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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

FILED

11/19/2021 3:17 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Permanent Rules Update to the Land Acquisition Revolving Loan Program (LAP)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/21/2021 2:00 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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Salem, OR 97304

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: 12/21/2021

TIME: 1:00 PM - 2:00 PM

OFFICER: Rebecca Isom

ADDRESS:

725 Summer St NE, Suite B
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Zoom - <https://us02web.zoom.us/j/81260464917>

Meeting ID: 812 6046 4917

NEED FOR THE RULE(S)

Rule changes reflect references to an updated version of the program guidelines, clarify definitions and descriptions, and update statute reference numbers in response to the 2021 legislative session (HB-5006) which provided another \$30 million of resources for funding loans to purchasers of naturally occurring affordable housing (NOAH) or land upon which housing will be developed. OHCS determined that \$20 million of these resources will be infused into the already established and successful LAP program and this program has been broken down to target location specified funds and set asides for culturally specific organizations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB-5006, HB-2912

FISCAL AND ECONOMIC IMPACT:

No fiscal impact is estimated

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 costs to comply.

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

No small businesses were involved in the development of these rules

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

A RAC was used when the rules were initially developed and that effort is deemed sufficient so there is no need to consult a RAC again for this update. The original rules were developed in consultation with a RAC. The update to the current rules does not merit reconvening a RAC as the changes are minimal and reference an update to the program guidelines per mandated legislative changes.

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:

813-037-0005, 813-037-0010, 813-037-0012, 813-037-0015, 813-037-0020, 813-037-0025, 813-037-0030, 813-037-0035, 813-037-0040

AMEND: 813-037-0005

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0005

Purpose and Objectives

OAR chapter 813, division 37 is established to enact the Affordable Housing Land Acquisition Revolving Loan Program or Land Acquisition Program (LAP) as authorized in ORS 456.502. LAP is also subject to the Department OHCS's general rules, including but not limited to OAR chapter 813, division 5, and subject to the Department OHCS's general procedures for public contracts and procurements found in OAR chapter 813, division 6. The purpose of LAP is to provide financial assistance to eligible organizations to purchase land for affordable housing development. ~~Additional policies and instructions are outlined in the Program Description and Application Guidelines Manual dated March 2019 (LAP Manual), incorporated herein by reference.~~

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0010

RULE SUMMARY: Updating due to statutory changes and to bring in line with DOJ advice

CHANGES TO RULE:

813-037-0010

Definitions

~~The following words and terms have the following meanings unless the context would clearly indicate otherwise. Terms used throughout OAR chapter 813, division 037 may be defined in Oregon 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, division 037 are as provided in statute, OAR 813-005-0005, or herein. As used in these rules:~~

- ~~(1) "Affordable Housing" means housing that is affordable to households with incomes less than or equal to 80 percent of the area median income for the county in which the housing is built.~~
- ~~(2) "Current Market Rate" means the ten- year constant treasury maturity year rate, as determined at the time the individual loan is closed upon, plus two- and one- half percent.~~
- ~~(3) "Department" means the Oregon Housing and Community Services Department.~~
- ~~(4) "Eligible Organization" means local governments, local housing authorities, nonprofit community, or neighborhood-based organizations, federally recognized Indian tribes in this state Oregon and regional or statewide nonprofit housing assistance organizations.~~
- ~~(5) "Eligible Purpose" means the development of affordable housing and/or facilities intended to provide supportive services to affordable housing residents and low- income households in the nearby community.~~
- ~~(6) "Extenuating Circumstances" means extreme or unusual conditions that resulted in an inability to repay the loan and that were unknowable at the time of the loan.~~
- ~~(7) "Identity of Interest" means any relationship where the purchaser and seller are related, affiliated through a business relationship, or both.~~
- ~~(7) "Land Acquisition Revolving Loan Program Manual" or "LAP Manual" or "Manual" means the program manual for the Land Acquisition Revolving Loan Program dated January 2022, as described in OAR 813-037-0012. The manual may be accessed online at OHCS's website.~~
- ~~(8) "Loan Recipient" means the eligible organization that has applied for and received financial assistance under the LAP.~~
- ~~(9) "Local Government" means a county, city, district or other public corporation, commission, authority, or entity organized and existing under statute or city or county charter.~~
- ~~(10) "Low Income Household" has the m means a household with income less than or equal to 80 percent of the area median ing given come as defined in ORS 456.270.~~
- ~~(11) "Substantially Completed" means that the OHCS Department has determined that enough project milestones have been achieved to reasonably conclude that additional time will result in LAP compliance.~~

