

# Mortgage Credit Certificate Program



Sponsored by:  
The City of Portland  
Portland Housing Bureau  
421 SW Sixth Avenue, Suite 500  
Portland, OR 97204

Phone: (503) 823-2375  
Fax: (503) 865-3480  
[www.portlandoregon.gov/phb/mcc](http://www.portlandoregon.gov/phb/mcc)



## Table of Contents

### SECTION I

#### INTRODUCTION TO THE MCC PROGRAM

A. GENERAL OVERVIEW	1
What is an MCC?	1
What is the difference between a “tax credit” and a “tax deduction”?	1
What happens to the tax deduction for mortgage interest when a homebuyer uses a MCC?	1
How does the homebuyer realize the increase in "home buying power"?	2
What happens if a qualified homebuyer cannot use the entire amount of the MCC credit for the year in which it applies?	2
How does a homebuyer apply for an MCC?	2
What kinds of properties are eligible?	2
What loans can be used with the MCC?	3
How long can a Borrower use the tax credit of the MCC?	3
What are the purchase price and income limitations on MCC-holders?	3
What are other program requirements?	3
B. PURPOSE OF THE MCC OPERATING MANUAL	4
C. GENERAL DEFINITIONS	4

### SECTION II

<b>PROGRAM ADMINISTRATION AND PROCEDURES</b>	7
A. LOAN ORIGATION AND MCC APPLICATION	7
B. LENDER/BROKER UNDERWRITING AND VERIFICATION	11
C. LOAN CLOSING	11
D. RECORDKEEPING AND FEDERAL REPORT FILING	12
E. REVOCATIONS	13
F. POST AUDIT	14
G. RECAPTURE TAX	14
FACTS ABOUT THE RECAPTURE TAX	14
PROCEDURES	15

### SECTION III

<b>BORROWER, PURCHASE PRICE, &amp; MORTGAGE UNDERWRITING REQUIREMENTS</b>	16
A. OVERVIEW	16
B. BORROWER ELIGIBILITY REQUIREMENTS	17
C. PURCHASE PRICE REQUIREMENT	19
D. MORTGAGE REQUIREMENTS	19

### SECTION IV

<b>MCC SUBMISSION AND COMMITMENT</b>	21
--------------------------------------	----

A. HANDLING PRIORITY	21
B. MCC APPLICATION	21
C. LOAN NUMBERS	21
D. RESUBMISSION OF MORTGAGE CREDIT CERTIFICATE APPLICATIONS RETURNED OR REJECTED	22
E. COMMITMENT FOR MORTGAGE CREDIT CERTIFICATE	22
F. CHANGES PRIOR TO CLOSING	23
<b>SECTION V</b>	
<b>COMMON MISTAKES AND OTHER REQUIREMENTS</b>	25
<b>APPENDIX A</b>	
<b>INCOME DETERMINATION FACTORS</b>	
1. Gross Income Shall Be Determined Without Deductions for the Following:	26
2. Gross Income Shall Include, but Not Be Limited To, All of the Following:	26
3. Gross Income Does Not Include	27
<b>APPENDIX B</b>	
<b>ACQUISITION COST</b>	28

## SECTION I

### INTRODUCTION TO THE MCC PROGRAM

#### **A. GENERAL OVERVIEW**

The Mortgage Credit Certificate Program (MCC), authorized by Congress in the Tax Reform Act of 1984, is an alternative to mortgage revenue bond-backed financing and is a means of providing financial assistance to “first time homebuyers” for the purchase of new or existing single-family housing. In November 2007 Portland’s City Council passed a City Ordinance establishing the MCC program.

#### What is a MCC?

The MCC operates as an IRS tax credit. The MCC tax credit (20% of annual mortgage interest paid) reduces the federal income taxes of qualified Borrowers purchasing a home. This reduction in income taxes provides more available income to homebuyers to qualify for a mortgage loan and/or make their monthly mortgage payments affordable.

#### What is the difference between a “tax credit” and a “tax deduction”?

A "tax credit" entitles a taxpayer to subtract the amount of the credit from their total federal income tax bill. A “tax deduction”, on the other hand, is subtracted from adjusted gross income before federal income taxes are computed.

#### What happens to the tax deduction for mortgage interest when a homebuyer uses a MCC?

When using Portland’s MCC tax credit rate of 20%, the homebuyer would still be eligible to deduct the remaining 80% of the annual mortgage interest paid which is not claimed as a credit.

Once the homebuyer has identified the tax liability, the MCC credit is used to reduce the amount of federal income taxes otherwise due to the federal government; however, the IRS will not pay out more than should have been paid in. Therefore, the benefit to the homeowner in any one-year cannot exceed the amount of federal taxes owed for that year, after other credits and deductions have been taken into account.

#### How does the homebuyer realize the increase in "home buying power"?

The homebuyer may consider adjusting his/her federal income tax withholding to receive the benefit from the credit on a monthly basis. In this case, the homebuyer will re-file a W-4 form with his/her employer reflecting the MCC credit. By taking this action, the number of exemptions will increase, reducing the amount of taxes withheld, thereby increasing the disposable income. The homebuyer also has the option to wait until the end of the year and realize the tax credit savings in one lump sum when filing federal income tax returns.

**Regardless of whether the homebuyer adjusts the W-4 form or not, the tax credit will have to be listed when filing Federal Income Tax returns.**

What happens if a qualified homebuyer cannot use the entire amount of the MCC credit for the year in which it applies?

If the amount of the MCC exceeds the homebuyer's tax liability reduced by any other personal credits for the tax year, the unused portion of the credit can be carried forward to the next three years or until used, whichever comes first. The homebuyer will have to keep track of the unused credit by year. The current year credit is applied first and then the "oldest" amount of unused credit applied next.

How does a homebuyer apply for an MCC?

