

## **WASHINGTON WORKS HOUSING PROGRAM: Questions and Answers, June 30, 2010**

### **Eligible Borrowers**

- q. Can a for-profit participate in the project?
  - a. The same rules apply as for 501(c)(3) bonds or, if using tax credit equity, the borrower entity must be a “Qualified Nonprofit” under the Commission’s Tax Credit Policy.  
[http://www.wshfc.org/tax-credits/application/d\\_policies.pdf#page=48](http://www.wshfc.org/tax-credits/application/d_policies.pdf#page=48)
  
- q. Can there be a for-profit limited or co-general partner in addition to tax credit investor?
  - a. No
  
- q. Can the property be purchased under a turnkey or similar arrangement with a for-profit developer who constructs or owns and rehabilitates a property?
  - a. Yes, so long as the Washington Works funds are only disbursed upon the Eligible Borrower’s purchase of the completed property.
  
- q. Is a tribal housing authority an Eligible Borrower?
  - a. Tribal housing authorities are viewed the same as public agencies.

### **Eligible Projects**

#### **Types of Buildings and Units**

- q. Must the units be rental?
  - a. Yes
  
- q. Must the units be complete dwelling units with kitchens and baths?
  - a. No, but they must qualify under the type of Commission bond financing chosen by the applicant.
  
- q. Can the units be age-restricted (e.g. for seniors only)?
  - a. The building(s) financed by Washington Works funds cannot exclude occupants below a certain age (e.g. cannot exclude occupants below 55). Subject to fair housing laws, there may be other buildings in the project with age-restrictions but those buildings cannot be financed with Washington Works funds.
  
- q. Can the project be mixed use?
  - a. Yes, however Commission tax-exempt bonds and Washington Works funds can only be used for the residential portion. The commercial portion can be financed with other debt, with Commission taxable bonds, equity or other sources.
  
- q. What is the minimum rehabilitation requirement?
  - a. The amount spent for rehabilitation must equal at least 15% of the bond proceeds used for acquisition of the building (excluding land). This amount must be spent by the seller and/or the buyer during the period from 24 months prior to bond closing through 24 months following bond closing.

## Existing Ownership

- q. Does the restriction on existing ownership by a nonprofit or public agency apply to new construction?
  - a. No. If the workforce units will all be newly constructed, it does not matter who currently or previously owned the land or any building that is being demolished and replaced by the workforce housing.
  
- q. Can Washington Works be used to refinance a building already owned by a nonprofit?
  - a. No. The project must add to the stock of housing owned by public agencies and nonprofits.
  
- q. What if the housing is deteriorated and needs substantial rehabilitation?
  - a. It is not eligible if it is already owned by a public agency or nonprofit (or by a partnership of which they are the general partner).
  
- q. Is demolition of an existing building owned by a public agency or nonprofit and construction of a new building permitted?
  - a. Yes. If the existing building is to be demolished, new construction of a building to be owned by an Eligible Borrower is permitted.
  
- q. Can Washington Works be used for a building if the nonprofit or public agency is currently the general partner in a tax credit project and wants or needs to buy-out the limited partner?
  - a. No, this would not add to the stock of units owned by public agencies and nonprofits (nor add to the stock of restricted affordable units).
  
- q. Can an Eligible Borrower purchase an existing residential building owned by *another* nonprofit or public agency?
  - a. No, the law requires that the project increase the stock of housing owned by public agencies and nonprofits.
  
- q. Can an Eligible Borrower purchase a building from a tax credit partnership with a different nonprofit or public agency general partner?
  - a. No. Projects with such partnerships are already owned by entities the law treats as nonprofit and public agency eligible entities.
  
- q. Can the borrower purchase a building which was previously but is not currently owned by a nonprofit or public agency (or partnership with a nonprofit or public agency general partner)?
  - a. Yes, but only if the building has been owned by the current for-profit owner for at least a year prior to application and does not have any affordability restrictions.

