

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

11/01/2021 8:11 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating rules due to statutory changes from the Legislature (2021 HB 2433)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/06/2022 4:00 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:
Martin Jarvis
Rules Coordinator

HEARING(S)

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

DATE: 12/16/2021

TIME: 3:30 PM - 4:00 PM

OFFICER: Martin Jarvis

ADDRESS: OHCS

725 Summer St NE, Suite B

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Hearing will be conducted over ZOOM. Instructions for accessing the link will be published on Oregon.gov/OHCS

NEED FOR THE RULE(S)

The legislature updated the statute for the program. These changes are in line with those updates.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

2021 HB 2433

FISCAL AND ECONOMIC IMPACT:

No new fiscal or economic impact is expected from these rules updates.

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 rules updates.

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

No small businesses were involved in the development of these rules. There will be no costs incurred to small businesses by these rules updates.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The changes are driven by statute and will not change the program in a way that would necessitate a new ARAC.

HOUSING IMPACT STATEMENT:

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

RULES PROPOSED:

813-110-0005, 813-110-0010, 813-110-0011, 813-110-0013, 813-110-0015, 813-110-0020, 813-110-0021, 813-110-0022, 813-110-0025, 813-110-0026, 813-110-0027, 813-110-0029, 813-110-0030, 813-110-0031, 813-110-0035, 813-110-0037, 813-110-0050

AMEND: 813-110-0005

RULE SUMMARY: Updating due to statutory changes.

CHANGES TO RULE:

813-110-0005

Purpose ¶

OAR chapter 813, division 110, ~~is promulgated to carry out the provisions of~~ provides specific guidance pursuant to ORS 317.097 under which the department OHCS certifies affordable multifamily rental housing development projects sponsored by government entities, nonprofit corporations, and certain persons ("sponsoring entities" or "sponsors") so as to enable a lending institution to claim Oregon affordable housing tax credits ("OAHTC" or "tax credits") against Oregon taxes with respect to loans for the construction or acquisition, and rehabilitation of such projects. The purpose of the tax credits is to encourage the creation or preservation of safe, sanitary, and affordable housing for lower-income Oregonians. Additional policies and instructions are outlined in the Oregon Affordable Housing Tax Credits (OAHTC) Manual dated June 2, 2014 (the "OAHTC Manual" or "Manual"), incorporated herein by reference. The manual may be accessed online at the department's website.

Statutory/Other Authority: ORS 317.097, 456.555

Statutes/Other Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625, 456.722

AMEND: 813-110-0010

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0010

Definitions ¶

~~Certain~~ Terms used in ~~this~~ throughout OAR chapter 813, division ~~8110~~ may be defined in ORS chapter 317, the Act, OAR 813-005-0005, and herein. Other terms may be identified in the text of this division (including by incorporation), ~~otherw~~iregon Revised Statute (ORS or statute), 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, ~~or applicable law.~~¶

~~(1)~~ "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6). The department will calculate tax credit availability based on the actual number of tax credits allocated at any given time. division 110 are as provided in statute, OAR 813-005-0005, or herein. As used in these rules:¶

~~(2)~~ "Certification" means the written verification by the department ~~OHCS~~ to a lender that a project is a qualified project for which the lending institution may claim a OAHTC program tax credit under the provisions of the Act.¶

~~(3)~~ "Firm commitment of financing" means an agreement by a lending institution or their intermediary to make a loan to a specific borrower on a specific property and which will contain all ~~of~~ the terms and conditions that the borrower ~~has to~~ must satisfy before said loan can be funded. Payment of a commitment charge by the borrower to the lending institution may be required as a condition precedent to issuance of such an agreement.¶

~~(4)~~ "Lending institution" means ~~any insured institution, as defined in ORS 706.008, any mortgage company that maintains an office in this state, or any community development corporation that is organized under the Oregon Nonprofit Corporation Law~~ has the meaning provided in ORS 317.097(1)(d).¶

~~(4)~~ "Manufactured Dwelling Park Project" means a project involving a manufactured dwelling park as defined in ORS 446.003(22).¶

~~(5)~~ "Preservation project" means ~~housing that was~~ has the meaning preoviously developed as aded in ORS 317.097(1)(g).¶

~~(6)~~ "Oregon Affordable hHousing with a contract for rental assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity. The contract for project-based rental assistance must cover at least 25 percent of all units in the project.¶

~~(6)~~ "Project," ~~except~~ Tax Credit Program Manual" or "OAHTC Manual" or "Manual" means the program manual for the Oregon Affordable Housing Tax Credit Program dated June 2016, as defined under "manufactured dwelling park" or "preservation pscribed in OAR 813-110-0011. The manual may be accessed online at OHCS's website.¶

