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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

FILED

10/31/2024 9:25 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: To create rules governing the award and subsequent administration of the Construction Loan Guarantee Program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Glenn Muna
503-986-6796
glenn.muna@hcs.oregon.gov

725 Summer St. NE, Suite B
Salem, OR 97301

Filed By:
Glenn Muna
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/19/2024

TIME: 10:00 AM - 10:30 AM

OFFICER: Mitch Hanoosh

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-986-6796

SPECIAL INSTRUCTIONS:

Please use the link above to register for the public hearing.

NEED FOR THE RULE(S)

House Bill 3395 from the 2023 Oregon Legislative Session instructed OHCS to award funding to one or more Community Development Financial Institutions (CDFIs) to implement and administer a Loan Guarantee Program for construction loans. OHCS is making these rules to govern the award process by which the CDFI is selected and the agency and the state requirements by which the awardee must utilize the funding they've been awarded.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 3395 (2023); OHCS Construction Loan Guarantee Framework approved by the Housing Stability Council on May 3, 2024.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Awardee is required to consider ways to target the program towards under-resourced communities that have historically been excluded from the access to capital through de jure or de facto racist lending practices.

FISCAL AND ECONOMIC IMPACT:

The program is designed in a way that limited state resources can be used to incentivize expanded private investment into projects or regions of the state they otherwise may not have for various reasons, generally related to risk. The insurance provided to lenders by way of this guarantee will open opportunities for development where otherwise there might not be.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The CDFI managing the program will be responsible for ensuring compliance of awardees to the rent and income levels required by the legislation and program rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

This program is intended for the lending community and so small businesses were only involved by proxy through the lending institutions that work with them regularly.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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 PROPOSED:

813-405-0005, 813-405-0010, 813-405-0015, 813-405-0020, 813-405-0025, 813-405-0030, 813-405-0035, 813-405-0040

ADOPT: 813-405-0005

RULE SUMMARY: To establish the purpose and objectives for the Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0005

Purpose and Objectives

(1) The rules of OAR 813, division 405, are established to accomplish the general purpose of House Bill 3395 Sections 44 to 47 from the 2023 Legislative Session, which authorizes the Department to provide grants to a Community Development Financial Institution for the purpose of establishing a fund to guarantee the repayment of loans to finance the construction of housing subject to an affordable housing covenant for low or moderate income households, as described in ORS 456.270 to 456.295. ¶

(2) These rules describe requirements for the Construction Loan Guarantee program and its objective to provide loan guarantees to construct new housing or to rehabilitate existing structures for housing.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

ADOPT: 813-405-0010

RULE SUMMARY: Adopting rule definitions for Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0010

Definitions

All words and terms are used in OAR 813, division 405, as defined in the Act, and as provided in 813-005-0005 (General Definitions) and herein. As used in these rules, unless the context indicates otherwise:¶

(1) "Community Development Finance Institution (CDFI)" means a federally insured and regulated depository institutions with a primary mission of community development. CDFI's are certified by the U.S. Department of Treasury and include requirements that at least 60 percent of their financing activities be targeted to one or more¶

(2) "Construction Loan Guarantee (CLG)" means a guarantee of repayment of loans made to finance the construction of housing subject to an affordable housing covenant for Low- or Moderate-Income households.¶

(3) "Fund" means the Guarantee Fund used for the Construction Loan Guarantee Program;¶

(4) "Low Income" as defined in ORS 458.610;¶

(5) "Moderate Income" as defined in ORS 458.610;¶

(6) "Very Low Income" as defined in ORS 458.610.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295, ORS 458.610

ADOPT: 813-405-0015

RULE SUMMARY: Construction Loan Guarantee Program's Availability and Source.

CHANGES TO RULE:

813-405-0015

Availability and Source

(1) CLG funds were authorized through House Bill 3395 of the Oregon Legislative Session in 2023. A program framework was then provided and approved by the Oregon Housing Stability Council. ¶

(2) CLG funds, must be granted to a third-party administrator that is a CDFI for the purpose of fund management and administration of the program. ¶

(3) The CLG fund administrator is responsible for the following:¶

(a) Outreach¶

(b) Technical assistance¶

(c) Fund management ¶

(d) Pipeline monitoring, tracking and management¶

(e) Program design¶

(f) Fund deployment¶

(g) Impact analysis¶

(h) Compliance monitoring¶

(i) Reporting

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

RULE SUMMARY: Eligibility, Program Guidelines, and Priorities for the Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0020

Eligibility, Program Guidelines, and Priorities

(1) The CDFI, on behalf of OHCS, shall provide guarantees of repayment of loans made to finance the construction, development, and/or rehabilitation of:

(a) Housing for rental or ownership by persons with Moderate, Low and Very Low Income; or

(b) The commercial component of a structure that contains both commercial property and housing for persons with Moderate, Low and Very Low Income.

(2) Organizational Eligibility - Any of the following (an "applicant") may apply to CDFI for a loan guarantee for a qualifying project under the Construction Loan Guarantee Program in the role of a developer, an owner or a lending institution for the project:

(a) A for-profit business;

(b) A local government entity including, but not limited to, a unit of local government (such as city or county) or a housing authority;

(c) A not-for-profit organization, including but not limited to, a nonprofit community-based organization, a regional or statewide nonprofit entity, or a nonprofit corporation;

(d) A Native American tribe; or

(e) Any other entity specifically identified by OHCS as an eligible applicant in an application or award process with respect to the Loan Guarantee Program funds.