## Existing Affordability Restrictions

### *Does Not Apply to New Construction or Expired Restrictions*

- q. Does the restriction on projects with existing affordability restrictions apply to new construction?
  - a. No. If the workforce units are all to be newly constructed, it does not matter if there is an existing restriction on the land requiring some or all new units be affordable. If a building with existing affordability restrictions is being demolished and replaced with a new building that is permitted as well. In both cases, the project is providing new affordable housing.

- q. Can the borrower purchase a property where the affordability restrictions have expired?
- a. Yes. The restrictions must have expired at the time when the application is submitted for Washington Works funds.

#### *Existing Affordability Restrictions*

- q. What types of existing affordability restrictions would make a property ineligible?
- a. Any affordability restrictions limiting more than 20% of the units in the property to borrowers below 80% of median (or any lower income level) including: Project-Based Vouchers; tax credit regulatory agreements; tax-exempt bond regulatory requirements; requirements of the State Housing Trust Fund; or any federal, state or local agency.
  
- q. Is the property eligible if only a portion or a few of the units have affordability restrictions?
- a. Yes, as long as 20% or less of the units in the property are currently restricted, the Washington Works funds are being used for other units in the property, and the seller is a for-profit

#### *Expiring Affordability Restrictions*

- q. Can the borrower purchase a building where the affordability restrictions will expire shortly, e.g. 6 months from now or a year from now?
- a. Yes, but only if the project is workforce housing (would otherwise qualify for the Washington Works program) and would qualify as an “At Risk Property” under the Commission’s Tax Credit Policy. ([http://www.wshfc.org/tax-credits/application/d\\_policies.pdf#page=67](http://www.wshfc.org/tax-credits/application/d_policies.pdf#page=67))
  
- q. Can Washington Works funds be used for take-out financing where there are affordability restrictions at the time of application but they will have expired prior to the use of the Washington Works funds (e.g. an owner of a Section 8 project sells the property, at which time the old affordability restrictions are extinguished)?
- a. Yes, but only if the project is workforce housing which would otherwise qualify for the Washington Works program, and would qualify as an “At Risk Property” under the Commission’s Tax Credit Policy ([http://www.wshfc.org/tax-credits/application/d\\_policies.pdf#page=67](http://www.wshfc.org/tax-credits/application/d_policies.pdf#page=67))
  
- q. What projects with expiring affordability restrictions would not qualify as workforce housing?
- a. If the transaction is intended or expected to allow the borrower to continue Project-based vouchers for 20% or more of the units, then it would not qualify as workforce housing.

#### **Ground Lease**

- q. Can the borrower purchase a building subject to a ground lease?
- a. Yes, so long as the term of the ground lease is at least as long as the Washington Works regulatory agreement. The owner of the land must sign the regulatory agreement.
  
- q. Can the Washington Works regulatory agreement be subordinate to the ground lease and be released in the event the borrower defaults on the ground lease and the building is taken over by the property owner.
- a. No, the regulatory agreement is not subordinated to default due to failure to make payments under a ground lease or for other defaults

## Required First Mortgage Financing

- q. Can the first mortgage financing be provided initially other than through the Commission (e.g. through a local issuer, local housing authority, private lender, take-back note from the seller, etc.)?
  - a. No, the law is specific on this point.
  
- q. When does the bond first mortgage loan have to close?
  - a. All non-State funds must be fully committed and potentially available to be disbursed by June 30, 2011
  
- q. Does the bond loan need to all be disbursed at bond closing?
  - a. No, the Commission permits 'drawdown'-type bonds, subject to federal tax rules, where the outstanding amount of the bond increases with each advance.
  
- q. Can a Commission bond loan be replaced by another Commission bond loan (e.g. be refunded or refinanced with another Commission bond loan)?
  - a. Yes, any initial or subsequent Commission bond loan is considered "Initial Bonded Indebtedness", so long as it is fully repaid prior to 40 years after initial bond closing (or if the original loan is FHA 221d3/d4, 40 years after commencement of amortization). Such refunding or refinancing does *not by itself* trigger the Rental Restriction Period.
  
