

MULTIFAMILY FINANCE PRODUCTION DIVISION

BOARD ACTION REQUEST

July 28, 2004

Action Item

Adoption of emergency amendment to the 2004 Housing Tax Credit Qualified Allocation Plan and Rules (QAP), Title 10, Part 1, Chapter 50 (“Emergency 2004 Qualified Allocation Plan and Rules”) with revised preamble, and withdrawal of current emergency amendment.

Required Action

Approve adoption of the emergency amendment to the 2004 QAP with expanded preamble, and authorize staff to withdraw current emergency amendment.

Background and Recommendations

On July 26 and 27, 2004, the Texas Department of Housing and Community Affairs was advised that the Office of the Governor declines to approve the Emergency 2004 Qualified Allocation Plan and Rules (“Emergency QAP”) until the Department republishes the adoption with an expanded preamble which clarifies the nature of the emergency necessitating the adoption of the Emergency QAP. The Texas Register has advised that the Department must withdraw the current emergency rule simultaneously with the refiling of the revised preamble and amendment.

The proposed revised preamble is as follows:

“The Texas Department of Housing and Community Affairs (the Department) adopts on an emergency basis the amendment of §50.9, relating to Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations. The text of the amendment is unchanged from the text of the emergency rule amendment as published in the July 23, 2004 edition of the Texas Register, which is being withdrawn in a separate action simultaneous with the filing of this emergency rule amendment. While the text of the rule amendment is unchanged, the emergency amendment is readopted in order to provide an expanded preamble.

The Department adopts the amendment on an emergency basis pursuant to Texas Government Code §2001.034. The Department finds that the amendment is required by state law in order to conform to Attorney General Opinion GA-0208, published on June 23, 2004, and to comply with §2306.6724(f), Texas Government Code, requiring the Department's Board to issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31. In addition, Texas Government Code §2306.6724(b) requires that the governor

approve, reject, or modify and approve the qualified allocation plan. The Office of the Governor has requested this additional action, which, coupled with the July 31 deadline, is another factor that necessitates this emergency rulemaking.

In addition, the Department also finds an imminent threat to the public welfare requires adoption of this amendment on fewer than 30 days' notice, in that the public welfare will be harmed by the delay or failure of development of additional low income housing that would be authorized by the amended QAP.

This amended section is also adopted on an emergency basis pursuant to Chapter 2306, Texas Government Code, which provides the Governing Board of the Department with the authority to adopt rules necessary for the efficient administration of the Department's Housing Tax Credit Program.”