



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Final Policy for Addressing Cost Increases for 2004 and 2005 Competitive Housing Tax Credit Developments

Section I. Introduction and Purpose

The Texas Department of Housing and Community Affairs (the "Department") has received numerous inquiries relating to increased direct construction costs over the past year that generally are attributed to the impact of Hurricanes Katrina and Rita during September 2005. While limited data at a national or state level relating to these cost increases is available at this time, the Department has researched this issue using comparative cost multipliers by region from 2003 to 2006 from *Marshall & Swift*. Department research indicates that the existing 2004 and 2005 Competitive Housing Tax Credit (HTC) developments in the Department's inventory are affected by these increases in direct construction costs by an average of 14%. The purpose of this policy is to outline how the Department will act to assist those developments in ascertaining additional tax credits to accommodate those cost increases. It is estimated that the total amount of additional credits that might be necessary to accommodate this policy for 2004 is \$2,966,327 that would be utilized from the 2007 credit ceiling, for 2005 is \$3,396,511 that would be utilized from the 2008 credit ceiling and for 2005 forward commitments of tax credits from the 2006 credit ceiling \$160,098 that would be utilized from the 2006 credit ceiling for a total of \$6,522,936.

Section II. Eligibility and Method of Allocation

The Department will offer an allocation of additional credits to all competitive HTC developments awarded from the 2004 and 2005 Tax Credit Ceilings that were not placed in service or did not complete cost certification before January 1, 2006. Developments awarded a Forward Commitment in 2005 for tax credits from the 2006 HTC Ceiling are also considered eligible under this policy. For the purpose of this policy, 2003 awards from the 2004 Tax Credit Ceiling and 2004 awards from the 2004 Tax Credit Ceiling will herein after be referred to as "2004 awarded developments." Likewise, 2004 awards from the 2005 Tax Credit Ceiling and 2005 awards from the 2005 Tax Credit Ceiling will herein after be referred to as "2005 awarded developments." Finally, 2005 awards from the 2006 Tax Credit Ceiling will herein after be referred to as "2005 forward committed developments."

The additional allocation will be made pursuant to a binding agreement to allocate credits from the Department's 2007 Tax Credit Ceiling to all 2004 awarded developments, from the Department's 2008 Tax Credit Ceiling to all 2005 awarded developments and from the Department's 2006 Tax Credit Ceiling to all 2005 forward committed developments. The

amount of each development's award will be determined by the Department using a methodology that applies a 14% increase to the site work and direct construction costs as reflected in the most recent Underwriting report and then completes the credit determination based on that adjustment. The portions of the Department Development Cost Schedule associated with site work and direct construction costs as reflected in the Underwriting report are Site Work and Direct Construction Costs: Hard Costs. The amount of the additional 2006, 2007, or 2008 allocation will be the difference between the newly calculated credit amount and the amount originally committed.

Developments will not be eligible for a 30% increase in eligible basis based on the development's location in a Qualified Census Tract (QCT) or Difficult to Develop Area (DDA).

Staff will use the numbers relied upon in the most recent Underwriting Report, either the applicant's or Department's as applicable, to determine the amount of the additional allocation of credits. The applicable percentage used in the most recent Underwriting Report will be used to determine the amount of the additional allocation of credits. Staff will perform an additional review of any development that has been granted an amendment by the Department to ensure that no development receives a disproportionate benefit under this Final Policy.

Pursuant to §2306.6711(b) of Tex. Gov't. Code, the Department may not allocate more than \$2 million in housing tax credits to any applicant in a single application round. The additional credits allocated under this policy will apply to the \$2 million cap for the year of the Tax Credit Ceiling from which the award of additional tax credits is being made. In the event that this requirement prevents a development from receiving the tax credits for which it is eligible, the applicant may, at his discretion, choose which development of which he is a principal will receive the award of additional tax credits, if more than one development is affected.

The Department will limit the allocation of tax credits to no more than \$1.368 million per Development.

Section III. Procedures

The following procedures will be utilized in implementing this process.

1. 2005 forward committed applications will be issued a revised 2006 Commitment Notice in the amount of the original award plus the additional amount as calculated by the Department. The revised award will come out of the 2006 Tax Credit Ceiling.
2. The Department will issue all 2004 and 2005 awarded developments a binding agreement indicating the specific additional allocation amount as calculated by the Department and instructions consistent with this policy for the binding agreement's return submission.
3. Owners that choose not to utilize the additional credits will return an election form indicating their decision not to proceed with the allocation by October 31, 2006. No credits will be set aside from the 2006, 2007, or 2008 HTC Ceiling for such developments.
4. Owners that choose to utilize the additional allocation will execute and return the binding agreement, pursuant to Treasury Regulation §1.42-8, in a format provided to the owner, with a fee equal to 5% of the credit amount allocated by October 31, 2006.

