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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OHCS 8-2021
CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

FILED
09/24/2021 9:55 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updating IDA rules to reflect new investments and flexibilities around participation limits.

EFFECTIVE DATE: 09/25/2021 THROUGH 03/23/2022

AGENCY APPROVED DATE: 09/09/2021

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NEED FOR THE RULE(S):

In the 2021 Legislative Session, HB 5006 and HB 2433 adopted new investments and flexibilities around participation limits for the Individual Development Accounts. This rulemaking is a direct reflection of those Legislative changes.

JUSTIFICATION OF TEMPORARY FILING:

If the agency failed to immediately implement these temporary rule amendments, OHCS would be out of compliance with new Legislative changes effective September 25, 2021. Eligible households participating in the IDA Program throughout the state would suffer, because they would be subject to the previous, lesser amount for participation limits. The agency was working diligently with IDA Program managers and stakeholders to prepare and plan for the statute change. If OHCS were to delay this change through a permanent filing, the agency would cause program implementation issues for the participants and providers through incorrect guidance. By filing temporary rules, OHCS will provide correct guidance for program participants and providers and ensure those populations eligible for the IDA Program benefit from the Legislative changes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 5006 and HB 2433 (2021 Legislative Session)

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:

813-300-0010, 813-300-0060, 813-300-0080, 813-300-0120, 813-300-0160

AMEND: 813-300-0010

RULE TITLE: Definitions

RULE SUMMARY: Update rule to align with ORS 458.670 (6)(b)(B) by defining "Net worth" valued at \$60,000 to \$120,000.

RULE TEXT:

As used in these rules, unless the context indicates otherwise:

- (1) "Account holder" means an Oregon resident, age 12 or older, of a lower income household that has a net worth of less than \$20,000 who is the named depositor of an individual development account.
- (2) "Administrative and operational costs" means all reasonable and appropriate administrative and program costs approved by the department or its designee for the operation of the IDA program as outlined in the fiduciary organization program plan. Such costs include, but are not limited to costs related to marketing, program implementation and evaluation.
- (3) "Contributor" means a person or entity contributing funds to the Department, its designee or to a fiduciary organization for the purpose of matching IDA deposits by an account holder or for funding program plan operations.
- (4) "Department" means the Housing and Community Services Department established in ORS 456.555 and, where applicable, its designee.
- (5) "Designated beneficiary" means a minor-age member of the account holder's household who is the beneficiary of an IDA used to pay the member's extracurricular non-tuition expenses designed to prepare the member for post-secondary education or job training.
- (6) "Fiduciary organization" means a non-profit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on January 1, 1999, or a federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state, as selected by the department or its designee under these rules.
- (7) "Fiduciary organization program plan" or "program plan" means a mission statement by a fiduciary organization and the corresponding detailed plan by it for the solicitation of contributions (tax credit or otherwise) and prospective account holders, the management of IDA's and their associated personal development plans, and the operation of the fiduciary organization itself — all as approved by the Department or its designee and with such modifications as the Department or its designee may require. A prospective program plan must accompany any application to the Department or its designee for its approval of a fiduciary organization.
- (8) "Financial institution" means an organization regulated under ORS Chapters 706 to 716, 722 or 723, or in the case of an account established for the purpose described in 458.685(1)(c) related to college savings plans, a financial institution as defined in ORS 178.300.
- (9) "Individual development account", "account" or "IDA" means a contract between an account holder and a fiduciary organization for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into a financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.
- (10) "Lower income household" means a household having an income equal to or less than the greater of the following:
 - (a) 80 percent of the median household income for the area as determined by the Department or its designee. In making the determination, the Department or its designee shall give consideration to any data on area household income published by the United States Department of Housing and Urban Development.
 - (b) 200 percent of the poverty guidelines as determined by the Department or its designee. In making the determination, the Department or its designee shall give consideration to poverty guidelines published by the United States Department of Health and Human Services or may consider other income data periodically published by other federal or Oregon agencies.
- (11) "Median Household Income" means, for the appropriate household size, the higher of:
 - (a) The median family income for the Metropolitan Statistical Area or county as published annually by the United States Department of Housing and Urban Development, or
 - (b) The statewide median family income for Oregon as published annually by the United States Department of Housing and Urban Development.