- q. Can the first mortgage financing from the Commission later be replaced by a loan other than a Commission bond loan?
  - a. Yes. However, whenever the Commission bond loan is fully paid, whether through regular amortization, mandatory or voluntary prepayment from any source, or refinanced with a non-Commission loan, then the property is no longer subject to a Commission bond loan and the Rental Restriction Period immediately commences.
  
- q. Can the Commission bond loan be paid down in part or even substantially without commencing the Rental Restriction Period?
  - a. Yes. However, if the Commission bond loan is partially prepaid from *amortizing debt not from the Commission*, that would trigger the Rental Restriction Period.
  
- q. Can the Commission bond loan be paid down in part from tax credit equity without commencing the Rental Restriction Period?
  - a. Yes.
  
- q. Can the Commission bond loan be paid down in part from public agency debt or other funding which does not amortize during the Commission bond loan, without triggering the Rental Restriction Period?
  - a. Yes.
  
- q. Can there be other, e.g. secondary financing, either initially or subsequently?
  - a. Yes so long as it is subordinate to the Washington Works regulatory agreement and the bond loan first mortgage.
  
- q. Can the borrower receive an initial first mortgage from the Commission and an amortizing second mortgage from another source?

- a. The first mortgage bond loan amount must be the maximum permitted by the lender and has not been reduced by amortizing debt from another lender. (For example, if the lender underwrites at a 1.20 coverage, then using other debt instead of the Commission debt at that same level is not permitted. However, if there is other debt underwritten to be paid from the difference between say 1.10 and 1.20 coverage, that is permitted if acceptable to the bond lender.)
- q. Does the requirement that the first mortgage bond loan be maximized under the lender's underwriting criteria mean the lender has to underwrite at a specific rent, such as the maximum tax credit rent?
  - a. No. The lender underwrites the loan at the highest rents it believes are achievable.
- q. How does the requirement that the first mortgage bond loan be maximized apply when the loan is to be partly paid down upon completion from tax credit equity or other non-amortizing sources?
  - a. In order to assure that the least amount of Washington Works money is needed, the pro forma needs to show that the permanent amount of the initial bond loan amount is being maximized.
- q. How does the Commission review that the bond loan is maximized?
  - a. The Commission will review the pro forma and sources and uses in light of the lender's underwriting standards and may contact the lender to understand how the loan was underwritten.

### **Required Affordability During Initial Bond Indebtedness**

- q. Are there rent restrictions during the Initial Bond Indebtedness period?
  - a. Washington Works does not require any rent restriction during this period, only income restrictions. However, the type of bond and equity financing chosen by the applicant (e.g. tax credits, for example) may require rent restrictions.
- q. Does refinancing of the initial Commission bond loan with another Commission bond loan trigger the Rental Restriction Period?
  - a. No, refunding bonds of the Commission are still considered Initial Bonded Indebtedness. However the Rental Restriction Period will commence no later than 40 years after initial bond closing (or for initial FHA 221d3/d4 loan, 40 years after commencement of amortization) even if the refunding bond continues beyond that date.
- q. Can more of the units be restricted than 51%?
  - a. Yes, up to 100% of the units can be restricted at the borrower's choice (e.g. to qualify for tax credits on all the units). Such units can be assisted by Washington Works so long as their income restriction is at 50%, 60% or 80% of area median.
- q. Can there be deeper affordability requirements on the property?
  - a. The purpose of Washington Works is to create workforce housing. A borrower may include other units with deeper subsidies (such as Project-Based Vouchers) or income requirements below 50% of median, so long as these units are not funded by Washington Works, and generally are not more than 20% of all units in the project.

- q. Can the borrower charge less than the maximum tax credit rents or less than the maximum achievable rents for units restricted for a particular income group so long as it can still pay debt service on its bond loan?
- a. Washington Works does not set either minimum or maximum rents during the Initial Bond Indebtedness period (nor require minimum rents during the Rental Restriction Period).
  
- q. Can the borrower rent units (including Washington Works units) to tenants with tenant-based vouchers?
- a. Yes. The borrower cannot discriminate on the basis of source of income.
  
