

Homes & Communities

U.S. Department of Housing
and Urban Development

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For Release

Friday

May 29, 2009

DONOVAN ANNOUNCES RECOVERY ACT'S HOMEBUYER TAX CREDIT CAN IMMEDIATELY HELP THOUSANDS OF FIRST-TIME HOMEBUYERS TO BUY A HOME *FHA plan will stimulate new home sales and help stabilize housing market*

WASHINGTON - Speaking to the National Association of Home Builders Spring Board of Directors Meeting, U.S. Housing and Urban Development Secretary Shaun Donovan today announced that the Federal Housing Administration (FHA) will allow homebuyers to apply the Obama Administration's new \$8,000 first-time homebuyer tax credit toward the purchase costs of a FHA-insured home. Donovan said that today's action will help stabilize the nation's housing market by stimulating home sales across the country.

The *American Recovery and Reinvestment Act of 2009* offers homebuyers a tax credit of up to \$8,000 for purchasing their first home. Families can only access this credit after filing their tax returns with the IRS. Today's announcement details FHA's rules allowing state 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 down payments. Home buyers using FHA-approved lenders can apply the tax credit to their down payment in excess of 3.5 percent of appraised value or their closing costs, which can help achieve a lower interest rate. To read the FHA's new mortgagee letter, visit [HUD's website](#).

"We believe this is a real win for everyone," said Donovan. "Today, the Obama Administration is taking another important step toward accelerating the recovery of the nation's housing market. Families will now be able to apply their anticipated tax credit toward their home purchase right away. At the same time we are putting safeguards in place to ensure that consumers will be protected from unscrupulous lenders. What we're doing today will not only help these families to purchase their first home but will present an enormous benefit for communities struggling to deal with an oversupply of housing."

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 down payment, but, under the terms of today's announcement, lenders can now monetize the tax credit for use as additional down payment, or for other closing costs, which can help achieve a lower interest rate. Buyers financing through state 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. Today's action permits the first-time homebuyer's anticipated tax credit under the Recovery Act to be applied toward the family's home purchase right away. Unlike seller-funded down-payment assistance, which was a vehicle for abuse, this program will allow homebuyers to shop for the best home price and services using their anticipated tax credit.

According to estimates by the National Association of Home Builders, the Administration's homebuyer tax credit will stimulate 160,000 home sales across the nation - 101,000 of which will be first-time buyers who will receive the credit. Another 59,000 existing homeowners will be able to buy another home because a first-time buyer purchased their home. Given FHA's current market share, it's

estimated that thousands of families will be able to purchase a home by allowing the anticipated tax credit to be applied toward their purchase together with an FHA-insured mortgage.

Homebuyers should beware of mortgage scams and carefully compare benefits and costs when seeking out tax credit monetization services. Programs will vary from organization to organization and borrowers should consider whether the services make sense for them, as well as what company offers the most suitable and affordable option.

For every FHA borrower who is assisted through the tax credit program, FHA will collect the name and employer identification number of the organization providing the service as well as associated fees and charges. FHA will use this information to track the business closely and will refer any questionable practices to the appropriate regulatory agencies, as necessary.

###

HUD is the nation's housing agency committed to sustaining homeownership; creating affordable housing opportunities for low-income Americans; and supporting the homeless, elderly, people with disabilities and people living with AIDS. The Department also promotes economic and community development and enforces the nation's fair housing laws. More information about HUD and its programs is available on the Internet at www.hud.gov and espanol.hud.gov.