~~(7)~~ "Project," means one or more units of housing, that has been acquired, constructed, developed, or rehabilitated, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of area median income. The use of a project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the lending institution, that lending institution may dispose of the property at its sole discretion.¶

~~(8)~~ "Rent Pass-through" or "pass-through" means the savings realized through the OAHTC loan rate discount that is used by the project owner to reduce tenant housing payments except in the case of preservation projects and manufactured dwelling park projects which do not have a pass-through requirement.¶

~~(7)~~ "Rent reduction" means the amount rents are reduced from the rents charged at the market interest rate ~~as a result of the Oregon Affordable Housing Tax Credit (OAHTC)~~ because of the OAHTC subsidy.¶

~~(8)~~ "Rent Pass through" means the value of the tax credits loan rate discount that is extended by the project owner to the tenants in the form of reduced rents Sponsor" or "Sponsoring Entity" has the meaning provided in ORS 317.097(1)(i).

Statutory/Other Authority: ORS 317.097, 456.555

Statutes/Other Implemented: ORS 317.097, 456.625

ADOPT: 813-110-0011

RULE SUMMARY: Adding manual rule per DOJ guidance

CHANGES TO RULE:

813-110-0011

Oregon Affordable Housing Tax Credit Manual

(1) Additional policies and instructions are outlined in the OAHTC Manual dated TBD, incorporated into and adopted as part of this division of administrative rules by reference. ¶

(2) The manual may be accessed online at OHCS's website.

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ORS 317.097

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Oregon Affordable Housing Tax Credit Program 2022



OAHTC Program Manual

Contacts

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Acknowledgements

Oregon Housing and Community Services
Margaret S. Salazar, Executive Director

Introduction

The purpose of the Oregon Affordable Housing Tax Credit (OAHTC) program is to create an incentive to lending institutions to lower the interest rates they charge for loans to developers of housing for low-income Oregonians. Under the OAHTC program, the department certifies loans to qualified borrowers as eligible for OAHTC.

Program Statutory and Rule Authority:

ORS 317.097

OAR 813-110

Program Requirements

The Oregon tax credits available under this program are limited. The following program requirements are necessary to get the most impact possible from this limited resource.

A. ANNUAL CAP

The legislature has set the maximum allowable OAHTC per year at \$35 million. OHCS cannot exceed this amount in annual allowable OAHTC allocations. This is a cap on the overall issuable tax credits per year.

B. INTEREST RATE REDUCTION

The OAHTC program allows for an up to four percent (4%) reduction in the interest rate a qualified lender may offer to a sponsor in exchange for the tax credit. The actual reduction in the interest rate is up to the lender. OHCS does not mandate an interest rate floor of one percent (1%). OHCS will allow up to a four percent (4%) reduction regardless of if the reduced rate will be below one percent (1%).

C. AVAILABILITY OF FUNDS

- OAHTC is commonly paired with other OHCS resources such as 9% LIHTC, GHAP, HDGP and OHCS issued pass-through revenue bonds.
- OAHTC will not be made available with non-competitive 4% LIHTC when OHCS is not the bond issuer unless the applicant receives approval from OHCS first.
- OAHTC is available as a standalone funding source through the OAHTC Pool Application.
- A project utilizing other OHCS programs must meet the minimum requirements of those programs and the General Policy and Guideline Manual (GPGM) in addition to the requirements in this manual.

D. RENT REDUCTION (PASS-THROUGH)

The tax credits provided by this program compensate lenders with a state of Oregon tax liability to reduce the interest rates on loans to approved Projects by up to four percent (4%). The OAHTC subsidy must be passed through to the tenants in the form of reduced rents except for preservation projects and manufactured dwelling park acquisition projects. The pass-through amount is the difference between the original interest rate and the reduced interest rate. This savings must be passed through directly to the tenants in its entirety. The pass-through does not need to be distributed evenly among the units. It is permissible to target the pass-through to a smaller number of units to create units affordable to lower AMIs.

The estimated annual average per-unit pass-through for the project is to be calculated by dividing the annual loan interest savings divided by 12 months and then by dividing by the number of affordable units occupied or held vacant for occupancy by qualified tenants.

The lower tenant rents are a project-specific requirement based on the credits taken by the lender. The amortization of interest in the loan taken by the bank will vary each year. The reduction to tenants' rents will be averaged over the lesser of the term of the loan or twenty (20) years to provide the same tenant reduction to rent each year by the owner/borrower.

In satisfying the pass-through requirement, project owners may only assign up to the maximum of the estimated annual average per-unit pass-through to units whose qualified tenants are employing a tenant-based section 8 voucher. This means that tenants with tenant-based vouchers cannot be targeted for deeper rent reductions if it is the sponsor's intent to bring a smaller number of units into affordability for very low income AMIs.

