

## **Federal Housing Administration (FHA) Tax-Credit “Monetization” Program Fact Sheet**

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

The *American Recovery and Reinvestment Act of 2009* offers homebuyers up to \$8,000 tax credit for purchasing their first home. Families can only access this credit after filing their tax returns with the IRS.

### **FHA Tax Credit Guidance**

FHA has announced the details of its plan to allow state and local Housing Finance Agencies and certain non-profits to ‘monetize’ up to the full amount of the tax credit (depending on the amount of the mortgage) so that borrowers can immediately apply the funds toward their downpayments. Home buyers using FHA-approved lenders can apply the tax credit to their downpayment in excess of 3.5 percent of appraised value or their closing costs, which can help achieve a lower interest rate.

### **Buyers Using State Housing Finance Agencies and certain non-profits**

Buyers financing through state and local Housing Finance Agencies and certain non-profits will be able to use the tax credit for their downpayments via secondary financing provided by the HFA or non-profit. In addition to the borrower’s own cash investment, FHA allows parents, employers and other governmental entities to contribute towards the downpayment.

#### *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.

### **Buyers using FHA-approved lenders**

Currently, borrowers applying for an FHA-insured mortgage are required to make a minimum 3.5 percent downpayment on the purchase of their home. Current law does not permit approved lenders to monetize the tax credit to meet the required 3.5 percent minimum downpayment, but, under the terms of today’s announcement, lenders can now monetize the tax credit for use as additional downpayment, or for other closing costs, which can help achieve a lower interest rate.

*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.

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

**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.