The homebuyer applies for an MCC through a participating Lender/Broker at the same time he/she makes a formal application for a mortgage loan. Before a MCC Commitment can be requested, the homebuyer should have a signed purchase offer in hand to buy a house and have already supplied credit information, employment data and other information to the Lender/Broker. Homebuyers must sign all of the initial phase MCC Program Documents to be submitted with supporting documentation by the Lender/Broker. Homebuyers must complete a homebuyer education class through a HUD certified agency approved by PHB within two years prior to closing; the homebuyer education requirement is waived for non-first time homebuyers in Target Areas.

What kinds of properties are eligible?

A MCC can only be used for single-family homes including single family detached houses, condominiums, or townhomes in the City of Portland. Duplexes, tri-plexes, four-plexes or manufactured homes do not qualify as eligible structures.

What loans can be used with the MCC?

MCCs can be used with conventional fixed-rate loans, FHA and VA loans, and privately insured loans (CRA types of mortgages). MCCs are not available with refinanced loans, Oregon Bond Program, variable rate loans, or sub-prime loans (negative amortization, stated income, etc).

How long can a Borrower use the tax credit of the MCC?

A homeowner may use the tax credit provided by the MCC as long as he/she lives in the home as his/her principle residence and maintains the original mortgage.

What are the purchase price and income limitations on MCC-holders?

The current purchase price and income limitations (both determined annually) for the MCC Program are below:

MORTGAGE CREDIT CERTIFICATE PROGRAM PURCHASE PRICE  
AND INCOME LIMITATIONS

<b><u>Purchase Price Limit</u></b>	\$372,658
<b><u>Income Limits</u></b>	
<b>Household Size</b>	<b>Income Limit</b>
1 – 2 Person	\$73,300
3 or more	\$84,295

Contact the Program Administrator for annual updates, or go to the program website at [www.portlandoregon.gov/phb/mcc](http://www.portlandoregon.gov/phb/mcc) for current limits.

What are other program requirements?

Qualified applicants must be first-time homebuyers. A homebuyer cannot have had an ownership interest in a principal residence three years prior to the date of application. The homebuyer must occupy the home.

## **B. PURPOSE OF THE MCC PROGRAM MANUAL**

The MCC Program Manual describes the program and sets forth the roles and requirements of the Program Administrator, the Lender/Broker, and the Borrower. This document contains a description of the MCC Program processing procedures and program administration. The Borrower, purchase price, and mortgage underwriting requirements as set forth in state and federal regulations also are described. MCC Program Documents and the MCC Lender Participation Agreement are not contained in this document. The Program Administrator may revise this Manual from time to time. Public notice will be given only for significant program changes.

To apply for a MCC, Borrowers must contact a participating Lender/Broker. Participating Lenders/Brokers are expected to be well-informed about all the local, state, and federal regulations and eligibility criteria as contained in this Manual so that both applicants and sellers alike are aware of these restrictions. The Lender/Broker shall reject those applications where the submitted information indicates that the applicant does not qualify for the program.

## **C. GENERAL DEFINITIONS**

As used in this MCC Program Manual and all MCC Program Documents, unless the context requires otherwise, the following words and terms have the meanings set forth below:

Acquisition Cost has the meaning given that term under Internal Revenue Code 143(k) (3) and the regulations there under (See Appendix B).

Affidavit means an affidavit filed in connection with the program made under oath and subject to penalties of perjury.

Applicant means any person who applies for an MCC under the Program (also referred to in this manual as Borrower).

Close of Escrow means the date the loan is recorded at the County Recorder's Office.

Date of Issue means the date on which the escrow closing occurs (*i.e.*, the deed is recorded)

Eligible Dwelling means new or previously owned single-family, owner occupied houses, townhouses, or condominiums. The property must be located in the City of Portland (within the City's taxing jurisdiction) and must meet the criteria set forth in Section III of this

Manual. Ineligible dwellings include: duplexes, mobile homes, manufacturing housing, trailers, unimproved land, investment or rental property and vacation homes. No more than **15%** of an eligible dwelling (*i.e.*, based on useable square footage) can be used for purposes other than a principal residence (*i.e.*, office, rental, etc.).

Existing Home means a dwelling unit that has been previously occupied prior to loan commitment.

Income as defined in Appendix A.

Issue Date means the date of close of escrow (recording date).

Issuer means Program Administrator.

Lender/Broker (Participating Lender/Broker) means a financial institution which is licensed to do business in the State of Oregon, has met all of the requirements established by the Program Administrator to participate as a Lender/Broker in the MCC Program, and has entered into an MCC Lender Participation Agreement acceptable to the Program Administrator. A Participating Lender/Broker can be either a funding Lender/Broker, correspondent or mortgage broker. However, **only a funding Lender can submit the closing MCC documents** (MCC-07, 08, 09, and 10).

Loan means an extension of credit provided to an Eligible Borrower to finance the purchase of an Eligible Dwelling. The Mortgage Credit Certificate applies to such loan.

MCC Program means the Mortgage Credit Certificate Program established by the City of Portland through a November 2007 City Ordinance and administered pursuant to the rules and regulations included in the MCC Program Manual.

Mortgage Credit Certificate Rate means the rate specified by City of Portland in the Mortgage Credit Certificate. The rate established by the City of Portland for the MCC Program is 20%.

Mortgage Credit Certificate or "MCC" means a tax credit designed to reduce the federal income tax of a qualified buyer purchasing a qualified home in order that he/she will have more disposable income to apply toward his/her mortgage payments. The MCC is issued by the Program Administrator pursuant to Section 25 of the Internal Revenue Code of 1986, as amended and applicable state and local requirements.

New Home means a dwelling unit that is proposed to be constructed, currently under construction, or existing but not previously occupied.

Ownership means any of the following interests in residential real property:

- Fee simple interest
- Joint tenancy
- Tenancy in common
- Interest of a tenant-shareholder in a cooperative
- Life estate
- Interest held in trust for the Applicant that would constitute a present ownership interest if held by the Applicant.

Ownership does not include a remainder interest, a lease with or without an option to purchase or any interest acquired on the execution of the purchase contract.

Program Administrator means the agency identified by the City of Portland to administer the Mortgage Credit Certificate program on its behalf.