Rental units covered by section 8 project-based assistance are not eligible to be used to demonstrate pass-through savings for the OAHTC program because the rent reductions related to the OAHTC subsidy typically would not be passed on to the tenants in the form of a rent reduction from what the tenants would otherwise pay, and therefore, would not achieve pass-through savings. Projects that are partially covered with project-based assistance may qualify to use OAHTC on the remaining units by demonstrating pass-through interest savings that result in appropriate rent reductions to the OAHTC qualified tenants in any units not covered by the project-based vouchers. To the degree this can be achieved in conjunction with tenant vouchers not targeted for pass-through, it is required to be targeted to non-voucher units in the Project.

E. EXCEPTIONS

Projects defined as **Preservation Projects** are not required to provide rent pass-through. A Preservation Project is defined as housing that was previously developed as affordable housing with a contract for rental assistance from the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture and that is being acquired

by a sponsoring entity. The contract for project-based rental assistance must cover at least twenty-five percent (25%) of all units in the Project and must be at risk of expiring within the next seven (7) years.

Projects defined as **Manufactured Dwelling Park Projects** are not required to provide rent pass-through and are exempt from tenant income restrictions.

F. AFFORDABILITY RESTRICTIONS AND OTHER FUNDING REQUIREMENTS

Affordability requirements for projects that only include OAHTC must be set at less than 80% Area Median Income (AMI). OAHTC affordability restrictions cannot exceed twenty years. Except in the case of projects with United States Department of Agriculture Rural Development (USDA RD) rent assistance or other RD financing attached which cannot to exceed thirty years.

When paired with other funding sources, OAHTC must be used to lower rents after all other OHCS subsidies and requirements for rents have been applied. A project utilizing other OHCS programs must meet the rent restriction requirements of those programs before OAHTC will be applied. For example, if an applicant applies for LIHTC and indicates they are choosing rent restrictions at sixty percent (60 %) of Area Median Family Income, the Application must demonstrate the required pass-through is being used to reduce rents below the sixty percent (60%) LIHTC restrictions in ten percent (10%) increments.

G. INCOME AND EXPENSE PROJECTIONS

The applicant is required to include information on their OAHTC-attached permanent loan in the application pro forma and to show how inclusion of the OAHTC will affect their financial assumptions. The following sheets include cells where applicants seeking OAHTC must fill in information:

- Budget Sources
- Rents and Incomes
- Operating Budget
- OAHTC Calculation
- OAHTC Amortization Schedule

Each of these tabs will be discussed in depth below.

H. DEBT COVERAGE RATIO AND CASHFLOW

Applicants using OAHTC must meet OHCS's minimum debt coverage ratio of 1.15:1 after pass through is applied. Applicants must also demonstrate a sufficient cashflow with pass through applied over the term of the OAHTC restrictions. Projects exempt from pass through

requirements still need to meet OAHTC underwriting standards otherwise applicable to the project.

I. REQUESTS FOR SET-ASIDES

A sponsoring entity may request a set-aside of OAHTC not otherwise available through other OHCS set-asides based on Requests for set-asides as described in OAR 813-110-0035(2). OHCS will review these requests on a case-by-case basis. The request must be based on actual, documented need. An example of documentation that would be acceptable to OHCS would be results from the Regional Housing Needs Analysis (see 2019 HB 2003).

Additional Program Requirements

J. LENDER OF INTENT

A letter of intent from the lender must accompany the application and must clearly state the lender will participate in the OAHTC program. This letter should contain, at a minimum, (1) specific conditions pertaining to the project, (2) an estimated comparable market interest rate for the proposed loan, (3) the estimated reduced interest rate, (3) terms of the proposed loan, and (4) the estimated amount of interest savings that will be produced in return for the use of the tax credits.

K. FIRM COMMITMENT OF FINANCING AND LOAN TERMS

A firm commitment of financing from a qualified lender is required before a final commitment of tax credits in the form of a Certification will be made. Applicants should be prepared to provide the finalized pro forma pages to OHCS demonstrating pass-through compliance at time of certification. OHCS will supply the lender with a Certification document to complete prior to the closing of the loan to certify the lender's agreed participation in the OAHTC program and the agreed to terms of the loan being provided.

L. DECLARATION OF RESTRICTIVE COVENANTS

The borrower must execute restrictive covenants to be recorded at the time of the loan closing. A copy of this declaration will be made available upon request by OHCS. Please see Section F for applicable affordability requirements.

M. ONGOING REPORTING AND CARRYOVER OF CREDITS

The lender will be required to submit an annual report to OHCS by May 31st of each year. The report must be submitted on a form furnished by OHCS and signed by an officer of the lending institution.