~~Statutory/Other Authority: ORS 456.502~~

~~Statutes/Other Implemented: ORS 456.502270~~

ADOPT: 813-037-0012

RULE SUMMARY: Adding per DOJ advice

CHANGES TO RULE:

813-037-0012

Land Acquisition Revolving Loan Program Manual

(1) Additional guidance and application instructions are outlined in the LAP Program Manual dated January 2022, 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 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0015

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0015

Availability and Source of Affordable Housing Land Acquisition Revolving Loan Program (LAP) Funds

(1) The Affordable Housing Land Acquisition Revolving Loan Program or Land Acquisition Program (LAP) was initially funded by repurposing funds already in ~~the Department~~OHCS's funding stream. Once moved to the LAP, the repurposed funds are to be continuously used for the LAP allowing for eligible organizations to reserve land assets for eligible purposes. Additional guidance can be found in the LAP Manual OAR 813-037-0012.¶

(2) Any additional funding may be targeted towards specific needs within the state, provided that all funding sources will be used for eligible purposes and in a manner consistent with the established program criteria.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0020

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0020

Program Criteria

(1) The LAP is overseen by ~~the Department.~~ At Department OHCS. At OHCS's discretion, ~~Department~~ OHCS may utilize a qualifying nonprofit organization to serve in a fiduciary capacity as a "program administrator". ¶

(2) ~~Department~~ OHCS or their program administrator, with ~~Department~~ OHCS's approval, may provide loans to eligible organizations to purchase land on which to develop affordable housing, and to build facilities intended to provide supportive services to affordable housing residents and low-income households in the community. ¶

(3) At least 40 percent of loans made through the LAP shall go to eligible organizations operating homeownership programs for low-income households. If the entire 40 percent cannot be loaned for homeownership programs, the remainder may be loaned for programs eligible in subsection (4) of this rule. ¶

~~(4) Additional guidance can be found in the LAP Manual OAR 813-037-0012.~~ ¶

(4) Up to 60 percent of loans, plus any funding that was unable to be used for homeownership purposes as described in subsection (3) of this rule, shall be made available to eligible organizations for the purpose of affordable housing and to build facilities intended to provide supportive services to affordable housing residents and low-income households in the community. Additional guidance on allocations and set-asides can be found in the LAP Manual OAR 813-037-0012. ¶

(5) Subject to available funding, LAP loans shall be made available in a manner consistent with the current application process as issued by ~~the Department~~ OHCS.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0025

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0025

Application Procedure Requirements

- (1) The process of obtaining LAP funding will be specified in solicitation documents issued by the ~~Department~~ OHCS, as supplemented ~~in~~ by the LAP Manual (~~See OAR 813-037-0005~~). Additional direction and guidance can be found in the LAP Manual. ¶
- ~~(2) The Department (See OAR 813-037-0012). ¶~~
- (2) OHCS may require payment of a non-refundable application charge from any applicant requesting LAP funds. ~~In the event that~~ the application is not considered due to a lack of funding availability, the application charge will be returned. ¶
- (3) ~~The Department~~ OHCS may refuse to process applications or terminate processing the application if it determines that an application is incomplete or otherwise nonconforming (see LAP Manual - OAR 813-037-0005 12) or if the applicant fails to meet the definition of an eligible organization. ¶
- (4) Property already purchased or donated is not eligible for LAP funding. ¶
- (5) Property with a cost reimbursement agreement is not eligible for LAP funding. ¶
- (6) Property purchased from an entity with an Identity of Interest to the buyer is not eligible for LAP funding. See LAP Manual for additional information. ¶
- (7) Property with option agreements or purchase sale agreements signed prior to the date of the public program opening announcement or ten business days prior to funding allocation application acceptance, whichever is longest, are not eligible for LAP funding. ¶
- (8) Property designated for renovation is not eligible for LAP funding. Exceptions may be allowed for incidental buildings on a case-by-case basis (for example, a maintenance or storage shed).