(12) "Net worth" means the value of all assets owned in whole or part by household members excluding equity in a residence and one vehicle, and excluding holdings in pension accounts, as defined by the Department by rule, that are valued at \$60,000 or less, minus the total debts and obligations of household members, all as measured at the time the prospective account holder applies to establish the IDA.

(13) "Oregon individual development account tax credit" or "tax credit" means a credit against taxes otherwise due under ORS Chapter 316, 317, or 318, as allowed in return for contributions to a fiduciary organization for eventual distribution to individual development accounts established under ORS 458.685.

(14) "Pension Account" means an account that is funded by an employee and/or the employer specifically to provide a retirement income, and in which the account is structured so that the funds in the account are either inaccessible to the employee until he/she terminates employment or reaches retirement or are accessible with an early withdrawal penalty.

(15) "Personal development plan" means a written plan developed jointly by the fiduciary organization and the prospective account holder for an IDA that is designed to provide the account holder with appropriate financial and asset training, counseling, career or business planning and other services that will increase the self-reliance of the account holder and his/her household through achievement of the IDA's approved purposes. The personal development plan must be in conformance with ORS 458.680, these rules and other requirements of the Department or its designee.

(16) "Related funds" means contributions to fiduciary organizations for IDA program purposes that do not qualify for tax credits and supplemental funding from the Department or its designee for IDA program purposes.

(17) "Resident of this state" has the meaning given in ORS 316.027

(18) "Reverted funds" means matching IDA deposits that devolve to a fiduciary organization because of the termination or revocation of a person as an account holder or unused tax credit contributions or supplemental funds upon termination or revocation of a fiduciary organization or at the expiration of its program plan.

(19) "Supplemental funding" means funds provided by the Department or its designee to fiduciary organizations for program plan purposes.

(20) "Tax credit contributor" means a contributor who receives a corresponding tax credit as allowed in ORS 315.271.

(21) "Tax credit contributions" means funds obtained from tax credit contributors who, in return, earn a tax credit.

(22) "Trust Land" means all lands held in trust by the United States on behalf of an Indian Tribe or individual Indian.

STATUTORY/OTHER AUTHORITY: ORS 456.625, ORS 456.555, 458.700

STATUTES/OTHER IMPLEMENTED: ORS 315.271, 458.670 - 458.700, 178.300, ORS 458.670 (6)(b)(B)

AMEND: 813-300-0060

RULE TITLE: Fiduciary Organization Suspension or Termination of Account Holders

RULE SUMMARY: Update to the proposed fiduciary organization entity in order to align with ORS 458.685 and House Bill 2433.

RULE TEXT:

(1) Subject to these rules, fiduciary organizations, for cause, may suspend or terminate a person's status as an account holder or designated beneficiary and may suspend or terminate any related IDA and personal development plan.

(2) Factors that fiduciary organizations may consider as sufficient cause for any such suspension or termination include the following:

(a) If an account holder or designated beneficiary moves from the area where the personal development program is conducted or is otherwise unable to continue in the personal development program;

(b) A material misrepresentation or omission by the account holder or designated beneficiary to the fiduciary organization in the application or otherwise;

(c) A material failure by the account holder or designated beneficiary to comply with applicable law, these rules, orders or directives of the Department or its designee, the terms of the IDA or the terms of the personal development plan;

(d) Ineligibility of the account holder or designated beneficiary; and

(e) Failure by the account holder or designated beneficiary to cooperate reasonably with the fiduciary organization or its third-party contractors or other partners in the performance or evaluation of the personal development plan or in the performance, evaluation, or audit of the IDA and the funds related thereto.

(3) In conjunction with the termination of any person's status as an account holder based on factors identified above in Section 813-300-0060(2)(a), (b), or (c), all matching IDA deposits and all interest earned on such matching IDA deposits shall revert to the fiduciary organization.

(4) In conjunction with the termination of any person's status as an account holder or designated beneficiary based on other factors identified or allowed in section 813-300-0060(2), fiduciary organizations may rescind any right or interest of account holders in, and assume sole ownership of, any or all matching IDA deposits and the interest earned on such matching IDA deposits.

