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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OHCS 2-2021

CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Update of the 2019 Qualified Allocation Plan, adding a Federal Disaster preference to scoring criteria.

EFFECTIVE DATE: 01/25/2021 THROUGH 07/19/2021

AGENCY APPROVED DATE: 01/25/2021

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NEED FOR THE RULE(S):

The addition of this scoring criteria allows OHCS to target federal development dollars, allocated through the Federal Low Income Housing Tax Credit (LIHTC) Program, to areas impacted by the 2020 Wildfires. Without the emergency rule change, scoring that prioritizes these areas would be delayed a year. The LIHTC program is the largest affordable housing development program in Oregon and the United States. LIHTC program application opening is scheduled to begin this month. Though this is an ongoing program, the rule changes need to be made on an emergency basis to meet the program funding schedule as provided to partners and awarded annually.

JUSTIFICATION OF TEMPORARY FILING:

he 2021 Notice for Funding Availability (NOFA) applications are set to launch January 22nd, 2021. Ensuring that a Federally Declared Disaster Area scoring preference in these NOFA offerings is critical to addressing the emergent need of affordable housing in areas affected by the 2020 Wildfires.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The Low Income Housing Tax Credit (LIHTC) Tax Reform Act of 1986, IRS Section 42, OAR 813-090, ORS 456.515 through 456.720, and 456.559(1)(f).

HOUSING IMPACT STATEMENT:

These rules do not affect the cost of development of a 6000 square foot parcel and the construction of a 1200 square foot detached single-family dwelling on that parcel.

RULES:

813-090-0010, 813-090-0015

AMEND: 813-090-0010

RULE TITLE: Definitions

RULE SUMMARY: Updating definition of QAP to refer to the most up-to-date version.

RULE TEXT:

Terms used throughout OAR chapter 813, division 090 may be defined in 26 U.S.C. § 42, in Oregon Revised Statute (ORS), or in the OHCS General Definitions (OAR 813-005-0005). Terms used within this division observe those definitions except as defined below. All words and terms used in OAR chapter 813, division 90 are as provided in 813-005-0005 and herein. As used in these rules:

- (1) "Applicable fraction" means the portion of a building that is treated as low-income use and generally eligible for the low-income housing tax credits.
- (2) "Applicable percentage" means the credit rate used in calculating the low-income housing tax credit. The applicable percentage includes the applicable federal rate (AFR) for the 9% annual credit, or competitive credit, which applies to eligible construction and substantial rehabilitation costs, and the 4% annual credit, or non-competitive credit, which applies to the acquisition cost of existing buildings to be rehabilitated.
- (3) "Applicant" means a person or entity that applies for an allocation of LIHTCs from OHCS by completing an application provided by OHCS. Once OHCS accepts the applicant's application and an allocation is made, the applicant becomes a project owner.
- (4) "Carryover allocation" means an allocation of LIHTCs that is made with respect to a project pursuant to IRC Section 42(h)(1)(E) and/or IRC Section 42(h)(1)(F), and in conformity with IRS Notice 89-1 and Treasury Regulations Section 1.42-6. OHCS issues a carryover allocation when a project will not be placed in service by close of the calendar year of the allocation but has incurred more than 10% of its anticipated costs within the calendar year in which the allocation was received or six (6) months after the date of the carryover.
- (5) "Credit authority" means the dollar amount of low-income housing tax credits available for allocation by OHCS for any calendar year and can include estimates of future amounts.
- (6) "Declaration of Land Use Restrictive Covenants" means a recorded document against a property that evidences the original intent and limitations of the LIHTC affordability (and other program) restrictions.
- (7) "Financial feasibility" means the viability of a project after taking into consideration its total costs and projected revenues.
- (8) An "IRS Form 8609" or "Form 8609" means the Internal Revenue Code (IRS) Form 8609, Low-Income Housing Credit Allocation and Certification that is issued to a Project Owner when a carryover allocation is approved. Owners of qualified low-income building(s) are allowed a low-income housing credit for each qualified building over a 10-year credit period. A separate Form 8609 must be issued for each qualified low-income building in a multiple building project.
- (9) "Housing credit agency" means the designated state agency that administers IRC Section 42 and allocates LIHTCs on behalf of the Internal Revenue Service.
- (10) "Low-income housing tax credit" or "LIHTCs" means the low-income housing tax credits available on a project pursuant to IRC Section 42. The amount of low-income housing tax credits available for allocation to a project is the amount that OHCS determines is necessary to make the project financially feasible but in no instance can it be greater than the applicable percentage of the qualified basis of each qualified low-income building.
- (11) "Notice of Funding Availability" or "NOFA" means the method OHCS informs interested parties about how to apply for low-income housing tax credits and other financial resources.
- (12) "Placed in service" means a project is completed and occupied by qualifying residents. In the case of multiple-building projects, each building has its own placed-in-service date.
- (13) "Program requirements" means these administrative rules, all funding agreement terms and conditions, OHCS directives, applicable OHCS handbooks and manuals (including but not limited to OHCS' LIHTC Manual defined herein and the General Policy and Guideline Manual described in OAR 813-005-0020, IRC Section 42 of 1986, as amended, and corresponding regulations, and other applicable laws, including federal, state, and local laws, codes, ordinances, and orders, all of which as may be amended from time to time.
- (14) "Project" means a "qualified low-income housing project" as defined in IRC Section 42(g).