Principal Residence: For purposes of prior homeownership, “principal residence” means (1) a single-family house; (2) condominium or townhouse unit; (3) stock held by a tenant-stockholder in a cooperative housing corporation (as those terms are defined in the Internal Revenue Code Section 216 (b) (1) and (2); and (4) occupancy of a unit in a multi-family building owned by the applicant. Principal residence does not include any manufactured home (including mobile home), recreational vehicles, campers, and other similar vehicles. This does not include investment property that has not been occupied as a “principal residence” by the applicant during the past three years.

Related Person means a “related person,” as that term is defined under Section 144(a) (3) of the Internal Revenue Code and applicable regulations.

Single-Family and Owner-Occupied Residences: For purposes of determining eligibility of a home to be purchased under this program, the term “single-family” residence means a housing unit intended and used for occupancy by one household. (i.e., duplexes and multi-family buildings are not eligible to be purchased under this program.)

## **SECTION II**

### **PROGRAM ADMINISTRATION AND PROCEDURES**

Eligible Borrowers apply for Mortgage Credit Certificates in connection with normal mortgage loan application procedures. The Mortgage Credit Certificate application must be filed in conjunction with an application for a mortgage from one of the Lenders/Brokers already participating in the MCC program or from a Lender/Broker that agrees to execute and comply with the terms of the MCC Lender Participation Agreement. There is no allocation of Mortgage Credit Certificates by Lenders/Brokers. Applications for the MCC are reviewed on a first come, first served basis and reservations are good for 120 days.

The MCC processing procedures are designed to coincide with the standard mortgage loan processing and underwriting procedures that are in place at most mortgage lending institutions. There are of course procedural variations among the participating Lenders/Brokers, thus the procedures outlined here are meant to serve as guidelines with respect to the sequence of events. However, all elements of the processing sequence outlined in this Manual must at some point be completed, regardless of sequence, by the Lender/Broker, the Program Administrator, Borrower, and Seller.

The following are the loan processing and program administration activities for the MCC Program:

#### **A. LOAN ORIGINATION AND MCC APPLICATION**

1. Borrower applies for a mortgage loan through a participating Lender/Broker. The participating Lender/Broker can be a Funding Lender, correspondent and/or mortgage broker. Lenders receiving the final Mortgage Credit Certificate (MCC-11), however, must be a Funding Lender, whereas any participating Lender/Broker can file the original application documents and receive the MCC Commitment (MCC-06).
2. Lender/Broker shall not charge more than 2% of the loan amount plus \$1,000.00 of combined net Origination Fees, Yield Spread Premium, and Lender/Broker Fees.
3. Lender/Broker determines the Borrower's eligibility for a MCC using the MCC Program Comparison Spreadsheet and Disclosure forms (MCC-01a-c).
4. Lender/Broker requests Borrower to supply the federal tax returns for the previous three years. If tax returns are unavailable at the time of application, the Borrower may

request his/her tax returns from the IRS either on IRS Form 4506 or may call the IRS to request the returns [(800) 829-1040]. The Lender/Broker should certify receipt of these forms at the time the final MCC documents are submitted; Lender Agent to check box on Lender Certification section of Application Affidavit (MCC-03). Borrowers who have not filed tax returns may complete the Income Tax Affidavit (MCC-04) and provide documented proof of their residential status during those years for which no tax returns are available (*e.g.*, notarized letter from landlord and/or cancelled rent checks, college transcripts, etc.).

5. Lender/Broker determines if Borrower is eligible for a MCC, based on preliminary indications of income, purchase price, prior home ownership, location of residence to be purchased, tax liability and other factors.

6. As part of the mortgage application process, the Lender/Broker directs Borrower to sign the Application Affidavit (See MCC-03). This document serves as the application and contains all the certifications and affidavits required by the MCC Program regulations and requirements as follows:

- a. Certifying that residence will be used as Principal Residence and that the Borrower and/or the Lender/Broker will notify the Program Administrator if the home ceases being the Principal Residence of the Certificate holder.
- b. Certification that Borrower has not had an ownership interest in a Principal Residence during prior 3-year period.
- c. Certification that the Acquisition Cost does not exceed acquisition cost limits. Seller signature is required on Seller Affidavit prior to issuance of the Certificate. (See MCC-07).
- d. Certification that this is a new mortgage loan, as defined in Internal Revenue Code. Additionally, the loan must be the primary (first) loan on the property.
- e. Certification that the loan applied for does not constitute a Prohibited Mortgage (*e.g.*, Oregon Department of Veterans Bond, Oregon Bond loan, or assumable loan).
- f. Certification that the Borrower was not forced to apply through a particular Lender/Broker.

- g. Certification that Borrower's Gross Annual Income does not exceed permitted income limits. This includes the income of all persons on deed of trust and living in the residence.
  - h. Certification that no interest is being paid to a Related Person.
  - i. Certification that the MCC cannot be transferred. The MCC expires when the home is sold, the certificate holder moves out, or the mortgage is refinanced.
  - j. Acknowledgment that any material misstatement or fraud is made under penalty of perjury.
7. With the MCC Initial Application Transmittal Form (Form MCC-02), Lender/Broker submits the following signed forms to the Program Administrator:

- MCC Application Affidavit (Form MCC-03) with TWO WITNESS SIGNATURES and certified by the Lender/Broker
- MCC Notice of Potential Recapture Tax on Sale of Home (Form MCC-05)
- MCC Program Comparison Disclosure (Form MCC-01c) **including homebuyer education provider and date of class**
- The corresponding Data Input (Form MCC-01a)
- Mortgage Comparison (Form MCC-01b) screens
- Copy of signed (by both Buyer and Seller) Sales Agreement with all Addenda (or equivalent document)
- Copies of the 1003 Loan Application
- 1008/MCAW Underwriting Transmittal
- Copy of the Loan Estimate

The Application Affidavit must be **completed fully**, including signatures of Borrower(s) and Lender/Broker's Certification and witnessed by two persons. An agent of the Lender/Broker legally authorized to sign for the Lender/Broker must sign the Lender/Broker's Certification.

