

**HOUSING AND COMMUNITY SERVICES DEPARTMENT**

**DIVISION 360**

**HOUSING CHOICE LANDLORD GUARANTEE PROGRAM**

**813-360-0000**

**Purpose and Objectives**

The rules in OAR chapter 813, division 360 are promulgated to accomplish the general purpose of implementing ORS 456.375 to ORS 456.~~395~~ 390 (the “Act”), which designates the Housing and Community Services Department herein after referred to as “the Department” as the state agency responsible for developing and administering the Housing Choice Landlord Guarantee Program and set forth the program requirements. The purpose of the program is to provide certain financial assistance to qualifying landlords to mitigate damages caused by tenants as a result of occupancy under the Housing Choice Voucher Program.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.390~~5~~

**Comment [AM1]:** Comment 1a, Oregon Law Center & Group

**Comment [AM2]:** Comment 1b, Oregon Law Center & Group

**Comment [AM3]:** Comment 1a, Oregon Law Center & Group

**813-360-0010**

**Definitions**

Words and terms used in OAR chapter 813, division 360 should be construed as defined or used in the Act, in 813-005-0005, or in this division unless the context clearly requires otherwise. For purposes of this division:

- (1) “Claim” means a claim in form and substance acceptable to the department filed by a landlord for program assistance to reimburse the landlord for qualifying damages awarded in a final judgment as further provided in these rules.
- (2) “Housing Choice Landlord Guarantee Program” or “program” means the program established in the Act as further set forth in this division.
- (3) “Housing Choice Landlord Guarantee Program Fund” or “fund” means the fund established pursuant to ORS 456.385 for the reimbursement of qualifying program damages.
- (4) “Housing Choice Voucher Program” means the federal tenant-based assistance program established under 42 USC 1437(f)(o).
- (5) “Landlord” means an owner of a dwelling unit that has entered into an agreement with a local housing authority to receive tenant-based assistance payments under the Housing Choice Voucher Program and that has entered into a rental or lease agreement with a tenant determined to be eligible to receive assistance under the Housing Choice Voucher Program. “Landlord” includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.
- (6) “Local housing authority” means a housing authority defined in ORS chapter 456 that has entered into a contract with the Secretary of Housing and Urban Development of the United States pursuant to which the housing authority is authorized to make tenant-based assistance payments to landlords within a designated county or area of operation under the Housing Choice Voucher Program.

(7) “Program assistance” means reimbursement funding to a landlord by the department from the Housing Choice Landlord Guarantee Program Fund pursuant to these rules in response to a claim filed with the department by a landlord.

(8) “Tenant” means an individual or a family eligible to receive tenant-based assistance payments under the Housing Choice Voucher Program who has entered into a rental or lease agreement with a landlord.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.395390

**Comment [AM4]:** Comment 1a, Oregon Law Center & Group

### 813-360-0020

#### Program Administration

(1) The department, in its sole discretion, may choose to contract with one or more public or private provider(s) for the administration of the Housing Choice Landlord Guarantee Program. The department is not subject to the provisions of ORS chapter 279A or 279B in procuring or effectuating such a contract.

(2) If the department chooses to contract for the administration of the program:

(a) The department will do so in accordance with OAR chapter 813, division 6 as supplemented herein.

(b) The department will publish solicitations, application requirements, award criteria, and deadlines through the Oregon Procurement Information Network (ORPIN).

(c) The department will provide stakeholders, including the Housing Choice Advisory Committee as created by ORS 456.390(4), with the opportunity to provide input regarding the contract award process.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.395390

**Comment [AM5]:** Comment 1a, Oregon Law Center & Group

### 813-360-0030

#### Landlord Eligibility

(1) In order to be eligible for program assistance, a landlord must first obtain a judgment with a monetary award against a tenant from a court in the county in which the tenant or the property is located.

(a) The judgment must be from a circuit court, the small claims department of a circuit court, or a justice court.

(b) The time frame for appeal of the judgment must have expired without appeal or the judgment must otherwise be final and not be subject to further judicial review.