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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](#)

First-Time Homebuyer Credit

▶ Attach to Form 1040

Name(s) shown on return

Your social security number

Part I General Information

- A** Address of home qualifying for the credit (if different from the address shown on return)
- B** Date acquired (see instructions)
- C** If you are choosing to claim the credit on your 2008 return for a main home bought after December 31, 2008, and before December 1, 2009, check here (see instructions)

Part II Credit

<p>1 Enter the smaller of:</p> <ul style="list-style-type: none"> • \$7,500 (\$8,000 if you purchased your home in 2009), but only half of that amount if married filing separately, or • 10% of the purchase price of the home. <p>If someone other than a spouse also held an interest in the home, enter only your share of this amount (see instructions)</p>				
<p>2 Enter your modified adjusted gross income (see instructions)</p>	2			
<p>3 Is line 2 more than \$75,000 (\$150,000 if married filing jointly)? No. Skip lines 3 through 5 and enter the amount from line 1 on line 6. Yes. Subtract \$75,000 (\$150,000 if married filing jointly) from the amount on line 2 and enter the result</p>	3			
<p>4 Divide line 3 by \$20,000 and enter the result as a decimal (rounded to at least three places). Do not enter more than 1.000</p>	4		X	
<p>5 Multiply line 1 by line 4</p>	5			
<p>6 Subtract line 5 from line 1. This is your credit. Enter here and on Form 1040, line 69</p>	6			

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form 5405 to claim the first-time homebuyer credit. The credit may give you a refund even if you do not owe any tax.

For homes purchased in 2008, the credit operates much like an interest-free loan. You generally must repay it over a 15-year period. For homes purchased in 2009, you must repay the credit only if the home ceases to be your main home within the 36-month period beginning on the purchase date. See *Repayment of Credit* on page 2.

Who Can Claim the Credit

In general, you can claim the credit if you are a first-time homebuyer. You are considered a first-time homebuyer if:

- You purchased your main home located in the United States after April 8, 2008, and before December 1, 2009.
- You (and your spouse if married) did not own any other main home during the 3-year period ending on the date of purchase.

If you constructed your main home, you are treated as having purchased it on the date you first occupied it.

Main home. Your main home is the one you live in most of the time. It can be a house, houseboat, house trailer, cooperative apartment, condominium, or other type of residence.

Who Cannot Claim the Credit

You cannot claim the credit if any of the following apply.

1. Your modified adjusted gross income is \$95,000 or more (\$170,000 or more if married filing jointly). See the instructions for line 2.
2. You are, or were, eligible to claim the District of Columbia first-time homebuyer credit for any tax year. This rule does not apply for a home purchased in 2009.
3. Your home financing comes from tax-exempt mortgage revenue bonds. This rule does not apply for a home purchased in 2009.
4. You are a nonresident alien.
5. Your home is located outside the United States.
6. You sell the home, or it ceases to be your main home, before the end of 2008.
7. You acquired your home by gift or inheritance.
8. You acquired your home from a related person.

A related person includes:

- a. Your spouse, ancestors (parents, grandparents, etc.), or lineal descendants (children, grandchildren, etc.).
- b. A corporation in which you directly or indirectly own more than 50% in value of the outstanding stock of the corporation.
- c. A partnership in which you directly or indirectly own more than 50% of the capital interest or profits interest.

For more information about related persons, see *Nondeductible Loss* in Chapter 2 of Pub. 544, *Sales and Other Dispositions of Assets*. When determining whether you acquired your main home from a related person, family members in that discussion (except item 7) include only the people mentioned in 8a above.

Amount of the Credit

Generally, the credit is the smaller of:

- \$7,500 (\$8,000 if you purchased your home in 2009), but only half of that amount if married filing separately, **or**
- 10% of the purchase price of the home.

You are allowed the full amount of the credit if your modified adjusted gross income (MAGI) is \$75,000 or less (\$150,000 or less if married filing jointly). The phase-out of the credit begins when your MAGI exceeds \$75,000 (\$150,000 if married filing jointly). The credit is eliminated completely when your MAGI reaches \$95,000 (\$170,000 if married filing jointly).

Repayment of Credit

Homes purchased in 2008. You generally must repay the credit over a 15-year period in 15 equal installments. The repayment period begins in 2010 and you must include the first installment as additional tax on your 2010 tax return.

If your home ceases to be your main home before the 15-year period is up, you must include all remaining annual installments as additional tax on the return for the tax year that happens. This includes situations where you sell the home, you convert it to business or rental property, or the home is destroyed, condemned, or disposed of under threat of condemnation.

