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PERMANENT ADMINISTRATIVE ORDER

OHCS 23-2020
CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

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RULES:

813-041-0000, 813-041-0006, 813-041-0010, 813-041-0015, 813-041-0020, 813-041-0026, 813-041-0027

AMEND: 813-041-0000

RULE TITLE: Purpose

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Updating language and statutory references

RULE TEXT:

OAR 813 Division 41 accomplishes the general purposes of ORS 315.163 to 315.169 and describes the Agriculture Workforce Housing Tax Credit (AWHTC) Program. The purpose of the program is to encourage the rehabilitation of existing housing and the construction or placement of additional housing for agricultural workers, retired and disabled agricultural workers, and their immediate families.

STATUTORY/OTHER AUTHORITY: ORS 315.167 - 315.169, 458.650

STATUTES/OTHER IMPLEMENTED: ORS 315.167

AMEND: 813-041-0006

RULE TITLE: Definitions

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Removing definitions duplicated from statute. Updating definitions. Updating statutory references.

RULE TEXT:

Terms used throughout this division (OAR 813-041) are defined in Oregon Revised Statute (ORS) or in the OHCS General Definitions (OAR 813-005-0005). Terms used in this division observe those definitions except as defined below:

(1) "Construction costs" means expenses incurred creating or making a new structure; or altering, partially constructing, or repairing an existing structure. Construction costs include:

(a) "Excavation costs" means expenses incurred in physically preparing a site for construction;

(b) "Installation costs" means expenses incurred installing different systems, fixtures, and parts of the finished building including but not limited to plumbing, electrical, HVAC, windows, exterior sheathing, countertops, flooring, and interior trim and molding;

(c) "Permit costs" means expenses incurred obtaining the necessary permits associated with construction of the project.

(2) "Finance costs" means expenses incurred obtaining capital funds or credit for the project including interest charges and fees.

(3) "Immediate family" means those persons the agricultural worker, including retired and disabled agricultural workers, considers their immediate family, and can include domestic partners, parents, and children whether biological, adoptive, or fostered.

(3) "Land costs" means expenses incurred acquiring the building site, excluding the costs of any preexisting structures or improvements.

(4) "Letter of Credit Approval" or "LOCA" means the OHCS-issued letter that grants the recipient of AWHTC Program credits the permission to use AWHTC to reduce their income tax burden as provided in statute.

STATUTORY/OTHER AUTHORITY: ORS 315.163 - 315.169

STATUTES/OTHER IMPLEMENTED: ORS 315.163

AMEND: 813-041-0010

RULE TITLE: Program Description and Application Requirements

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Updating rule language for clarity and grammar. Updating statutory references.

RULE TEXT:

(1) OHCS allots AWHTC Program credits on an annual basis. Credits and awards of these credits are identified by the year in which OHCS makes the credits available for allocation.

(2) A taxpayer or a contributor may obtain a Letter of Credit Approval (LOCA) from OHCS for the purpose of claiming an AWHTC Program credit by submitting an application and meeting the requirements described in OAR 813-041-0025.

(3) The application must be submitted on the application form furnished or required by OHCS and must comply with all requirements established by OHCS.

(4) To apply for the AWHTC Program credit for a specific year, a taxpayer or a contributor must file the application in a manner consistent with this section. An application is filed with OHCS:

(a) Upon receipt by OHCS staff if the application is mailed;

(b) As of the date received when submitted electronically, provided the application charge is received by the date specified by OHCS; or

(c) As of the time and date stamped by OHCS if the application is hand delivered.

(5) A taxpayer or a contributor is responsible for being informed of current application requirements for the program, including but not limited to information as provided by OHCS through its applicable solicitation for applications.

(6) A proportion of the total available yearly allocation of AWHTC Program credits will be set aside for the acquisition, construction, installation, or rehabilitation of employer-sponsored housing units.

(a) This set-aside will be available to operators of agricultural enterprises to acquire, construct, install, or rehabilitate housing for agricultural workers who are employed on land zoned for agricultural use.

(b) This set-aside will remain in place until the entire amount has been allocated or until September of that year's AWHTC Program credit allocation.

STATUTORY/OTHER AUTHORITY: ORS 315.167 - 315.169, 458.650

STATUTES/OTHER IMPLEMENTED: ORS 315.167

AMEND: 813-041-0015

RULE TITLE: Evaluation of Applications.

