

# **Joint Task Force Addressing Racial Disparities in Home Ownership**

## **Institutional and Regulatory Work Group - Focus Area #2 Policy Option Proposals – August 9, 2022**

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# Joint Task Force Addressing Racial Disparities in Home Ownership Institutional and Regulatory Work Group - Focus Area #2 Appraiser Training and Education Requirements Proposal

## Proposal

Amend [ORS 674.310](#) (2021) to incorporate the fair housing and implicit bias language used for mortgage brokers and real estate agents in 2021. The proposed amendment is shown in bold below.

*(2) Rules adopted by the Appraiser Certification and Licensure Board to govern real estate appraiser certification and licensure shall conform with the requirements of the federal Act. The board shall adopt rules including but not limited to:*

*(a) Establishing programs for the certification, licensure or registration of individuals who engage in real estate appraisal activity.*

*(b) Establishing educational requirements for certification or licensure of appraisers and for the registration of appraiser assistants that ensure protection of the public interest and comply with the requirements of the federal Act, **including on state and federal fair housing laws and topics of implicit bias, including racial bias**. Education requirements for state licensed appraisers and state certified appraisers must meet the minimum criteria established by the Appraiser Qualification Board of the Appraisal Foundation.*

*(c) Establishing a professional code of responsibility for state certified appraisers and state licensed appraisers that is in conformance with the federal Act.*

*(d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.*

## Background

The Oregon Appraiser Certification and Licensure Board was created in 1991 with the responsibility to protect the public and Oregon financial institutions through regulation and supervision of licensed and certified real estate appraisers and appraisal management companies in the state. In addition, the board ensures that real estate appraisals are issued in writing and conducted in compliance with Oregon statutes and administrative rules and the Uniform Standards of Professional Appraisal Practice. The board is a semi-independent agency with seven full-time staff members and eight board members appointed by the Governor.

[ORS 674.310](#) (2021) requires the Appraiser Certification and Licensure Board to adopt rules governing the certification and licensure of appraisers in Oregon.

*(2) Rules adopted by the Appraiser Certification and Licensure Board to govern real estate appraiser certification and licensure shall conform with the requirements of the federal Act. The board shall adopt rules including but not limited to:*

*(a) Establishing programs for the certification, licensure or registration of individuals who engage in real estate appraisal activity.*

*(b) Establishing educational requirements for certification or licensure of appraisers and for the registration of appraiser assistants that ensure protection of the public interest and comply with the requirements of the federal Act. Education requirements for state licensed appraisers and state certified appraisers must meet the minimum criteria established by the Appraiser Qualification Board of the Appraisal Foundation.*

*(c) Establishing a professional code of responsibility for state certified appraisers and state licensed appraisers that is in conformance with the federal Act.*

*(d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.*

Information provided on the Board's website ([How to Become an Appraiser](#)) does not specify any requirements for training or education on racial bias or appraiser responsibilities under state or federal fair housing laws. The website does list the hours required for certain courses, which are set in rule.

The Board's administrative rules specifying Qualifying Education Course Content Guidelines ([OAR 161-020-0110](#)) do not call out fair housing or valuation bias. Only the Continuing Education Course Content Guidelines ([OAR 161-020-0120](#)) specify valuation bias, fair housing, and/or equal opportunity as acceptable topics for continuing education courses.

## **Problem Statement**

National studies have identified differences in appraisals depending on whether the homeowner was white, a person of color, or a member of another protected class. While much of the lending process is now completed online, appraisals continue to be done in person. Appraisers are covered by Oregon's fair housing statutes.

The 2019 Task Force on Addressing Racial Disparities in Home Ownership recommended improving the education and training required of, and provided to, mortgage and real estate professionals to cover homebuyer assistance programs and incorporate racial bias training. [House Bill 2703 \(2021\)](#) required a three-hour course on federal and state fair housing laws prior to real estate license application or renewal every two years. [House Bill 2007 \(2021\)](#) allowed the Department of Consumer and Business Services to require implicit bias training for mortgage loan originators.

## **Joint Task Force Addressing Racial Disparities in Home Ownership Institutional and Regulatory Work Group - Focus Area #2**

### **Fair Housing Law Statewide Regional Enforcement and Awareness Proposal**

#### **Proposal**

Violations of fair housing laws in the state of Oregon are enforced through a combination of administrative processes through the state's Bureau of Labor and Industries (BOLI) and private rights of action, supported by the state's only private, nonprofit-qualified fair housing organization—Fair Housing Council of Oregon (FHCO)—and local civil rights attorneys.

