

D R A F T

SUMMARY

Extends sunset for tax credit for affordable housing lenders.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for affordable housing lenders; amending ORS 317.097
3 and section 30, chapter 913, Oregon Laws 2009; and prescribing an effec-
4 tive date.

Be It Enacted by the People of the State of Oregon:

5
6 **SECTION 1.** Section 30, chapter 913, Oregon Laws 2009, is amended to
7 read:

8 **Sec. 30.** The Housing and Community Services Department may not issue
9 a certificate under ORS 317.097 on or after January 1, [2014] **2020**.

10 **SECTION 2.** ORS 317.097, as amended by section 30, chapter 82, Oregon
11 Laws 2010, is amended to read:

12 317.097. (1) As used in this section:

13 (a) "Annual rate" means the yearly interest rate specified on the note,
14 and not the annual percentage rate, if any, disclosed to the applicant to
15 comply with the federal Truth in Lending Act.

16 (b) "Finance charge" means the total of all interest, loan fees, interest
17 on any loan fees financed by the lending institution, and other charges re-
18 lated to the cost of obtaining credit.

19 (c) "Lending institution" means any insured institution, as that term is
20 defined in ORS 706.008, any mortgage banking company that maintains an
21 office in this state or any community development corporation that is or-
22 ganized under the Oregon Nonprofit Corporation Law.

1 (d) "Manufactured dwelling park" has the meaning given that term in
2 ORS 446.003.

3 (e) "Nonprofit corporation" means a corporation that is exempt from in-
4 come taxes under section 501(c)(3) or (4) of the Internal Revenue Code as
5 amended and in effect on December 31, 2009.

6 (f) "Preservation project" means housing that was previously developed
7 as affordable housing with a contract for rent assistance from the United
8 States Department of Housing and Urban Development or the United States
9 Department of Agriculture and that is being acquired by a sponsoring entity.

10 (g) "Qualified assignee" means any investor participating in the secondary
11 market for real estate loans.

12 (h) "Qualified borrower" means any borrower that is a sponsoring entity
13 that has a controlling interest in the real property that is financed by a
14 qualified loan. A controlling interest includes, but is not limited to, a con-
15 trolling interest in the general partner of a limited partnership that owns
16 the real property.

17 (i) "Qualified loan" means:

18 (A) A loan that meets the criteria stated in subsection (5) of this section
19 or that is made to refinance a loan that meets the criteria described in sub-
20 section (5) of this section; or

21 (B) The purchase by a lending institution of bonds, as defined in ORS
22 286A.001, issued on behalf of the Housing and Community Services Depart-
23 ment, the proceeds of which are used to finance or refinance a loan that
24 meets the criteria described in subsection (5) of this section.

25 (j) "Sponsoring entity" means a nonprofit corporation, nonprofit cooper-
26 ative, state governmental entity, local unit of government as defined in ORS
27 466.706, housing authority or any other person, provided that the person has
28 agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit
29 cooperative, state governmental entity, local unit of government or housing
30 authority.

31 (2) The Department of Revenue shall allow a credit against taxes other-

1 wise due under this chapter for the taxable year to a lending institution that
2 makes a qualified loan certified by the Housing and Community Services
3 Department as provided in subsection (7) of this section. The amount of the
4 credit is equal to the difference between:

5 (a) The amount of finance charge charged by the lending institution dur-
6 ing the taxable year at an annual rate less than the market rate for a qual-
7 ified loan that is made before January 1, [2014] **2020**, that complies with the
8 requirements of this section; and

9 (b) The amount of finance charge that would have been charged during
10 the taxable year by the lending institution for the qualified loan for housing
11 construction, development, acquisition or rehabilitation measured at the an-
12 nual rate charged by the lending institution for nonsubsidized loans made
13 under like terms and conditions at the time the qualified loan for housing
14 construction, development, acquisition or rehabilitation is made.

15 (3) The maximum amount of credit for the difference between the amounts
16 described in subsection (2)(a) and (b) of this section may not exceed four
17 percent of the average unpaid balance of the qualified loan during the tax
18 year for which the credit is claimed.

19 (4) Any tax credit allowed under this section that is not used by the
20 taxpayer in a particular year may be carried forward and offset against the
21 taxpayer's tax liability for the next succeeding tax year. Any credit remain-
22 ing unused in the next succeeding tax year may be carried forward and used
23 in the second succeeding tax year, and likewise, any credit not used in that
24 second succeeding tax year may be carried forward and used in the third
25 succeeding tax year, and any credit not used in that third succeeding tax
26 year may be carried forward and used in the fourth succeeding tax year, and
27 any credit not used in that fourth succeeding tax year may be carried for-
28 ward and used in the fifth succeeding tax year, but may not be carried for-
29 ward for any tax year thereafter.