(5) Fiduciary organizations must provide thirty (30) days written notice to an account holder and any designated beneficiary receiving assistance through the account holder's personal development plan, and to the Department or its designee before suspending or terminating the person's status as an account holder. The notice must include a provision satisfactory to the Department advising the account holder of his or her right to obtain administrative review by the Department or its designee of any determination by the fiduciary organization to suspend or terminate his/her status as an account holder. The administrative review provision also must advise the account holder and any designated beneficiary receiving assistance through the account holder's personal development plan of their right to obtain administrative review by the Department or its designee of any determination by the fiduciary organization to suspend or terminate the related personal development plan or to rescind any right or interest of the account holder in, and to assume sole ownership of, any or all matching IDA deposits and the interest earned on such matching IDA deposits.

(6) A fiduciary organization may provide a shorter written notice of suspension or termination if the fiduciary organization identifies in the notice the exigent circumstances reasonably requiring such shorter notice period.

STATUTORY/OTHER AUTHORITY: ORS 456.555, 456.625, 458.700

STATUTES/OTHER IMPLEMENTED: ORS 315.271, 458.670 - 458.700

AMEND: 813-300-0080

RULE TITLE: Fiduciary Organization Use of Tax Credit Contributions and Related Funds

RULE SUMMARY: Delete provisions around tuition saving program in alignment with 2021 deletion ORS 458.690 (1)(b)(C)

RULE TEXT:

(1) Oregon individual development account tax credit contributions to fiduciary organizations, other contributions to fiduciary organizations specifically for their program plan, and any supplemental funds from the Department or its designee to fiduciary organizations shall be used by fiduciary organizations solely for reasonable and documented program plan purposes consistent with these rules.

(2) In addition to any other limitations on supplemental funds imposed by the Department or its designee when providing such supplemental funds to fiduciary organizations, the following limitations apply to the use of tax credit contributions and related funds:

(a) Fiduciary organizations only may expend tax credit contributions and related funds in a manner consistent with their budget as approved by the Department or its designee;

(b) Fiduciary organizations may expend up to an amount authorized in writing by the Department and its designee for reimbursement of reasonable and appropriate administrative and program operational costs;

(c) The ultimate determination of reasonable and appropriate is reserved to the Department in its sole discretion;

(d) Fiduciary organizations may not expend supplemental funds for administering the solicitation of tax credit contributions;

(e) Fiduciary organizations may expend tax credit contributions and related funds for appropriate matching of account holder IDA deposits as follows:

(A) Allowable matching IDA deposits by fiduciary organizations must equal at least \$1, but not exceed \$5, for each \$1 of IDA deposits by the account holder;

(B) Matching IDA deposits must be placed in:

(i) A savings account with an approved financial institution jointly held by the account holder and the fiduciary organization and requiring the signatures of both for withdrawals;

(ii) A savings account with an approved financial institution that is controlled by the fiduciary organization and is separate from the savings account of the account holder; or

(C) The aggregate maximum amount of matching IDA funds that a fiduciary organization may deposit with respect to a specific account holder shall not exceed more than [\$3,000] \$6,000 in a 12-month period; and

(D) The aggregate maximum amount of matching IDA funds that a fiduciary organization may deposit with respect to a specific account holder during the existence of that account holder's IDA shall not exceed \$20,000.

(f) Supplemental funds not expended, obligated or deposited consistent with these rules within one year from the date that such supplemental funds are received from the Department or its designee shall be returned immediately to the Department or its designee; and,

(3) Reverted matching IDA deposits must be used by fiduciary organizations to make matching IDA deposits for eligible account holders consistent with these rules as soon as is reasonably practicable.

STATUTORY/OTHER AUTHORITY: ORS 456.555, 456.625, 458.700

STATUTES/OTHER IMPLEMENTED: ORS 315.271, 458.670 - 458.700, 178.300 - 178.360

AMEND: 813-300-0120

RULE TITLE: Account Holder Use of Funds

RULE SUMMARY: Rule update to align with changes within ORS 458.685 and House Bill 2433.

