

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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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: Updating the defunct Predevelopment Program rules to match requirements given in the 2023 Legislative Session.

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.

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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)

OHCS was provided direction from the legislature to stand up a revolving Predevelopment Loan Program. OHCS is updating an existing division of OARs that were for a defunct Predevelopment Program to reflect this direction from the legislature and the frameworks that have been approved by the Housing Stability Council.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Governor's Executive Order 23-04; SB 5511

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

Part of the Predevelopment Loan Program creates a carve out of resources to help support culturally specific organizations and rural nonprofits to receive a small upfront investment to understand the feasibility of the project before we commit the larger predevelopment loans through the primary program.

FISCAL AND ECONOMIC IMPACT:

This will be a revolving loan program, so intended to be able to be recycled back into itself and sustainable long term.

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).

There is no expected cost of compliance for these programs.

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

OHCS worked with small developers and got their input on the original program framework.

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:

813-038-0005, 813-038-0010, 813-038-0015, 813-038-0020, 813-038-0025, 813-038-0030, 813-038-0035, 813-038-0040

AMEND: 813-038-0005

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0005

Purpose and Objectives ¶

OAR chapter 813, division 038 is promulgated intended to accomplish the general purposes of the department's Predevelopment Loan Program (the "Program") as authorized in ORS 456.515 to 456.725. The Program is designed to assist in the financing of ~~start-up costs~~ costs (planning) incurred prior to the actual development of low-income housing projects. It is intended to facilitate the development of high quality, affordable housing by providing below market financing and flexible terms for ~~site acquisition and~~ typical predevelopment expenses, not including site acquisition and land costs. The Department has no obligation to approve any Loan or to issue a Commitment Letter in response to any Program application or otherwise.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0010

Definitions ¶¶

All words and terms used in OAR chapter 813, division 038, except as the context specifically requires, are defined in ORS 456.515 to 456.725, ~~as provided in 813-005-0005, or herein.~~ As used in these rules, the following words and terms have the following meaning unless the context clearly indicates otherwise:¶¶

- (1) "Application" means a Loan request provided by the Eligible Borrower to the Department in a form and format as prescribed by the Department and modified from time to time reflecting current Program criteria.¶¶
- (2) ~~"Collateral" means real or personal property pledged to secure the repayment of a Predevelopment Loan as set forth in these rules, including but not limited to real property, guarantees, savings accounts, certificates of deposit and receivables.¶¶~~
- (3) "Commitment Letter" or "Commitment" means the written conditional obligation of the Department to provide a Loan issued to the Borrower after the Department has received, reviewed and determined to approve a Loan request. The Department has no obligation to approve. The Commitment Letter may be for an amount different than ~~the applicant requested,~~ and may include, but is not necessarily limited to stating the approved loan amount, interest rate, costs of borrowing, repayment terms, performance criteria, monthly reporting requirements and other conditions of the Loan.¶¶
- (4) ~~"Eligible Borrower" or "Borrower" means a for-profit, non-profit or governmental entity who satisfies the legal, financial, and other criteria of the Department for receipt of a Loan and who has or will make a Loan request that will qualify for approval by the Department.¶¶~~
- (5) ~~"Eligible Predevelopment Costs" means costs associated with predevelopment activities including but not limited to architectural design, legal fees, land surveys, soils reports, environmental reports, appraisals, market studies, land option carrying charges, land acquisition costs, federal/state application fees, and other recovera~~Communities of Color: identity-based communities that hold a primary racial identity that describes shared racial characteristics among community members. The term aims to define a characteristic of the community that its members share (such as being African American) that supports self-definition by community members, and that typically denotes a shared history and current/historic experiences of racism. An older term for Communities of Color is that of "minority communities" which is increasingly inaccurate given that people of color are majority identities on a global level. That term has also been rejected for its potential to infer any inferior characteristics. The community may or may not also be a geographic community. Given that race is a socially defined construct, the definitions of these communities are dynamic and evolve across time. The Coalition of Communities of Color defines Communities of Color to include Native Americans, Latinos, Asian and Pacific Islanders (further disaggregated according to local preferences), African Americans, African Immigrants and Refugees, Middle Eastern, and Slavic communities.¶¶
- (4) Culturally Specific Organization (CSO): an entity that provides services to a cultural community and the entity has the following characteristics:¶¶
 - (a) Majority of members and/or clients must be from a particular Community of Color;¶¶
 - (b) Organizational environment is culturally focused and the community being served recognizes it as a culturally-specific entity that provides culturally and linguistically responsive services;¶¶
 - (c) Majority of staff must be from the community being served, and the majority of the leadership (defined to collectively include board members and management positions) must be from the community being served;¶¶
 - (d) The entity has a track record of successful community engagement and involvement with the community being served; and¶¶
 - (e) The community being served recognizes the entity as advancing the best interests of the community and engaging in policy advocacy on behalf of the community being served.¶¶
- (5) "Eligible Borrower" or "Borrower" means a non-profit, housing authority or tribal entity who satisfies the legal, financial, and other criteria of the Department for receipt of a Loan and who has or will make a Loan request that will qualify for approval by the Department.¶¶
- (6) ~~"Eligible Predevelopment costs approved by the Department at its sole discretion~~Costs" means costs associated with predevelopment activities as allowable by the Department.¶¶
- (6) ~~"Eligible Project" means the new construction or acquisition and rehabilitation of affordable multi-family rental housing with a minimum of five (5) units that comply with Program requirements as determined by the Department. A single-family housing subdivision may qualify as an~~¶¶

