

**STATE OF OREGON**

**HOUSING AND COMMUNITY SERVICES DEPARTMENT**

**NOTICE OF FUNDING AVAILABILITY (NOFA) # 4189**

**Affordable Housing Projects that require Gap Financing**

NOFA Issued Date: **June 23, 2015**

Application Due Date: **September 4, 2015**

Application Due Time: **4:00 PM PST**

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[www.oregon.gov/ohcs](http://www.oregon.gov/ohcs)

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## 1.0 Introduction

### 1.1 Purpose

The State of Oregon, acting by and through its Housing and Community Services Department (Department), is seeking qualifying responses (referred herein as Applications) pursuant to this Notice of Funding Availability (NOFA) with respect to Housing Development (ORS 456.549(6)) of Residential Housing (456.548 (17)) that are Multifamily and Affordable (referred herein as Projects) whose development, *inter alia*, will require gap funding hereunder in order to serve qualifying low-income populations.

All entities submitting Applications responsive to this NOFA are herein referred to as Applicant(s). Applicants, if any, that the Department determines to provide a reservation of funds (Reservation) pursuant to this NOFA will be designated as Grantee in the conditional commitments (Reservation Letter) issued to them by the Department. All Reservations are conditional in nature and subject, *inter alia*, to the continuing availability to the Department of the described funds (collectively or individually without distinction Funds), the continuing authority of the Department to disburse or allocate such Funds, and the successful negotiation, execution, and recording (if required) of relevant documents in a manner satisfactory to the Department at its sole discretion.

### 1.2 Funding Sources

Funds for this NOFA will be derived from state funds (referred to as Funds), which include the following resources in the following approximate amounts:

General Housing Account Program (GHAP)	\$12,000,000
Housing Development Grant Program (HDGP)	\$8,000,000
Oregon Affordable Housing Tax Credits (OAHTC)	\$5,000,000
Low Income Weatherization (WX)	\$3,000,000

The Department may supplement or reduce funding hereunder in its sole discretion. These Funds are to be used as gap financing for the Project.

### 1.3 Minimum Project Qualifications

In order to submit a qualifying Application for a Reservation of Funds, the request for Funds in the Application shall not exceed the allocation of available Funds and must address **one (1)** of the following:

- New Construction or Acquisition/Rehabilitation Projects of thirty-five (35) units or less (referred herein as Small Projects).
- OHCS previously funded Projects that have documented construction defects where the funds allocated hereunder will be used to resolve defects to original specifications (referred herein as Construction Defect Projects).
- New Construction or Acquisition/Rehabilitation of Group Homes targeted to Special Needs Populations (referred herein as Group Home or Special Needs Projects).

### **Notes to Applicants:**

- *Projects funded under this NOFA will not be allowed to request additional Department funding for five (5) years after the Project is complete.*
- *No more than ten percent (10%) of Funds allocated for a Project can be used for replacement reserves and no operating reserves can be funded with such funds.*
- *Soft set-asides for the three(3) focus areas are:*
  - *\$9,000,000 for Small Projects (thirty-five (35) units or less),*
  - *\$9,000,000 for Construction Defect Projects (with associated documentation),*
  - *\$2,000,000 for Group Home Projects.*

Failure of the Applicant to satisfy at least **one (1)** of the minimum project qualifications will result in disqualification.

## **1.4 Reservation Process**

### **A. Application Ranking Process**

Funds are reserved on a competitive basis to Projects of qualifying Applicants that:

1. Pass the Application review ,
2. Meet the minimum project qualifications,
3. Meet the minimum threshold requirements,
4. Score and rank the highest in overall scoring.

Applications with the highest in overall score will be allocated resources until the balance of available Funds hereunder are insufficient to support any other Applications.

In the event of a tie throughout the ranking process:

1. First, Projects that allow the Department to realize geographic distribution of funds,
2. Second, Projects that score the highest impact score will be applied to break ties.