(15) "Project owner" means a person or entity whose application for LIHTCs has been accepted by OHCS and who is the owner also known as the borrower of a Project.

(16) "Qualified Allocation Plan" or "QAP" means the amended 2019 State of Oregon Qualified Allocation Plan for Low Income Housing Tax Credits, dated January 20th, 2020, as described in 813-090-0015 and IRC Section 42(m)(B). The QAP may be accessed online at OHCS' website.

(17) "Qualified basis" means the amount of eligible basis that will be used to generate low-income housing tax credits and is based upon the proportion of the property that will be used for affordable housing. The qualified basis is equal to the eligible basis, multiplied by the applicable fraction.

(18) "Reservation and extended use agreement" or "REUA" is a contract between OHCS and the project owner whereby the project owner agrees, among other things, to provide and maintain the project and to guarantee its compliance with the requirements of IRC Section 42 and OHCS by executing and recording a Declaration of Land Use Restrictive Covenants on the project property in return for an allocation of LIHTCs in accordance with IRC Section 42(h)(6). It will also include, by reference, a carryover allocation agreement.

STATUTORY/OTHER AUTHORITY: ORS 183, 456.515 - 456.720

STATUTES/OTHER IMPLEMENTED: ORS 456.559(1)(f), 26 U.S.C. § 42

AMEND: 813-090-0015

RULE TITLE: Qualified Allocation Plan; Allocation of Credit Authority

RULE SUMMARY: Updating QAP reference to the current version.

RULE TEXT:

- (1) The amended 2019 Qualified Allocation Plan (referred to hereafter as QAP) with the requirements and standards therein, dated January 20th, 2021, is incorporated into and adopted as part of this division of administrative rules, by reference.
- (2) The 2019 QAP may be accessed online at OHCS' website.
- (3) OHCS, as the authorized state housing credit agency, develops and maintains a Qualified Allocation Plan for the allocation of both non-competitive, or 4%, and competitive, or 9%, LIHTCs.
- (4) OHCS may, to the extent of its credit authority, allocate LIHTCs pursuant to the current QAP approved by executive order and then in effect.
- (5) OHCS will allocate the LIHTCs in compliance with the program requirements. Applications will be solicited during specified periods within OHCS' Notice of Funding Availability. OHCS can also select from a pool of qualified applicants, or such other process as OHCS deems appropriate.
- (6) OHCS shall maintain a record of allocations and the balance of credit authority remaining for each calendar year.

STATUTORY/OTHER AUTHORITY: ORS 456.515-456.720

STATUTES/OTHER IMPLEMENTED: ORS 456.508, 456.510, 456.513, 456.559, 456.605, 456.626, 456.722, 26 U.S.C. § 42