Any tax credit otherwise allowable under ORS 317.097 that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next four (4) succeeding tax years.

N. CHARGES

The lender will be required to submit a fee equal to five percent (5%) of the annual tax credits claimed for the prior calendar year which will be due and payable by May 31st of each year along with the annual report referenced in Section D above. A late fee of \$100 will be charged for each full month the annual report is delayed.

Pro Forma Guidance

O. PRO FORMA TABS WHERE OAHTC INFORMATION IS ENTERED

- **Budget Sources** – The applicant will put the permanent loan amount they are requesting be used to calculate the tax credit in the **Funding Request** cell. Then, they will list the permanent loan with OAHTC and the permanent loan without in the **Financing Sources** table. The amount in the Funding request cell should match the amount in the cell labeled **Permanent First Loan, Hard Debt (With-OAHTC)**.
- **Rents and Incomes**– The applicant will select “yes” in the **IS THIS PROJECT APPLYING FOR OREGON AFFORDABLE HOUSING TAX CREDITS (OAHTCs)?** dropdown menu in cell G15 to indicate the project is requesting OAHTC.
- **Operating Budget** – this page auto-populates from the Budget Sources tab. See the **With OAHTC** section of the **30 Year Operating Analysis**.
- **OAHTC Calculation** – This tab will also largely auto-populate from the **Budget Sources** tab. The applicant will need to indicate the number of years the credit will be taken over, any loan amount without OAHTC, the without OAHTC interest rate on the permanent loan, and the monthly payment for the non-OAHTC permanent loan. The applicant will also have to indicate the **Actual OAHTC Annual Pass Through** in cell E22. This amount should be equal to or greater than the amount listed in **Required OAHTC Annual Pass Through** in cell E21.
- **OAHTC Amortization Table** – auto-populates based on information from other tabs. The only action required by the applicant on this page is to indicate the number of yearly payments in cell D9 and the start date of the loan in cell D10. The applicant may also indicate any extra payment above that required by the loan terms.

AMEND: 813-110-0013

RULE SUMMARY: Updating due to statutory change

CHANGES TO RULE:

813-110-0013

Loan Requirements ¶

~~In order to~~ ¶ To be eligible for the OAHTC program tax credit, the loan shall be: ¶

~~(1) Made to an individual or individuals who own the dwelling, who participate in an owner-occupied community rehabilitation program, and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income. ¶~~

~~(21) Made to a qualified borrower; ¶~~

~~(a) Used to finance construction, development, acquisition, or rehabilitation of housing; and, ¶~~

~~(b) Accompanied by a written certification by the department OHCS that the: ¶~~

~~(A) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and, ¶~~

~~(B) The full amount of the savings, from the reduced interest rate provided by the lending institution, is or will be passed through to the qualified tenants in the form of a rent reduction-, regardless of other subsidies provided directly to the housing project, ¶~~

~~(C) In satisfying the foregoing pass-through requirement, project owners may only assign up to the maximum of the estimated annual average per-unit pass-through to units whose qualified tenants are using a tenant-based Section 8, or Housing Choice Voucher, ¶~~

~~(D) The estimated annual average per-unit pass-through for the projects is to be calculated by dividing the annual loan interest savings, divided by twelve months, and then by dividing the number of affordable units occupied or held vacant for occupancy by qualified tenants, or ¶~~

~~(32) Made to a qualified borrower; ¶~~

~~(a) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park; ¶~~

~~(b) The housing created by the loan is or will be occupied by a significant number of households, defined as more than 30% of all households at initial tenant qualification, earning less than 80 percent of the area median income; and, ¶~~

~~(c) Accompanied by a written certification by the department OHCS that the housing will continue to be operated as a manufactured dwelling park during the period for which the OAHTC program tax credit is allowed, or ¶~~

~~(43) Made to a qualified borrower; ¶~~

~~(a) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and, ¶~~

~~(b) Accompanied by a written certification by the department OHCS that the housing preserved by the loan: ¶~~

~~(A) Is or will be occupied by households earning less than 80 percent of the area median income; and ¶~~

~~(B) Has a rent assistance contract with the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture that will be maintained by the qualified borrower. The contract must provide rental assistance to households in at least 25% of the project units. ¶~~

(4) Projects where less than 25% of units have a rent assistance contract with the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture that will be maintained by the qualified borrower must meet the pass-through requirement on non-federal rent assisted units.