If any Department funds remain after all the Reservation processes are complete, the Department may choose, at its sole discretion, not to reserve any or part of the remaining resources.

### **B. Re-Evaluation of Reservation**

The following events will result in a re-evaluation of a previously issued Reservation:

- Failure to meet all Reservation conditions **within 180 days** of the Reservation.
- A material adverse change so the Project or Applicant no longer meets the minimum qualification thresholds or any of the competitively scored criteria.
- Other causes at the Department's discretion.

In the event of a re-evaluation of Reservation, the Department, at its sole discretion, may do any of the following:

- Revoke the Reservation,
- Approve requested changes to the original application as proposed,
- Take no action.

## 2.0 APPLICATION REQUIREMENTS

**2.1 Application Submission:** Applications must be submitted no later than:

**APPLICATION DUE DATE AND TIME:**

**September 4, 2015 by 4:00 PM PST**

**DELIVERY ADDRESS:**

**Oregon Housing and Community Services**

**Attn: Lisa Goonan**

**725 Summer Street NE, Suite B**

**Salem, OR 97301-1266**

- Applications must be received with a date and time stamp by the Department receptionist **no later than the Application closing date and time.**
- Applications must be delivered in a sealed container that clearly identifies the following:
  - NOFA number,
  - Applicant's name,
  - Name of the contact person for the **Application**,
  - Department name and address,
  - Application closing date and time.
- Mis-deliveries and late submittals will **not** be accepted or considered.
- Post-marked **Applications** will not be considered. Only Applications actually received by the Department by the Application closing date and time specified herein will be processed.

Faxed, electronically transmitted, late or incomplete Applications will not be accepted or reviewed. All **Applications** and any accompanying documentation become the property of the Department, subject to the Oregon Public Records Law , and will not be returned. **Application charges are nonrefundable.**

*All costs associated with Applicant's submission of its Application are the sole responsibility of the Applicant and will not be borne by the State of Oregon.*

Department is not responsible for any errors or omissions resulting from the Applicant downloading the NOFA. The official version of the NOFA is the one held at the Department.

Those Applications that are incomplete or do not meet all requirements of the NOFA will be deemed by the Department as "*non-responsive*" and rejected. Applications considered complete or "*responsive*" by the Department will be evaluated to determine if they comply with the administrative and technical requirements of the NOFA. If the Application is unclear, the Applicant(s) may be asked to provide written clarification to assist the Department in determining the issue of the Application's responsiveness.

## 2.2 Application Submission Checklist

Applicants may use this section of minimum requirements as a checklist to ensure the Application is complete:

### **[ ] Application submission checklist**

Submit the Application pages in the following order using the appropriate tabs and page numbers provided by the checklist.

### **[ ] NOFA Application cover sheet: See part 1 of Application submission page 2.**

The Application must include a completed and signed NOFA Application cover sheet.

### **[ ] Application and charge transmittal: See part 1 Application submission page 3.**

The Applicant must fill out the Application and charge transmittal and pay the required amount by check.

### **[ ] Owner/Board of Director's authorization and acceptance form: See part 1 Application submission page 6.**

Applicant must complete and sign the attached Form.

### **[ ] Organizational documents: part 1 see Application submission page 7.**

The Applicant must provide evidence of authority to submit the Application, including certified copy of the official organizational document, such as, (for a corporation) Certificate of Incorporation, (for a limited liability company) Articles of Organization, (for a limited partnership) or Certificate of Limited Partnership.

### **[ ] Complete NOFA Application with required exhibits.**

The Application and all its required exhibits, forms and addenda should be organized as detailed in the Application instructions and Application submittal checklist provided by the Department within the instructions about how to fill out the Application. The number of exhibits, forms and addendum will vary depending on the program Funds requested by the Applicant.

**Applicant must submit one (1) original signed Application and three (3) copies**, each including all attachments. Please submit the Application materials and the excel spreadsheets on one (1) disc, CD, or thumb drive with the paper copies.

