

OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

Chapter 813

Division 37

AFFORDABLE HOUSING LAND ACQUISITION REVOLVING LOAN PROGRAM

813-037-0005

Purpose and Objectives

OAR chapter 813, division 37 is established to enact the Affordable Housing Land Acquisition Revolving Loan Program or Land Acquisition Program (“LAP”) as authorized in ORS 456.502. LAP is also subject to the Department’s general rules, including but not limited to OAR chapter 813, division 5, and subject to the Department’s general procedures for public contracts and procurements found in OAR chapter 813, division 6. The purpose of LAP is to provide financial assistance to eligible organizations to purchase land for affordable housing development. Additional policies and instructions are outlined in the Program Description and Application Guidelines Manual dated October 24, 2018 (“LAP Manual”) incorporated herein by reference. The LAP Manual may be accessed online at the Department’s website.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0010

Definitions

The following words and terms have the following meanings unless the context would clearly indicate otherwise.

- (1) “Affordable Housing” means housing that is affordable to households with incomes less than or equal to 80 percent of the area median income for the county in which the housing is built.

- (2) “Current Market Rate” means the ten year constant treasury maturity year rate, as determined at the time the individual loan is closed upon, plus two and one half percent.
- (3) “Department” means the Housing and Community Services Department for the State of Oregon.
- (4) “Eligible Organization” means Local Governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in this state and regional or statewide nonprofit housing assistance organizations.
- (5) “Eligible Purpose” means the development of Affordable Housing and/or facilities intended to provide supportive services to Affordable Housing residents and Low Income Households in the nearby community.
- (6) “Extenuating Circumstances” means extreme or unusual conditions that resulted in an inability to repay the loan and that were unknowable at the time of the loan.
- (7) “Identity of Interest” means any relationship where the purchaser and seller are related, affiliated through a business relationship, or both.
- (8) “Loan Recipient” means the Eligible Organization that has applied for and received financial assistance under the LAP.
- (9) “Local Government” means a county, city, district or other public corporation, commission, authority, or entity organized and existing under statute or city or county charter.
- (10) “Low Income Household” has the meaning given in ORS 456.270.
- (11) “Substantially Completed” means that the Department has made a determination that enough project milestones have been reached to reasonably conclude that additional time will result in LAP compliance.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0015

Availability and Source of Affordable Housing Land Acquisition Revolving Loan Program (LAP) Funds

The Affordable Housing Land Acquisition Revolving Loan Program or Land Acquisition Program (“LAP”) was initially funded by repurposing funds already in the Department’s funding stream. Once moved to the LAP, the repurposed funds are to be continuously used for the LAP allowing for eligible organizations to reserve land assets for eligible purposes.

Any additional funding may be targeted towards specific needs within the State, provided that all funding sources will be used for eligible purposes and in a manner consistent with the established program criteria.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0020

Program Criteria

- (1) The LAP is overseen by the Department. At Department discretion, Department may utilize a qualifying nonprofit organization to serve in a fiduciary capacity as a “program administrator”.
- (2) Department or their program administrator, with Department’s approval, may provide loans to eligible organizations to purchase land on which to develop affordable housing, and to build facilities intended to provide supportive services to affordable housing residents and low income households in the community.
- (3) 40 percent of loans made through the LAP shall go to eligible organizations operating homeownership programs for low income households. If the entire 40 percent cannot be loaned for homeownership programs, the remainder may be loaned for programs eligible in subsection (4) of this rule.
- (4) 60 percent of loans, plus any funding that was unable to be used for homeownership purposes as described in subsection (3) of this rule, shall be made available to eligible organizations for the purpose of affordable housing and to build facilities intended to provide supportive services to affordable housing residents and low income households in the community.
- (5) Subject to available funding, LAP loans shall be made available in a manner consistent with the current application process as issued by the Department.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0025

Application Procedure Requirements

- (1) The process to obtain LAP funding will be specified in solicitation documents issued by the Department, as supplemented in the LAP Manual (See OAR 813-037-0005). Additional direction and guidance can be found in the LAP Manual.
- (2) The Department may require payment of a non-refundable application charge from any applicant requesting LAP funds. In the event that the application is not considered due to a lack of funding availability, the application charge will be returned.
- (3) The Department may refuse to process applications or terminate processing the application if it determines that an application is incomplete or otherwise nonconforming (see LAP Manual – OAR 813-037-0005) or if the applicant fails to meet the definition of an eligible organization.
- (4) Property already purchased or donated is not eligible for LAP funding.
- (5) Property with a cost reimbursement agreement is not eligible for LAP funding.
- (6) Property purchased from an entity with an identity of interest to the buyer is not eligible for LAP funding.
- (7) Property with option agreements or purchase sale agreements signed prior to the date of the public program opening announcement or 10 business days prior to funding allocation application acceptance, whichever is longest, are not eligible for LAP funding.
- (8) Property designated for renovation is not eligible for LAP funding. Exceptions may be allowed for incidental buildings on a case by case basis (for example, a maintenance or storage shed)