30 (5) To be eligible for the tax credit allowable under this section, a lending
31 institution must make a qualified loan by either purchasing bonds, as defined

1 in ORS 286A.001, issued on behalf of the Housing and Community Services
2 Department, the proceeds of which are used to finance or refinance a loan
3 that meets the criteria stated in this subsection, or by making a loan directly
4 to:

5 (a) An individual or individuals who own a dwelling, participate in an
6 owner-occupied community rehabilitation program and are certified by the
7 local government or its designated agent as having an income level when the
8 loan is made of less than 80 percent of the area median income;

9 (b) A qualified borrower who:

10 (A) Uses the loan proceeds to finance construction, development, acqui-
11 sition or rehabilitation of housing; and

12 (B) Provides a written certification executed by the Housing and Com-
13 munity Services Department that the:

14 (i) Housing created by the loan is or will be occupied by households
15 earning less than 80 percent of the area median income; and

16 (ii) Full amount of savings from the reduced interest rate provided by the
17 lending institution is or will be passed on to the tenants in the form of re-
18 duced housing payments, regardless of other subsidies provided to the hous-
19 ing project;

20 (c) Subject to subsection (14) of this section, a qualified borrower who:

21 (A) Uses the loan proceeds to finance construction, development, acqui-
22 sition or rehabilitation of housing consisting of a manufactured dwelling
23 park; and

24 (B) Provides a written certification executed by the Housing and Com-
25 munity Services Department that the housing will continue to be operated
26 as a manufactured dwelling park during the period for which the tax credit
27 is allowed; or

28 (d) A qualified borrower who:

29 (A) Uses the loan proceeds to finance acquisition or rehabilitation of
30 housing consisting of a preservation project; and

31 (B) Provides a written certification executed by the Housing and Com-

1 munity Services Department that the housing preserved by the loan:

2 (i) Is or will be occupied by households earning less than 80 percent of
3 the area median income; and

4 (ii) Is the subject of a rent assistance contract with the United States
5 Department of Housing and Urban Development or the United States De-
6 partment of Agriculture that will be maintained by the qualified borrower.

7 (6) A loan made to refinance a loan that meets the criteria stated in
8 subsection (5) of this section must be treated the same as a loan that meets
9 the criteria stated in subsection (5) of this section.

10 (7) For a qualified loan to be eligible for the tax credit allowable under
11 this section, the Housing and Community Services Department must execute
12 a written certification for the qualified loan that:

13 (a) Specifies the period, not to exceed 20 years, as determined by the
14 Housing and Community Services Department, during which the tax credit
15 is allowed for the qualified loan; and

16 (b) States that the qualified loan is within the limitation imposed by
17 subsection (8) of this section.

18 (8) The Housing and Community Services Department may certify quali-
19 fied loans that are eligible under subsection (5) of this section if the total
20 credits attributable to all qualified loans eligible for credits under this sec-
21 tion and then outstanding do not exceed \$17 million for any fiscal year. In
22 making loan certifications under subsection (7) of this section, the Housing
23 and Community Services Department shall attempt to distribute the tax
24 credits statewide, but shall concentrate the tax credits in those areas of the
25 state that are determined by the State Housing Council to have the greatest
26 need for affordable housing.

27 (9) The tax credit provided for in this section may be taken whether or
28 not:

29 (a) The financial institution is eligible to take a federal income tax credit
30 under section 42 of the Internal Revenue Code with respect to the project
31 financed by the qualified loan; or

1 (b) The project receives financing from bonds, the interest on which is
2 exempt from federal taxation under section 103 of the Internal Revenue Code.

3 (10) For a qualified loan defined in subsection (1)(i)(B) of this section fi-
4 nanced through the purchase of bonds, the interest of which is exempt from
5 federal taxation under section 103 of the Internal Revenue Code, the amount
6 of finance charge that would have been charged under subsection (2)(b) of
7 this section is determined by reference to the finance charge that would have
8 been charged if the federally tax exempt bonds had been issued and the tax
9 credit under this section did not apply.

10 (11) A lending institution may sell a qualified loan for which a certif-
11 ication has been executed to a qualified assignee whether or not the lending
12 institution retains servicing of the qualified loan so long as a designated
13 lending institution maintains records, annually verified by a loan servicer,
14 that establish the amount of tax credit earned by the taxpayer throughout
15 each year of eligibility.

16 (12) Notwithstanding any other provision of law, a lending institution
17 that is a community development corporation organized under the Oregon
18 Nonprofit Corporation Law may transfer all or part of a tax credit allowed
19 under this section to one or more other lending institutions that are stock-
20 holders or members of the community development corporation or that oth-
21 erwise participate through the community development corporation in the
22 making of one or more qualified loans for which the tax credit under this
23 section is allowed.

24 (13) The lending institution shall file an annual statement with the
25 Housing and Community Services Department, specifying that it has con-
26 formed with all requirements imposed by law to qualify for a tax credit under
27 this section.

28 (14) Notwithstanding subsection (1)(h) and (j) of this section, a qualified
29 borrower on a loan to finance the construction, development, acquisition or
30 rehabilitation of a manufactured dwelling park under subsection (5)(c) of this
31 section must be a nonprofit corporation, manufactured dwelling park

1 nonprofit cooperative, state governmental entity, local unit of government
2 as defined in ORS 466.706 or housing authority.

3 (15) The Housing and Community Services Department and the Depart-
4 ment of Revenue may adopt rules to carry out the provisions of this section.

5 **SECTION 3. This 2011 Act takes effect on the 91st day after the date**
6 **on which the 2011 session of the Seventy-sixth Legislative Assembly**
7 **adjourns sine die.**

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