8. The Program Administrator accepts Application Affidavit, reviews it for completeness, and checks for both Lender/Broker's and Borrower's(s) Certifications. If the Program Administrator determines the MCC Application Affidavit is completed

properly and that the Borrower and the transaction are in compliance with Program provisions, the Program Administrator endorses MCC Commitment (and assigns a unique MCC code number). Provided there are no material changes from the time of the issuance of the Commitment, the Program Administrator is prepared to issue an MCC (MCC-11) to the Borrower through the Lender/Broker. The Program Administrator faxes the MCC Commitment and invoice for the MCC fee to the Lender/Broker who submitted the Application Affidavit and supporting documentation. **If the Administrator determines that the Application is incomplete, the Lender/Broker will be notified and a new complete Application may be requested.**

9. The MCC Commitment is valid for 120 calendar days, beginning on the date the Borrower's income is verified by the Lender/Broker (the date the Application Affidavit is signed by the Lender/Broker). The Lender/Broker should note that income must be re-verified and a 30-day extension requested if the period between original verification and loan closing is longer than 120 days.

10. The Program Administrator sends instructions to escrow regarding the fee to be paid at closing and how to submit final MCC Program Documents to the Program Administrator.

11. The Program Administrator maintains a cumulative-to-date total of expected aggregate certified indebtedness and aggregate amount of MCCs to be issued. The Program Administrator's system will produce program commitment reports on a periodic basis. The aggregate amounts of Mortgage Credit Certificates issued shall not exceed the authorized amounts for the specific period. Thus, the Lender/Broker must notify the Program Administrator should any material changes amounting to more than \$5,000.00 occur (e.g., income, purchase price and /or mortgage amount) after the commitment has been issued. Such notification should be in the form of a new initial application packet, for which an updated MCC Commitment can be issued. Any changes amounting to less than \$5,000.00 (or other material changes such as income) shall be reflected on the Lender's Closing Certificate (MCC-09) and the Borrower's Closing Affidavit (MCC-08).

12. Lender/Broker completes the remainder of the mortgage application process as per standard procedures.

**B. LENDER/BROKER UNDERWRITING AND VERIFICATION**

1. Lender/Broker performs standard mortgage loan underwriting procedures.
2. Lender/Broker must take into consideration the effect of the MCC when determining the total amount of household income available for the monthly housing payment in order to determine Borrower qualification. Lender/Broker determines acceptability of loan in accordance with applicable FNMA, FHLMC, FHA, VA, and private mortgage insurance standards and/or underwriting guidelines.
3. Lender/Broker verifies that the Borrower and the mortgage transaction comply with MCC Program requirements for income, purchase price, first-time homebuyer, location of residence, and other program terms. Lender/Broker receives Federal Income Tax Returns and Income Tax Affidavit (if required.)
4. Lender/Broker completes all other standard underwriting and verification procedures.

**C. LOAN CLOSING**

1. Lender/Broker approves the loan with the Borrower as per regular procedures. The Lender/Broker informs the Borrower that he may change his IRS W-4 Form Employee's Withholding Allowance Certificate to adjust federal withholding tax in an amount comparable to the expected MCC tax credit.
2. Lender/Broker confirms that the MCC Commitment is still active and has not expired. The loan may be closed (*i.e.*, funded and recorded) after the MCC Commitment has been issued and all MCC Closing Documents have been executed. However, the Program Administrator should be notified of any material changes that occurred after MCC Commitment and prior to loan closing. An increase in mortgage amount may negate the MCC Commitment if sufficient MCC allocation is not available.
3. Funding Lender prepares Loan Closing Documents including all final MCC Program Documents (MCC-07, 08, 09, and 10.)
4. Lender/Broker forwards all loan documents, including MCC Program Documents to Escrow along with the summary pages of the appraisal.

5. Escrow coordinates signing of all documents and delivers to Program Administrator all final signed original MCC Program Documents to include:

- MCC Closing Transmittal Summary (Form MCC-12)
- Completed Seller Affidavit (Form MCC-07, Notarized)
- Borrower's Closing Affidavit (Form MCC-08, Notarized). Any changes from the information submitted on the Application Affidavit must be noted
- Lender/Broker's Closing Certificate (Form MCC-09, signed by officer of the Funding Lender). Any changes from information submitted on the Application must be noted
- Notice of Method to Compute Recapture (Form MCC-10) signed by Borrower(s)
- Summary pages of the appraisal
- Copy of the final Closing Disclosure
- Final 1003 Loan Application (copy)
- Final Combined Master Settlement Statement (certified copy)
- Copy of Homebuyer Education Certificate from a HUD certified agency approved by PHB (**homebuyer(s) to have attended class within two years prior to closing**; waived for non-first time homebuyers in Target Areas)
- MCC fee as instructed by the Program Administrator

**The Program Administrator must receive all closing documents within 5 business days of the close of escrow.** If the Funding Lender wishes to receive original documents back for their records, then two originals should be signed by the Borrower(s). Program Administrator must receive signed originals back at closing. If any of the closing documents have been prepared incorrectly the Program Administrator will notify the Lender. The Lender will correct the documents accordingly and have them re-signed and/or notarized if necessary. The MCC will not be issued until all closing documents are received and approved.

6. The Program Administrator reviews the final MCC documents, prepares and endorses the Mortgage Credit Certificate (MCC-11), and mails it to the Borrower along with a copy of the document to the Funding Lender (at the address provided on the MCC Lender Participation Agreement.)

7. The Program Administrator maintains a cumulative total for all MCC authority placed into use.

**D. RECORDKEEPING AND FEDERAL REPORT FILING**

1. The Funding Lender must file an annual report, using IRS Form 8329, listing all loans funded with a MCC. The Funding Lender will be sent a list of all MCCs funded in the City of Portland for verification.
  
2. For six years, the Funding Lender must retain:
  - a. Name, mailing address, and TIN (social security number or tax identification number) of the MCC holder (Borrower).
  
  - b. Name, mailing address, and TIN of the issuer
  
  - c. Date of loan (recording date) certified indebtedness amount (mortgage amount) and MCC tax credit rate (20%).
  