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0030

Award Determination

- (1) There is no maximum loan amount on LAP loans; however, LAP is not intended to cover 100% of site acquisition costs. The amount of any LAP loan is subject to the discretion of the Department considering factors that may include, but are not limited to:
 - (a) the availability of LAP funds;
 - (b) the availability of other funding to the applicant;
 - (c) the amount of affordable housing to be developed in relation to the size of the loan;
 - (d) the timing of the proposed development;

- (e) the capacity and past performance of the applicant in developing and managing affordable housing; and
 - (f) the need for affordable housing in the area.
- (2) The Department shall be in the first lien position on all property loan documents.
 - (3) Loan applications must include a proposed affordable housing development plan that indicates the number of affordable housing units intended, a description of any other facilities that are being considered for the property, and an estimated timeline for completion of the development. Additional information including, but not limited to, project readiness and land use, may be required by the Department as part of the application process.
 - (4) Subject to the placement of appropriate affordable housing into service on the land acquired by the LAP loan within eight years of the loan's receipt, LAP loans will have a simple interest rate of not more than one percent if all loan terms and regulatory requirements are met. Collection costs, late fees, interest upon accelerated payments due to an event of default and post-judgment interest are not subject to the one percent limitation.
 - (5) Subject to the placement of appropriate affordable housing into service on the land acquired by the LAP loan within eight years of the loan's receipt, LAP loan fees, if applicable, will not exceed one percent if all loan terms and regulatory requirements are met. Collection costs, late fees, interest upon accelerated payments due to an event of default and post-judgment interest are not subject to the one percent limitation.
 - (6) All loans will include documents listing the current market rate of the loan payable in the event of a loan default.
 - (7) All housing developed on the property acquired with LAP funding shall be preserved as affordable housing for a minimum of 30 years. The affordability restrictions shall be documented through documents acceptable to the Department including, but not limited to, restrictive covenants, recorded at the loan recipient's expense against the property acquired with LAP funding.
 - (8) Loan payments may be deferred by the Department. However, repayment shall begin no later than when the project financing has closed. Loan documents must be satisfactory to the Department in its sole discretion. Loan recipients must reimburse the Department for its legal costs in negotiating terms of applicable loan documents.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-037-0035

Loan & Project Oversight

- (1) Within five years of receiving a loan, a loan recipient must present the Department with an updated development plan if the development has not been completed and placed into service.
 - (a) The development plan must include a current development design, committed and anticipated financial resources dedicated to the project and an estimated development scheduled that includes completion of the project within eight years.
 - (b) The updated development plan must be substantially consistent with the original development plan.
- (2) Within eight years of receiving a loan under the LAP, the project must be completed and placed into service or the loan interest rate limit will be reestablished at the current market rate. Failure to place a project in service within eight years of receiving a loan under LAP may also be deemed by the Department to be an event of default.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History:

813-37-0040

Program or Loan Default

- (1) The Department may deem a/an LAP loan to be in default when one or more of the following events occur:
 - (a) A loan recipient does not place appropriate affordable housing into service on a property acquired under this section within eight years of receiving Department's LAP funding.
 - (b) The property is not used for an eligible purpose as determined by the Department.
 - (c) Loan repayment is not made as required under the loan agreement.
 - (d) A Loan Recipient does not provide an updated development plan to the Department within five years of receiving a loan.
 - (e) The Loan Recipient otherwise fails to perform in a manner consistent with the LAP or applicable loan documents.

(2) If a loan recipient fails to place appropriate affordable housing into service in conformance with subsection (1)(a) or when a loan or LAP default otherwise occurs, the loan recipient must pay the Department an amount consistent with the principal of the original loan plus compounded interest calculated at the current market rate. Loan fees and other costs may also apply. Notwithstanding the foregoing, the Department may, in its sole discretion, grant a partial or total exemption from the repayment requirements of this section if the Department determines that a project is substantially completed or that the property has been substantially used as described in the original affordable housing development plan. When determining whether to grant a partial or total exemption under this section, the Department may consider factors including, but not limited to, extenuating circumstances and potential benefits to the LAP.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

History: