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# TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

## OHCS 13-2024
CHAPTER 813
OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

**FILED**
05/29/2024 11:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Establish rules and guidelines for the Affordable Rental Housing (ARH) Division within OHCS.

EFFECTIVE DATE: 05/29/2024 THROUGH 11/24/2024

AGENCY APPROVED DATE: 05/28/2024

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Filed By:
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NEED FOR THE RULE(S):

The ARH Division of Oregon Housing and Community Services (OHCS) currently operates following the General Rules (813-005) which do not encompass the needs of the Division. Division 002 addresses Rules specific to the ARH Division which will include operation of the new Oregon Centralized Application (ORCA) and its funding allocations.

JUSTIFICATION OF TEMPORARY FILING:

Launch of the Oregon Centralized Application is intended to be launched in the month of May 2024. Rules governing this process are needed immediately for the ARH Division of OHCS to operate this method of funding affordable rental housing projects in the State of Oregon. This vital change in funding delivery for affordable housing projects is in response to the Governor's Executive Order 2023-3 and 2023-4.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Governor's Executive Order 2023-3 and 2023-4.
Statutory/Other Authority: ORS 456.250 - 456.395, 456.500 - 456-723, 458-210 - 458-740
Statutes/Other Implemented: ORS 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740
Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act

HOUSING IMPACT STATEMENT:

These rules do not affect the cost of development of 6000 square foot parcel and the construction of a 1200 square foot detached single-dwelling on that parcel.

RULES:
813-002-0005, 813-002-0010, 813-002-0015, 813-002-0020, 813-002-0025, 813-002-0030, 813-002-0035, 813-002-0040, 813-002-0045, 813-002-0050, 813-002-0055

ADOPT: 813-002-0005

RULE TITLE: Purpose and Objectives

RULE SUMMARY: This Rule establishes the purpose of the Affordable Rental Housing Division of OHCS and its programs.

RULE TEXT:

OAR Chapter 813, Division 2 establishes the rules and guidelines for the Affordable Rental Housing (ARH) Division within the Oregon Housing and Community Services Department (OHCS). This Division 2 is designed to govern the ARH division's rules and policies for the entire division.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

ADOPT: 813-002-0010

RULE TITLE: Definitions

RULE SUMMARY: This Rule establishes definitions for the Affordable Rental Housing Division Rules.

RULE TEXT:

The following words and terms have the following meanings unless the context would clearly indicate otherwise.

(1) “Applicant” means any developer, consultant, sponsor, or other individual or entity that may initiate a funding request and act as a responsible party for a project throughout the Funding Process. This includes entities that have been conditionally approved by the Housing Stability Council (“HSC”) for funding.

(2) “ARH” means the Affordable Rental Housing Division within OHCS which provides financial resources to create and preserve quality, affordable rental housing for Oregonians. ARH is also responsible for overseeing long-term property performance and programmatic compliance of OHCS federal and state development investments, permanent supportive housing funding, and the United States Department of Housing and Urban Development’s (HUD) rent-assisted portfolio of housing.

(3) “Co-Developer” means an individual or entity that is partnering with the Developer to manage the production, acquisition, or rehabilitation of affordable rental housing units.

(4) “Co-Sponsor” means the individual or entity that acts as a secondary responsible party for a project throughout the ORCA Process and may include, but is not limited to the Developer, Applicant, or Project Owner.

(5) “Developer” means the individual or entity that is responsible for managing the production, acquisition, or rehabilitation of affordable rental housing units.

(6) “Developer Consultant” means an individual or entity contracted to provide guidance and support to the Applicant to structure the project, its funding, and/or seeing it through completion.

(7) “Funding” means financial support from ARH, including loans, grants, bonds, or other types.

(8) “Funding Process” means the method ARH employs to receive prospective project applications in order to distribute Funding for Affordable Rental Housing projects in Oregon. This may include the ORCA or a different Funding Process.

(9) “Funding Recipient” means an Applicant that has been awarded Funding for their project.

(10) “Oregon Centralized Application” or (“ORCA”) means the integrated entry point for an Applicant to request an affordable housing subsidy from ARH. The ORCA process is divided into various steps in which applicants provide increasing levels of information from project concept to commitment.

(11) “Project Owner” means the entity that acts as the responsible party for a project once the project has been funded and established.