RULE TEXT:

- (1) Account holders only may withdraw and use IDA matching deposits in a manner consistent with their IDA, the relevant personal development plan, these rules and any relevant directives of the Department and its designee.
- (2) Account holders only may withdraw and use IDA matching deposits for the following purposes as approved by their fiduciary organization:
 - (a) For the acquisition of post-secondary education or job training;
 - (b) If the account holder has established the account for the benefit of a designated beneficiary, for the payment of extracurricular non-tuition expenses designed to prepare the designated beneficiary for post-secondary education or job training;
 - (c) If the account holder has established an account for the acquisition of post-secondary education or job training, the account holder may withdraw, or authorize the withdrawal of funds, including matching deposits, into a college savings network account under ORS 178.300 to 178.360. The rollover of moneys into a college savings network account under this subsection may not cause the amount in the college savings network account to exceed the limit on total contributions established pursuant to ORS 178.335. Any amount of the rollover that has been subtracted on the taxpayer's federal return pursuant to section 219 of the Internal Revenue Code shall be added back in the determination of taxable income.
 - (d) To capitalize a small business;
 - (e) For the purchase of a primary residence;
 - (f) For the rental of a primary residence to help achieve housing stability. Account moneys also may be used for security deposits, first and last months' rent, application fees and other expenses necessary to move into the primary residence.
 - (g) With respect to account holder deposits only, for an emergency as set forth in ORS 458.685(2)(a);
 - (h) If the account holder has established a qualified tuition savings program account under ORS 178.300 to 178.360 on behalf of a designated beneficiary, for the establishment of an additional qualified tuition savings program account on behalf of the same designated beneficiary;
 - (i) For improvements, repairs or modifications necessary to make or keep the account holder's primary dwelling habitable, accessible, or visitable for the account holder or a household member. This does not include improvements, repairs, or modifications made to a rented primary dwelling to achieve or maintain a habitable condition for which ORS 90.320(1) places responsibility on the landlord;
 - (j) For the purchase of equipment, technology, or specialized training required to become competitive in obtaining or maintaining employment or to start or maintain a business.
 - (k) For the purchase or repair of a vehicle.
 - (l) For the saving of funds for retirement.
 - (m) If the account holder has established an account for the purpose of saving for retirement, the account holder may withdraw or authorize the withdrawal of funds, including matching deposits and interest into an individual retirement account, a retirement plan, or a similar account or plan established pursuant to the terms of The Internal Revenue Code of 1986, as amended. Any amount of the rollover that has been subtracted on the taxpayer's federal return pursuant to section 219 of the Internal Revenue Code shall be added back in the determination of taxable income.
 - (n) For the replacement of a primary residence when replacement offers significant opportunity to improve habitability or energy efficiency.
 - (o) For the payment of debts to support the account holder's personal development plan for increasing the independence of the person.
 - (p) In order to secure a loan or a financial product that is designed to improve their credit score.
 - (q) For the establishment of savings for emergency expenses. "Emergency expenses" includes expenses for

extraordinary medical costs or other unexpected and substantial personal expenses that would significantly impact the account holder's noncash assets, health, housing or standard of living if not promptly addressed.

(3) In addition to payment on the purchase price of a residence pursuant to OAR 813-300-0120(2)(d) above, appropriate account moneys may be used to pay any usual or reasonable settlement, financing or other closing costs with respect to such residence.

(4) Account holders may not use IDA deposits to purchase a primary residence if they have owned or held any interest in a residence during the three years prior to making the purchase for which they intend to use IDA deposits. This three year restriction shall not apply in the following:

(a) For displaced homemakers or other individuals who have lost homeownership as a result of divorce.

(b) For a tribal member who has an interest in trust land and still has rights to an allotment under the Dawes Act Public Law 280 and amended in 1891, the 1906 Burke Act and the 1910 Omnibus Act Statutes at Large 24, 388-91, NADP Document A1887, but the tribal member faces multiple ownership of his or her land status and cannot successfully achieve sole ownership in order to receive any equity or collateral from that allotment. If the tribal member solely owns a residence on land known as an allotment and has successfully received sole ownership including the receipt of title status report (TSR) through the Bureau of Indian Affairs, they may not use IDA deposits to purchase a primary residence. If the person can receive more than \$2500 in equity or collateral of their allotment, the value over \$2500 shall be included in their asset limit.