## 2.3 NOFA Questions

All inquiries relating to the NOFA process, administration, deadline, Reservation, or to the substantive technical portions of the NOFA, must be directed to the individual listed below:

**Oregon Housing and Community Services**

**Attn: Lisa Goonan**

**725 Summer Street NE, Suite B**

**Salem, OR 97301-1266**

**Fax: 503-986-2020**

**Email: [OHCS.Contracts@oregon.gov](mailto:OHCS.Contracts@oregon.gov)**

All questions regarding the intent of the NOFA must be submitted in writing (by mail, fax, or e-mail). When appropriate, revisions, substitutions, or clarifications shall be issued as addenda to this NOFA. Changes or modifications to the NOFA requirements will **ONLY** be recognized if in the form of written addenda issued by the Department. The Department shall provide copies of any addenda to all known NOFA recipients as well as post the addenda at [www.oregon.gov/OHCS](http://www.oregon.gov/OHCS).

## 3.0 EVALUATION CRITERIA

There are three (3) parts to the evaluation criteria. The Applicants must pass each criterion below to proceed to the next level of review. If at any point between the criteria listed in sections 3.1 through 3.3 an Application fails, the Application will be deemed *nonresponsive* and will not be reviewed further.

**The Department may employ, but is not limited to, the following selection criteria upon which to base its decisions:**

### 3.1 Application pass/fail review

Each Application will be reviewed for timeliness and completeness of the NOFA requirements. The following are pass/fail criteria:

- A. NOFA cover sheet submitted by due date and time,
- B. Application and charge transmittal form,
- C. Authorization and acceptance form,
- D. Board of Directors resolution,
- E. Organizational documents [if applicable],
- F. Project meets one (1) of the three (3) minimum project qualifications,
- G. Complete NOFA application with required exhibits.

### 3.2 Project Qualification

The Project will be reviewed to ensure:

- A. The amounts requested are within the specified amount of funding allocations, and
- B. The Project meets one (1) of the three (3) minimum project qualifications (see Section 1.3) criteria.

These are pass/fail criteria evaluated as part of the minimum Project qualifications.

### **3.3 Minimum Threshold Qualifications**

After passing Application pass/fail review, in order to qualify for competitive scoring, all minimum threshold qualifications must be met. The following are pass/fail criteria:

#### **A. Asset Management Compliance Review**

Each Applicant will be evaluated using standardized internal process reviewing asset management and compliance categories with portfolio thresholds. Portfolio thresholds are evaluated based on the size of the portfolio.

Compliance categories evaluated will include the following:

- Most recent rating received on management review,
- Physical inspections,
- Tenant file reviews,
- REAC scores,
- Submission of required reporting including financial audits and certifications of program compliance (Program Compliance),
- Owner and management cooperation with reporting and communication, and
- Need or outcome for a community evaluation within the last year.

#### **B. Program Compliance Review**

Applicants must satisfy the program requirements for the all funding sources.

#### **C. Resident Services Review (not required for the Construction Defect Project submissions)**

The Applicant must provide a resident services description at the time of Application responsive to the following goals and guidelines below:

##### **1. Resident Services Description Goals**

The anticipated outcomes and overall goals of the resident services description and subsequent plan are as follows:

Through coordination, collaboration, and community linkages, the residents will be provided the opportunity to access appropriate services that promote self-sufficiency, independent living, and positive life choices.

##### **2. Resident Services Description Guidelines**

A resident services description must, at a minimum, address these general guidelines where applicable:

- a. Will support and serve the general low-income population by improving residents' ability to maintain lease obligations, enhancing quality of life through programs for employment, education, income/asset building, child and youth development, community building and access to services;
- b. Will support and serve the elderly by improving residents' ability to uphold the lease during the aging process through better access to health care and other services, enhanced quality of life through community building, socialization, and other programs;
- c. Will support and serve the special needs population by focusing on the strengths and needs of the target population to provide for their daily support and promote participation in the larger community.