(12) “ARH Predevelopment and Pipeline Technical Advisory” means assistance and guidance provided to Applicants as they engage with the Funding Process and move through the ARH development pipeline.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

ADOPT: 813-002-0015

RULE TITLE: Governance and Decision Making

RULE SUMMARY: This Rule establishes the authority of the ARH Division to review and update policies as necessary.

RULE TEXT:

(1) ARH may develop, review, and propose changes to policies as necessary to address evolving housing needs, market conditions, and legislative mandates.

(2) The General Policy and Guideline Manual (GPGM) dated May 6 2024, as amended from time to time, is incorporated into this Division 2 by reference.

STATUTORY/OTHER AUTHORITY: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

ADOPT: 813-002-0020

RULE TITLE: Public Input

RULE SUMMARY: This Rule outlines the requirements and expectations for the ARH Division to seek public input and feedback regarding policies and procedures.

RULE TEXT:
(1) Public feedback may be provided to ARH using the Housing Stability Council public feedback process which is published on the OHCS website.
(2) ARH Funding Applicants and prospective Applicant input may also be provided to ARH through the OHCS General Housing email inbox at app.team@hcs.oregon.gov.
(3) Project Owners that receive ongoing OHCS compliance monitoring may also provide feedback regarding ARH policies by using the methods listed above or by contacting the ARH staff member responsible for monitoring their project.
(4) Tenants residing in properties that receive ongoing OHCS compliance monitoring may provide feedback regarding ARH policies by using the methods listed above in addition to contacting an ARH staff member responsible for monitoring the property.
(5) Public feedback will be taken under consideration by ARH. ARH will retain sole discretion for final decision-making regarding the feedback provided by the public.

STATUTORY/OTHER AUTHORITY: 456.250 - 456.395,, 456.500 - 456.723, 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: 456.250 - 456.395,, 456.500 - 456.723, 458.210 - 458.740

ADOPT: 813-002-0025

RULE TITLE: Funding Applications

RULE SUMMARY: This Rule establishes the application process for funding requests made to the ARH Division.

RULE TEXT:

(1) The Funding Process may include multiple housing resources. Applications may be accepted on a rolling basis if funding is available.

(2) During the ORCA application process, ARH staff will work with Applicants to assign the best Funding for a project based on the project type, Applicant's project management experience, eligibility requirements, Funding availability, and other factors as determined by ARH.

(3) Funding may be set aside to assure access and availability for historically underserved areas or Applicants depending on ARH policy goals or resource priorities.

(4) Projects in the ARH development pipeline will move through various steps to receive Funding. Standards tied to these steps may be determined by the unique project needs as well as specific funding types attached to the project.

(5) Movement through the ARH development pipeline steps will be determined by the Applicant's ability to complete tasks and achieve standards. However, some steps may be time-constrained as determined by ARH. OHCS will provide Applicants with notice of any deadlines for necessary tasks related to the project if failure to complete the task would result in a project restarting a step in the pipeline, denial of funding, or ARH recalling a conditional commitment of the project funding.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

ADOPT: 813-002-0030

RULE TITLE: Technical Advisory

RULE SUMMARY: This Rule establishes ARH Technical Assistance parameters and restrictions.

RULE TEXT:

(1) ARH Predevelopment and Pipeline Technical Advisory assistance and guidance may include:

(a) Assistance to Developers in identifying support needed to navigate the Funding Process or ARH development pipeline, strengthen OHCS capacity to build and maintain affordable rental housing, or other areas determined by OHCS.

(b) Offering resources and referrals to Developers.

(c) Guidance regarding difficulties Developers encounter during the Funding Process or while in the ARH development pipeline.

(2) Developers that seek to engage with the ARH Predevelopment and Pipeline Technical Advisors may indicate so at any time throughout the Funding Process. ARH staff may also refer Developers directly to the ARH Predevelopment and Pipeline Technical Advisory team for support.

(3) ARH may establish and enforce a limit on the number of Developers enrolled to receive services from the ARH Predevelopment and Pipeline Technical Advisory team.

(a) If such limits on enrollment are established or enforced, priority enrollment will be provided to entities consistent with the most recent Statewide Housing Plan priorities.

(b) Additional priority engagement with ARH Predevelopment and Pipeline Technical Advisory may be extended to entities that meet priority set-asides offered at the time of engagement.