(2) Program assistance is limited to reimbursement for those amounts covered in a final judgment that are related to property damage, unpaid rent or other damages satisfactorily described and documented in a claim to the department from a landlord and:

(a) Incurred after July 1, 2014;

(b) Caused as a result of the tenant’s occupancy pursuant to a rental agreement under the Housing Choice Voucher Program in effect at the time the damage was incurred;

(c) That exceed normal wear and tear; and

(d) That are in excess of \$500, but not more than \$5,000 per tenancy.

(A) Program assistance for damages in amounts less than \$500 may be provided by the department, when a partial amount is still owes on a judgment in excess of \$500. For example, if a

**Comment [AM6]:** Comment 2a from Oregon Law Center and Group. They suggest “with a money award”.

**Comment [AM7]:** Comment 2b, Oregon Law Center & Group

**Comment [AM8]:** Comment 2c, Oregon Law Center & Group

**Comment [AM9]:** Spacing error.

landlord has received a payment of \$400 on a \$700 judgment for qualifying damages, the landlord may seek reimbursement for the remaining \$300 owing to it under the judgment.

(B) Program assistance for damages up to \$5,000 may be provided by the department on a judgment that is in excess of \$5,000. For example, if a landlord has a judgment for \$7,000 of qualifying damages, the landlord may seek reimbursement for up to \$5,000 of the qualifying damages.

(3) Qualifying damages included within the meaning of property damage, unpaid rent or other damages may include:

(a) Attorney fees, court costs, and interest;

(b) Loss of rental income during the time ~~reasonably~~ required for repairs to with respect to qualifying property damage;

(c) Lease-break fees;

(d) Other costs related to lease violations by a tenant.

~~(4) All program assistance received by a landlord must be used by the landlord only for payment of qualifying, uncompensated damages for which it filed the particular claim for program assistance.~~

~~(5) A landlord may not seek, accept or retain program assistance from the department for amounts paid to the landlord for qualifying damages by the tenant or by a third party.~~

~~(6) If, after submitting a claim for program assistance to the department, a landlord receives payment for any claimed damages from a tenant or a third party, the landlord must promptly notify the department within ten (10) days of such payment.~~

~~(7) A landlord must provide restitution to the department for overpaid program assistance within forty-five (45) days of notice.~~

~~(8) The department may shall maintain a record of program assistance provided to a landlord to assist it in determining if there has been an overpayment of program assistance to that landlord.~~

~~(9) The following examples are illustrative of when restitution may or may not be owed by a landlord to the department. Any amounts paid to the landlord shall be applied to the sum total of the qualifying judgment owed the landlord;~~

(a) Example 1: A qualifying judgment is \$6,000. The landlord receives a \$5,000 reimbursement from the fund, and a \$1,000 payment from the tenant. The landlord reports the receipt of \$1,000. There has been no overpayment.

(b) Example 2: A qualifying judgment is for \$6,000. The landlord receives a \$5,000 reimbursement from the fund, and a \$2,000 payment from the tenant. The landlord reports the \$2,000. There has been a \$1,000 overpayment to the landlord, which must be reimbursed to the department by the landlord.

~~(10) A landlord must submit a claim for program assistance to the department within one year from the date of the expiration of the right to appeal a qualifying judgment against a tenant or the date that after which the judgment otherwise becomes final and not further appealable is not subject to further appeal.~~

~~(11) A landlord must file a satisfaction of judgment in the amount of any program assistance received from the department in the court from which the judgment against the tenant was obtained. A copy of this filed satisfaction must be delivered to the department within 30 days of the landlord's receipt of the program assistance.~~

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.395390

**Comment [AM10]:** Comment 2d, Oregon Law Center & Group

**Comment [AM11]:** Comment 2e, Oregon Law Center & Group

**Comment [AM12]:** Renumbering after the removal of Sub 4.

**Comment [AM13]:** Comment 2f, Oregon Law Center & Group

**Comment [AM14]:** Comment 2g, Oregon Law Center & Group

**Comment [AM15]:** Comment 2h, Oregon Law Center & Group

**Comment [AM16]:** Comment 2i, Oregon Law Center & Group

**Comment [AM17]:** Comment 2j, Oregon Law Center & Group

**Comment [AM18]:** Comment 1a, Oregon Law Center & Group

**813-360-0040**

**Claim for Assistance**

(1) The department normally will provide the required form or information for a claim for program assistance on its website. A claim must include a signed declaration by the landlord as to the truth of matters asserted, including but not necessarily limited to:

**Comment [AM19]:** Comment 3a , Oregon Law Center & Group

- (a) An attestation regarding how the damages submitted for reimbursement meet the criteria set out in OAR 813-360-0030 (Landlord Eligibility);
- (b) The tenant’s last known address and the address used to accomplish service of the court pleadings on the tenant, if different;
- (c) The landlord’s current mailing or contact address;
- (d) The specific address of the property where the tenant resided at the time the damage was incurred;
- (e) A list of any payments the landlord has received towards the judgment, either by the tenant or a third party.