(8) "Funds" means the financial resources the Department makes available for predevelopment activities through this Predevelopment Loan Program.

(9) "Predevelopment Loan" or "Loan" means a loan made by the Department to a Eligible Project if there are five (5) or more lots that will be for sale to home owners who meet the Department's Single-Family Loan Program requirements. Income limits and home prices in the Single-Family Loan Program typically are established in consideration of the Borrower in order to finance Eligible Predevelopment Costs for an Eligible Project.

(10) Rural Communities: The OHCS Rural - Urban definition first evaluates housing density by census tract. Those tracts with 640 or more housing units per square mile are tentatively considered urban, below 640 housing units is rural. Next, OHCS uses the National Center for Health Statistics County Schema to better understand what the economic and geographic environment (probably a better word for this) the tract is part of. About 3.5% or 35 of 1,002 tracts were affected by the county code matrix. Rural tracts in an urban core county in which the subdivision is located.

(7) "Funds" means the funds the Department makes available for predevelopment activities through this Predevelopment Loan Program.

(8) "Predevelopment Loan" or "Loan" means a loan made by the Department to a Eligible Borrower in order to finance Eligible Predevelopment Costs for an Eligible Project (e.g. Multnomah) shift to urban, urban tracts in rural or noncore counties flip to rural (e.g. downtown Klamath Falls).

(11) Small Organization: An organization is defined as "small" for the PFLP if its average annual budget is less than \$5,000,000 over the last 3 years, as confirmed by audited financial statements, form 990s, or any other method of confirmation approved by OHCS staff.

(12) Tribe or Tribal: A federally recognized Native American Tribe or Indian Tribe in Oregon, as defined in ORS 182.162, or related to the same.

(13) Tribal-led Project: A Project that is sponsored by a Tribe, a Tribally Designated Housing Entity, or an organization owned by a Tribe.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

AMEND: 813-038-0015

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0015

Availability and Source of Predevelopment Loan Funds ¶

(1) The Predevelopment Loan Program Funds ~~generally~~ are maintained in a ~~Department~~ OHCS revolving account. ¶

(2) Funding availability, among other considerations, is dependent upon the number of outstanding loans at the time of the Program Application. ~~The Department~~ ¶

(3) OHCS may provide funding ~~on its own initiative or through a process which may include, but is not limited to, a first-come first-reviewed and approved approach or a competitive review and approval approach. The Department~~ through a competitive or non-competitive process. ¶

(4) OHCS may provide a Predevelopment Loan under this Division from: ¶

(1a) Unrestricted cash and investments of ~~the Department~~ OHCS made available for use as Predevelopment Loans not needed for operations of ~~the Department~~ OHCS and not otherwise determined by the Executive Director to be a necessary and prudent reserve; ¶

(2b) Resources made available to the Department for Predevelopment Loans from other institutions, ~~including, but not limited to, Federal Home Loan Bank, Fannie Mae, or other lending institutions;~~ ¶

(3c) Appropriations for this purpose; and ¶

(4d) Other appropriate sources.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625, 456.692

AMEND: 813-038-0020

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0020

Program Criteria ¶

~~Program criteria~~ (1) OHCS may establish one or more programs to support partners as OHCS determines is prudent. Programs may be established to address different stages of the predevelopment process, different categories of vulnerable partners, different aspects of predevelopment costs or separated in any other way OHCS determines appropriate. ¶

(2) Any predevelopment loan program subject to this rule should include, but is not limited to: ¶

(1), the following program criteria. The Eligible Borrower shall provide a: ¶

(a) A complete Program Application satisfactory to the Department OHCS that appropriately demonstrates, inter alia, the need for and projected use of the requested Loan; ¶

(2b) The Eligible Borrower shall provide such other information, warranties and assurances as the Department OHCS may require, including, inter alia, that it will comply with all Program requirements as set forth in statute, these rules, the Application, and the Loan Documents; and; ¶