## **D. Readiness to Proceed**

Application must demonstrate the Project's readiness to proceed based on the following information:

### **1. Site Control and Zoning**

#### **Site Control**

The Applicant will have control of the land necessary for the project by the Application deadline and submit evidence of that control with the Application.

At the time of construction closing, the Applicant must have control of the site satisfactory to the Department. Acceptable evidence of site control at Application is a document that has a complete and accurate legal description and is either:

- a recorded deed or conveyance showing the Applicant has ownership,
- a valid purchase and sale agreement,
- a valid option to purchase,
- a valid option for a long-term lease, or
- other evidence satisfactory to the Department.

The Applicant will make sure the name on the evidence of site control and the Application is *exactly* the same. The site control document will also identify the exact same area as the project site listed in the Application and the exact same cost for the land and/or existing buildings for the Project referenced in the development budget provided with the Application. If the site description in the Application and the site control document are not *exactly the same*, the Applicant must provide a narrative description and supporting documentation to clarify how the area and cost for the Project were established.

#### **Zoning**

Is the Project properly zoned for the type of intended Project?

The Applicant will provide the certification of zoning executed by the appropriate zoning authority to verify this.

## **2. Additional Federal Project Resources Status**

If the Applicant has identified additional federal resources, such as rental or capital assistance from HUD, U.S. Department of Agriculture Rural Development (RD), or VA as part of the funding structure, the Applicant will be required to provide evidence that the federal agency for these resources has been notified of the project and is aware of the funding constraints.

## **3. Development Schedule**

The Applicant's development schedule must clearly demonstrate that funds will be invested and the Project will be constructed, leased and stabilized within acceptable time frames.

## **4. Completed Environmental Review Checklist (not needed for the Construction Defect Project submissions)**

The Department's environmental checklist contains questions regarding the suitability of the site, the distances to services, transportation and schools, the nature of existing structures, soil suitability, environmental hazards, safety concerns, noise problems, air quality issues, historic preservation, flood plain and wetlands issues and, finally, solid waste, waste water and storm water concerns. Depending on the impact of the Project, the Applicant must provide a satisfactory mitigation plan for any adverse material information revealed in the environmental checklist.

## **5. Architectural Guidelines (not needed for the Construction Defect Project submissions)**

All architectural and construction guidelines are now located in one (1) of two (2) manuals. The Architectural Design, Construction and Inspection Guidelines (ADCIG) and the Building Enclosure Rehab Guide (BERG) are OHCS minimum quality standards (MQS) on all Projects receiving Funds from OHCS. They are being provided as an aid for owners/developers, architects and contractors for the design and construction of quality affordable housing.

OHCS will use these guidelines to evaluate the plans, specifications and other relevant data of the proposed housing development, including new construction, and rehabilitation of existing buildings. We encourage users to exceed these minimum requirements whenever possible, making Projects more functional and extending their longevity. By increasing items such as the building's energy efficiency, utilizing environmentally friendly materials, and insuring Projects are more cost effective to construct and operate, the owner/developer, taxpayer and the end-user all benefit.

The OHCS's design review will be based in-part on the following broad policy objectives:

- Compliance with the MQS to the greatest extent feasible per the scope of work, funding sources, and Capital Needs Assessment (CNA)

- The quality of the building(s) and other improvements must be consistent with the underwriting and program requirements.
- The Project must comply with all local, state, and federal codes or regulations (including any applicable lead-based paint, mold, and asbestos regulations and any other OHCS requirement).
- The development must be consistent with the demands of the marketplace.
- The design and construction must be consistent with recognized standards and accepted practices in the construction industry.
- The Department reserves the right to object to any proposed building system or material selection.

The MQS are subject to change and modification; this version supersedes and replaces any prior versions. OHCS will also evaluate certain aspects of the guidelines that may require modification in order to meet the unique site, design or use of the development. In this event, OHCS will consider modification requests on a case by case basis.