(4) ARH Predevelopment and Pipeline Technical Advisors support projects in an advisory capacity only. Working with ARH Predevelopment and Pipeline Technical Advisors does not guarantee Funding or preference for any ARH resources. ARH is not liable for any failure of a project to move through the Funding Process to financial close, regardless of the amount of time ARH staff has contributed to supporting an Applicant throughout that process.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

ADOPT: 813-002-0035

RULE TITLE: Funding Allocations

RULE SUMMARY: This Rule establishes ARH funding decision terms and requirements for approval.

RULE TEXT:

(1) Applications will be evaluated based on standards and requirements published in the Funding Process.

(2) All HSC Funding approvals are considered conditional.

(3) HSC may conditionally approve maximum subsidy amounts, early project parameters, and project restrictions.

(a) Applicants may alter project plans for projects conditionally approved by HSC if the changes are immaterial and do not fundamentally alter the project scope or intent.

(b) Applicants may not alter project plans for projects conditionally approved by HSC if the changes are material and fundamentally alter the project scope or intent. If an Applicant seeks to make such changes, the project must return to HSC for approval of the changes prior to Applicant implementing the change(s).

STATUTORY/OTHER AUTHORITY: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

ADOPT: 813-002-0040

RULE TITLE: Protests and Judicial Review of Funding Process

RULE SUMMARY: This Rule establishes a procedure for appeal and review of ARH Funding Processes.

RULE TEXT:

(1) A prospective Applicant may protest an ARH Funding Process. Before seeking judicial review, a prospective Applicant must file a written protest with OHCS and exhaust all administrative remedies.

(2) Unless otherwise specified by the ARH Funding Process, a protest must be delivered in writing to OHCS not less than 10 calendar days prior to an application due date. In the case of the ORCA with no due date, a protest must be received during the open application period of the ORCA. Protests of any Funding Process will not affect OHCS Funding decisions that were made prior to OHCS' receipt of a protest.

(3) A prospective Applicant's written protest must include the following elements:

(a) Sufficient information to identify the Funding Process that is the subject of the protest;

(b) The grounds that demonstrate how the Funding Process is contrary to law or how the Funding Process is legally flawed;

(c) Evidence or documentation that supports the grounds on which the protest is based;

(d) The relief sought; and

(e) A statement of the desired changes to the Funding Process that the prospective Applicant believes will remedy the conditions upon which the prospective Applicant based its protest.

(4) OHCS will not consider a prospective Applicant's protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Funding Process. OHCS will consider the protest if it is timely filed and meets the conditions set forth in subsection (3) of this section. OHCS will issue a written disposition of the protest no fewer than 3 business days before applications are due, unless a written determination is made by OHCS that circumstances exist that justify a shorter time limit. If OHCS upholds the protest, in whole or in part, OHCS may in its sole discretion either issue an addendum reflecting its disposition or cancel the Funding Process.

(5) If OHCS receives a protest from a prospective Applicant in accordance with this rule, OHCS may extend application due dates if OHCS determines an extension is necessary to consider and respond to the protest.

(6) Prior to the deadline for submitting a protest, a prospective Applicant may request that OHCS clarify any provision of the Funding Process. OHCS' clarification to a prospective Applicant, whether orally or in writing, does not change the Funding Process and is not binding on OHCS unless OHCS modifies the Funding Process by addendum.

(7) Judicial review of OHCS' decision relating to a protest to a Funding Process shall be in accordance with ORS 183.480.

STATUTORY/OTHER AUTHORITY: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: 456.250 - 456.395, 458.210 - 458.740

ADOPT: 813-002-0045

RULE TITLE: Protests and Judicial Review of Funding Decisions

RULE SUMMARY: This Rule establishes a procedure for appeal and review of ARH Funding Decisions.

RULE TEXT:

(1) An Applicant may protest the Funding offered to a project, or the intent to award Funding, whichever occurs first, if the following conditions are satisfied:

(a) The Applicant is adversely affected because the Applicant would be eligible to be awarded Funding in the event that the protest was successful; and

(b) The reason for the protest is that:

(A) OHCS has failed to conduct the evaluation of applications in accordance with the criteria or processes described in the Funding Process;

(B) OHCS has abused its discretion in rejecting the protestor's application; or

(C) OHCS' evaluation of applications or OHCS' subsequent determination of Funding is in violation of law.