(3c) That the Loan will not exceed 100% of the value of the Collateral unless otherwise approved in writing by the Department OHCS and may have such other conditions and requirements as the Department OHCS, in its sole discretion, determines to be reasonable or appropriate. ¶

(4) The Loan must be secured by a first-lien interest in appropriate Collateral as determined by the Department, unless otherwise approved in writing by the Department. ¶

(53) A proposed multi-family rental housing Eligible Project must have five (5) or more rental housing units and meet the maximum income requirements of either 20% of the units rented to residents at 50% of area median income or 40% of the units rented to residents at 60% of area median income, as determined by the Department. One-third. The partner must agree to the terms upon affordable housing project completion, the greater of 10 or 10% of the total units may be occupied by households whose incomes are more less than 120% of the area median income. Rents for income restricted units must also be restricted as required by the Department. ¶

(6) A proposed single-family subdivision with five (5) or more lots must offer the for-sale homes to owners that meet the Department's Oregon Bond Loan requirements for Eligible Borrowers. Income limits and home prices are restricted, based on the County in which the subdivision is located. ¶

(74) Loan funds may be disbursed in a lump sum, in installments, or on a cost reimbursement basis as determined by the Department OHCS. ¶

(85) The Program Application shall include, at a minimum, two independent and comprehensive repayment plans to fully repay plan, as determined by OHCS, to make repayment of the Loan within the t. Terms and conditions of the Loan Commitment Letter and are satisfactory to the Department. At least one repayment plan shall include r may vary by program and Depayrtment of the Loan without using other Department funding sources. al intent. ¶

(96) The Department OHCS may require such fur other information as it deems appropriate prior to disbursement of any Loan Funds. ¶

(107) The Commitment Letter must be executed by an authorized signor of the Eligible Borrower and returned to the Department OHCS prior to any disbursement of Loan Funds. ¶

(118) Notwithstanding any Commitment, disbursement of Loan Funds to the Eligible Borrower by the Department OHCS is specifically conditioned upon the Borrower's execution, delivery and recording of Loan and other Program documents satisfactory to the Department. ¶

(12) The Department OHCS. ¶

(9) OHCS may give a preference for a Loan based upon factors that may include, but are not limited to, those described in subparagraph 038-0030(2) and the following: ¶

(a) Projects providing the greatest number of suitable housing units constructed, acquired, developed or rehabilitated for the least amount of loan; and ¶

(b) Those Program applications which, in the sole judgment of the Department OHCS, best achieve the purposes of the Predevelopment Loan Program. ¶

(130) The Department OHCS will make Loans to Eligible Borrowers under the terms of a written Commitment Letter. ¶

(141) The Borrower shall comply with the provisions of these rules, appropriate directives of the Department OHCS, and the Loan Documents. If the Borrower does not comply or fails to comply, the Department OHCS may revoke its Commitment Letter and demand immediate repayment of all or a portion of the

Loan Funds advanced.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

AMEND: 813-038-0025

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0025

Program Loan Terms ¶¶

~~(1) The minimum Loan is \$40,000 and the maximum Loan is \$1,500,000, unless otherwise specified in writing by the Department.¶¶~~

~~(2) Loans between \$40,000 and \$500,000 may have a term of up to two (2) years and Loans above \$500,000 may have a term of up to six (6) months; Loans may have a term of up to a maximum of five (5) years, unless otherwise specified in writing by the Department.¶¶~~

~~(3) The interest rate applicable to Program Loans will be established from time to time by the Department as it determines appropriate in consideration of factors it may determine to be relevant, potentially including, but not necessarily limited to current market rates, the availability of Funds, the credit-worthiness of the Borrower, the size and term of the Loan, any determination by the Department with respect to the need for the Project, the quality of Collateral, or market conditions in general. Unless otherwise established by the Department, interest will accrue as simple interest due and payable under the terms of the Commitment Letter and Loan Documents.¶¶~~

~~(4) Loans shall be repaid with the sooner of the first available funding sources and otherwise in accordance with the Application, the proposed repayment plans, and within the specified term of the loan.¶¶~~

~~(5) Due to the limited amount of Funds available, the Department discourages any Loan term extensions. The Department may extend the term of a Loan at its sole discretion and subject to such additional conditions and charges as it determines to be appropriate.¶¶~~

~~(6) The Loan shall be secured by a fully executed trust deed note and other appropriate Loan Documents satisfactory to the Department. Loan Program commitments by the Borrower with respect to the Project shall be memorialized in an agreement or instrument satisfactory to the Department and executed and recorded by the Borrower at their own expense as required by the Department.¶¶~~

~~(7) If the Loan is secured by real property, the trust deed shall be recorded in an acceptable lien position, as determined by the Department.¶¶~~

~~(8) The Borrower shall demonstrate control over the Collateral satisfactory to the Department.¶¶~~