- q. Can the borrower meet the requirement for income-restricted units in the property by counting age-restricted units in a building which cannot be assisted by Washington Works funds?
- a. No, the project must meet the program income requirements from and on the units assisted by Washington Works.
  
- q. Must the income-restricted units at each income level and non-income restricted units be of comparable size and must they be distributed throughout the property?
- a. Commission bond policies and tax law generally require that units meeting income restrictions be of comparable size and amenities (other than luxury amenities) as other units and be generally distributed throughout the project. A borrower considering other approaches should review this with the Commission prior to the application.

## **Rental Restriction Period**

- q. When does the Rental Restriction Period begin?
- a. On the earliest of:
  - (i) Full retirement of the Initial Bond Indebtedness (including any refunding bonds of the Commission),
  - (ii) Partial prepayment of such indebtedness with other amortizing debt not from or through the Commission (except at the Commission's option), or
  - (iii) 40 years after the date of initial bond closing (or for FHA 221d3 or d4 loans, 40 years after Commencement of Amortization if later).
  
- q. If the original Commission bond loan has a 30 year maturity, but is refunded during its term with an additional 10 years and not prepaid, when does the Rental Restriction Period begin?
- a. The earlier of when the refunded bonds are fully paid off or 40 years after the date of initial bond closing. (e.g. the original maturity does not matter so long as there is still a Commission bond loan; it also does not matter if the bonds are refunded multiple times).
  
- q. Can the Borrower later add other amortizing debt without triggering the Rental Restriction Period (whether for capital repairs or other purposes)?
- a. Yes, so long as it is not being used to pay down and replace Commission debt.
  
- q. What happens when the Rental Restriction Period begins?
- a. The Commission will work with the borrower to determine to what extent additional affordable units can be created, taking into account reasonable operating and maintenance expenses, debt service and minimum coverage on any pre-existing secondary debt for past reasonable capital repairs or new debt needed for new repairs, repayment of secondary public agency debt incurred at the time of initial bond closing where the payments were

deferred until after the first mortgage bond debt was fully retired and which now need to be paid down to meet tax credit partnership or basis requirements, permitted management and asset management fees and deposits into reserves.

The determination by the Commission will be reviewed each 3 years if there remain, or borrower requests there be, units rented above 30% of 60% of area median.

The purpose of this approach is so that:

- the Borrower and lender providing debt for capital repairs, before or after commencement of the Rental Restriction Period, can underwrite such debt
- The State can be assured that all units will remain affordable as workforce housing, with as many units as possible at rents below 30% of 60% of area median.

1. **Income Restrictions.** The regulatory agreement recorded when the Washington Works loan was made requires that upon commencement of the Rental Restriction Period:
  - a. Any units which are not already subject to restriction below 80% of area median income (i.e. market rate units) shall thereafter only be re-rented to households below 80% of area median income according to a plan and schedule approved by the Commission. These units are subject to income restriction upon re-rental.
  - b. All prior regulatory agreement restrictions on income (e.g. 50% or 60% or 80% restrictions) remain the same for those units.

2. **Rental Restriction.** Rent to tenants not exceeding the following levels will qualify as being affordable to households in their respective income categories:
  - 30% of 50% of area median income (for all units which were and remain restricted at that income level) or 30% of 60% of median income (for all units which were and remain restricted at that income level), and
  - 30% of 80% of area median income for all other unitsThese will be the desired rent levels for projects in the Rental Restriction Period.

## Applications

- q. What if there are insufficient approved applications in the initial round for a given geographic region (e.g. not all the amount initially set-aside for non-metro areas is approved)?
  - a. The Commission may reallocate funds to projects in the other areas that were not able to be funded.
- q. What is the maximum funding amount?
  - a. The general limit is \$2.5 million.
- q. Can a project receive more than \$2.5 million?
  - a. Requests may be considered for amounts above \$2.5 million if, in the Commission's determination the project is exceptional in the following ways:
    - low amount of Washington Works \$ per unit,
    - low cost per unit
    - higher level of need for workforce housing in the project area, based on market studies, and

- meeting Commission priorities for transit-oriented development and other objectives for workforce housing