Statutory/Other Authority: ORS 317.097, 456.515 - 456.7205

Statutes/Other Implemented: ORS 317.097

AMEND: 813-110-0015

RULE SUMMARY: Updating for statutory changes

CHANGES TO RULE:

813-110-0015

Application Requirements ¶¶

(1) For the purpose of enabling a lending institution to obtain a reservation of OAHTC under ORS 317.097, a sponsoring entity may apply to ~~the department~~OHCS for certification of a qualified loan for the allocation of OAHTC consistent with OAR chapter 813 division 110 pursuant to relevant solicitation documents issued by ~~the department~~OHCS including, but not limited to a Notice of Funding Availability ("NOFA"), or as otherwise determined by ~~the department~~OHCS. The application shall provide information satisfactory to ~~the department~~OHCS including but not limited to:¶¶

- (a) The name, address and telephone number of the sponsoring entity;¶¶
- (b) Proof as required by ~~the department~~OHCS that the sponsoring entity is a qualified borrower;¶¶
- (c) The relevant background of the qualified borrower and its management agent and their expertise with housing for low-income persons, if applicable;¶¶
- (d) A firm commitment of financing by the lending institution to the sponsoring entity for the property that is the subject of the OAHTC program tax credits claim containing all of the terms and conditions that the sponsoring entity has to satisfy before the loan will be funded and including an estimated comparable market interest rate for the proposed loan, the estimated reduced interest rate and the estimated amount of savings or a letter of intent for the purpose of a reservation under OAR 813-110-002130;¶¶
- (e) The name, address and contact person of the lending institution making the loan;¶¶
- (f) A description of the project, including the type of housing or program involved, the number and type of housing units to be provided, the number of bedrooms, the address where the project is or will be located, and the federal, state, and local agencies or organizations involved in financing or managing the project;¶¶
- (g) A certification that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project;¶¶
- (h) An agreement by the sponsoring entity to execute restrictive covenants satisfactory to ~~the department~~OHCS to which covenants will be recorded at the time of loan closing;¶¶
- (i) A demonstration relating to occupancy of the units in the project, as required by subsection (2) of this section;¶¶
- (j) A demonstration that the project meets the minimum requirements of any other ~~department~~OHCS program used by the project, as required by subsection (3) of this section;¶¶
- (k) Any additional information or actions requested by ~~the department~~OHCS; and¶¶
- (l) A certification by the sponsoring entity that includes, at a minimum, the statement that all information in the application is true, complete, and accurately describes the project.¶¶

(2) The following provisions apply to the demonstration relating to occupancy of units that is required in subsection (1) of this section:¶¶

- (a) A demonstration for a project other than a manufactured dwelling park must show that units constructed or rehabilitated with OAHTC will be occupied by households earning less than 80 percent of adjusted area median income at the time of initial occupancy.¶¶
- (b) In the case of a preservation project or a manufactured dwelling park ~~awarded after September 27, 2007~~, pass-through is not required for a certification ~~produced on or after September 27, 2007~~.¶¶
- (c) For a project other than a project to which paragraph (b) of this subsection applies, the demonstration must show that at the time the project is initially rented or purchased, and thereafter for the term of the OAHTC or twenty years, whichever is longer, the sponsor will pass the benefits of the project's reduced loan interest rate to tenant or homeowner households whose earnings are less than 80 percent of area median income at the time of initial tenant or homeowner qualification.¶¶
- (d) A demonstration for a manufactured dwelling park must show that the project meets the occupancy requirements applicable to manufactured dwelling parks in ORS 317.097.¶¶

(3) ~~Because the OAHTC program funding is intended to lower rents below the level that would be obtained after all other OHCS subsidies have been applied, a project that uses one or more other department OHCS programs must demonstrate that the project meets or will meet the minimum requirements of those other programs before application of the OAHTC subsidy rent reduction. For example, if an applicant has applied for tax credits under the Low Income Housing Tax Credits (LIHTC) program and that application indicated a target of 60 percent of area median income rents, the application under this rule must show the project is feasible at the targeted 60 percent median rents without the OAHTC subsidy. The OAHTC subsidy must be applied to reduce rents below the 60 percent level and must be passed on directly to the OAHTC qualified tenants or homeowners in its entirety~~

although the pass-through need not be distributed evenly among the units. Pass through is limited for units occupied by a tenant with a tenant based Section 8 or Housing Choice Voucher, under 813-110-0013(2)(C).¶
(4) Rental units covered by Section 8 project-based assistance are not eligible to be used to demonstrate pass-through savings for the OAHTC program because the rent reductions related to the OAHTC subsidy typically would not be passed on to the tenants in the form of a rent reduction from what the tenants would otherwise pay, and therefore, would not achieve pass-through savings. ¶

(a) Projects that are partially covered with project-based assistance may qualify to use OAHTC on the remaining units by, ~~inter alia~~, demonstrating pass-through interest savings that result in appropriate rent reductions to the OAHTC qualified tenants. ¶

(b) To the degree this can be achieved in conjunction with tenant vouchers not targeted for pass-through, it is encouraged to be targeted to non-voucher units in the Project. ¶

(5) ~~The department~~OHCS may require more extensive and enduring affordability covenants than provided in subsections (2) through (4) as may be reflected in relevant solicitation documents or otherwise. ¶

(6) ~~The department~~OHCS may require a non-refundable application charge and may assess such other charges as it deems reasonable to cover anticipated costs of processing the application, coordinating with other funding or project partners, negotiating, and recording required documents or additional administration. Certain other charges are identified later in these rules.