(2) The claim must be accompanied by:

- (a) A copy of the complaint;
- (b) A court-certified copy of the final judgment;
- (c) A copy of the final security deposit accounting containing an itemization of damages;
- (d) A copy of the pre- and post-tenancy inspection reports, if any;
- (e) A copy of Part A of the Housing Choice Voucher Program agreement between the landlord, the tenant, and the housing authority, for the property where the damage was incurred; and
- (f) Such other information as the department may require.

**Comment [AM20]:** Comment 3b, Oregon Law Center & Group

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.395390

**Comment [AM21]:** Comment 1a, Oregon Law Center & Group

**813-360-0050**

**Awards of Assistance**

(1) Prior to approving a claim for program assistance, the department will:

- (a) Determine if the claim is complete and satisfies the criteria necessary to be a qualifying claim, including as set out in OAR 813-360-0030 and 813-360-0040;
- (b) Verify with the public housing authority that the tenant was a voucher holder at the time the tenancy was terminated.

(2) The department will endeavor to review claims for program assistance and make awards of program assistance for qualifying applications within 45 days of its receipt of all required information. The department may choose to require the submittal of additional or clarifying information.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.395390

**Comment [AM22]:** Comment 4, Oregon Law Center & Group. We are not removing the word “endeavor” as suggested in Comment 4. This language was added at the suggestion of the Department of Justice. Given that HCS does not know the extent of claims on the Guarantee Fund, we feel it is prudent to leave the word “endeavor”. The guidelines currently spell out clear timelines and we believe we will meet the 45 day timeline.

**813-360-0060**

**Tenant Repayment Plans**

(1) When a payment of program assistance is made to a landlord, the department will require the responsible tenant to repay the full or a partial amount of any program assistance paid to the landlord and shall offer the responsible tenant a reasonable repayment agreement that provides

**Comment [AM23]:** Comment 1a, Oregon Law Center & Group

for repayment by the tenant to the department of the full or a partial amount of the program assistance paid to the landlord.

(2) Repayment plans from the department ~~may shall~~ take into account factors the department deems relevant as to capacity for repayment, including but not limited to the tenant's family size, monthly income, debt obligations, and the family's ability to meet the basic needs of the household.

**Comment [AM24]:** Comment 5a, Oregon Law Center & Group

(3) After the department pays a claim for program assistance to a landlord, the department will serve a notice upon the responsible tenant that informs the tenant of the following:

**Comment [AM25]:** Comment 1a from ORHA requests we specify debt obligations includes debt to landlords. We would prefer not to further define debt obligation in rule. In the program guidelines, we have defined debt obligation, and we have included debt to previous landlords.

(a) That the tenant must repay to the department the amount of any program assistance paid to a landlord on the tenant's behalf;

(b) That the tenant may enter into a reasonable repayment agreement with the department to repay the full or a partial amount of any program assistance paid to a landlord on the tenant's behalf.

~~The tenant may request a repayment plan by contacting the department;~~

~~(c) That the tenant may request a waiver of the repayment requirement for good cause by contacting the department;~~

**Comment [AM26]:** Comment 5b, Oregon Law Center & Group

~~(ed)~~ That if the tenant does not enter into a repayment agreement or make good faith efforts to comply with the terms of a repayment agreement, or otherwise fails to repay the full or an agreed-upon partial amount of assistance paid to the landlord on the tenant's behalf, the department may seek to collect any amount remaining unpaid by the tenant;

**Comment [AM27]:** Renumbering.

~~(de)~~ That the department will make available upon request by local housing authorities and landlords information regarding a tenant's compliance with the provisions of this section, including records of repayments made by the tenant, where applicable;

~~(ef)~~ That the tenant may seek a waiver of repayment requirements under this section for good cause shown and may contest the department's determination that the tenant has an obligation to repay any amounts of assistance paid to a landlord on the tenant's behalf, in accordance with ORS chapter 183; and

~~(fg)~~ The means by which a tenant may contest the department's determination that the tenant has an obligation to repay any program assistance, its determination as to a tenant's failure to comply in good faith with a repayment agreement, or the department's determination with respect to any requested waiver of repayment.