## 4.0 Competitive Scoring

If the Application passes the tests set out in Sections 3.1 through 3.3 above, then a Scoring Committee will competitively score sections of the Application by the Scoring Criteria described below.

### A. Financial Feasibility: 10 points (all Project type Applications will use this scoring methodology for Financial Feasibility)

#### 1. Sources and Uses, Operating Pro Forma:

- Are the sources and uses well-documented, balanced and accounted for?
- Is it likely all sources will be committed, closed and funded within 120 days?
- Does the operating Proforma contain growth assumptions for a Project of this size and scope in conformance with the Department and industry norms?
- Are the income and expenses well documented by actual amounts?
- Are benchmarks such as; vacancy ratio, expense ratio, expenses per units, and replacement reserves in conformance with the Department guidelines and industry norms?

#### 2. Debt Underwriting

- If there is first mortgage debt, are the loan-to-value, debt service coverage, and breakeven ratio in conformance with the Department guidelines and industry norms?
- If there is no mortgage debt, does the Project have a reasonable cash flow after all expenses?
- Does the operating pro forma predict stable long-term performance?

#### 3. Construction Feasibility

- Is the development budget complete and does it meet the Department guidelines and industry norms for percentage of architectural fees, builder overhead and profit, soft costs, construction contingency and other typical percentages for cost items?
- Is the percentage of land and acquisition cost in conformance with the Department guidelines and industry norms for the market in which this Project is located?
- Do the preliminary plans and specifications generally meet the Department minimum new construction or rehabilitation architectural guidelines for a Project of this type, size and scope? For construction defect Project submissions, the defect needs to be brought back to the original specifications as outlined in the original plans, unless there are code changes.

*Note: Developer fee will not be allowed in a construction defect Project submission*

## **B. Impact of Project: 70 points**

### **SMALL PROJECTS OR GROUP HOME SUBMISSIONS IMPACT CRITERIA**

#### **1. Project Type and Population Served: 0-25 points**

*Applicable criteria:*

- Does the Project serve the lowest income households?
- Does the Project serve a target population for housing?
- Does the Project provide preservation of federally assisted affordable housing?
- What is the integration of the Project with other community housing?

#### **2. Location & Building Features: 0-15 points**

*Applicable criteria:*

- Does the Project include fee simple ownership of the project?
- What is the accessibility of location?
- What is the complementary or responsive building design?
- Is the Project in an area that serves to de-concentrate poverty?

#### **3. Community Impact: 0-30 points**

*Applicable criteria:*

- Is the Project responsive to a community need?
- Is the Project responsive to State or local policy direction?
- Is the Project collaborative?
- Does the Project leverage other resources?
- Does the Project provide innovative ways to overcome obstacles?

### **CONSTRUCTION DEFECT PROJECT SUBMISSIONS IMPACT CRITERIA**

#### **1. Construction Defect Issues:**

*Applicable criteria:*

- Severity of construction defect issues

- Scope of work commensurate with bringing the Project to original specifications
- Life, health, safety issues that have arisen due to the construction defect issues
- If settlement funds have been received, how have they been used to fix the construction defect issues to date, what funds are available in the proposed scope of work?

**Note: Applicant must provide documentation satisfactory to OHCS that clearly shows the deficiency issues were caused by defects in construction at the time of Project was newly constructed or substantially rehabilitated, such as documentation from a formal lawsuit or forensic report documenting construction defect with an explanation as to why a formal lawsuit was not pursued.**

## 2. Impact to the Community: 10 Points

*Applicable criteria:*

- Risk of loss of affordability due to continued defect
- Risk of loss of the units due to continued defect
- Impact to tenants
- Target population served
- Percentage of affordable housing the Project represents in the community
- Percentage of affordable housing for the existing target population in the community

## C. Development Team Capacity: 10 points (all applications will use this scoring methodology for Development Team Capacity)