Statutory/Other Authority: ORS 317.097, ~~456.515-456.725~~

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0020

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0020

Application Review ¶

(1)(a) Applications for a reservation of OAHTC, or for an OAHTC certification of award if conditions are met as required under OAR 813-110-001520, are subject to ~~department~~OHCS review.¶

(b) Any resulting reservation or certification of award may include modifications to the application and may be rescinded if conditions subsequent are not satisfied, including but not limited to the requirement to timely acquire a qualified funder who will appropriately use the OAHTC program tax credits.¶

(2) When a reservation or certification of award is made through a solicitation process, the reservation or certification of award will be subject to conditions identified in the solicitation documents that may differ from or supplement OAR 813-110-002130. ¶

(3) When a reservation or certification of award is made outside of a solicitation process, ~~the department~~OHCS may specify additional conditions that may differ from or supplement OAR 813-110-002130.¶

(34) Criteria that ~~the department~~OHCS may apply in considering an application include but are not limited to the following:¶

(a) The experience of the sponsoring entity, property management agent and other involved person in providing low-income housing;¶

(b) Estimated rents that would have to be charged or the purchase price that would be required in order to make the project financially feasible, for the type and location of housing to be provided;¶

(c) The dollar amount of estimated savings from the reduction in rents from the estimated rents under paragraph (b) of this subsection, or the reduction in purchase price, owing to the OAHTC subsidy;¶

(d) The estimated rent reduction or purchase price reduction under paragraph (c) of this subsection;¶

(e) How long the OAHTC program tax credits are needed to meet the sponsoring entity's goals of long-term safe, sanitary and affordable housing;¶

(f) Except for manufactured dwelling park or preservation projects awarded after September 27, 2007, the sponsoring entity's statement that the proposed rent reduction or reduced purchase price will be maintained for or offered to households whose annual incomes are less than 80 percent of area median income;¶

(g) If the project is a preservation project, whether the project-based contract for rental assistance from the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture covers at least 25 percent of all units in the project;¶

(h) Restrictive covenants that provide for, but are not limited to, appropriate habitability, income and rent restrictions;¶

(i) A certifying statement from the agent for the lending institution of a local owner-occupied community rehabilitation program, if applicable;¶

(j) The target population to be served;¶

(k) The need for such affordable housing in the area to be served;¶

(l) Consistency with the comprehensive housing plan for the state or community;¶

(m) The location of the project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services that best serve the residents;¶

(n) Availability of street, sewer, water, utilities and other public services;¶

(o) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;¶

(p) Compliance with applicable local comprehensive plan and land use regulations, housing codes and other applicable standards;¶

(q) The experience of the developer, contractors, architects, consultants, and management agents in developing, constructing, and operating housing projects; and¶

(r) ~~The department~~OHCS's experience with and the reputation, experience and capacity of the sponsoring entity, project owner and developer and their representatives, employees, and contractors.¶

(45) Applications are subject to review by ~~the department~~OHCS under this rule according to a process that may include, but need not be limited to an invitation only, a first-come first-reviewed or a competitive review process.¶

(56) The amount of a reservation or certification of award made pursuant to an application under this division, together with the total outstanding OAHTC program tax credits, may not exceed the maximum allowable amount of OAHTC program tax credits for a project established under program requirements including, but not limited to those established in ORS 317.097.

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0021

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0021

Reservation in Lieu of Certification ¶¶

(1) For a reservation granted under OAR 813-110-00205:¶¶

(a) Except as provided in subsection (2) of this section, the reservation is valid for 240 days and is subject to extension by ~~the department~~ OHCS at its sole discretion; and¶¶

(b) Is a confirmed reservation unless the lending institution modifies the original letter of intent or there is a failure to comply with material terms of the reservation.¶¶

(2) A reservation for a sponsoring entity that is a local government entity providing a community rehabilitation program or rental project may be made for the period of proposed financing and may be extended at the discretion of ~~the department~~ OHCS.¶¶

(3) A sponsor that furnishes ~~the department~~ OHCS a firm commitment of financing prior to the expiration of a reservation is eligible, subject to other program requirements, for issuance of a certification.¶¶

(4) A sponsor that has a reservation issued shall notify ~~the department~~ OHCS of any change in the lending institution as well as any failure to comply with a material term of the reservation.