3. Program Administrator shall make quarterly reports on IRS Form 8330, beginning with the quarter in which the election is made. The report must include:
  - a. Name, address and TIN of the issuer.
  
  - b. Date of election.
  
  - c. The sum of the products of the certified indebtedness amount (mortgage amount) and the MCC credit rate (20%) for each MCC issued.
  
  - d. Name, address and TIN of each MCC holder whenever a MCC is revoked.

**E. REVOCATIONS**

1. Automatic revocation occurs when the residence for which the MCC was issued ceases to be the MCC holder's Principal Residence.
  
2. A refinanced mortgage revokes the MCC unless the MCC is reissued under a Reissued Mortgage Credit Certificate (RMCC) program. MCC holders (homeowners) should contact the Program Administrator to see if such program is available.

3. Revocation will occur upon discovery by the Program Administrator or a participating Lender/Broker of any material misstatement, whether negligent or fraudulent.

## **F. POST AUDIT**

The Program Administrator retains the express authority to perform annual random case post audits of Participating Lender/Broker records.

## **G. RECAPTURE TAX**

If the buyer sells or otherwise disposes of the home with which the buyer received an MCC during the nine years after purchase, all or part of this benefit may be “recaptured.” The recapture is accomplished by an increase in the homeowner’s federal income tax for the year in which the home is sold. The recapture only applies, however, if the home is sold at a gain and if the homeowner’s income has increased above specified levels.

### **FACTS ABOUT THE RECAPTURE TAX**

*(The tax is payable in the year the borrower sells their home.)*

1. Exceptions to the Recapture Tax:
  - (a) Home is disposed of at a loss;
  - (b) Home is disposed of as a result of homeowner’s death;
  - (c) Home is disposed of later than nine years after close of mortgage loan;
  - (d) Home is transferred either to homeowner’s spouse or former spouse incident to divorce and homeowner has no gain or loss included in home under section 1041 of the Internal Revenue Code; or
  - (e) Homeowner’s Modified Adjusted Gross Income is less than the Adjusted Qualifying Income in the taxable year in which the home is sold.

*“Modified Adjusted Gross Income”* is the adjusted gross income shown on the homeowner’s federal income tax return for the year in which the Residence is sold or transferred *plus* any interest received or accrued which is excluded from gross income received during that year, *minus* the amount of gain from the sale of the Residence included in gross income on homeowner’s federal income tax return for that year.

2. Maximum Recapture Tax is the lesser of:
  - (a) 6.25% of the largest principal amount of the mortgage loan and is the “federally subsidized amount” with respect to the loan;

- (b) 50% of the gain on the sale of the home, regardless of whether that gain must be included in the homeowner's income for federal income tax purposes; or
- (c) The calculated Recapture Amount.

## PROCEDURES

1. *The Notice of Potential Recapture Tax on Sale of Home (MCC-04)* must accompany the Initial Phase documents before a MCC Commitment will be issued.
2. *The Notice of Method to Compute Recapture (MCC-10)* must accompany the Close of Escrow Phase documents before a MCC Certificate will be issued.
3. Lender/Broker completes sections 1-5 and B of form MCC-10 which contains specific instructions on how to complete the form.

## SECTION III

### **BORROWER, PURCHASE PRICE, AND MORTGAGE UNDERWRITING REQUIREMENTS**

#### **A. OVERVIEW**

For loans involving MCCs, the conventional underwriting standards must be modified to reflect recognition of the MCC-derived mortgage interest credit in determining housing expense and indebtedness ratios. The secondary mortgage market and the mortgage insurance industry have established underwriting policy acceptable for their requirements for MCC-linked loans. These are available as policy statements from the mortgage lending industry.

The Borrower, purchase price, and loan underwriting requirements discussed in this section are incorporated in the MCC Program Documents which are available at [www.portlandonline.com/phb/mcclender](http://www.portlandonline.com/phb/mcclender). It is necessary for all applicants and program participants to complete and sign the appropriate MCC Program Documents and attest to their validity. The Lender/Broker will be required to submit certifications on which it will state that to the best of its knowledge, no material misstatements appear in the application and program documents. If the Lender/Broker becomes aware of misstatements, whether negligently or willfully made, it must notify the Program Administrator immediately. The Program Administrator will take all lawful action to correct or modify the problem.

The Lender/Broker also should be aware and inform the Borrower that criminal penalties are provided by Federal and Oregon law if a person makes a false statement or misrepresentation so as to obtain participation in this Program. In an attempt to assure that all requirements are clear, an MCC Application Affidavit (MCC-03) is required of each applicant and must be included in the MCC loan submission package submitted to the Program Administrator.

MCCs can be used with conventional, fixed-rate loans, FHA and VA loans, and privately insured loans. MCCs are not available with refinanced loans or with bond-backed loans such as programs backed by the Oregon Bond Program. Lender/Brokers should note that mortgages under tax-free bond programs (*e.g.*, Oregon Bond loan or Oregon Department of Veteran's Mortgage Bonds) are not eligible under this program.

## **B. BORROWER ELIGIBILITY REQUIREMENTS**

Similar to any conventional mortgage loan program, the Borrower must meet the credit and underwriting criteria established by the participating Lender/Broker providing the mortgage loan.

Based on applicable federal and state regulations, in order to qualify for a MCC, a Borrower must also meet the following requirements:

1. The Borrower may not have held an ownership interest in his/her Principal Residence within the past three years. The Borrower applying for a MCC cannot have had a present ownership interest in a principal residence at any time during the preceding three years ending on the date the mortgage is executed (date deed is recorded). This requirement qualifies the Borrower as a “first-time homebuyer” under the federal regulations. The Lender/Broker must obtain from the Borrower an affidavit to the effect that the Borrower had no present ownership interest in a principal residence at any time during the three-year period prior to the date on which the mortgage for the MCC is executed. This must be verified by the Lender/Broker’s examination of the Borrower’s federal tax returns for the preceding three years, to determine whether the Borrower has claimed a deduction for mortgage interest or taxes on real property claimed as a “principal residence.” Copies of tax returns can be requested on IRS Form 4506 or by calling the IRS directly [(800) 829-1040]. In the event the Borrower did not file tax returns; the Borrower must complete the Income Tax Affidavit form (MCC-04) with documented proof that he/she was a renter during that 3-year period.

