrower must submit a signed certification that the tax credit is not subject to offset due to other indebtedness.
- A copy of the borrower’s tax refund and/or the IRS 5405 must be collected and retained in the FHA case binder.
- Any costs attendant to the purchase of the tax credit are to be nominal and discounting the anticipated credit to cover the costs and expenses of the transaction must be reasonable and disclosed to the homebuyer. In FHA’s view, fees and costs that total more than 2.5% of the anticipated credit are considered excessive. (Example: \$6000 to be refunded, with all fees and costs discounted, borrower should receive not less than \$5850.00 for sale of tax credit.)
- Pursuant to 12 U.S.C. 1709(b)(9), the homebuyer’s downpayment required for eligibility for FHA insurance may not consist of any funds (including funds derived from a sale of the homebuyer tax credit) provided by the mortgagee, the seller, or any other person or entity that financially benefits from the transaction (or by any third party or entity that is reimbursed, directly or indirectly, by the financially benefiting person or entity).  
Accordingly, the proceeds of the sale of the tax credit to FHA approved mortgagees, the seller, or any other person or entity that financially benefits from the transaction (or any third party or entity that is reimbursed, directly or indirectly, by the financing benefiting person or entity), may not be used to meet the 3.5% minimum downpayment, but may be used as additional downpayment, buying down of interest rate, or other closing costs.

*Due Diligence*

FHA expects that entities purchasing tax credit assets will employ appropriate due diligence measures including, but not limited to:

- Require the homebuyer to draft and provide the IRS form 5405 “First-Time Homebuyer Credit.”
- Contact the borrower’s employer and review pay stubs to confirm there are no outstanding garnishments.
- Review the homebuyer’s credit report to ensure there are no unpaid student loans, or other obligations that could be offset against the credit.
- Validate that all of the eligibility requirements for the tax credit are fulfilled
- Review previous tax returns and IRS tax assessment letters, if any, to determine that the borrower does not have unsettled obligations to the IRS

### III. Monitoring

In order to track the tax credit monetization activities, FHA will require FHA-approved mortgagees to input into FHA Connection the following data:

- Name and EIN of the party who purchased the tax credit,
- The amount of the anticipated credit, and
- The amount the homebuyer paid for the monetization services.

The lender must also collect and maintain in the FHA case file the documentation that validates all of the tax credit monetization data submitted via FHA Connection.

FHA will monitor the purchase of tax credit transactions closely. Charging of excessive fees or costs in the purchase of the tax credit or increasing other fees or charges in the transaction without FHA approval may result in referral to the Mortgagee Review Board, and particularly with respect to entities that are not FHA-approved mortgagees, referral to the Federal Trade Commission, or referral to the appropriate State Attorney General office, as may be applicable.

If you have any questions regarding this mortgagee letter, please call FHA’s Resource Center at 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

Brian D. Montgomery

Assistant Secretary for Housing-  
Federal Housing Commissioner

#### Attachments

- ▶ [IRS Form 5405](#)
- ▶ [IRS Tax Credit Summary](#)