

Enrolled
Senate Bill 996

Sponsored by COMMITTEE ON RULES

CHAPTER

AN ACT

Relating to tax credits for low-income housing financing; creating new provisions; amending ORS 317.097; repealing section 85, chapter 94, Oregon Laws 2005; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 317.097 is amended to read:

317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, [2010] **2020**, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development or rehabilitation is made.

(2) The maximum difference between the amounts described in subsection (1)(a) and (b) of this section [shall] **may** not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in [such] **the** next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall be:

(a) Made to an individual or individuals who own the dwelling, 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; or

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, rehabilitation or development of housing; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed [~~\$6~~] **\$11** million for any year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which shall not exceed 20 years.

(8) [*The credit allowed in this section shall not be affected by*] The applicant's receipt of a credit under section 42 of the Internal Revenue Code [*(low-income housing tax credit program)*] **does not affect the credit allowed under this section.**

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

(10) As used in this section:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Finance charge" means the total of all interests, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, or any mortgage banking company that maintains an office in this state. "Lending institution" also includes any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) "Qualified assignee" means any investor participating in the secondary market for real estate loans.

(e) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(f) "Sponsoring entity" means a nonprofit corporation, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any person as defined in ORS 174.100, including, but not limited to, an employer making housing available to low-income employees and other low-income persons, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, state governmental entity, local unit of government or housing authority.

(11) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

(12) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

(13) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

SECTION 2. The amendments to ORS 317.097 by section 1 of this 2005 Act apply to tax years beginning on or after January 1, 2005.

SECTION 3. If House Bill 2446 becomes law, section 85, chapter 94, Oregon Laws 2005 (Enrolled House Bill 2446) (amending ORS 317.097), is repealed and ORS 317.097, as amended by section 1 of this 2005 Act, is amended to read:

317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, 2020, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development or rehabilitation is made.

(2) The maximum **amount of credit for the** difference between the amounts described in subsection (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall be:

(a) Made to an individual or individuals who own the dwelling, 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; or

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, rehabilitation or development of housing; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed \$11 million for any year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which [*shall*] **may** not exceed 20 years.

(8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not affect the credit allowed under this section.

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

(10) As used in this section:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Finance charge" means the total of all [*interests*] **interest**, loan fees, **interest on any loan fees financed by the lending institution**, and other charges related to the cost of obtaining credit [*and includes any interest on any loan fees financed by the lending institution*].

(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, [*or*] any mortgage banking company that maintains an office in this state. [*"Lending institution" also includes*] **or** any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) "Qualified assignee" means any investor participating in the secondary market for real estate loans.

(e) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(f) "Sponsoring entity" means a nonprofit corporation, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any **other** person, [*as defined in ORS 174.100, including, but not limited to, an employer making housing available to low-income employees and other low-income persons,*] provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, state governmental entity, local unit of government or housing authority.

(11) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

(12) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

(13) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

SECTION 4. This 2005 Act takes effect on the 91st day after the date on which the regular session of the Seventy-third Legislative Assembly adjourns sine die.

Passed by Senate April 11, 2005

Received by Governor:

Repassed by Senate June 22, 2005

.....M.,....., 2005

Approved:

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Secretary of Senate

.....M.,....., 2005

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President of Senate

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Governor

Passed by House June 20, 2005

Filed in Office of Secretary of State:

.....M.,....., 2005

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Speaker of House

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Secretary of State