### How to Show Compliance

2. To demonstrate compliance with this requirement, applicants must complete and sign the Application Affidavit (MCC-03), Borrower's Closing Affidavit (MCC-08), and provide copies of their last three (3) years signed federal tax returns (or acceptable alternate exhibits if they did not file tax returns - see below).

- a. If the applicant(s) can produce the signed 1040A, 1040EZ, or 1040 returns for the three proceeding years with all schedules which show no deductions for mortgage interest or real estate taxes for a Principal Residence, these forms shall be submitted to the Lender/Broker prior to the Program Administrator issuing an MCC. The certified tax returns can be requested from the IRS by using form 4506 or calling (800) 829-1040.

b. If the applicant(s) has filed the short form 1040A or 1040EZ for the last three (3) years, completes and signs the required affidavits, but is unable to produce the signed returns, the applicant must submit a letter from IRS (IRS 1722) verifying the filing status of the applicant to the Lender/Broker prior to the issuance of an MCC. This letter should confirm that the applicant filed the 1040A or 1040EZ for the years in question. The letter also can be requested from the IRS by calling the IRS or by filing Form 4506 and indicating on the form that a letter of filing status of Form 1040A or 1040EZ for the years in question is requested.

c. In the event the applicant(s) was not obligated to file federal income tax returns for any of the preceding three (3) years and/or could not provide the information from (a) or (b) above, it will be necessary for the Lender/Broker to obtain from the applicant(s) a completed and signed Income Tax Affidavit (MCC-06) which is required in place of (a) or (b) above, along with a documented proof of the Borrower's residential status (e.g., notarized letter from landlord, rent receipts, college transcripts) as well as other program affidavits.

d. When the loan is closed during the period between January 1 and February 15 and the applicant has not yet filed his Federal income tax return for the preceding year with the IRS, the Lender/Broker may, with respect to such year, rely on an affidavit of the applicant that the applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his principal residence for the preceding calendar year.

3. The MCC applicant must occupy the acquired residential housing as a "Principal Residence." The Borrower must use the house being purchased with the MCC-linked mortgage as a principal residence. The Lender/Broker must obtain from the Borrower, using the program affidavits a statement of the Borrower's intent to use the residence as his/her principal residence within 60 days after the MCC is issued. This affidavit further states that the MCC holder will notify the Lender/Broker and issuer of the MCC if the residence ceases to be his/her principal residence. No more than 15% of the residence being purchased may be used for purposes other than the "principal residence" of the Borrower (e.g., office, rental, etc.).

4. In order to qualify for the MCC Program, the purchaser's current gross annual income may not exceed current year income limits. Contact the Program Administrator for annual updates.

5. The MCC may be automatically revoked if the applicant fails to comply with program requirements. An MCC may be revoked under certain circumstances (please see Section II.E for a detailed list of causes for revocation). For example, revocation occurs if the residence to which the MCC relates ceases to be the Borrower's principal residence or the original mortgage is refinanced. An MCC also may be revoked if the certificate does not meet the requirements of a "qualified MCC."

6. Strict penalties may be imposed on any applicant making a material misstatement, misrepresentation or fraudulent act on documents submitted to obtain a MCC. Any person making a negligent material misstatement or misrepresentation in any affidavit or certification made in connection with the application for or the issuance of a MCC shall be subject to all applicable fines and penalties.

### **C. PURCHASE PRICE REQUIREMENT**

The Borrower must comply with the following purchase price limits in order to qualify:

1. The maximum acquisition price of house and land (See Appendix B) may not exceed \$366,835, adjusted annually. Contact the Program Administrator for annual updates.

### **D. MORTGAGE REQUIREMENTS**

1. New Mortgage Requirements. A Mortgage Credit Certificate cannot be issued in conjunction with the acquisition or replacement of an existing mortgage or land contract. The Lender/Broker must obtain from the Borrower, using the program affidavits, a statement to the effect that the mortgage being acquired in connection with the certificate will not be used to acquire or replace an existing mortgage or land contract.

2. Prohibited Mortgages.

a. First mortgages only. If a Borrower takes out a first and second mortgage, the MCC tax credit applies only to the first mortgage.

b. A Mortgage Credit Certificate shall not be used in direct or indirect connection with a qualified mortgage bond or a qualified veteran's mortgage bond. The Lender/Broker must obtain from the Borrower, using the program affidavits, a

statement to the effect that no portion of the financing for acquisition of the residence in connection with which the Certificate is issued is provided from a qualified mortgage or veteran's bond.

c. A Mortgage Credit Certificate shall not be used in connection with a variable rate mortgage or a sub-prime mortgage (interest only, a negative amortization, stated income).

3. No Interest Paid to Related Persons. No interest on the mortgage (or certified indebtedness) amount may be paid to a person who is a "related person", as that term is defined under Section 144(a) (3) of the Internal Revenue Code and applicable regulations. The Lender/Broker must obtain from the Borrower, using the program affidavits, a statement to the effect that no related person has or is expected to have an interest as a creditor in the certified indebtedness amount.

4. Transferability. Currently the Mortgage Credit Certificate is not transferable, but the Program Administrator could decide to allow transferability and to issue new certificates if the home is purchased by an eligible MCC homebuyer and the new homebuyer assumes the remaining certified indebtedness (mortgage).

## **SECTION IV**

### **MCC SUBMISSION AND COMMITMENT**

#### **A. HANDLING PRIORITY**

Complete MCC applications will be processed by the Program Administrator according to the date of receipt. Lenders/Brokers will be notified of incomplete applications that will not be processed until all deficiencies are corrected.

