Draft Framework for PuSH Seller's Tax Credit

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About the PuSH Seller's Tax Credit

Publicly supported housing (PuSH) refers to any multifamily affordable housing development that receives or benefits from public assistance and involves restrictions that govern the affordability of units through maximum allowable rents.

PuSH includes housing that has a contract with Oregon Housing and Community Services (OHCS) involving affordability restrictions, a contract for project-based rental assistance administered by the U.S. Department of Housing and Urban Development or USDA Rural Development, or subsidies from local government. *See the full definition in ORS 456.250 and more information in OAR 813-115.*

OHCS operates the PuSH Contract Preservation process, which aims to preserve a project's affordability contract. When affordability restrictions are set to expire, owners must provide notice of the impending expiration to tenants, prospective tenants, OHCS, and local government. OHCS, the local government, or an OHCS designee may make an offer to purchase the property. The owner does not have to accept this offer, but OHCS, the local government, or an OHCS designee have a right of first refusal to match any offers made by other parties. If an offer is matched by OHCS, the local government or an OHCS designee, the owner must accept if they choose to sell.

House Bill 2071, which passed in 2023, directed OHCS to implement a program to complement the Contract Preservation process. This program is the PuSH Seller's Tax Credit. This new tax credit is available to sellers of publicly supported housing who sell to a purchaser that agrees to maintain affordability restrictions.[1] The credit can be used by purchasers as part of their negotiations with the seller, helping them to compete with other potential purchasers who may not keep the property affordable.

The PuSH Seller's Tax Credit will be available through OHCS' Oregon Centralized Application (ORCA) for affordable housing funding. OHCS anticipates that projects seeking the PuSH Seller's Tax Credit will likely also seek Preservation funding through the ORCA in order to maintain extended affordability requirements. Please note that receiving a PuSH Seller's Tax Credit allocation does not in any way reserve, prioritize, or advantage a partner in receiving a Preservation funding award.

HB 2071 sets a total cap of $3 million per year for the PuSH Seller's Tax Credit.

This framework outlines the eligibility, tax credit award criteria, distribution process, and reporting for the PuSH Seller's Tax Credit, operating within the parameters set by HB 2071.

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[1] HB 2071 defines a **"qualifying sale"** for the tax credit as "any sale of publicly supported housing to a purchaser that enters into a recorded affordability restriction agreement governing the use of the housing that:

- **(a)** Applies to publicly supported housing on or before the expiration of the right of first refusal under ORS 456.262 (3)(d); and
- **(b)** Adopts affordability restrictions for a period of at least 30 years that:
  - **(A)** For dwelling units of the participating property that were subject to an expired or expiring affordability restriction, extend those expired or expiring restrictions, except in cases where the affordability restriction was based on a project-based rental assistance program which has been terminated by the issuing agency; or
  - **(B)** For any other dwelling units, require rental rates for the housing to be affordable under federal rental affordability standards to households earning 80 percent of the area median income."

Eligibility

HB 2071 outlines the following parameters for eligibility:

- The statute defines a "qualifying sale" as a sale of publicly supported housing that occurs on or before the expiration of the 2-year right of first refusal window created by the PuSH Contract Preservation regulations (see [ORS 456.262 (3)(d)]) *and* adopts affordability restrictions for 30 or more years that either:
    - Extend existing affordability restrictions that are set to expire (if applicable), or
    - If there are no existing affordability restrictions, set rents at 80% of Area Median Income (AMI). OHCS will clarify in rules that the agency will allow units *up to* and including 80% AMI to access the tax credit. OHCS will prioritize units with vulnerable tenants (defined below).[2]
- The seller cannot be married to, blood-related to, or in a business relationship with the purchaser (have an "identity of interest").
- The tax credit can only be used for a particular building once every 30 years.

Awarding credits based on policy outcomes

Tax credits are awarded as a percentage of the sale price or assessed value, whichever is lower.

In alignment with the OHCS Statewide Housing Plan priorities of Affordable Rental Housing and Equity and Racial Justice, OHCS will apportion the PuSH Seller's Tax Credit based on the following policy outcomes.