*Applicable criteria:*

- **Construction Experience:** Does the Applicant have a successful history of leading construction development Projects of similar (or larger) size and scope, such as, mid-rise versus high-rise, wood frame versus steel, and new construction versus rehabilitative construction? If Applicant's history is limited, will the Applicant partner with an appropriate party to mitigate this concern?
- **Financing Experience:** Does the Applicant have a successful history of closing the requested combination of financing, such as mortgage financing, HOME funds, and other grant or government loan programs? If Applicant's history is limited, will the Applicant partner with an appropriate party to mitigate this concern?
- **Management Experience:** Does the Applicant have a successful history of managing existing projects with similar population and programs, size and scope? If Applicant's history is limited, will the Applicant partner with an appropriate party to mitigate this concern?
- **Development Team Experience:** Has the Applicant managed similarly comprised development teams? Are the development team members appropriate for a Project of this type, size, and scope?
- **Capacity:** If an Applicant has applied for multiple Project Reservations, does the development team have the capacity to administratively and financially support all Projects simultaneously?

## APPLICATION EVALUATIONS

### A. Evaluation Process

After passing Application review, Applications will be subject to a Threshold Review. The Department reserves the right to request clarification or changes to the Application and budget as necessary.

Applications submitted will be reviewed to determine that all NOFA threshold requirements (see Sections 3.1 through 3.3) have been met. Applications meeting those criteria will be forwarded to the Scoring Committee for competitive scoring against the Scoring Criteria described in Section 4.0.

The final selection for Reservations, if any, will be of those Applications that best meet the competitive scoring requirements set forth in this NOFA, based on the recommendation from the Scoring Committee, as approved by the Director and the State Housing Council, and as required by the Funding sources applicable to the Application.

### B. Evaluation Criteria

Each Application must clearly address Application requirements and all selection criteria in the NOFA (see Section 3.0).

### C. Notice of Intent to Issue Reservation Letter; Protests

Applicants will be notified in writing of the Department's Notice of Intent to Issue a Reservation Letter which will also be posted on the Department's website.

An unsuccessful Applicant may protest the selection process, Application Reservation or, if applicable, rejection of its Application. The protest must be in writing, and must be received at the address set forth in Section 2.3, within **thirty (30)** calendar days of written notification date of the pending Reservation to another Applicant or notice of Application rejection. The protest must state with clarity the issue protested, and the rationale and basis for such protest. The envelope containing the protest **MUST** be marked PROTEST, and **MUST** identify the NOFA number, the closing time and date for acceptance of Applications, the Department contact person, and address as listed in Section 2.3 of this NOFA.

The Department will provide written responses to all timely filed protests. Failure to timely provide a qualifying protest will be deemed a failure to exhaust administrative remedies and terminate further rights by an unsuccessful Applicant to challenge any related department actions.

## GENERAL NOFA TERMS

The Department reserves the right and option to amend any Reservation Letter or other related documents (collectively, the Agreement) that result from a Reservation made pursuant to this NOFA. All amendments shall be in writing and signed by relevant authorized parties.

ORS 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in the State. A foreign corporation (ORS 60.001) means a for-profit corporation incorporated under a law other than the law of the State of Oregon. If a foreign corporation is selected for the Agreement because of this NOFA, it must register to do business in Oregon.

The Department reserves the right at its sole discretion:

- (A) to amend the NOFA prior to the closing date,
- (B) to amend the deadline for submitting Applications,
- (C) to determine whether an Application does or does not substantially comply with the requirements of this NOFA,
- (D) to waive any minor irregularity, informality, or nonconformance with the requirements of this NOFA;
- (E) to obtain from and/or provide to other public agencies, upon request, references regarding the Applicant's performance;
- (F) at any time prior to Agreement execution (including after announcement of the apparent Reservation):
  - (1) to reject any Application that fails to substantially comply with all prescribed NOFA procedures and requirements; including the executing and recording of documents satisfactory to the Department and,
  - (2) to reject all Applications received and cancel this NOFA upon a finding by Department that such cancellation would be in the best interests of the State;
- (G) to seek clarification on any or all Applications; and
- (H) to take any other action that the Department determines to be necessary or appropriate.