If you and your spouse claim the credit on a joint return, each spouse is treated as having been allowed half of the credit for purposes of repaying the credit.

Example 1. You claimed a \$7,500 credit on your 2008 tax return. You must include \$500 ($\$7,500 \div 15$) as additional tax on your 2010 tax return and on each tax return for the next 14 years.

Example 2. You claimed a \$7,500 credit on your 2008 tax return. In 2009, you sold the home to your son. You must include \$7,500 as additional tax on your 2009 tax return.

Exceptions. The following are exceptions to the repayment rule.

- If you sell the home to someone who is **not** related to you, the repayment in the year of sale is limited to the amount of gain on the sale. (See item 8 under *Who Cannot Claim the Credit* for the definition of a related person.) When figuring the gain, reduce the adjusted basis of the home by the amount of the credit you did not repay.
- If the home is destroyed, condemned, or disposed of under threat of condemnation, and you acquire a new main home within 2 years of the event, you continue to pay the installments over the remainder of the 15-year repayment period.
- If, as part of a divorce settlement, the home is transferred to a spouse or former spouse, the spouse who receives the home is responsible for making all subsequent installment payments.

- If you die, any remaining annual installments are not due. If you filed a joint return and then you die, your surviving spouse would be required to repay his or her half of the remaining repayment amount.

Homes purchased in 2009. You must repay the credit only if the home ceases to be your main home within the 36-month period beginning on the purchase date. This includes situations where you sell the home, you convert it to business or rental property, or the home is destroyed, condemned, or disposed of under threat of condemnation. You repay the credit by including it as additional tax on the return for the year the home ceases to be your main home. If the home continues to be your main home for at least 36 months beginning on the purchase date, you do not have to repay any of the credit.

If you and your spouse claim the credit on a joint return, each spouse is treated as having been allowed half of the credit for purposes of repaying the credit.

Exceptions. The following are exceptions to the repayment rule.

- If you sell the home to someone who is **not** related to you, the repayment in the year of sale is limited to the amount of gain on the sale. (See item 8 under *Who Cannot Claim the Credit* for the definition of a related person.) When figuring the gain, reduce the adjusted basis of the home by the amount of the credit.
- If the home is destroyed, condemned, or disposed of under threat of condemnation, and you acquire a new main home within 2 years of the event, you do not have to repay the credit.
- If, as part of a divorce settlement, the home is transferred to a spouse or former spouse, the spouse who receives the home is responsible for repaying the credit.
- If you die, repayment of the credit is not required. If you filed a joint return and then you die, your surviving spouse would be required to repay his or her half of the credit.

Specific Instructions

Part I General Information

Line B. Enter the date you acquired the home. This is the date you purchased it (or the date you first occupied it if you constructed your main home).

Line C. You can choose to claim the credit on your 2008 Form 1040 for a main home purchased after December 31, 2008, and before December 1, 2009. If you make this choice, check the box.

Part II Credit

Line 1. If two or more unmarried individuals buy a main home, they can allocate the credit among the individual owners using any reasonable method. The total amount allocated cannot exceed the smaller of \$7,500 (\$8,000 if you purchased your home in 2009) or 10% of the purchase price. See *Purchase price* on page 3.

Note. A reasonable method is any method that does not allocate all or a part of the credit to a co-owner who is not eligible to claim that part of the credit.

Purchase price. The purchase price is the adjusted basis of your home on the date you purchased it. This includes certain settlement or closing costs (such as legal fees and recording fees) and your down payment and debt (such as a first or second mortgage or notes you gave the seller in payment for the home). If you build, or contract to build, a new home, your purchase price can include costs of construction. For more information about adjusted basis, see Pub. 551, Basis of Assets.

Line 2. Your modified adjusted gross income is the amount from Form 1040, line 38, increased by the total of any:

- Exclusion of income from Puerto Rico, and
- Amount from Form 2555, lines 45 and 50; Form 2555-EZ, line 18; and Form 4563, line 15.