Statutory/Other Authority: ORS 317.097, ~~456.515-456.725~~

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0022

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0022

Set-Aside ¶¶

(1) A portion of the maximum amount of OAHTC program tax credits established in ORS 317.097 is subject to either or both of the following:¶¶

(a) A set-aside by ~~the department~~OHCS for projects that meet ~~department~~OHCS identified goals under the OAHTC program.¶¶

(b) One or more set-asides established by ~~the department~~OHCS from time to time, when directed by the Housing Stability Council, to meet housing needs in various economic or geographic regions of the state.¶¶

(2) At ~~the department~~OHCS's direction, a sponsoring entity that does not qualify for a set-aside under subsection (1) of this section may request that ~~the department~~OHCS approve a set-aside on alternate grounds as provided in this subsection. The sponsoring entity must demonstrate to ~~the department~~OHCS that the sponsoring entity meets criteria ~~similar to~~like those used in the needs assessment in Oregon's plan that is approved by the U.S. Department of Housing and Urban Development (HUD) and that describes the needs, resources, priorities, and proposed activities to be undertaken with respect to programs of that department. ~~The department~~OHCS may approve or deny a set-aside ~~on the basis of~~on its consideration of a request under this subsection.

Statutory/Other Authority: ORS 317.097, ~~456.515~~456.725

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0025

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0025

Certification of Eligible Projects ¶¶

(1) When ~~the department~~OHCS determines that it may issue a certification to a lending institution as authorized by ORS 317.097, the certification will include, ~~inter alia~~, the following as applicable:¶¶

(a) The proposed borrower is an eligible sponsor;¶¶

(b) The proposed borrower has demonstrated that the required benefits will be passed on to households earning less than 80 percent of area median income, except for manufactured dwelling park projects and preservation projects, according to program requirements including, but not limited to those in ORS 317.097 and this division;¶¶

(c) The length of the period eligible for OAHTC program tax credits; and¶¶

(d) The loan does not exceed the maximum limitation for total loan balances.¶¶

(2) A certification is based on information provided by the sponsoring entity in the application and accumulated from the lending institution's annual reports required by OAR 813-110-00360 and conditioned, ~~inter alia~~, upon the accuracy of such information.¶¶

(3) A certification is valid for the purpose of the OAHTC program tax credit only if the information on which the certification is based, other than estimates based on interest rates and other changes made with the approval of ~~the department~~OHCS, is unchanged when the loan is closed for the project and when funding documents satisfactory to ~~the department~~OHCS including, but not limited to an appropriate declaration of restrictive covenants have been executed and, as required by ~~the department~~OHCS, recorded in the official records of the appropriate counties.¶¶

(4) To establish the use of a certificate for a fixed rate term loan, a lending institution shall, ~~inter alia~~, complete the loan closing information section of the certificate and send the original to ~~the department~~OHCS along with evidence satisfactory to ~~the department~~OHCS that an appropriate declaration of restrictive covenants has been recorded or will be recorded at the close of permanent financing (as required by ~~the department~~OHCS) against the project property.¶¶

(5) When ~~the department~~ OHCS approves a OAHTC program tax credit for a construction loan, the lending institution shall complete the loan closing information section of the certificate and send the original to ~~the department~~, and OHCS and shall record the restrictive covenants.

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0026

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0026

Reservations, Certifications and Other Commitments Subject to Housing Stability Council Approval ¶

~~If the department provides a reservation, certification of award or otherwise commits to an award of OAHTC under this division and if the amount of any related tax credits or any other department funding approved by the department that was considered by the department in setting the amount of the tax credits ("complementary funding") meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the Housing Stability Council, the reservation, certification or other commitment is subject to review and approval by the council of such tax credit assistance and any such complementary funding. When OAHTC are included in a project that meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the Housing Stability Council, then the OAHTC is also subject to review and approval by the council. The council may approve, deny, modify, or further condition funding assistance subject to its review. Based upon any relevant council determination, including with respect to complementary funding, any subject reservation, certification, or other commitment may be deemed revoked, be modified or be further conditioned.~~

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625, 456.722

AMEND: 813-110-0027

RULE SUMMARY: Updating statutory references

CHANGES TO RULE:

813-110-0027

Certification Request by Lending Institution ¶

(1) A sponsor shall submit on behalf of the lending institution a separate request for each certification of a sponsoring entity requested under the Oregon Affordable Housing Tax Credits program.¶

(2) A sponsor shall pay a charge as assessed by ~~the department~~ OHCS for each request for a certification.