This proposal recommends continued support of approximately \$5 million of state General Fund moneys for the 2023-2025 biennium for fair housing enforcement and awareness as follows:

- Funding for FHCO of \$1.2 million annually to fund 12 FTEs statewide;
- Support of the BOLI budget, including \$1.15 million annually (\$2.3 million for the biennium) to support one Program Manager (1.00 FTE); six Civil Rights Investigators (6.00 FTE) to support housing discrimination investigation in four priority regions; and one Training and Development Specialist (1.00 FTE) to provide statewide fair housing education and outreach; and
- Funding for the Department of Justice (DOJ) of \$225,000 annually to fund 1 FTE statewide.

*Note: these are the 2021-2023 actual numbers and will need to be adjusted for natural cost increases.*

#### **Background**

In the 2021-2023 biennium, the Legislative Assembly provided General Fund funding to BOLI, DOJ, and the FHCO to build a network of local collaborations in four priority regions throughout the state of Oregon. These collaborations bring together local resources to increase both knowledge about and access to fair housing resources and increase reporting of housing discrimination in local communities.

The statewide network consists of four priority regional locations centered in north coastal; southern, eastern, and central Oregon. Each regional collaboration consists of a regional BOLI civil rights investigator; an FHCO Regional Enforcement Liaison; a housing navigator embedded within a local organization; and a local landlord-tenant legal resource, such as Legal Aid Society of Oregon. These regional collaborative teams are further supported by a centralized BOLI Fair Housing Enforcement Program Manager; an FHCO Statewide Fair Housing Enforcement Collaborative Program Manager, Statewide Enforcement Intake Coordinator, and an Operations Manager; and a DOJ Assistant Attorney General focused on housing enforcement.

## **Problem Statement**

There is limited capacity among BOLI and FHCO for educating and enforcing fair housing laws throughout the entirety of the state of Oregon, particularly in rural and frontier communities across the vast state. In addition, a lack of resources centered in local communities erodes the ability to build trust between those communities and fair housing enforcement entities working to address violations of housing discrimination. As a result, instances of housing discrimination are likely under-reported in these communities and those experiencing housing discrimination remain underserved. Reports from state agencies tasked with monitoring compliance with federal housing regulations have identified a distinct lack of knowledge among particularly rural residents about how and to whom they should report housing discrimination.

## **Joint Task Force Addressing Racial Disparities in Home Ownership Institutional and Regulatory Work Group - Focus Area #2**

### **Supply Incentive Tax Credit Proposal**

#### **Proposal**

To address investor ownership of existing homes and increase the return of existing homes to the homeownership market, the Joint Task Force on Addressing Racial Disparities in Home Ownership could recommend the development of a tax credit to encourage owners, including both personal and corporate taxpayers, of single-family homes to sell the home to one of the following buyers:

1. current renter;
2. nonprofit housing or homeownership organization; or
3. purchaser under 100% AMI of the state/county.

The tax credit could be structured in two ways:

1. Exempt the capital gains earned on property.
2. Set a tax credit amount of a certain percentage of the sales prices, with a maximum amount.

Other considerations:

- Eligible sellers and buyers and all terms (e.g., “current renter” or “single-family home”) will need to be defined in statute or administrative rule, so it is clear who qualifies.
- A third-party entity will be needed to certify eligibility. One option would be to have Oregon Housing and Community Services (OHCS) create a form to be completed and certified by the recording office at closing for eligible transactions.
- Tax credits can be refundable where the state would pay the difference if tax liability is less than the credit; transferable to another taxpayer; or may be a carryforward credit to future tax years, with three to five years being the typical period for use of the credit.
- The work group discussed pairing the tax credit with a five-year residency requirement for the buyer; however, the enforcement mechanism for such a condition is not clear. If the tax credit were only available for sales to nonprofit housing or homeownership organizations, those organizations could require conditions on the subsequent buyer, including payback provisions or other restrictions on “flipping.”
- Reporting on use of the tax credit could be required by OHCS with the assistance of the Department of Revenue.
- Tax credit must have sunset dates; most expire every six years. If the tax credit begins with the 2024 tax year, there might not be enough data to evaluate it until 2029 (six years).

## Background

“Investors bought 24 percent of all single-family houses sold nationwide last year, up from 15 percent to 16 percent annually going back to 2012, according to a Stateline analysis of data provided by CoreLogic, a California-based data analytics firm. That share dipped only slightly in the first five months of 2022 to 22 percent.”<sup>1</sup>

For Oregon, the investor share of home sales in 2021 was 20 percent with 16,781 total home sales. This represents a 67 percent change from 2020.<sup>2</sup>

Many affordable homeownership developers and brokers who work with BIPOC homebuyers have expressed concern about their ability to compete with investor buyers. Similarly, because of the number of past purchases, there is interest in finding a way to encourage the return of properties purchased by investors to the homeownership market.

