

DIVISION 110
OREGON AFFORDABLE HOUSING TAX CREDITS:
AFFORDABLE HOUSING PROJECT CERTIFICATION

813-110-0010

Definitions

Certain terms used in this division are 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), otherwise in 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.
- (2) “Certification” means the written verification by the department to a lender that a project is a qualified project for which the lending institution may claim a tax credit under the provisions of the Act.
- (3) “Firm commitment of financing” means an agreement by a lending institution 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 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.
- (5) “Preservation project” means housing that was previously developed as affordable housing 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 as defined under “manufactured dwelling park” or “preservation 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.

(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) subsidy.

(8) “Rent ~~pass~~ Pass through” means the ~~amount value~~ of the tax credits loan rate discount that is extended by the project owner to rent reduction made available to the tenants in the form of reduced rents because of the reduced interest rate attributable to the OAHTC subsidy.

Stat. Auth.: ORS 317.097 & 456.555

Stats. Implemented: ORS 317.097 & 456.625

813-110-0013

Loan Requirements

In order to be eligible for the 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.

(2) 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 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 F~~ Full amount of the savings, from the reduced interest rate provided by the lending institution, is or will be passed ~~on-through~~ to the qualified tenants in the form of a rent reduction reduced housing payments, 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

(3) 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 that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed, or

(4) 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 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.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

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 for certification of a qualified loan for the allocation of OAHTC consistent with OAR chapter 813 pursuant to relevant solicitation documents issued by the department including, but not limited to a Notice of Funding Availability (“NOFA”), or as otherwise determined by the department. The application shall provide information satisfactory to the department including but not limited to:

- (a) The name, address and telephone number of the sponsoring entity;
- (b) Proof as required by the department 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 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 813-110-0021;
- (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 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 program used by the project, as required by subsection (3) of this section;
- (k) Any additional information or actions requested by the department; and

(1) 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 is intended to lower rents below the level that would be obtained after all other subsidies have been applied, a project that uses one or more other department 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. 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. 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 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 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.

Stat. Auth.: ORS 317.097

Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722