#### **B. MCC APPLICATION**

1. The MCC application process formally begins with the filing with the Program Administrator by the Borrower through the Lender/Broker of the following packet to include all signatures:
  - MCC Application Affidavit (MCC-03) with TWO WITNESS SIGNATURE and certified by the Lender/Broker
  - MCC Initial Application Transmittal Form (MCC-02)
  - MCC Notice of Potential Recapture Tax on Sale of Home (MCC-05)
  - MCC Program Comparison Disclosure (MCC-01c)
  - The corresponding Data Input (MCC-01a)
  - Mortgage Comparison (MCC-01b) screens
  - Copy of signed (by both Buyer and Seller) Sales Agreement with all Addenda (or equivalent document)
  - Copies of the 1003 Loan Application
  - 1008/MCAW Underwriting Transmittal
  - Copy of the Loan Estimate

Upon receipt of these documents, the Program Administrator will perform a preliminary screening for compliance with the MCC Program's purchase price and Borrower income limits. Once eligibility is established, the Program Administrator will notify Lender/Broker of receipt of the application and an MCC Commitment has been made.

#### **C. LOAN NUMBERS**

The Program Administrator will assign an MCC code number upon receipt of the formal written request for an MCC Commitment.

**D. RESUBMISSION OF MORTGAGE CREDIT CERTIFICATE APPLICATIONS RETURNED OR REJECTED**

If a MCC application as represented by the submitted MCC Program Documents and exhibits has been returned or denied by the Program Administrator, any resubmission, if appropriate, must include all information which the Program Administrator has determined necessary for reconsideration. An MCC application that is being submitted a second time will be reviewed in depth and a final disposition made.

**E. COMMITMENT FOR MORTGAGE CREDIT CERTIFICATE**

1. Issuance

The Program Administrator will review each MCC submission package for acceptability and completeness. Acceptable loan packages will be kept on file at the Program Administrator, and an MCC Commitment (MCC-06) will be issued to the Lender/Broker with an expiration period of one hundred twenty (120) days after the Lender/Broker has verified income with signed Application Affidavit. If the Administrator determines that the Application is incomplete, the Lender/Broker will be notified and a new complete Application may be requested.

2. Extensions

With regard to any MCC Commitment which is currently outstanding and which will not close prior to the expiration date, an extension may be requested prior to the expiration date, provided that income status is re-verified (See G-1-a below).

A 30-day extension may be granted upon the Lender/Broker's request and payment of the extension fee of \$50. Additional extensions will be granted only when the Program Administrator determines that extenuating circumstances exist. Expiration dates are subject to federal, state and local requirements.

If the applicant can document that any delay in closing was caused by the action or inaction of a governmental agency (other than in the normal course of duty); the Program Administrator will waive the fee for that extension period.

### 3. Cancellations

The Lender/Broker will immediately notify the Program Administrator in writing of Commitments to be cancelled by submitting written notification, on the Lender's letterhead, and returning the original MCC Commitment (MCC-06). A reason for the cancellation should be included.

## **F. CHANGES PRIOR TO CLOSING**

### 1. Changes in the Applicant's Financial or Marital Status after Issuance of MCC Commitment and Prior to Closing

a. Changes in current income. The eligibility of the applicant for a loan is based upon the applicant's current income (provided the loan closes 120 days after income verification by the Lender/Broker) and the MCC Program will issue its MCC Commitment based on facts, as they are determined as of the date the MCC Commitment is issued. Subject to the foregoing, changes in the applicant's financial status occurring after the MCC Commitment, whether or not foreseen or predictable at the time of the issuance of the MCC Commitment, and changes in the working status of a spouse will not affect the validity of an MCC Commitment.

b. Changes in marital status. If the applicant experiences a change in marital status after issuance of the MCC Commitment and prior to closing, the new spouse must satisfy the prior homeownership requirements contained in the Application Affidavit, and the Lender/Broker must notify the MCC Program. Any income added to the household income previously declared because of a new spouse will not affect the validity of the MCC Commitment provided the closing occurs within 120 days of the income verification by the Lender/Broker.

### 2. Changes in Homeownership Status, Acquisition Cost and Amount of Mortgage Loan After Issuance of MCC Commitment and Prior to Closing

a. If the Borrower(s) acquire a present ownership interest in a principal residence prior to loan closing, the MCC Commitment shall be revoked unless the residence being purchased in connection with the receipt of the MCC Commitment is located in a Target Area (see definition page); or

b. If the total acquisition cost of the residence purchased in connection with the

MCC increases so as to exceed the acquisition cost limitations set forth herein, the MCC Commitment shall be revoked; or,

c. If the amount of the loan increases, thereby causing an increase in the credit amount, the Commitment will be revoked if that increase in credit amount serves to increase the aggregate credit amount of all MCCs issued by the Program Administrator above the aggregate credit limit imposed by law.

3. Other Changes in Circumstances after Issuance of MCC Commitment and Prior to Closing

The MCC Commitment is issued in reliance upon the Borrower's Closing Affidavit; Seller's Affidavit and the Lender's Closing Certificate that the requirements necessary for issuance of a qualified MCC have been met. The Lender must immediately notify the Program Administrator in writing of any change in the circumstances upon which the MCC Commitment was issued. If any other change of the circumstances upon which the MCC Commitment was issued occur so that the MCC to be issued will not meet the requirements of a qualified MCC, the MCC Commitment will be revoked.

## SECTION V

### **COMMON MISTAKES AND OTHER REQUIREMENTS**

Forms - Forms are available online at [www.portlandoregon.gov/phb/mcc/61017](http://www.portlandoregon.gov/phb/mcc/61017). Updated forms will be posted online and available for download. The Lender/Broker should fill out these forms for each Borrower. The Lender/Broker should keep a photo copied set of the forms submitted to the Program Administrator.

Incomplete or incorrect MCC applications - Lender/Brokers who continue to submit incomplete or incorrect MCC applications to the Program Administrator will be notified and additional training may be required in order to continue using the MCC Program.