~~(9) All conditions contained in the Commitment and Loan Documents shall be timely fulfilled by the Borrower to the satisfaction of the Department.¶¶~~

~~(10) The Borrower shall repay the Loan within the terms of the Commitment Letter and applicable Loan Documents.¶¶~~

~~(11) The Loan shall not be transferred to another party or assumed by another party unless approved in writing by the Department prior to the change.¶¶~~

~~(12) During the term of the Loan, the Eligible Borrower shall not take any action that directly or indirectly affects the value of the Collateral used as security without prior written approval of the Department.~~

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

AMEND: 813-038-0030

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0030

Application Criteria ¶

(1) An Eligible Borrower shall provide a complete Program application in the form and content satisfactory to the Department. ¶

(2) The Program application shall include, but is not limited to, the following documents: ¶

~~(a): ¶~~

~~(a) All relevant contact and identifying information requested pertaining to Applicant and Project; ¶~~

~~(b) The Predevelopment Loan amount requested; ¶~~

~~(c) A list itemizing the proposed uses and associated Eligible Uses for the Loan proceeds, as well as written explanation of how those Eligible Uses relate to the Project achieving the OHCS readiness standard; ¶~~

~~(d) A written description of the proposed Eligible Project including, but not limited to, the development timelines, number of units, proposed, current plans for unit mix, proposed rents, site location and proposed amenities; ¶~~

~~(be) A written description indicating the market need of the proposed type of housing, prospective income levels of the residents and prospective resident services; ¶~~

~~(c) A proforma of the proposed Eligible Project operating income and expenses, funding sources, and development costs ¶ Project information pertaining to the site and development status requested, if completed, and a status and plan for how it will be accomplished if not completed, including if these loan proceeds will support achieving that; ¶~~

~~(df) The Predevelopment Loan amount requested; ¶~~

~~(e) A written explanation itemizing the proposed uses and associated Eligible Predevelopment Costs for the Loan proceeds; ¶~~

~~(f) At a minimum, two (2) comprehensive repayment plans for the Loan; ¶~~

~~(g) A descripA high level proforma of the proposed funding sources, acquisition, construction, and soft costs, and unit mix of bedroom sizes and rent restrictions; ¶~~

~~(g) Identification of the Eligible Borrower and their development team's experience in and capacity for developing and operating similar housing projects; ¶~~

~~(h) Adequate documentation demonstrating at least 100% Collateral to secure the Loan and any subordinate loans using the same Collateral completed OHCS Predevelopment Loan Budget Form; and ¶~~

~~(i) Such other documents and information as the Department may require. ¶~~

(3) In evaluating whether or not to provide a Loan, the Department may consider factors including, but not limited to: ¶

~~(a) The value of the security for the Loan; ¶~~

~~(b) The economic and financial feasibility of the Eligible Project; ¶~~

~~(b) Other program or external funds the Eligible Project is leveraging for predevelopment; ¶~~

~~(c) The readiness of the Eligible Project to proceed with development; ¶~~

~~(d) The location and need for the Eligible Project; ¶~~

~~(e) The availability of Department Funds; ¶~~

~~(f) The Department's experience with and/or the reputation, experience and capacity of the Borrower, including any of its agents, representatives, employees or contractors; ¶~~

~~(g) The amount, quality, and duration of suitable affordable housing to be provided or enabled by the proposed Eligible Project; ¶~~

~~(h) The mix of affordable housing units to be provided or enabled; and ¶~~

~~(i) Any other information obtained by or made available to the Department.~~

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

AMEND: 813-038-0035

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0035

Fees ¶¶

(1) A non-refundable Application charge, as specified from time to time by the Department, is due and payable by the Eligible Borrower upon submission of the Application.¶¶

(2) A non-refundable loan processing charge, as specified from time to time by the Department is due and payable by the Eligible Borrower upon the sooner of the closing of the Loan or 90 days after the Borrower's acceptance of the Commitment.¶¶

(3) If the Borrower determines the need for an extension of the Loan, it must request and justify the extension to the Department in writing in advance of the loan maturity date.¶¶

(4) Should the Department determine, in its sole discretion, that an extension of the loan term is warranted, the Department may grant the extension subject to such additional conditions and an extension charges as it deems appropriate.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625

AMEND: 813-038-0040

RULE SUMMARY: To amend and align rules with the approved program framework approved by the Housing Stability Council.

CHANGES TO RULE:

813-038-0040

Waiver **II**

Subject to applicable law, the Department may waive or modify any requirements of OAR 813, division 038, as it deems appropriate for the public interest.

Statutory/Other Authority: ORS Ch. 183, 456.555(2), 456.625(12)

Statutes/Other Implemented: ORS 456.561, 456.574, 456.620, 456.625