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0030

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0030

Award Determination

(1) There is no maximum loan amount on LAP loans; however, LAP is not intended to cover 100 percent of site acquisition costs. The amount of any LAP loan is subject to the discretion of ~~the Department~~OHCS considering factors that may include, but are not limited to:¶

(a) the availability of LAP funds;¶

(b) the availability of other funding to the applicant;¶

(c) the amount of affordable housing to be developed in relation to the size of the loan;¶

(d) the timing of the proposed development;¶

(e) the capacity and past performance of the applicant in developing and managing affordable housing; and¶

(f) the need for affordable housing in the area.¶

(2) ~~The Department~~OHCS shall be in the first lien position on all property loan documents.¶

(3) Loan applications must include ~~a proposed affordable housing development plan that indicates the number of affordable housing units intended, a description of any other facilities that are being considered for the property, and an estimated timeline for completion of the development. Additional information including, but not limited to, project readiness and land use, may be required by the Department as part of the application process.~~development plans as described in ORS 456.502(4).¶

(4) Subject to the placement of appropriate affordable housing into service on the land acquired by the LAP loan within eight years of the loan's receipt, LAP loans will have a simple interest rate of not more than one percent if all loan terms and regulatory requirements are met. Collection costs, late fees, interest upon accelerated payments due to an event of default and post-judgment interest are not subject to the one percent limitation.¶

(5) Subject to the placement of appropriate affordable housing into service on the land acquired by the LAP loan within eight years of the loan's receipt, LAP loan fees, if applicable, will not exceed ~~the~~one percent if all loan terms and regulatory requirements are met. Collection costs, late fees, interest upon accelerated payments due to an event of default and post-judgment interest are not subject to the one percent limitation.¶

(6) All loans will include documents listing the ~~€~~Current ~~≠~~Market ~~≠~~Rate of the loan payable in the event of a loan default.¶

(7) All housing developed on the property acquired with LAP funding shall be preserved as affordable housing for a minimum of 30 years. The affordability restrictions shall be documented through documents acceptable to ~~the Department~~OHCS including, but not limited to, restrictive covenants, recorded at the loan recipient's expense against the property acquired with LAP funding.¶

(8) Loan payments may be deferred by ~~the Department~~OHCS. However, repayment shall begin no later than when the project financing has closed. Loan documents must be satisfactory to ~~the Department~~OHCS in its sole discretion. Loan recipients must reimburse ~~the Department~~OHCS for its legal costs in negotiating terms of applicable loan documents.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0035

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0035

Loan & Project Oversight

(1) Within five years of receiving a loan, a loan recipient must present ~~the Department~~ OHCS with an updated development plan if the development has not been completed and placed into service.¶

(a) The development plan must include a current development design, committed, and anticipated financial resources dedicated to the project and an estimated development schedule that includes completion of the project within eight years.¶

(b) The updated development plan must be substantially consistent with the original development plan.¶

(2) Within eight years of receiving a loan under the LAP, the project must be completed and placed into service, or the loan interest rate limit will be reestablished at the current market rate. Failure to place a project in service within eight years of receiving a loan under LAP may also be deemed by ~~the Department~~ OHCS to be an event of default.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502

AMEND: 813-037-0040

RULE SUMMARY: Updating due to statutory changes

CHANGES TO RULE:

813-037-0040

Program or Loan Default

(1) ~~The Department~~OHCS may deem ~~a~~/~~n~~ LAP loan to be in default when one or more of the following events occur:¶¶

(a) A loan recipient does not place appropriate affordable housing into service on a property acquired under this section within eight years of receiving ~~Department~~OHCS's LAP funding.¶¶

(b) The property is not used for an eligible purpose as determined by ~~the Department.~~OHCS.¶¶

(c) Loan repayment is not made as required under the loan agreement.¶¶

(d) A loan recipient does not provide an updated development plan to ~~the Department~~OHCS within five years of receiving a loan. ¶¶

(e) The loan recipient otherwise fails to perform in a manner consistent with the LAP or applicable loan documents.¶¶

(2) If a loan recipient fails to place appropriate affordable housing into service in conformance with subsection (1)(a) or when a loan or LAP default otherwise occurs, the loan recipient must pay ~~the Department~~OHCS an amount consistent with the principal of the original loan plus compounded interest calculated at the current market rate. Loan fees and other costs may also apply. Notwithstanding the foregoing, ~~the Department~~OHCS may, in its sole discretion, grant a partial or total exemption from the repayment requirements of this section if ~~the Department~~OHCS determines that a project is ~~s~~Substantially eCompleted or that the property has been substantially used as described in the original affordable housing development plan. When determining whether to grant a partial or total exemption under this section, ~~the Department~~OHCS may consider factors including, but not limited to, ~~e~~Extenuating eCircumstances ~~and potential benefits to the LAP,~~ community need and project specific circumstances.

Statutory/Other Authority: ORS 456.502

Statutes/Other Implemented: ORS 456.502