5. The Department will review the binding agreement and, upon satisfaction, the agreement will be executed by the Executive Director of the Department. The execution by the Executive Director will occur no later than December 31, 2006 for the 2004 awarded developments and 2005 awarded developments placed in service in 2006, and no later than March 1, 2007 for the 2005 awarded developments and 2005 forward committed developments to be placed in service after 2006. The binding agreement will be considered effective as of the date the Executive Director of the Department executes the agreement.
6. The Department will assign a new project number from the year of the new allocation to all developments that receive an additional allocation under this policy. This new number must be used, in addition to the original project number, in any correspondence with the Department.
7. Upon placement in service and submission of the cost certification, the Applicant will be required to substantiate their total costs and credit allocation consistent with the requirements set forth in the *Cost Certification Manual*. All deadlines applicable to the original application will apply under this policy; no extensions will result from the allocation of additional credits. Unsubstantiated credits for 2004 awarded developments will be returned to the 2007 HTC Ceiling, and for 2005 awarded developments unsubstantiated credits will be returned to the 2008 HTC Ceiling. Unsubstantiated credits for 2005 forward committed developments will be handled, as all other 2006 allocations, at Cost Certification. Specifically, this analysis will be based on the development details originally proposed and credits will not be eligible for new activities not originally proposed. Further, a detailed cost analysis will be required at the time of cost certification that will be utilized to ensure that site work and direct construction costs specifically increased by the estimated 14%.
8. Applications that are granted an additional award of 2006 Housing Tax Credits or a Forward Commitment of 2007 or 2008 Housing Tax Credits are considered by the Board to comply with the respective 2006, 2007, or 2008 QAP by having satisfied the requirements of the QAP under which the original application was submitted, except for statutorily required QAP changes.
9. The binding agreement will be reviewed before execution by the Executive Director of the Department to ensure that the principals of the development receiving an allocation of additional credits are not in material non-compliance on other developments in which they are a party. The Portfolio Management and Compliance division of the Department will perform this review as of November 17, 2006.
10. For all allocations made under this policy the credit amount awarded for 2004 awarded developments will be attributed to the proper region and set-asides from the 2007 Ceiling, for 2005 awarded developments will be attributed to the proper region and set-asides from the 2008 Ceiling, and for 2005 forward committed developments will be attributed to the proper region and set-asides from the 2006 Ceiling to ensure adherence to the Regional Allocation Formula in 2006, 2007, and 2008.

11. Pursuant to §2306.6711(f), “The board may allocate housing tax credits to more than one development in a single community...only if the developments are or will be located more than one linear mile apart.” For the purpose of this section, developments awarded an additional allocation of credits under this policy will be considered to have met this test as of the year during which the original application was submitted; however, for purposes of conducting this test for proposed applications submitted during the 2007 or 2008 application rounds, developments allocated additional credits under this policy will be considered to have been allocated in 2007 or 2008 respectively. (Example: all proposed applications in the 2007 competitive cycle that are within one mile of a development that receives additional credits will not be eligible to receive an allocation in the 2007 cycle.)
12. Pursuant to §2306.6703(a)(3), an application will be considered ineligible if the applicant proposes to construct a new development that is located one linear mile or less from a development that serves the same type of household as the new development and has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins. For the purpose of this section, developments awarded an additional allocation of credits under this policy will be considered to have met this test as of the year during which the original application was submitted; however, for purposes of conducting this test for proposed applications submitted during the 2007 or 2008 application rounds, developments allocated additional credits under this policy will be considered to have been allocated in 2006, 2007, or 2008 respectively. (Example: any application proposed within a three year period from the date of Board action for additional credits that are within one mile of a development that receives additional credits will not be eligible to receive an allocation without a resolution from the appropriate governing body.)
13. Pursuant to §2306.6703(a)(4), an application will be considered ineligible if “the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds...” For the purpose of this section, developments awarded an additional allocation of credits under this policy will be considered to have met this test as of the year during which the original application was submitted; however, for purposes of conducting this test for proposed applications, the amount of additional credits allocated under this policy will be applied to the calculation accordingly going forward.
14. The Land Use Restriction Agreement (LURA) for eligible developments that were not placed in service or did not complete cost certification during 2006 will not be affected. To the extent that any eligible development did place in service or complete cost certification during 2006 and recorded a LURA with the Department, the credit award amount reflected in the LURA will be amended within the LURA using the Department’s administrative LURA amendment process.
15. Each eligible 2004 and 2005 awarded development that receives an additional allocation of tax credits under this policy will receive new IRS Forms 8609 for the amount of additional allocation substantiated at cost certification. Each eligible 2004 and 2005 awarded development will therefore receive two complete sets of IRS Forms 8609; one

set for the amount of original allocation and one set for the amount of the additional allocation under this policy. 2005 forward committed developments will receive only one set of IRS Forms 8609.