Revised Framework for PuSH Seller's Tax Credit

Updated July 9, 2024

About PuSH and the new 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](ORS 456.250) and more information in [OAR 813-115](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 create a funding source to complement the Contract Preservation process. This new resource is the PuSH Seller's Tax Credit, often called the "preservation tax credit" by advocates during the legislative session.

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 compete with other potential purchasers who may not keep the property affordable.

HB 2071 sets a total cap of $3 million per year for the PuSH Seller's Tax Credit. OHCS cannot carry forward unallocated funds to future years.

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.

---

[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.[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 property once every 30 years.

Maximum credit awards vary based on 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 properties owned for 10 or more years, and a cap of up to 2.5% for properties 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.

The statute does not allow OHCS to award tax credits to properties owned by the seller for less than 5 years. This limitation intends to prevent flipping, or quick transactions for the purpose of acquiring the tax credit.

Awarding credits based on policy priorities

The statute allows OHCS to review and prioritize applications for the PuSH Seller's Tax Credit. The tax credit will be offered alongside OHCS' other funding sources through the Oregon Centralized Application (ORCA) in a first-come, first-reviewed process. The ORCA does not involve scoring, competition, or comparing applications against each other. Rather, any application that meets a set of minimum requirements, or evaluation standards, will be awarded funding.

In this context, OHCS will award credits to all eligible PuSH Seller's Tax Credit applicants until funding is exhausted. OHCS will use the amount of credit awarded as the "lever" to meet the agency's priority of equity and racial justice as established in the Statewide Housing Plan.

Culturally specific organizations[3], federally recognized Tribes in Oregon, and project sponsors who are Black, Indigenous, or other People of Color (BIPOC) have historically received less funding from federal, state, and

---

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

[3] The ORCA defines **"culturally specific organization (CSO)"** as "an entity that provides services to a cultural community and the entity has the following characteristics: majority of members and/or clients must be from a particular Community of Color; organizational environment is culturally focused and the community being served recognizes it as a culturally-specific entity that provides culturally and linguistically responsive services; 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

local governments. To advance racial equity in our funding decisions, OHCS will allocate funding as follows, in alignment with the cap based on length of ownership set out in statute:

Tax credit award percentages for transaction types	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	2.5%	5%
None of the above applies to the selling or purchasing entity	2%	4.5%

Examples

Credit amounts will be determined by multiplying the percentage an applicant is awarded (based on the above criteria) 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.

For example, a building selling at the median price of $3,640,070 that was owned by the seller for 5 years in a transaction that does not involve a culturally specific organization, Tribe, or BIPOC ownership/leadership would be allocated a tax credit equivalent to 2% of the sales price. This amounts to $72,801.40 in credit.

A building selling at the median price that was owned by the seller for over 10 years in a transaction involving a culturally specific organization, Tribe, or BIPOC ownership/leadership would be allocated a tax credit equivalent to 5% of the sales price. This amounts to $182,003.50 in credit.

The purchaser of each building would apply for this credit from OHCS, receive their allocation, and use it as a tool in their negotiation with the seller of the building. The seller would then receive the tax credit against their State tax liability.

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.

Receiving a PuSH Seller's Tax Credit reservation does not guarantee, reserve, prioritize, or advantage an applicant in receiving Preservation funding or another funding award from OHCS.

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 calendar year.

---

being served; the entity has a track record of successful community engagement and involvement with the community being served; and 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."

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.

Monthly reporting

If an awarded transaction falls through, awardees must make OHCS aware immediately so that credits can be reallocated within the calendar year.

To this end, awardees will send OHCS monthly reports on the status of their transaction.

Collecting data and tracking program impact

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

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

Engagement and what we heard

From April through June 2024, OHCS presented the first draft of this framework to the advocates instrumental in the creation of the PuSH Seller's Tax Credit and development partners likely to use the credit. We did this to ensure implementation met the intent of the legislation and would result in effective usage by partners.

OHCS held meetings with the following groups:

- Network for Oregon Affordable Housing's Preservation Work Group
- Housing Oregon's Portland Metro Policy Council
- Housing Oregon's Rural Policy Council
- Oregon Housing Alliance's Development, Land Use, and Preservation Steering Committee
- A monthly meeting of culturally specific developers OHCS convenes
- A monthly meeting of a Tribal housing work group OHCS convenes

OHCS also held a virtual engagement via Zoom open to all interested parties on May 16, 2024 and introduced the tax credit to the Housing Stability Council on June 7, 2024.

Throughout this time, we received feedback from individuals representing nonprofit developers and advocacy organizations, for-profit developers, cities, counties, and Home Forward.

The primary message we heard is that the intent of the bill was to create a fast, flexible tool for buyers who want to keep housing affordable to better negotiate with the sellers of the building and compete with other buyers who might convert it to market-rate. For this reason, the tool needs to simple for purchasers to apply for with a quick turnaround. This framework has been developed with these objectives in mind.