



Oregon Housing & Community Services

"Setting the Standard"

Low Income Housing Tax Credit

Overview

The 1986 Tax Reform Act created the Low-Income Housing Tax Credit as an incentive to encourage the construction and rehabilitation of rental housing for lower-income households. The program offers credits on federal tax liabilities for ten years. Individuals, corporations, partnerships and other legal entities may benefit from tax credits, subject to applicable restrictions.

Annually, the U.S. Department of Treasury allocates tax credits to each state. Federal law limits the annual per capita tax credit issued to each state to \$1.25. Oregon Housing and Community Services (OHCS) administers the tax credit program for the state of Oregon.

How the Tax Credit Works

Tax credits offer direct federal income tax savings to owners of rental housing developments who are willing to set aside a minimum portion of the development's units for households earning 60 percent or less of gross area median income. Developers of tax credit developments typically syndicate or form limited partnerships involving investors who are willing to provide equity capital in return for the economic benefits (including tax credits) generated by the development.

The amount of tax credit an owner receives is determined at the time the tax credit is allocated. The tax credit amount is based on several factors including depreciable development costs, type of development (new construction, rehabilitation or acquisition), percentage of housing units designated for low-income use, the allocating agency's evaluation and development financing.

Tax credits may be claimed annually for a 10-year period. In order to claim the tax credit, the owner must comply with governing rules and regulations (Section 42 of the Internal Revenue Code as amended) throughout the applicable compliance period.

Eligible Projects

All types of rental housing developments qualify under the tax credit guidelines: new construction, substantial rehabilitation and acquisition of existing properties that will be substantially rehabilitated.

At minimum a development must:

Set aside a minimum of 20 percent of the units as rent restricted and available to tenants whose incomes do not exceed 50 percent of the area gross median income,

or

Set aside a minimum of 40 percent of the units as rent restricted and available to tenants whose incomes do not exceed 60 percent of the area gross median income.

Income limits are defined annually by the U.S. Department of Housing and Urban Development (HUD) based on family size and development location. As the family size increases or decreases, the maximum qualifying income allowances increase or decrease accordingly.

The development's low-income units must have gross rents, including allowances for tenant-paid utilities, that do not exceed 30 percent of qualifying income limitations. Maximum gross rents allowed under the program vary by area and the number of bedrooms in a unit. These rents are based upon the annual income limits published by HUD.

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Eligible Projects

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Tax Credit Allocation/ Application Process

The development must be maintained as low-income housing for an initial 15-year compliance period and be subject to an extended use period of 15 additional years or more, depending upon the owner's commitment.

Prior to allocating tax credits, each state is required to develop a *Qualified Allocation Plan*. Oregon's allocation plan provides both a competitive and non-competitive process for awarding tax credits to developments that address the state's low-income housing needs. The plan also includes other selection criteria, such as provision of resident services, site amenities and unmet housing needs.

Federal regulations require at least 10 percent of a state's tax credits be set aside for qualified not-for-profit organizations that are tax-exempt under Section 501(c)(3) or 501 (c)(4) of the Internal Revenue Code. Providing low-income housing must be one of the organizational purposes of the qualified organization, and among other things, must also have ownership and materially participate in the construction and management of the development during the applicable compliance period.

Competitive Credits

Applications for competitive credits are taken as part of the department's Consolidated Funding Cycle (CFC). The CFC awards credits that are subject to the state cap and has specific timelines for applications. Please contact OHCS D for more information regarding the CFC process.

Non-Competitive Credits

Developments that have 50 percent or more of the aggregate basis of buildings and land financed by tax-exempt bonds may receive a 30 percent present value credit if they qualify under the program regulations and meet the requirements of the state's Qualified Allocation Plan. Credits received by these developments do not reduce the state's annual allocation authority.

Maximum Tax Credit Eligibility

The maximum annual tax credit available to a development is calculated using an annual tax credit percentage. That percentage provides a "present value" of either 30 or 70 percent of the low-income units' qualified costs.

Development costs eligible for a 30 percent present value credit include:

- Qualified acquisition costs of developments that will be substantially rehabilitated.
- Qualified costs of new construction and substantial rehabilitation developments that will be financed with tax-exempt bonds or subsidized federal loans.

Development costs eligible for a 70 percent present value credit include qualified costs of new construction and substantial rehabilitation that have no federal financing subsidies, subject to some exceptions.

Over the 10-year credit period, the annual rate for a 30 percent present value credit is approximately 4 percent; the annual rate for a 70 percent present value credit is approximately 9 percent. Maximum tax credit eligibility is determined by multiplying the applicable annual percentage rate (approximately 4 or 9 percent) by the eligible development, acquisition, and rehabilitation costs attributable to the designated low-income units in the development.

Application

The tax credit award process consists of three separate application procedures. Each process requires a separate financial evaluation by the department.

Initial Request

The initial request is through the Consolidated Funding Cycle or its non-competitive equivalent. This application determines the amount of tax credits allowable for each project.

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Application

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Carryover Allocation Request

If a project that has received a reservation of credits will not be completed during the year the tax credits are awarded, a *Carryover Allocation Request* must be prepared. A tax credit recipient must be able to provide documentation showing:

- the project has expended at least 10 percent of project costs during the year in which the credit has been requested; and
- the applicant has site control.

The application must be revised, if necessary, to reflect the current financial situation (cost increase or reduction). A *Carryover Allocation Agreement* is sent to the Internal Revenue Service for their records and a copy is given to the applicant.

Placed in Service Request

When a project is completed (either during the year the tax credit is awarded or within 24 months of the Carryover Allocation Agreement), the tax credit recipient must provide final documentation that shows when the project was Placed in Service. This application request must include a final, as-built cost verification, syndication and/or limited partnership agreement, property management plan, and certification of all subsidies.

Key documents in the process include:

Offer of Reservation: Once a project has been reviewed and a tax credit amount is determined, an Offer of Reservation, stating the proposed amount of tax credit, is submitted to the applicant.

Reservation and Extended Use Agreement: The applicant is required to pay a reservation fee of 5 percent of the annual tax credit amount. Once the reservation fee has been received, the department and the applicant enter into a binding commitment that reserves the tax credit allocation and guarantees the project will be maintained as low income housing for at least 30 years.

Carryover Allocation: If a project will not be able to complete construction during the year the tax credits were allocated, then a *Carryover Allocation Request* must be prepared. The applicant must submit an updated application, provide evidence that at least 10 percent of total project costs have been expended, and provide proof of site control.

Declaration of Land Use Restrictive Covenants: Once the project is placed in service but before the department sends final tax documents to the Internal Revenue Service, the applicant must enter into a *Declaration of Land Use Restrictive Covenants*. This document must be recorded as a deed restriction on the property and proof of recording must be submitted to the department.

Form 8609: This form is the final document the department submits to the Internal Revenue Service showing the actual amount allocated for each project. There must be a separate Form 8609 for each building that is placed in service. The 8609 form allows the credits to be claimed on tax returns.

For additional information or to be placed on a list to receive an application, please call the **Housing Resources Section** at 503.986.2055, or email Sarah.Dornon@hcs.state.or.us. For technical assistance on a specific project, please call one of the department's **Regional Advisors to the Director** at 503.986.2000.

OHCS is the state housing finance agency, providing financial and program support to create and preserve opportunities for quality, affordable housing for lower income Oregonians. The agency also administers federal and state antipoverty, homeless and energy assistance community service programs.

Further Information