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The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

Taylor, Mark

From: Mtg Currentcy [information@mortgagecurrentcy.com]
Sent: Friday, May 29, 2009 12:28 PM
To: MARK@AWESOMERATES.COM
Subject: FHA Okays FTHB Credit - Buy Now; Pay Later



Interpreting the Rules
& Mortgage News...



Leslie Petersen • Tracey Rumsey • Dan Moralez
Your Mortgage Guideline Experts

FHA OKs First Time Homebuyer Tax Credit Advances - Buy Now; Pay Later

(And we think they mean it this time...)

In case you hadn't heard, HUD issued Mortgagee Letter (ML) 2009-15, "Using First-Time Homebuyer Tax Credits for the Downpayment" on May 11, 2009 only to pull it from their site the same day. Needless to say there was much rumor and speculation about the whys and what-fors but they have now re-issued the ML and here's what's going on....

This isn't a new concept for some of you. At least 10 states have enacted some form of "Tax Credit Advance" legislation. They offer secondary financing and/or short-term loans to get the \$8,000 tax credit provided in the American Recovery and Reinvestment Act of 2009 to the homebuyer BEFORE closing to use as downpayment and/or to cover closing costs.

What's new is FHA is playing catch up by finally defining:

- WHO can offer secondary financing or purchase the tax credit; and
- HOW the loans work.

A little scary since the horse has been out of the barn for awhile, but okay.

FHA has determined that there are two ways to assist homebuyers who are eligible for the tax credit:

1. Secondary Financing OR
2. Purchase of the Tax Credit

WHO is eligible to offer the assistance:

- Federal, state and local government agencies
- Non-Profit Instrumentalities of government
- FHA-approved non-profits
- FHA approved mortgagees

HOW Secondary Finance works:

- No cash back to borrower.

- Loan amount can't exceed total needed for downpayment, closing costs and prepaids.
- Secondary financing may be "soft" (silent) OR require monthly repayment.
- If payments are required, they must be included in ratios.
- If payments are deferred, the deferment must be at least 36 months in order to exclude the payment from qualifying ratios.
- If the tax credit advance loan has a short term for repayment and the borrower fails to repay by the designated deadline, principal and interest payments begin automatically or the loan converts to a "soft" second.
- No balloon payments before 10 years.

HOW the Purchase of the Tax Credit Works:

- Proceeds of the sale of the tax credit may not exceed the anticipated tax credit due.
- Borrower must sign certification that tax credit is not subject to offset of other debt.
- Copy of form IRS 5405 must be retained in the case binder.
- Costs associated with purchase cannot exceed 2.5% of anticipated credit.
- **If the FHA approved mortgage purchases the tax credit the proceeds cannot be used for the 3.5% required downpayment.** Only for closing costs, additional downpayment, or buydown of interest rate.
- **HERE'S THE KICKER:** The same rule stated above applies if the tax credit is purchased by the SELLER or any entity that financially benefits from the transaction.

HEREIN LIES THE CAN OF WORMS!!! (and the huge difference from the original ML that was issued.)

FHA is quietly admitting that this is an asset for sale and not just the "approved" entities can purchase an asset. Almost anybody can purchase the asset. They also 'get' that they've opened a Pandora's Box because they go on to explain how there will be special monitoring information that has to be entered into FHA Connection including:

- Name and EIN of the party who purchased the tax credit
- Amount of anticipated tax credit
- Amount the homebuyer paid in fees

They also threaten:

- Non-FHA approved entities who charge excessive fees will be referred to the Federal Trade Commission and State Attorney General office.

Originators keep your eyes and ears open to opportunities that might be coming if your local governments or FHA approved non-profits get involved. Use this Mortgagee Letter to know the difference between an acceptable option for your borrowers and a scam that won't make it through underwriting.

You are going to see some convoluted dealings as everyone turns and twists this "purchase of the tax credit" option to make it result in more closings. And probably by trying to push the envelope on the rules. Trust me, you will hear more about this from FHA over the coming months.

Stay tuned and we'll get you more details in the June 10 issue of MortgageCurrentcy.com!