



OREGON HOUSING *and*
COMMUNITY SERVICES

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To: Housing Development Partners and Stakeholders

From: OHCS Affordable Rental Housing Division

Date: March 24, 2023

RE: Updates to Requirements for Article XI-Q Bond Fund Regulatory Agreements

This email is to inform stakeholders about changes to specific legal documents for transactions that combine Article XI-Q Bond (currently LIFT Rental or Permanent Supportive Housing) and 4% Low Income Housing Tax Credit (LIHTC)/ Private Activity Bond (PAB). These changes are effective immediately.

Background

In 2015, the Oregon Legislature authorized and committed general obligation Article XI-Q bonds to OHCS through the Local Innovation & Fast Track (LIFT) Rental program for affordable housing development. The utilization of Article XI-Q bonds for affordable housing was expanded in 2019 when Article XI-Q bonds were used for development purposes in the OHCS' Permanent Supportive Housing (PSH) program. Allocations of both LIFT and PSH have increased each biennium since program inception. In the next biennium (2023-2025), OHCS is expecting to receive additional Article XI-Q bonds to fulfill Governor Kotek's housing goals.

The use of Article XI-Q bonds through LIFT and the PSH program has been very successful, resulting in over 6,000 units through the LIFT Program and over 600 housing units through the PHA program as of December 31, 2022. To continue building upon this success, OHCS is providing information on updated requirements for projects that pair Article XI-Q bond funds with 4% LIHTC/PABs. The requirements have been updated to ensure that projects being funded with Article XI-Q bond proceeds are meeting constitutional requirements of the funding. These requirements are not negotiable since they are needed to ensure the use of the funds meet the constitutional requirements.

Although the information in this memo pertains to updates to legal documents for projects that have Article XI-Q bond proceeds and 4% LIHTC/PAB, the documents for projects that have XI-Q proceeds without 4%LIHTC/PAB already follow the requirements and will not be modified.



Updated Requirements

To satisfy the constitutional requirements of Article XI-Q funds (currently LIFT or PSH) when paired with private activity bonds issued by OHCS (or another permitted bond issuer) for an affordable housing project, the LIFT/PSH Intercreditor Agreement and the Priority & Subordination Agreement must reflect the following:

1. The LIFT and PSH affordability requirements and other covenants contained in OHCS' Operating Agreement will continue to encumber the property following a foreclosure of the Bond/Governmental Note Deed of Trust or deed in lieu of foreclosure pursuant to such Deed of Trust;
2. The LIFT/PSH Deed of Trust and the Bond/Governmental Note Deed of Trust will continue to have a shared first-lien position, with the relative rights associated with the shared lien set forth in updated forms of the LIFT/PSH Intercreditor Agreement and the Priority & Subordination Agreement;
3. LIFT/PSH Intercreditor Agreement will not include an *agency* concept allowing the Bondholder/Bond Trustee to foreclose the LIFT/PSH Deed of Trust acting as an agent on behalf of OHCS; and
4. In the event of a foreclosure (or deed in lieu of foreclosure) of both the Bond/Governmental Note Deed of Trust and the LIFT/PSH Deed of Trust, the Bondholder and OHCS as the LIFT/PSH Lender will share foreclosure/sale proceeds on a pro rata basis.

Developer/Applicant Responsibilities

- Look through your current development pipeline and review any projects that have LIFT or PSH funding in them.
- Provide the updated foreclosure and first-lien language to any financial partner who is going to finance affordable housing funded with Article XI-Q bonds.
- Review the Intercreditor Agreement & Priority and Subordination Agreement provided by Bond Council at the first opportunity.

All projects funded with Article XI-Q bonds (currently, LIFT Rental and PSH) are subject to these requirements.

