

HOUSING AND COMMUNITY SERVICES DEPARTMENT

DIVISION 110

OREGON AFFORDABLE HOUSING TAX CREDITS: AFFORDABLE HOUSING PROJECT CERTIFICATION

813-110-0005

Purpose

OAR chapter 813, division 110, is promulgated to carry out the provisions of ORS 317.097 under which the department certifies affordable multifamily rental housing development projects sponsored by government entities, nonprofit corporations and certain persons (“sponsoring entities” or “sponsors”) so as to enable a lending institution to claim Oregon affordable housing tax credits (“OAHTC” or “tax credits”) against Oregon taxes with respect to loans for the construction or acquisition, and rehabilitation of such projects. The purpose of the tax credits is to encourage the creation or preservation of safe, sanitary and affordable housing for lower-income Oregonians. Additional policies and instructions are outlined in the Oregon Affordable Housing Tax Credits (OAHTC) Manual dated June 2, 2014 (the “OAHTC Manual” or “Manual”), incorporated herein by reference. The manual may be accessed online at the department’s website.

Stat. Auth.: ORS 317.097 & 456.555

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625 & 456.722

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 29-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0010

Definitions

Certain terms used in this division are defined in ORS chapter 317, the Act, OAR 813-005-0005, and herein. Other terms may be identified in the text of this division (including by incorporation), otherwise in chapter 813, or applicable law.

(1) “Cap” means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6). The department will calculate tax credit availability based on the actual number of tax credits allocated at any given time.

(2) “Certification” means the written verification by the department to a lender that a project is a qualified project for which the lending institution may claim a tax credit under the provisions of the Act.

(3) “Firm commitment of financing” means an agreement by a lending institution to make a loan to a specific borrower on a specific property and which will contain all of the terms and conditions that the borrower has to satisfy before said loan can be funded. Payment of a commitment charge by the

borrower to the lending institution may be required as a condition precedent to issuance of such an agreement.

(4) "Lending institution" means any insured institution, as defined in ORS 706.008, any mortgage company that maintains an office in this state, or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(5) "Preservation project" means housing that was previously developed as affordable housing with a contract for rental assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity. The contract for project-based rental assistance must cover at least 25 percent of all units in the project.

(6) "Project," except as defined under "manufactured dwelling park" or "preservation project," means one or more units of housing, that has been acquired, constructed, developed, or rehabilitated, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of area median income. The use of a project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the lending institution, that lending institution may dispose of the property at its sole discretion.

(7) "Rent reduction" means the amount rents are reduced from the rents charged at the market interest rate as a result of the Oregon Affordable Housing Tax Credit (OAHTC) subsidy.

(8) "Rent Pass through" means the value of the tax credits loan rate discount that is extended by the project owner to the tenants in the form of reduced rents.

Stat. Auth.: ORS 317.097 & 456.555

Stats. Implemented: ORS 317.097 & 456.625

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 1-2009(Temp), f. & cert. ef. 2-9-09 thru 8-7-09; OHCS 2-2009, f. & cert. ef. 8-5-09; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 3-2015(Temp) f. & cert. ef. 3-18-15 thru 9-13-15; OHCS 6-2015, f. & cert. ef. 7-9-15; OHCS 4-2016(Temp), f. & cert. ef. 5-5-16 thru 10-31-16; OHCS 12-2016, f. & cert. ef. 10-13-16

813-110-0013

Loan Requirements

In order to be eligible for the tax credit, the loan shall be:

(1) Made to an individual or individuals who own the dwelling, who participate in an owner-occupied community rehabilitation program, and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income.

(2) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or rehabilitation of housing; and,

(b) Accompanied by a written certification by the department that the:

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

(B) The full amount of the savings, from the reduced interest rate provided by the lending institution, is or will be passed through to the qualified tenants in the form of a rent reduction , regardless of other subsidies provided directly to the housing project,

(C) In satisfying the foregoing pass-through requirement, project owners may only assign up to the maximum of the estimated annual average per-unit pass through to units whose qualified tenants are using a tenant based Section 8, or Housing Choice Voucher,

(D) The estimated annual average per-unit pass through for the projects is to be calculated by dividing the annual loan interest savings, divided by twelve months, and then by dividing the number of affordable units occupied or held vacant for occupancy by qualified tenants, or

(3) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park;

(b) The housing created by the loan is or will be occupied by a significant number of households, defined as more than 30% of all households at initial tenant qualification, earning less than 80 percent of the area median income; and,

(c) Accompanied by a written certification by the department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed, or

(4) Made to a qualified borrower;

(a) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and,

(b) Accompanied by a written certification by the department that the housing preserved by the loan:

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

(B) Has a rent assistance contract with the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture that will be maintained by the qualified borrower. The contract must provide rental assistance to households in at least 25% of the project units.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; Suspended by OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 4-2016(Temp), f. & cert. ef. 5-5-16 thru 10-31-16; OHCS 12-2016, f. & cert. ef. 10-13-16