Changes in the Application Affidavit - Lender/Brokers should be aware to check the appropriate boxes in line 2 of the Borrower's Closing Affidavit and Line 6 of the Lender's Closing Certificate. If there have been changes in the Application Affidavit such as an increase in mortgage indebtedness, Borrower income, or purchase price, the Lender should check box B on both forms and list the changes on the form. You do not need to revise the Application Affidavit. Many Lenders inadvertently check box A even though they know there has been a change. Program Administrator will return the forms to the Lender for corrections.

Income - Lender/Brokers must comply with the income certification contained in Appendix A. The MCC program is not concerned about past income or averages over the past two years. The MCC Program requires Lender/Brokers to calculate future household income over the next twelve (12) month period. We are only concerned about a Borrower's current income projected for 12 months and not the income the Borrower may receive in the future or has received in the past.

## APPENDIX A

### INCOME DETERMINATION FACTORS “GENERAL GUIDE”

The program's maximum income limit is set by the Federal Department of Housing and Urban Development, pursuant to the Section 8 program guidelines. The maximum income consists of the gross income of the applicant(s). In determining gross income, the combined income of all members of the household (other than minors) who both will be living in the dwelling unit, and liable for the payment of the mortgage, must be computed.

#### 1. Gross Income Shall Be Determined Without Deductions For The Following:

- a. Funds paid into a tax shelter retirement account.
- b. Child support payments made by an Applicant for the benefit of the Applicant's child or children.<sup>1</sup>(See 2i)
- c. Alimony, separate maintenance, or similar periodic payments that an Applicant is required to make to a spouse or former spouse.

#### 2. Gross Income Shall Include, But Not Be Limited To, All of the Following:

- a. The gross amount, before payroll deductions, of wages and salaries; overtime pay; commissions; fees; tips; bonuses; gambling winnings and prizes; and other compensation for personal services.
- b. The net income from an operation of a business or profession or from the rental of real personal property. For this purpose, if this operation results in a loss, the loss may not be used to offset income generated from other sources. For this purpose, any shareholder that owns ten percent or more of any outstanding class of stock in a corporation, shall also be deemed to have received income in its proportionate share of net earnings not otherwise distributed in salaries or dividends.
- c. All dividends and interest, including otherwise tax-exempt interest.
- d. The full amount of periodic payments received from social security, housing assistance payments, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts including any lump sum payment for the delayed start of a periodic payment.
- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay.
- f. The full amount of public assistance payments.
- g. Periodic and determinable allowances, such as alimony and separate maintenance payments received, housing allowances received, and regular contributions or gifts received from persons not residing in the dwelling, where such sums are received on

---

<sup>1</sup> Gross Income shall not be reduced by the amount of Child Support payment a husband/wife makes for the care of a child or children. However, Husband/Wife who receives Child Support payments must include this amount as income.

- a recurrent basis and which may be reasonably expected to continue.
- h. The distributive share of partnership income.
- i. Child support payments received by an Applicant for the benefit of the Applicant's child or children.
- j. All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the Dwelling) who is the head of the household or spouse (or other persons whose dependents are residing in the unit).

**3. Gross Income Does Not Include:**

- a. Casual, sporadic or irregular gifts.
- b. Amounts which are specifically for, or in reimbursement of medical expenses.
- c. Lump sum additions to family assets, such as inheritances, insurance payments, (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal property losses.
- d. Amounts of educational scholarships paid directly to the student or the educational institution, and the amounts paid by the government to a veteran for use in meeting the costs of attending an educational institution, including tuition, fees, books, equipment, supplies, transportation, and miscellaneous expenses. (Non-school-related veteran's benefits are included in Income calculations).
- e. Special pay to a family member in the Armed Forces who is away from home and exposed to hostile fire.
- f. Relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- g. Foster child care payments.
- h. The value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1977, 7 U.S.C. Sections 2011 and 2027, which is in excess of the amount actually charged the eligible household.
- i. Payments to volunteers under the Domestic Volunteer Service Act of 1973.
- j. Payments of allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.
- k. Payments received from the Job Training Partnership Act.
- l. Income from employment of children (including foster children) under the age of 18 years.

## **APPENDIX B**

### **ACQUISITION COST**

(A) The term "acquisition cost" means the cost of acquiring a residence from the seller as a completed residential unit. Acquisition cost includes the following:

All amounts paid, either in cash or in kind, by the purchaser (or a related party or for the benefit of the purchaser) to the seller (or a related party or for the benefit of the seller) as consideration for the residence.

1. If a residence is incomplete, the reasonable cost of completing the residence whether or not the cost of completing construction is to be financed with bond proceeds. For example, the acquisition cost would include the cost of completions necessary to obtain an occupancy permit.
2. Where a residence is purchased subject to a ground rent, the capitalized value of the ground rent. (Calculated pursuant to directions from the Program Administrator).

(B) The term "acquisition cost" does not include the following:

1. The usual and reasonable settlement or financing costs. Settlement costs include titling and transfer costs, title insurance, survey fees, or other similar costs. Financing costs include credit reference fees, legal fees, and appraisal expenses, "points" which are paid by the buyer (but not the seller, even though borne by the mortgagor through higher acquisition cost) or other costs of financing the residence. However, such amounts will be excluded in determining acquisition cost only to the extent that the amounts do not exceed the usual and reasonable costs which would be paid by the buyer where financing is not provided through a qualified mortgage bond issue. For example, if the purchaser agrees to pay to the seller more than a prorate share of property taxes, such excess shall be treated as part of the acquisition cost of a residence.
2. The value of services performed by the mortgagor or members of the mortgagor's family in completing the residence. For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. For example, where the mortgagor builds a home alone or with the help of family members, the acquisition cost includes the cost of materials provided and work performed by subcontractors (whether or not related to the mortgagor) but does not include the imputed costs of any labor actually performed by the mortgagor or a member of the mortgagor's family in constructing the residence. Similarly, where the mortgagor purchases an incomplete residence, the acquisition cost includes the cost of material and labor paid by the mortgagor to complete the residence but does not include the imputed value of the

mortgager's labor or the labor of the mortgagor's family in completing the residence.

3. The cost of land which has been owned by the mortgagor for at least two years prior to the date on which construction of the residence begins.