(2) An Applicant must file a written protest with OHCS and exhaust all administrative remedies before seeking judicial review of OHCS' grant award decision.

(3) Unless otherwise specified in the Funding Process, an Applicant must deliver a written protest to OHCS within 7 calendar days after the Funding decision is made.

(4) An Applicant's written protest must specify the grounds for the protest to be considered by OHCS.

(5) OHCS will not consider an Applicant's grant award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Funding Process. OHCS will issue a written disposition of the protest in a timely manner. If OHCS upholds the protest, in whole or in part, OHCS may in its sole discretion either award Funding to the successful protestor or cancel the Funding Process. Cancellation of a Funding Process will not affect OHCS Funding decisions that were made prior to OHCS' receipt of a protest.

(6) If the protest is mailed, the envelope containing the request for review must:

(a) Be marked PROTEST;

(b) Identify the project or prospective applicant name;

(c) Be addressed to the ARH Applications Team as recipient of the protest;

(d) Be mailed to the Department at its main Salem office: Oregon Housing and Community Services, 725 Summer Street NE, Suite B Salem, Oregon 97301

(7) If the protest is electronically mailed, the electronic mail must:

(a) Be marked PROTEST in the subject line;

(b) Identify the project or prospective applicant name in the subject line;

(c) Be addressed electronically

(8) Judicial review of OHCS' decision relating to a grant award protest shall be in accordance with ORS 183.480.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

ADOPT: 813-002-0050

RULE TITLE: Protests and Judicial Review of Enforcement Action

RULE SUMMARY: This Rule establishes a procedure for appeal and review of ARH Enforcement Action.

RULE TEXT:

(1) An Applicant may protest an OHCS enforcement action if the following conditions are satisfied:

(a) OHCS has abused its discretion in initiating an enforcement action; or

(b) OHCS' enforcement is in violation of law.

(2) An Applicant must file a written protest with OHCS and exhaust all administrative remedies before seeking judicial review of OHCS' enforcement action.

(3) Unless otherwise specified in the Funding agreement, an Applicant must deliver a written protest to OHCS within 7 calendar days after OHCS notified an Applicant or a prospective Applicant of its planned enforcement action.

(4) An Applicant or prospective Applicant written protest must specify the grounds for the protest to be considered by OHCS.

(5) OHCS will not consider an Applicant enforcement action protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Funding agreement. OHCS will issue a written disposition of the protest in a timely manner. If OHCS upholds the protest, in whole or in part, OHCS may in its sole discretion either modify or cancel the enforcement action.

(6) If the protest is mailed, the envelope containing the request for review must:

(a) Be marked PROTEST;

(b) Identify the project or prospective applicant name;

(c) Be addressed to the ARH Applications Team as recipient of the protest;

(d) Be mailed to the Department at its main Salem office: Oregon Housing and Community Services, 725 Summer Street NE, Suite B Salem, Oregon 97301

(7) If the protest is electronically mailed, the electronic mail must:

(a) Be marked PROTEST in the subject line;

(b) Identify the project or prospective applicant name in the subject line;

(c) Be addressed electronically

(8) Judicial review of OHCS' decision relating to an enforcement action protest shall be in accordance with ORS 183.480.

STATUTORY/OTHER AUTHORITY: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: 456.250 - 456.395, 456.500 - 456.723, 458.210 - 458.740

ADOPT: 813-002-0055

RULE TITLE: Fees and Charges

RULE SUMMARY: This Rule establishes the ARH discretion to require fees and charges of applicants, potential applicants, owners, or other partners.

RULE TEXT:

(1) ARH may require the payment of fees and charges as it determines appropriate with respect to the administration of its housing programs and the ORCA or other Funding process requirements. These fees and charges may include, but are not limited to:

(a) The Funding Process application, award, documentation and use of department ARH Funding assistance.

(b) Ongoing compliance monitoring and enforcement of financial, affordability, and habitability requirements.

(c) Transfers, subordinate liens, and encumbrances.

(2) At its sole discretion, with reasonable justification and authority and under unique circumstances, ARH may reduce certain established fees and charges.

STATUTORY/OTHER AUTHORITY: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740

STATUTES/OTHER IMPLEMENTED: ORS 456.250 - 456.395, ORS 456.500 - 456.723, ORS 458.210 - 458.740