This NOFA and one (1) copy of each original Application received, together with copies of all documents pertaining to the Reservation, shall be kept by Department and made a part of a file or records, which shall be open to public inspection. If an Application contains any information that is considered a trade secret under ORS 192.501 (2), each sheet containing such information must be marked with the following:

***"This Application constitutes a trade secret under ORS 192.501 (2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."***

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "*unless the public interest requires disclosure in the particular instance,*" ORS 192.501 (2). Therefore, non-disclosure of a document or any portion of a document submitted as part of an Application may depend upon official or judicial determination made pursuant to the Oregon Public Records Law.

If an Application contains any information that may be considered exempt from disclosure under the various grounds specified in Oregon Public Records Law, ORS 192.430 through 192.505, Applicants must clearly designate as exempt any portion of its Application it considers exempt, along with a citation to the authority relied upon. Application of the Oregon Public Records Law will determine whether any information is actually exempt from disclosure and the Department reserves its discretion as to whether or not to exercise an exemption. Identifying an Application in whole as exempt from disclosure is not acceptable. Failure to identify with specificity the portion(s) of the Application claimed to be exempt from disclosure, and the authority used, shall be deemed a waiver of any future claim of exemption from disclosure of that information.

The Applicant will be required to assume responsibility for performance required by the Agreement, whether performed by the Applicant, a representative, assignee or subcontractor. The Department considers the Applicant responsible for any and all contractual matters.

An Applicant aggrieved by a final determination made by the Department during the Application review or minimum threshold qualifications with respect to the success of its NOFA Application must request review by the Department of such determination within **ten (10)** days of its receiving notice from the Department of that determination.

The request for review must be **in writing**, contain an explanation of the basis for challenging the Department's determination and include any supporting information. The envelope containing the request for review -must be marked protest, and must identify the NOFA number, the closing time and date for acceptance of Applications, the Department contact person, and be received by the Department at its main Salem Office, 725 Summer Street NE, Suite B, Salem, OR 97301-1266, not later than 4:00 PM on the tenth day after the Applicant's receipt of notice from the Department.

The Applicant will be deemed to have received such notice upon the sooner of:

- (A) three (3) days after the Department's determination is mailed to the Applicant,
- (B) two (2) days after such determination is posted to the Department's website,
- (C) two (2) days after the list of successful NOFA Applicants is posted to the Department's website,
- or
- (D) one (1) day after such determination is emailed to the Applicant.

The Department may request additional information from the Applicant with respect to its request and consider such other information as it deems appropriate. The Department will endeavor to provide a written response to a qualifying request within thirty (30) days.

The Department will provide written responses to all timely filed protests. Failure to timely provide a qualifying protest will be deemed a failure to exhaust administrative remedies and terminate further rights by an unsuccessful applicant to challenge any related department actions.

Reservations, allocations or awards (collectively, Determinations) subject to State Housing Council review under ORS 456.561, and Determinations where additional Department funding supporting such Determinations are subject to Council review, are contingent, *inter alia*, upon Council approval of those Determinations or supporting funding. The Council may approve, reject, modify, or further condition

funding awards submitted for its review, thereby directly or indirectly impacting Department Determinations.

All Reservations made pursuant to this NOFA are subject to the successful negotiation, execution, and recording (if required) of Agreement documents satisfactory to the Department in its sole discretion. Projects that have only a leasehold interest in relevant real property must include documented commitments executed and recorded by the landlord satisfactory to the Department including, but not limited to, covenants with respect to the ongoing use and operation of the real property and leasehold interest for affordable housing acceptable to the Department.

The Department may charge, and the Applicant shall pay, legal and administrative costs incurred by the Department in negotiating Agreement and other related documents.

Provisions stated in the form of a question in this NOFA shall be construed as required action by Applicants.