Statutory/Other Authority: ORS 317.097, ~~456.515-456.725~~

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0029

RULE SUMMARY: Updating statutory references

CHANGES TO RULE:

813-110-0029

Supplemental Application Charge ¶

A sponsoring entity of a project under the OAHTC program shall pay a supplemental application charge, as established by ~~the department~~ OHCS from time to time, when the sponsoring entity requests additional resources for a project that has already been funded under the program.

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ~~ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0030

RULE SUMMARY: Updating statutory references

CHANGES TO RULE:

813-110-0030

Monitoring and Reporting Requirements ¶

A lending institution claiming ~~state~~OAHTC program tax credits under ORS 317.097 is subject to monitoring by ~~the department~~OHCS. A lending institution shall submit to the ~~department~~OHCS by May 1 of each year a report satisfactory to ~~the department~~OHCS in which the lending institution affirms that the lending institution has met all requirements imposed by law to qualify for the OAHTC program tax credits. The report must be submitted on a form furnished by ~~the department~~OHCS and signed by an officer of the lending institution, and:¶

(1) May not include any representation as to the performance by the sponsoring entity; and¶

(2) Shall include, at a minimum, the name and address of the institution, the name and phone number of a contact person, the number of loans for which OAHTC program tax credits will be claimed, the amount of credit claimed, the annual charge payment, the dates the loans were closed, the location of the projects financed by those loans, the amount loaned for each project, the outstanding balances of all loans, and the average annual balance for each loan.

Statutory/Other Authority: ORS 317.097, 456.515-456.725

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0031

RULE SUMMARY: Updating statutory references

CHANGES TO RULE:

813-110-0031

Charges ¶

(1) A lending institution claiming OAHTC program tax credits under ORS 317.097 shall pay a base charge of 5 percent of the annual tax credits claimed by an eligible lending institution plus to OHCS annually.¶

(2) OHCS will assess a \$100 per month charge for each full month the annual report is delayed shall be paid by the lending institution to the department.¶

~~(2) On projects certified prior to September 29, 1991, all annual charges required in OAR 813-110-0031, except for any charges for delayed reports, shall be waived after the due date.~~

Statutory/Other Authority: ORS 317.097, 456.515 - 456.7205

Statutes/Other Implemented: ORS 317.097

AMEND: 813-110-0035

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0035

Community Rehabilitation Project Certification ¶

(1) A local government or its designated agent that certifies as a participant in a community rehabilitation program shall certify to ~~the department that the~~OHCS that the OAHTC program tax credits for the community rehabilitation program fall within the maximum amount of OAHTC program tax credits authorized in ORS 317.097.¶

~~(2) A participant in a community rehabilitation program includes any individual, nonprofit corporation or unit of local government that re-loans proceeds to an individual participating in the community rehabilitation program.¶~~

~~(3) A local government entity shall certify to the department~~OHCS that the local community rehabilitation standards will be met for all relending of proceeds from a certified loan.

Statutory/Other Authority: ORS 317.097, 456.515 - 456.7205

Statutes/Other Implemented: ORS 317.097

AMEND: 813-110-0037

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-110-0037

Use of Project; Transfer of Title ¶¶

(1) The sponsoring entity and the owner of a project, including legally registered owners of a manufactured dwelling park, any successors, assigns or transferees shall operate and maintain the project in a manner consistent with program requirements including, but not limited to its use for eligible occupants, for the term of the OAHTC program credits or twenty years, whichever is longer.¶¶

(2) The sponsoring entity and the owner of a project with USDA RD rent assistance and/or financing attached, including any successors, assigns or transferees shall ~~maintain~~ operate and maintain the project in a manner consistent with program requirements including, but not limited to its use for eligible occupants, for the term of the ~~tax~~OAHTC program credits or ~~twen~~thirty years, whichever is longer.¶¶

(23) If the title to a project transfers to the lending institution because of a foreclosure, a deed-in-lieu of foreclosure or an involuntary transfer under a bankruptcy proceeding, the lending institution may dispose of the property at its sole discretion.¶¶

(4) In the event of a title transfer as described in OAR 813-110-0075(3), the lending institution cedes any rights to any remaining OAHTC program credits.

Statutory/Other Authority: ORS 317.097, ~~456.515-456.725~~

Statutes/Other Implemented: ORS 317.097, ~~456.508, 456.510, 456.513, 456.559, 456.605, 456.722~~

AMEND: 813-110-0050

RULE SUMMARY: Updating statutory references

CHANGES TO RULE:

813-110-0050

Waiver **II**

The Director may waive or modify any requirements of these Program rules, unless such waiver or modification would violate applicable state statute or federal regulations.

Statutory/Other Authority: ORS 317.097, 456.515 - 456.7205

Statutes/Other Implemented: ORS 317.097