## Problem Statement

Two problems or concerns:

- investor purchases and competition with first-time or BIPOC homebuyers; and
- investor ownership of existing homes and returning some of those to the homeownership market to be available for purchase by BIPOC homebuyers.

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<sup>1</sup> Governing, [Investors Bought a Quarter of Homes Sold Last Year, Driving Up Rents](#) (July 26, 2022)

<sup>2</sup> *Id*

## **Joint Task Force Addressing Racial Disparities in Home Ownership Institutional and Regulatory Work Group - Focus Area #2**

### **Special Purpose Credit Program Proposal**

#### **Proposal**

Allocation of \$30 million for a pilot program at Oregon Housing and Community Services (OHCS) that provides 100 percent funding of the home purchase price through a special purpose credit program loan product within the OHCS Flex Lending Program.

- Lenders develop a special purpose credit program and identify their focused demographic, consistent with the purposes of addressing racial disparities in homeownership, to participate in the program.
- Lenders provide the first mortgage loan, of up to 90 percent, and agree to buy out or pay the mortgage insurance.
- Borrowers can then access a 10 percent second mortgage from OHCS, which will have an interest rate of one percent over the rate of the first mortgage and the same term as the first mortgage.
- The first mortgage is sold to OHCS unless it is an Individual Taxpayer Identification Number (ITIN) mortgage loan.
- Loan payments for the first and second mortgages are made to OHCS's Master Servicer under the Flex Lending Program. Payments on the first mortgage go to the investor who purchases the first mortgage. Payments on the second mortgage go back to the Program and are available for other mortgages.
- For ITIN loans, the lender will retain the first mortgage loan and the borrower will make payments on the second mortgage to OHCS's Master Servicer.
- Participating lenders would need to fund a maximum of 90 percent, but only the difference between that percent and the total of any down payment funds. If the loan the lender provides is less than 85 percent (or less than 80 percent), it improves the interest rate because a lump sum mortgage insurance policy would cost less or not be needed.

#### **Criteria**

To be eligible, lenders must meet the Flex Lending Program criteria and must develop a special purpose credit program. Lenders must:

- identify and document the community need for their program;
- establish a special purpose credit program for mortgage lending and legally attest that the program meets the requirements;
- commit to funding 90 percent for the first mortgage and to a buyout or payment of mortgage insurance;
- meet the Flex Lending Program criteria that require homebuyer education; and
- provide impact data showing that the program is reaching the intended population and meeting the identified community need.



## Background

The 2018-2019 Joint Task Force on Addressing Racial Disparities in Home Ownership recommended convening a Housing Lending and Finance Disparities work group of members, banking and credit union representatives, housing organizations, and relevant state agencies to develop recommendations related to reducing racial disparities in lending access and outcomes for homeownership.

This Task Force learned about how the Equal Credit Opportunity Act (ECOA) and Regulation B permit creditors to create “special purpose credit programs” to extend credit to applicants who meet certain eligibility requirements. Under these programs, lenders may offer special underwriting or pricing for traditionally disadvantaged groups without violating the ECOA and Regulation B. These programs include initiatives for:

- “credit assistance programs expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons”;
- “low-income minority borrowers”;
- government-sponsored housing credit subsidies for the “aged or the poor”;
- small business lending programs providing credit to minority- or disabled-owned businesses; and
- student loan programs based on the family’s financial needs.<sup>3</sup>

In February 2022, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Department of Housing and Urban Development, the Department of Justice, and the Federal Housing Finance Agency issued an interagency statement to remind creditors of the ability under the ECOA and Regulation B to establish special purpose credit programs to meet the credit needs of specified classes of persons.<sup>4</sup>

## Problem Statement

There has been increased discussion by Federal agencies and national organizations about special purpose credit programs, but guidance is still being developed and financial institutions are unsure of how to establish such programs, consistent with ECOA and Regulation B requirements and required lending principles. There is also uncertainty around how such a program could be developed with funding allocated to Oregon Housing and Community Services, but administered by financial institutions, with the requirements to do more analysis of the disparities.

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<sup>3</sup> Lauren Winters, Department of Consumer and Business Services, *State and Federal Regulation Of Mortgage Lending* (July 15 presentation), available online at <https://olis.oregonlegislature.gov/liz/202111/Downloads/CommitteeMeetingDocument/256224> (last visited July 27, 2022).

<sup>4</sup> Board of Governors of the Federal Reserve System et al, *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (February 22, 2022), <https://www.fdic.gov/news/financial-institution-letters/2022/fil22008a.pdf> (last visited July 27, 2022).