80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

House Bill 2662

Sponsored by Representative KENY-GUYER, Senator MONNES ANDERSON; Representatives NOSSE, POWER, Senators FAGAN, GELSER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Requires Housing and Community Services Department, in certifying tax credits for affordable housing loans, to give priority to projects that develop affordable housing for sponsoring entities' employees who are direct care workers or human service workers.

Applies to loans made on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to affordable housing tax credits; creating new provisions; amending ORS 317.097; and prescribing an effective date.

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

SECTION 1. ORS 317.097, as amended by section 24, chapter 101, Oregon Laws 2018, and section 3, chapter 111, Oregon Laws 2018, is amended to read:

317.097. (1) 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 interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.

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

(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2017.

(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.

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

(h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by a qualified loan. A controlling interest includes a controlling interest in the general partner of a limited partnership that owns the real property.

(i) "Qualified loan" means:

(A) A loan that meets the criteria stated in subsection (5) of this section or that is made to refinance a loan that meets the criteria described in subsection (5) of this section; or

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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(B) The purchase by a lending institution of bonds, as defined in ORS 286A.001, issued on behalf of the Housing and Community Services Department, the proceeds of which are used to finance or refinance a loan that meets the criteria described in subsection (5) of this section.

(j) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

(2) The Department of Revenue shall allow a credit against taxes otherwise due under this chapter for the taxable year to a lending institution that makes a qualified loan certified by the Housing and Community Services Department as provided in subsection (7) of this section. The amount of the credit is 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 qualified loan that is made before January 1, 2026, 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 qualified loan for housing construction, development, acquisition 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 qualified loan for housing construction, development, acquisition or rehabilitation is made.

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

(4) Any tax credit allowed 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.

(5) To be eligible for the tax credit allowable under this section, a lending institution must make a qualified loan by either purchasing bonds, as defined in ORS 286A.001, issued on behalf of the Housing and Community Services Department, the proceeds of which are used to finance or refinance a loan that meets the criteria stated in this subsection, or by making a loan directly to:

(a) An individual or individuals who own a 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 when the loan is made of less than 80 percent of the area median income;

(b) A qualified borrower who:

(A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation of housing; and

(B) Provides a written certification executed 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;

(c) Subject to subsection (14) of this section, a qualified borrower who:

(A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation of housing consisting of a manufactured dwelling park; and

(B) Provides a written certification executed by the Housing and Community Services Department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed; or

(d) A qualified borrower who:

(A) Uses the loan proceeds to finance acquisition or rehabilitation of housing consisting of a preservation project; and

(B) Provides a written certification executed by the Housing and Community Services Department that the housing preserved by the loan:

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

(ii) Is the subject of a rent assistance contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture that will be maintained by the qualified borrower.

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

(7) For a qualified loan to be eligible for the tax credit allowable under this section, the Housing and Community Services Department must execute a written certification for the qualified loan that:

(a) Specifies the period, not to exceed 20 years, as determined by the Housing and Community Services Department, during which the tax credit is allowed for the qualified loan; and

(b) States that the qualified loan is within the limitation imposed by subsection (8) of this section.

(8) The Housing and Community Services Department may certify qualified loans that are eligible under subsection (5) of this section if the total credits attributable to all qualified loans eligible for credits under this section and then outstanding do not exceed $25 million for any fiscal year. In making loan certifications under subsection (7) of this section, 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 Oregon Housing Stability Council to have the greatest need for affordable housing.

(9) The tax credit provided for in this section may be taken whether or not:

(a) The financial institution is eligible to take a federal income tax credit under section 42 of the Internal Revenue Code with respect to the project financed by the qualified loan; or

(b) The project receives financing from bonds, the interest on which is exempt from federal taxation under section 103 of the Internal Revenue Code.

(10) For a qualified loan defined in subsection (1)(i)(B) of this section financed through the purchase of bonds, the interest of which is exempt from federal taxation under section 103 of the Internal Revenue Code, the amount of finance charge that would have been charged under subsection (2)(b) of this section is determined by reference to the finance charge that would have been charged if the federally tax exempt bonds had been issued and the tax credit under this section did not apply.

(11) A lending institution may sell a qualified loan for which a certification has been executed

to a qualified assignee whether or not the lending institution retains servicing of the qualified 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.

(12) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer all or part of a tax credit allowed under 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 qualified loans for which the tax credit under this section is allowed.

(13) 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 a tax credit under this section.

(14) Notwithstanding subsection (1)(h) and (j) of this section, a qualified borrower on a loan to finance the construction, development, acquisition or rehabilitation of a manufactured dwelling park under subsection (5)(c) of this section must be:

(a) A nonprofit corporation, manufactured dwelling park nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706 or housing authority; or

(b) A nonprofit corporation or housing authority that has a controlling interest in the real property that is financed by a qualified loan. A controlling interest includes a controlling interest in the general partner of a limited partnership that owns the real property.

(15) The Housing and Community Services Department shall give priority for tax credits under this section to projects that develop affordable housing for vulnerable populations, including sponsoring entities' employees who are direct care workers or human service workers.

[*(15)*] **(16)** The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

<u>SECTION 2.</u> The amendments to ORS 317.097 by section 1 of this 2019 Act apply to loans made on or after January 1, 2020.

<u>SECTION 3.</u> This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.