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SNAP Loan Adjustments in Response to COVID-19 Crisis Frequently Asked Questions

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The Oregon Facilities Authority ("OFA") recognizes that some SNAP Borrowers may need loan adjustments in response to the reduction in their operating revenues due to the COVID-19 pandemic crisis. OFA appreciates the flexibility of SNAP Banks in making adjustments in this historically challenging time.

This FAQ is designed to answer some of the questions we have received so far about the loan adjustment process, and to describe how to access OFA's streamlined process for obtaining OFA and OST approvals for SNAP Loan adjustments.

1. *May the terms of SNAP Loans be adjusted in response to the COVID-19 crisis?*

Yes.

2. *What kinds of adjustments are possible?*

While the universe of changes is infinite, most proposed adjustments (so far) fit in one of three main categories. OFA will use this nomenclature in discussing changes with Banks and Borrowers:

TYPE 1: Changes to loan covenants.

TYPE 2: Changes to the applicable interest rate on the SNAP Loan.

TYPE 3: Other changes, including payment holidays, interest-only periods, payback periods, release or change of collateral, etc.

See Q&A 6 for information relating to temporary forbearances.

3. *Why is the designation of TYPE (1, 2 or 3) of loan adjustment important?*

Each loan adjustment will require OFA's SNAP Loan Counsel to analyze the Type of loan adjustment. The more complex the adjustment, the more work is required from SNAP Loan Counsel. For example, some loan adjustments will trigger what is called a "tax re-issuance," which results in a longer and more expensive process than loan adjustments that do not trigger a tax-reissuance. Most SNAP Borrowers and Banks will try to avoid a tax reissuance, if possible.

4. *What is a "tax reissuance"?*

A tax reissuance occurs when a SNAP Loan is "materially modified," as defined in complex federal tax regulations. When a reissuance occurs with a SNAP Loan, the transaction is treated as a refunding of the original tax-exempt debt with a new loan that includes amended terms. Certain actions *must* be taken to ensure that the tax-exempt status of this new debt is maintained. These actions include the filing of a new IRS Form 8038 by the State Treasurer, as the issuer of the SNAP Loan. Sometimes a new TEFRA hearing must be held. Other tax and loan documentation must be prepared. OFA's SNAP Loan Counsel leads this effort, in consultation with the Oregon Department of Justice, and the Borrower's and Bank's legal counsels. This process confirms that the loan continues to qualify as tax-exempt financing under federal law.

5. *What TYPES of loan adjustments typically trigger a tax reissuance?*

SNAP Loan Counsel will analyze all loan adjustments to see if they trigger a tax reissuance. In general:

TYPE 1 adjustments typically *do not* trigger a tax reissuance.

TYPE 2 adjustments typically *do* trigger a tax reissuance.

TYPE 3 adjustments *may* trigger a tax reissuance. For example, a change in the timing of loan payments that results in a deferral of principal payments beyond a safe harbor period (the lesser of 5 years or 50% of the original initial term of the loan) would trigger a tax reissuance.

6. *Do temporary forbearances require OST approval?*

No. For example, if a Bank is providing a temporary forbearance in excusing compliance with a loan covenant or delaying payment, that forbearance is not required to go through the loan adjustment process. When the forbearance period ends, however, the loan agreement will likely require an adjustment that must be analyzed to determine if it is a TYPE 1, 2 or 3 loan adjustment.

However, the Bank should inform OFA of the forbearance by sending an email describing the situation to the Executive Director. That forbearance, along with any other adjustments, should be reported on the outstanding balance reports due twice a year from the Bank.

7. *What is the process for completing a SNAP Loan adjustment?*

A Bank should first confer with its SNAP Borrower to determine the appropriate loan adjustments based on the specific circumstances of the Borrower. The Bank and Borrower may wish to confer with their respective legal counsels as part of this process. OFA is not involved at this stage.

Once the Bank and Borrower are on the same page, the Bank should provide to OFA (via email to Gwen Griffith (ofa@tonkon.com)) a specific proposal to adjust the loan terms. There is no required form for the proposal. The Bank should describe the proposed adjustment in the email, and include information about what documents will require amendment (if the Bank has documents to be proposed, include them). The Bank should state that the Borrower agrees in concept with the proposed change.

OFA's SNAP Loan Counsel will review the proposal and reach out for any additional information needed, develop the analysis of the proposed changes, and determine what documents are required to implement the proposed change. The job of OFA's SNAP Loan Counsel is to ensure that the tax exemption is preserved. SNAP Loan Counsel will facilitate any required approvals by the Office of the State Treasurer. Executed documents will be sent to the requesting Bank.

8. *What are the costs of the loan adjustments?*

Costs vary, but in general:

TYPE 1 loan adjustments are typically less than $1,500.

TYPE 2 loan adjustments are typically between $5,000 and $6,500.

TYPE 3 loan adjustments depend on whether the change triggers a tax reissuance. If so, see TYPE 2 for the range of costs. If not, the cost will vary based on the complexity of the proposed change.

9. *Who is responsible for OFA's costs?*

The Borrower must pay for OFA's costs of SNAP Loan Counsel's analysis and documentation based on hourly rates. OST and OFA are waiving loan adjustment fees.

However, the OFA Board has approved having OFA pay for the first two hours of SNAP Loan Counsel's time in evaluating a proposed adjustment. This should make the process more affordable for Borrowers. *Note:* this assistance does not apply to refinancings that will transform a loan from a SNAP Loan to a (Non-SNAP) taxable bank loan.

10. *How long does the loan adjustment approval process take?*

The time required for this process depends on the complexity of the loan adjustment proposal. OFA and OST are committed to moving proposed loan adjustments through the review and approval process as quickly as possible.

11. *Who should I contact for more answers?*

Gwen Griffith (ofa@tonkon.com) or 503-802-5710
Nick Pham (ofa@tonkon.com) or 503-802-5713

DUE TO THE COVID-19 CRISIS, WE ARE WORKING OFFSITE. OUR RESPONSES MAY BE DELAYED.

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