Tenant vulnerability

Many buildings will have existing affordability restrictions that will be extended. In addition, the statute allows OHCS to award tax credits to units affordable up to 80% AMI if there were no existing affordability restrictions. In both cases, OHCS can prioritize awarding the tax credits to projects offering deeper affordability for tenants.

Affordability can be measured in two ways: by determining the Area Median Income (AMI) that is tied to the units or by determining tenant vulnerability, based on rent burden and lived experience.

OHCS will use tenant vulnerability as the measure of affordability. The loss of affordable housing impacts any tenant who must find a new place to live. However, certain tenants face more challenges in finding new affordable housing. Tenant vulnerability, using rent burden and lived experience as metrics, provides a way to more specifically determine how expiring affordability will impact tenants.

Additionally, OHCS' Preservation funding will also examine tenant vulnerability, and OHCS anticipates that most projects seeking the PuSH Seller's Tax Credit will also be seeking Preservation funding through the ORCA. For this reason, OHCS recommends aligning the PuSH Seller's Tax Credit with Preservation funding by using the same metrics for tenant vulnerability. (Note that receiving a PuSH Seller's Tax Credit allocation does not reserve, prioritize, or advantage a partner in receiving a Preservation funding award.)

[2] See full definition of "qualifying sale" in footnote 1.

"Vulnerable tenants" are defined as:

- Households that are **severely rent burdened** (paying 50% or more of their income toward housing costs), **and**

- **One or more of the following is true** of the household:
  - One or more resident identifies as Black, Indigenous, or Person of Color
  - One or more resident identifies as an immigrant or refugee
  - One or more resident identifies as a person with disabilities (including behavioral health challenges, substance use disorder, etc.)
  - Includes one or more children under 18
  - Every member of the household is 62 years old or older

Racial equity in credit distribution

Tax credits will be available to all sellers who meet eligibility criteria. However, the PuSH Seller's Tax credit a limited resource (capped at $3 million per year). Culturally specific organizations, federally recognized Tribes in Oregon, and project owners who are Black, Indigenous, or other People of Color (BIPOC) have historically received less funding from federal, state, and local governments. For these reasons, **we will use a tax credit eligibility scale that is weighted utilizing a racial equity lens.** Awards will be scaled based on the following criteria, from higher percentage awards to lower percentage awards:

1. One or more of the following are true of the selling or purchasing entity:
   - Culturally specific organization is majority owner or sole sponsor
   - Entity is a federally recognized Tribe in Oregon
   - For for-profit sole entities, >50% of ownership identifies as BIPOC
   - For non-profit sole entities, >50% of board identifies as BIPOC and/or executive director or CEO identifies as BIPOC
   - For jointly owned entities, BIPOC entity has >50% ownership

2. One or more of the following are true of the selling or purchasing entity:
   - Culturally specific organization is a minority owner and has right to exercise option to purchase at year 15
   - For jointly owned entities, BIPOC entity has <50% ownership but receives >40% of developer fee and has significant role in decision-making

3. None of the above applies to the selling or purchasing entity

Length of ownership

HB 2071 sets a cap for the tax credit percentages that changes based on how long the seller has owned the property. It allows a cap of up to 5% for buildings owned for 10 or more years, and a cap of 2.5% for buildings owned for more than 5 years but less than 10 years. Tax credits are awarded as a percentage of the sale price or assessed value, whichever is lower.

Putting it all together

Combining these three policy outcomes – tenant vulnerability, racial equity in credit distribution, and length of ownership – results in different tax credit percentages available for different types of sales.

Per statute, buildings owned by the seller for 5-10 years and 10+ years, respectively, have different allowable tax credit caps.