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Updating rule language to clarify process of application evaluation. Updating statutory references.

RULE TEXT:

- (1) OHCS's evaluation and approval of an application is subject to the terms of the applicable solicitation, the provisions of this rule, other applicable law, and the annual limitation on the total of estimated eligible costs for all approved projects for the calendar year established under ORS 315.167.
- (2) The application review process may be on an invitation basis, a first come-first reviewed process, a competitive review process, an evaluation as a demonstration program, or any other process deemed necessary or appropriate by OHCS.
- (3) OHCS will indicate the application review process for a particular year's allotment of AWHTC Program credits in the applicable solicitation.
- (4) Employer-sponsored applications will be evaluated and reviewed separately from community-based applications.
- (5) Applications are subject to evaluation by OHCS according to criteria that include the following minimum requirements:
 - (a) Completeness, level of detail, and accuracy of the information included in the application;
 - (b) The qualifying status of the taxpayer/contributor and of the proposed project;
 - (c) The viability of the project, including as reflected in the estimated eligible costs and other support funding as appropriately documented;
 - (d) The number of units reserved for Agricultural workers and their families, and
 - (e) Such other criteria established by OHCS, including but not limited to those described in the applicable solicitation.
- (6) Community-based applications will also be evaluated for their plans to affirmatively further fair housing laws.
- (7) An application is subject to one or more of the following actions by OHCS:
 - (a) An application determined by OHCS in the evaluation process not to include specific or substantial information about the project or to be incomplete or inaccurate in any respect may be declined by OHCS and returned to the taxpayer as not qualifying for further evaluation;
 - (b) OHCS may issue a request to the applicant to provide or correct any information deemed missing, inaccurate, or inadequate in the application. The applicant will have 15 days to answer OHCS's request for information. If the supplemental information is submitted after this deadline or deemed inadequate by OHCS, the application will be declined by OHCS and will not be eligible for a reservation of AWHTC Program credits;
 - (c) Acceptance of the application and resulting issuance of a reservation of AWHTC Program credits pending further action by applicant as laid out in the reservation letter. The reservation amount cannot exceed fifty percent (50%) of eligible costs as indicated in the application; or
 - (d) Acceptance of the application and resulting issuance of a standby notice per OAR 813-041-0020.
- (8) Factors that OHCS may consider in prioritizing one application over others may include, but are not limited to:
 - (a) The quality of the application when compared to the other applications submitted and received by OHCS;
 - (b) The location of the project;
 - (c) The market demand for and financial feasibility of the project;
 - (d) The particulars of the appraisal of the project;
 - (e) Whether or not the project meets all applicable state and local land use and zoning requirements, housing codes and similar requirements;
 - (f) The quality of the housing over and above the factors listed in OAR 813-041-0015 (7) (e);
 - (g) Whether or not the project meets all other applicable laws and program requirements;
 - (h) The target population to be served;
 - (i) The availability and sustainability of related tenant services;

- (j) The extent and duration of affordability to be provided;
 - (k) the quality of their fair housing plan if Community-based, and
 - (l) OHCS's experience with the project sponsor and its agents, representatives, employees, and contractors.
- (9) Applicants who have received a LOCA in a previous year's allotment may not apply for AWHTC Program credits for the same project for a period of ten (10) years unless they apply for and are granted a waiver in writing by OHCS.
- (10) Applicants who received a partial award in the latest allotment of AWHTC Program credits may apply for full funding in the next year's allotment without seeking a waiver.

STATUTORY/OTHER AUTHORITY: ORS 315.167 315.169, 458.650

STATUTES/OTHER IMPLEMENTED: ORS 315.167

AMEND: 813-041-0020

RULE TITLE: Standby Applications

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Updating rule language for clarity and grammar.

RULE TEXT:

- (1) Qualifying applications not selected for a reservation of AWHTC Program credits in a particular year because the amount of available AWHTC Program credits has already been allocated will be put on a standby list for a potential allocation if any previously allocated AWHTC Program credits become available.
- (2) If an application is declined by OHCS as not qualifying for further evaluation solely because the estimated eligible costs, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, exceed the limitation on the total of estimated eligible costs under ORS 315.167, the applicant may:
 - (a) Request a reduction of the estimated eligible costs for the project to an amount that, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, would not exceed the limitation; or
 - (b) Request that OHCS place the taxpayer on a standby list for future possible eligibility.
- (3) Applications on a standby list under this rule will be held in such priority as OHCS determines to be appropriate considering factors including, but not limited to those listed in OAR 813-041-0015, above.
- (4) OHCS may, at its discretion, select and process a standby application whenever OHCS determines that AWHTC Program credits are available for funding the application. The applicant may update the application as needed within the time provided by OHCS.
- (5) All outstanding standby applications expire on December 31 of the calendar year of their filing.