(3) Project Eligibility - To be considered eligible for a loan guarantee, projects must meet the following criteria:

(a) No less than 50% of the units constructed, developed, or rehabilitated must be designated for Moderate, Low, or Very Low income individuals or families;

(b) Affordability designations must remain on the property for a period of no less than 10 years or a period determined by CDFI and approved by OHCS or whichever is longer;

(c) Properties with a commercial component are bound by the following requirements:

(A) Commercial space cannot exceed 20% of the overall development budget for the project, as determined by OHCS underwriting; and

(B) Commercial space must be restricted in scope through a land-use agreement to exclude business(es) that are incompatible with residential housing.

(d) All projects must meet underwriting criteria as established and made easily accessible by CDFI and the participating lender.

(4) General Terms & Conditions of the Fund:

(a) No guarantee shall be prepared or construed in such a manner as to violate provisions of Article XI, section 7, of the Oregon Constitution;

(b) CDFI will not issue any loan guarantee that provides for the repayment of more than 50 percent of the original principal balance of any loan;

(c) CDFI will issue any guarantee on a loan exceeding five-year terms;

(d) To the greatest extent possible, the Loan Guarantee Program should prioritize projects that:

(A) Further affordable housing investments in rural markets that lack market and appraisal data to support needed lending;

(B) Provide access to lending to those small and culturally specific organizations that will benefit from the enhanced credit and risk mitigation a guarantee would provide;

(C) Have the deepest affordability restrictions; or

(D) Optimize efficiency of units per dollar guaranteed.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

ADOPT: 813-405-0025

RULE SUMMARY: Program Administrator Selection Criteria for the Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0025

Program Administrator Selection Criteria

(1) The Department may include the following criteria as part of the CDFI selection process:¶

(a) The Administrator must meet the definition of a CDFI found in 813-405-0010;¶

(b) The CDFI must have the ability to provide the services throughout the State of Oregon;¶

(c) The CDFI has experience in providing guarantees, for construction lending in particular;¶

(d) The CDFI has experience in assuring that funds provide benefits to families and business that are historically underserved by public dollars;¶

(e) The CDFI presents a plan that allows for the continuation of project development after activation of the guarantee;¶

(f) The CDFI presents a plan that is efficient in utilizing public dollars but also targets the borrowers and projects most in need of a loan guarantee; and¶

(g) The CDFI presents a plan that realistically plans for the funds longevity in the long term, focused on a 30 to 60 year time horizon.¶

(2) The Department will expect reporting to be conducted on all of these criteria in accordance with the annual reporting requirements in 813-405-0035. Any changes to the program, organization, fund, or other critical components of the award, must be reported and approved by the Department. If the changes are not aligned with the intent of the program, or have strayed too significantly from the structure from the original award, the CDFI risks loss of program administration authority.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

ADOPT: 813-405-0030

RULE SUMMARY: Program Continuation for the Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0030

Program Continuation

(1) The CLG program includes the backing of guarantee amounts depending largely upon individual project need. Guarantees may be activated and provided to borrowers or their associated lending institution in the form of loans or grants. ¶

(2) Loans must include loan terms and interest rates though interest rates shall be established at rates below market levels. Funds returned through this process shall be reused by the program or until such time that the Department determines the program is no longer effective or funding is inadequate. ¶

(3) At the time the program ends or any unused funds must be returned from any third party provider, not including any agreed administrative expenses.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

ADOPT: 813-405-0035

RULE SUMMARY: Program oversight for the Construction Loan Guarantee Program.

CHANGES TO RULE:

813-405-0035

Program Oversight

(1) The Department requires information from project awardees on an annual basis every year that the fund is still actively being used for this program.¶

(2) Report information must include but is not limited to the following:¶

(a) Number of loan guarantees made to housing projects¶

(b) Entity and project information of housing projects, including at a minimum:¶

(A) Lender entity name¶

(B) Borrower entity name¶

(C) Project location¶

(D) Relevant project details, including at a minimum:¶

(i) Target population¶

(ii) Total units¶

(iii) Units by bedroom size¶

(iv) Units by rent restrictions¶

(c) Status of loan guarantees made, including at a minimum:¶

(A) Length of time remaining on all active guarantees and associated loans¶

(B) Use of guarantees, if applicable, by projects. Report should include both the amount activated and how it was utilized¶

(d) Construction status of project¶

(e) Relevant updated financial information if necessary¶

(f) Pipeline of projects, if applicable¶

(3) Information review shall be done at least annually by OHCS staff and will be delivered to the Department by, at the latest, 30 days after the end of each fiscal year (June 30).¶

(a) The Department will provide oversight to a Third Party Administrator.¶

(b) Oversight may be established through a cooperative review process. Joint reviews shall be done at least annually and may be more often if determined appropriate.¶

(c) The Department shall establish report criteria for the Third Party Administrator that includes, at a minimum, the information outlined in 813-405-0020.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295

ADOPT: 813-405-0040

RULE SUMMARY: Fees and changes

CHANGES TO RULE:

813-405-0040

Fees and Changes

The Department may engage in a long term contract with targeted performance outcomes allowing for contract termination earlier if necessary. However, if performing, a long term contract is preferred due to the high front end costs and the long term nature of construction and loan repayments the Third Party Administrator may be allowed to establish a loan fee structure and an application fee to offset administration though the department is advised to establish some ongoing administration costs for the Third Party Administrator for ongoing technical assistance demands.

Statutory/Other Authority: HB 3395 (2023)

Statutes/Other Implemented: HB 3395 (2023), ORS 456.270 - 456.295