(c) For owners of manufactured homes.

(5) In capitalizing a small business pursuant to OAR 813-300-0120(2)(c) above, IDA deposits may be used for capital, plant, equipment and inventory expenses, to hire employees, and for working capital pursuant to a business plan approved by the fiduciary organization. To qualify for fiduciary organization approval, the business plan must have been developed by a financial institution, a nonprofit micro enterprise program or other qualified agent demonstrating business expertise. The business plan also must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(6) Account holders must repay moneys improperly taken from IDA deposits including the interest earned thereon, when required by their fiduciary organization or by the department.

STATUTORY/OTHER AUTHORITY: ORS 456.555, 456.625, 458.700

STATUTES/OTHER IMPLEMENTED: ORS 458.670 - 458.700, 178.300 - 178.360

AMEND: 813-300-0160

RULE TITLE: Department Regulation and Enforcement

RULE SUMMARY: Statutory duplications removed. To align with change to ORS 458.685 (2)(b) and House Bill 2433.

RULE TEXT:

- (1) The Department and its designee may limit, suspend, revoke or terminate its authorization of a fiduciary organization. In addition to, or in lieu of, such action, the Department or its designee may require the fiduciary organization to take appropriate remedial action including, without limitation, to complete any or all IDA's current at the time of revocation or termination, to return supplemental funds to the Department or its designee, to transfer contributions as required by the Department or its designee, and to meet such other requirements and submit to such audits and reviews as the Department and its designee deems appropriate.
- (2) The Department and its designee may refuse to approve any proposed fiduciary organization action requiring such approval. The Department and its designee also may condition its approval of any proposed fiduciary organization action requiring such approval.
- (3) The Department or its designee may require fiduciary organizations to terminate or revise contracts or other engagements with any financial institution, third-party contractor or other program plan partner.
- (4) The Department or its designee may require the termination of any individual development account. The Department or its designee may require the transfer of any individual development account, including related deposits, from one fiduciary organization to another or to such other fiduciary as the Department or its designee determines to be appropriate.
- (5) The Department and its designee may audit any fiduciary organization, any third-party contractor, and any other program plan partner. The Department and its designee also may inspect and copy IDA program documents in the possession or under the control of such entities including, without limitation, any individual development account, any contract or other IDA program agreement, and any personal development plan.
- (6) The Department or its designee may suspend, terminate or require modifications in personal development plans.
- (7) The Department or its designee, on its own initiative or at the request of an aggrieved party, may review fiduciary organization decisions with respect to individual development accounts, including but not limited to decisions to withdraw matching funds from individual development accounts or to suspend or terminate matching deposits to deposits made by the account holder.
- (8) The Department or its designee may suspend, overturn or modify fiduciary organization decisions with respect to individual development accounts including, but not limited to funding decisions.
- (9) The Department or its designee, on its own initiative or at the request of any aggrieved party, may review other fiduciary organization decisions with respect to program plan matters including, without limitation, decisions made through third-party contractors and other program plan partners.
- (10) The Department or its designee may suspend, overturn or modify fiduciary organization program plan decisions.
- (11) The Department or its designee may limit the number of authorized fiduciary organizations eligible to collect tax credit contributions and may limit the amount of tax credit contributions that specific fiduciary organizations may receive in any particular time-period.
- (12) The Department and its designee may take such other action to regulate and enforce compliance with the IDA program, including these rules, as the Department and its designee determines to be necessary or appropriate.
- (13) Factors that the Department or its designee may consider in taking any regulatory or enforcement action under these rules may include, but are not limited to the following:
 - (a) Those factors identified in these rules for the authorization of fiduciary organizations;
 - (b) A person or entity's compliance with these rules and other relevant law;
 - (c) The efficient and effective operation of the IDA program;
 - (d) The integrity of account management; and
 - (e) The best interests of account holders and designated beneficiaries.

STATUTORY/OTHER AUTHORITY: ORS 456.555, 456.625, 458.700

STATUTES/OTHER IMPLEMENTED: ORS 315.271, 458.670 - 458.700, ORS 458.685 (2)(b)