OHIO HOUSING FINANCE AGENCY

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To: All Interested Parties

From: Ohio Housing Finance Agency

Date: August 18, 2023

RE: **2023 4% LIHTC with Bond Gap Financing (BGF) Frequently Asked Questions (FAQ)**

FAQ Background

The following is a summary of questions received in advance of the 2023 4% Low-Income Housing Tax Credit (LIHTC) with Bond Gap Financing (BGF) Proposal Application deadline regarding the 2023 4% LIHTC with BGF Guidelines (the "Guidelines"). Questions were edited for style, to remove identifying details, and combined with similar questions from various individuals. The answers posted herein clarify and modify the Guidelines and will be considered during the program round.

Development Team Experience and Capacity Review

Audited Financial Statements

Q: Which entities must submit Audited Financial Statements for Experience and Capacity?

A: Per page 33 of the Guidelines, Pre-Applications must include the last three years of audited financial statements for the developer and any co-developer(s).

Q: When a developer or co-developer is a single purpose entity, what should be submitted for audited financials?

A: The developer or co-developer entity must submit an organizational chart and the last three years of consolidated audited financial statements for each parent company.

Q: For sole proprietorships developers, what should be submitted for audited financials?

A: Developers that are sole proprietors must submit executed and dated personal financial statements for the last three years and a letter of reliance from a third-party accounting firm indicating that personal financial statements have been reviewed and that that OHFA can rely on the personal financial statements.

Q: Is a tax return acceptable if there are no audited financials for a developer entity?

A: A tax return is acceptable with a certification from an authorized person stating that audited financials are not available.

Lien and Litigation Reports

Q: What is a Lien and Litigation Report?

A: A Lien and Litigation Report is a standard real estate due diligence search provided by an independent third-party organization to help OHFA and other funding entities such as lender and syndicators/investors determine if there are any legal risks associated with the proposed development team and proposed project site. The search include Uniform Commercial Code (UCC) liens, fixture filings, federal and state tax liens and judgment liens, bankruptcy, and any outstanding federal or state litigation. This search concludes with a report which OHFA legal staff will analyze.

Q: Which jurisdictions should be included in the search when completing the Lien and Litigation Report?
A: For lien reports, include the county where the project is located and the state of Ohio. For litigation reports, include Ohio courts and any federal court.

Q: If the developer owns the General Partnership, is the lien and litigation report required for both?
A: If the developer owns the GP, provide the lien and litigation report for both entities.

Q: Is the Lien and Litigation Report required for properties and entities that are outside of Ohio?
A: This is a requirement for in-state and out of state entities, but the search would be limited to Ohio as noted above.

Q: What if the project owner and/or developer is a single-purpose entity—does OHFA still want a Lien and Litigation Report?
A: Yes. OHFA expects project owners to be single-purpose entities and wants to verify that such entities do not have unexpected liens against the project property or pending litigation.

Q: Liens are filed against a property, so is the "lien" portion of the Lien and Litigation Report applicable to developer entities?
A: Lien searches can be limited to the project property.

Q: Is a Lien and Litigation Report required for to-be-created entities in the ownership?
A: A Lien and Litigation Report is not required for entities that have not yet been created.

<u>Miscellaneous Experience and Capacity Questions</u>

Q: The Experience and Capacity form and AHFA only provide space for a developer and one co-developer. How would OHFA prefer a third co-developer be documented?
A: Fill the form out a second time and identify that third entity as a co-developer.

Q: Is there an Exception Request for 9% LIHTC resyndication projects that will reach Year 20 of the Extended-Use Period shortly after the Proposal Application deadline to avoid being considered an Ineligible Development?
A: No.

Q: Is there any chance to resubmit in the event an entity is not approved for Experience and Capacity?
A: Given the amount of due diligence required and the approved Program Calendar, there will not be an opportunity to resubmit.

Q: Are audited financials included with the .ZIP file due at Pre-Application or are they sent to a separate location?
A: They must be included in the .ZIP file due at Pre-Application.

Q: For the Real Estate Owned (REO) list requested, is this just for LIHTC properties?
A: Yes

Pre-Application Submission

Q: Will developers be held to the numbers in the Pre-Application if they vary at Proposal Application?
A: No. OHFA will underwrite to the Proposal Application.

NHTF Requirements

Q: The NHTF minimum eligibility requirements calls for a minimum of 10% of the funding from non-OHFA, non-Federal funding. Does a federally-insured, but not federally-funded permanent loan meet this requirement?