(4) The department will waive program assistance repayment requirements upon its determination of good cause for such waiver. The department may waive other requirements of the Act and this division upon its determination of good cause for such waiver. Factors that the department may consider if there is good cause for waiver include, but are not limited to the following:

(a) The landlord has already been paid, either by the tenant or a third party;

(b) The damages resulting in the judgment were the result of domestic violence, sexual assault, stalking, or other crime of which the tenant or someone in the tenant's household was the victim;

(c) The tenant and family have insufficient income, including all financial assistance and subsidies, to meet the basic minimum needs of the household; ~~and~~

(d) Other extenuating circumstances ~~as further defined in the guidelines;~~

~~(e) The status of the fund;~~

**Comment [AM28]:** Comment 5d, Oregon Law Center & Group

**Comment [AM29]:** Comment 1d from ORHA indicates they would prefer that tenants not be granted permanent waivers of their obligation to repay. We would prefer not to define this in rule. Currently in guidelines, we may offer tenants a repayment plan, we may arrange to defer the debt, or we may waive the debt altogether. If tenants do not request a waiver or repayment plan, or make no good faith effort to repay assistance, we have set up protocols to send to the Department of Revenue for collections.

(5) Amounts repaid by tenants under this section will be deposited by the department into the fund.

**Comment [AM30]:** Comment 5e, Oregon Law Center & Group

(6) The department may pursue any rights, remedies or processes provided at law or otherwise for the collection of unpaid amounts due from a tenant for program assistance paid to a landlord on the tenant's behalf.

(7) The department will, in accordance with ORS chapter 183, provide an opportunity for the tenant to contest the following:

(a) The department's determination that the tenant has an obligation to repay the department,

(b) That the tenant has failed to repay amounts due under a repayment agreement,

(c) That the tenant has not made or is not making a good faith effort to comply with the repayment agreement;

(d) That the tenant has not paid to the department the full or a partial amount of the assistance paid to a landlord on the tenant's behalf; or

(e) That the department properly failed to waive a repayment obligation.

(8) The department will ~~endeavor to~~ serve a notice of noncompliance upon a tenant in accordance with ORS 183.415 that states the amount of program assistance remaining unpaid by the tenant. If the notice is served by mail, it will be sent to the tenant's last known address, and the address used to accomplish service of the court pleadings on the tenant, if different.

(9) The department will note whether or not a tenant is in compliance with applicable repayment obligations and make that information available to local housing authorities and landlords at no cost. A tenant will be considered in compliance if the tenant has been granted a relevant waiver, or the department determines that the tenant has made or is making good faith efforts at repayment. The department will note if the full amount of program assistance has been repaid.

(a) The contact number or email address that a landlord may use to request compliance information will be made available on the department's website.

(b) The department will respond promptly to requests for compliance information.

(c) The department will update compliance information on a timely basis, ~~with a goal of~~ not less frequently than every 30 days.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.375 to 456.~~395~~390

**Comment [AM31]:** Comment 5f, Oregon Law Center & Group

**Comment [AM32]:** Comment 1b from ORHA indicates they are requesting specific information about whether the tenant is in compliance because they are making payments or whether they have been granted a waiver. HCS has concerns about the privacy of tenants, particularly without signed agreements about information disclosure.

**Comment [AM33]:** Comment 1c from ORHA indicates they would like further definition of "promptly", and that two business days is reasonable. We would prefer not to define promptly in rule, given that HCS does not have any knowledge of future demand for this service. Currently in guidelines, we have that the Program Analyst will respond to Landlord inquiries within two business days.

**Comment [AM34]:** Comment 5g, Oregon Law Center & Group

**Comment [AM35]:** Comment 1a, Oregon Law Center & Group