STATUTORY/OTHER AUTHORITY: ORS 315.163 - 315.169, 456.555

STATUTES/OTHER IMPLEMENTED: ORS 315.163 - 315.169

ADOPT: 813-041-0026

RULE TITLE: Requirements for Obtaining a Letter of Credit Approval

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Adding language to clarify the process for receiving a Letter of Credit Approval.

RULE TEXT:

(1) After issuance of a reservation letter for AWHTC Program credits and satisfactory completion of reservation requirements by applicant, OHCS will issue of a Letter of Credit Approval (LOCA). The LOCA amount cannot exceed fifty percent (50%) of final eligible costs of the project. If final eligible costs do not support the AWHTC Program credit amount in the reservation letter, the AWHTC Program credit award will be reduced from the amount requested to the minimum amount required to make the project financially viable (as determined by OHCS)

(2) OHCS will release a Letter of Credit Approval (LOCA) provided the taxpayer or contributor has met the following criteria:

(a) OHCS has issued a reservation of AWHTC;

(b) The local planning authority has issued a Certificate of Occupancy or similar official declaration that the project is ready for residents; and

(c) OHCS has verified final eligible costs for the project.

STATUTORY/OTHER AUTHORITY: ORS 315.167 - 315.169, 456.555

STATUTES/OTHER IMPLEMENTED: ORS 315.167

AMEND: 813-041-0027

RULE TITLE: Charges, Annual Certification, and Compliance Monitoring

NOTICE FILED DATE: 09/29/2020

RULE SUMMARY: Updating language for clarity. Adding compliance language per 2019 HB 2141.

RULE TEXT:

- (1) OHCS may assess, and the assessed applicant or other applicable party will pay, such charges as OHCS determines appropriate for reviewing an application and for issuance of a LOCA.
- (2) OHCS may assess, and the applicant, owner, operator, or other applicable party will pay, such charges as OHCS determines appropriate from time to time for its monitoring of the project for compliance with program requirements and/or enforcement of appropriate program compliance, including but not limited to:
 - (a) Meeting appropriate construction and maintenance standards, and
 - (b) Satisfying and documenting applicable affordability compliance.
- (3) All recipients of AWHTC are required to fill out and submit an annual certification form provided by OHCS to certify that all units set aside for the exclusive use of agricultural workers continue to be inhabited by agricultural workers.
- (4) If, after OHCS has issued the Letter of Credit Approval (LOCA) and during the term the taxpayer or contributor is using the tax credit, OHCS finds the project is out of compliance with any of the program requirements, OHCS may take one or more of the following actions:
 - (a) Notify Oregon Department of Revenue,
 - (b) Notify Oregon Occupational Safety and Health Administration,
 - (c) Allow the project to address the issue to come back into compliance,
 - (d) Suspend any remaining tax credits, or
 - (e) Revoke any remaining tax credits.
- (5) All projects will need to further certify their continued compliance with state fair housing laws.
- (6) The direct recipient of the tax credit may apply to OHCS for a waiver of the remaining compliance period after five (5) years. Among the factors OHCS may consider in granting or denying a waiver are:
 - (a) They provide documentation, confirmed by OHCS, showing consistent compliance with program requirements for the preceding five-(5) year period,
 - (b) They provide further documentation of a declining trend in the demand for agriculture workforce housing within a relevant area and evidence of the taxpayer or contributor's inability to fill the agriculture workforce units despite reasonable efforts to do so,
 - (c) There is documented loss of financial feasibility of the agriculture workforce housing that cannot be corrected, or
 - (d) The condition of the agriculture workforce housing has degraded through no fault of the taxpayer or contributor.

STATUTORY/OTHER AUTHORITY: ORS 315-164 - 315.169

STATUTES/OTHER IMPLEMENTED: ORS 315.163 - 315.169