A: National Housing Trust Fund (NHTF) regulations found at 24 C.F.R. §91.220(l)(5)(i)(A) requires that states, in their federally-required NHTF Allocation Plan, "…identify priority factors for funding that shall include…the extent to which the application makes use of non-federal funding sources." The Ohio Department of Development, as the state recipient for NHTF, is responsible for submitting an NHTF Allocation Plan to HUD annually as part of its Consolidated Plan (ConPlan) Annual Action Plan. That document is still in draft form, but can be found here. In it, page 6 has a definition of non-federal, non-OHFA funding sources, which is as follows: "Non-Federal, non-OHFA funding sources include private debt from a non-related entity, funds from the Federal Home Loan Bank's Affordable Housing Program, state historic tax credit equity, private capital from a non-related entity, and grants or loans from the state or local government." We will need to abide by the definition in this plan. Under this definition, private debt from a non-related entity would count; it is silent on whether such debt is federally-insured.

Q: Are State and Local Fiscal Recovery Funds (SLFRF) considered federal funding for purposes of meeting NHTF minimum eligibility requirements?

A: SLFRF funds are federal and will not be considered for meeting the 10% standard of non-OHFA, non-federal funding to achieve NHTF minimum eligibility requirements.

Leveraging

Q: Does the assumption of debt qualify for leveraging points?

A: Assumption of debt does not qualify for leveraging points.

Q: If a Community Development Finance Institution (CDFI) or other entity is administering county or local government funds on behalf of the county or local government, would that count towards leveraging points?

A: For OHFA to consider this, the CDFI (or other entity) administering county or local government funds must provide two items:

(1) a conditional commitment letter that meets the requirements of the 2023 4% LIHTC with BGF Guidelines; in addition, the letter must provide detail on the type of funds (HOME, State and Local Fiscal Recovery resources, etc.) and the county or local government the funds are from. The funds cannot be from multiple sources; and

(2) A letter from the county or local government verifying that the CDFI (or other entity) is authorized to administer the specific source of funds.

Discount to Market Rent

Q: How do you determine if you use the Fair Market Rent (FMR) or the Small Area Fair Market Rent (SAFMR)?

A: First you should determine if your proposed project is in a HUD-Defined Metropolitan Statistical Area (MSA), you can do this by going to HUD's SAFMR Lookup website located here. You will first select Ohio-OH, then the county. If the county is not listed, you will use the MTSP rents at 50% AMI. If the county is listed, select the county and click "Next Screen". A list will populate with zip codes that have SAFMRs calculated; if the zip code your proposed project is in is not listed, you would use the FMR for the county as a whole. You can find county-wide FMRs on HUD's FMR Documentation System. If the SAFMR Lookup site does have the site zip code, use the one-bedroom SAFMR for the applicable zip code. Please note that the Affordable Housing Funding Application (AHFA) will automatically calculate the Discount to Market Rent.

HDAP Assisted and Restricted Units

Q: If a project has both LIHTC and non-LIHTC, what is used to calculate the Restricted Units
A: Per pages 27-28 of the 2020-2024 Ohio Consolidated Plan, Restricted Units are only calculated off the "affordable units", which are strictly the LIHTC units for purposes of these Guidelines.

Q: Do developers have to identify the HDAP Assisted or Restricted Units in the AHFA?
A: No. If the units float, OHFA verifies that the project has enough units that will meet the HOME requirements. While the HDAP units are allocated among the units based on unit type, the Restricted Units float among all the units.

Davis Bacon Wage Rates

Q: Since OHFA determines the source of funding for BGF applications, how should we account for the possibility of Davis-Bacon Wage Rates at Proposal Application?
A: OHFA does not expect projects that are not otherwise required to comply with Davis Bacon to budget for such wages at Proposal Application. Should funds be reserved that require Davis-Bacon Wage Rates, OHFA expects the project to adjust their construction budget, if necessary, for the Final Application submission.

The regulations for each source of funding are as follows:

- HOME: Per 24 C.F.R. §92.354(a)(1), any project with 12 or more HOME-assisted units must have a construction contract requiring Davis Bacon Wage Rates.
- NHTF: This source does not trigger Davis Bacon per HUD's Frequently Asked Questions as of June 2015.
- OHTF: This source does not trigger Davis Bacon.

Miscellaneous

Q: What if you plan to request State LIHTCs: should you apply now and note you will be applying for state LIHTC?
A: No. This round is specifically for 4% LIHTC with BGF using traditional sources of gap financing such as HOME Investment Partnerships Program (HOME), National Housing Trust Fund (NHTF), and Ohio Housing Trust Fund (OHTF) resources. State LIHTC guidelines are forthcoming and will be wholly separate from the 2023 4% LIHTC with BGF round.

Q: Can State Historic Tax Credits be used as a source in this round?
A: These credits are no longer eligible to be paired with LIHTC. However, if you already have an allocation and it is still eligible to be paired with LIHTC, then it can be included as long as you have a valid commitment.