Within these caps, OHCS will offer higher or lower percentages based on tenant vulnerability and racial equity in credit distribution. The following tables lay out these criteria:

	Owned by seller for 5-10 years	**Owned by seller for 10+ years**
Total possible percentages (calculated by adding percentages from each table below)	2.5%	5%

Percentage of vulnerable tenants* (excluding manager's units)	**Owned by seller for 5-10 years**	**Owned by seller for 10+ years**
30% or more	1.25%	2.5%
20-29%	1%	2.25%
Any other qualifying sale*	0.75%	2%

**See definitions of vulnerable tenants and qualifying sale above*

Racial equity in credit distribution	**Owned by seller for 5-10 years**	**Owned by seller for 10+ years**
One or more of the following are true of the selling or purchasing entity: • Culturally specific organization is majority owner or sole sponsor • Entity is a federally recognized Tribe in Oregon • For for-profit sole entities, >50% of ownership identifies as BIPOC • For non-profit sole entities, >50% of board identifies as BIPOC and/or executive director or CEO identifies as BIPOC • For jointly owned entities, BIPOC entity has >50% ownership	1.25%	2.5%
One or more of the following are true of the selling or purchasing entity: • Culturally specific organization is a minority owner and has right to exercise option to purchase at year 15 (for LIHTC properties) or right of first refusal (for other properties) • For jointly owned entities, BIPOC entity has <50% ownership but receives >40% of developer fee and has significant role in decision-making	1%	2.25%
None of the above applies to the selling or purchasing entity	0.75%	2%

The lowest possible percentage a building could receive based on the criteria above is 1.5%. For example, this could apply to a building that has been owned by the seller for 5 years, has less than 20% of vulnerable tenants and has units set to 80% AMI (thereby meeting minimum requirements under the definition of qualifying sale), and will be sold or purchased by an entity that does not involve a culturally specific organization, Tribe, or BIPOC ownership/leadership.

The highest possible percentage a building could receive is 5%. For example, this could apply to a building that has been owned by the seller for 10+ years, has 30+% of tenants considered vulnerable, and will be sold or purchased by an entity that involves a culturally specific organization, Tribe, or BIPOC ownership/leadership.

Credit amounts will be determined by multiplying the percentage an applicant is awarded, using the criteria above, by the sale price or appraisal (whichever is less).

The sale prices of acquisition projects recently funded by OHCS range from $920,000 to $51,425,000, with a median of $3,640,070. Based on this range and the percentages above, we can estimate the value of tax credits that *hypothetical* buildings may receive. The table below illustrates the value of credits hypothetical buildings could receive given low, median, and high example sale prices/appraisals.

Example sale price/appraisal	**Low-end tax credit percentage: 1.5%** For example, building owned by seller for 5 years, has less than 20% vulnerable tenants, and selling or purchasing entity does not involve a culturally specific organization, Tribe, or BIPOC ownership/leadership	**High-end tax credit percentage: 5%** For example, building owned by seller for 10+ years, 30+% of tenants are considered vulnerable, and selling or purchasing entity involves a culturally specific organization, Tribe, or BIPOC ownership/leadership
Bottom of range: $920,000	$13,800	$46,000
Median: $3,640,070	$54,601	$182,004
Top of range: $51,425,000	$771,375	$2,571,250

Distributing credits

The PuSH Seller's Tax Credit will be available through OHCS' Oregon Centralized Application (ORCA) for affordable housing funding. Like all funding available through the ORCA, applicants will be assessed on a first-come, first-reviewed basis. Applications that meet eligibility criteria will be awarded tax credits using the criteria above. A total of $3 million per year is available for the PuSH Seller's Tax Credit, and OHCS cannot carry this funding forward to future years. All tax credits must be awarded within the year.

Awardees may not sell the tax credits they receive. They can, however, carry over the credits they receive for up to three additional tax years.

Collecting data and tracking program impact

OHCS staff will track data on the PuSH Seller's Tax Credit alongside our data for the PuSH Contract Preservation process. This data collection will include a list of transactions and amounts awarded; percentages of vulnerable tenants or affordability levels, as applicable; number of units involved; whether and how the selling or purchasing entity involves culturally specific organizations, federally recognized Tribes in Oregon, or BIPOC ownership/leadership; and length of ownership by the seller.

Additionally, HB 2071 requires OHCS to report to the Department of Revenue a list of sellers and approved amounts of credit each year.