

By: Campos

H.B. No. 3136

A BILL TO BE ENTITLED

AN ACT

relating to the issuance by the Texas Department of Housing and Community Affairs of certain federal forms for purposes of allocating low income housing tax credits; authorizing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter DD, Chapter 2306, Government Code, is amended by adding Section 2306.67101 to read as follows:

Sec. 2306.67101. ISSUANCE OF INTERNAL REVENUE SERVICE FORM 8609; REPORT. (a) In this section:

(1) "Documentation packet" means the Internal Revenue Service Form 8609 documentation packet required to receive an allocation of housing tax credits under this subchapter.

(2) "Form 8609" means Internal Revenue Service Form 8609, or that form's successor.

(b) Not later than the 120th day after the date a development owner submits to the department an Internal Revenue Service Form 8609 documentation packet under this section, the department shall issue the owner an Internal Revenue Service Form 8609.

(c) A documentation packet must consist of only:

(1) an owner's statement of certification form:

(A) that is signed by the development owner and notarized; and

1 (B) through which the development owner
2 certifies the accuracy of the information included in the
3 documentation packet;

4 (2) an owner's summary form that includes:

5 (A) the taxpayer identification number of the
6 development owner; and

7 (B) information on the ownership structure of the
8 development owner, the developer, or the development guarantor;

9 (3) a development cost schedule for the development;

10 (4) an independent auditor's report of the total
11 development cost and eligible basis of the development through
12 which the auditor certifies that the audit was conducted according
13 to generally accepted auditing standards and included:

14 (A) an examination of evidence supporting the
15 amounts and disclosures outlined in the cost certification;

16 (B) an assessment of the accounting principles
17 used and significant estimates made by the development owner; and

18 (C) an overall cost certification evaluation and
19 establishment of the total eligible basis;

20 (5) an independent auditor's report of bond financing
21 through which the auditor certifies the percentage of the
22 development's aggregate basis financed by tax-exempt bonds;

23 (6) a complete copy of the executed carryover
24 allocation agreement issued to the development owner by the
25 department;

26 (7) for a development that was awarded points for
27 demonstrating nonprofit participation under the sponsor

1 characteristics of the application, documentation evidencing the
2 nonprofit participation;

3 (8) a placement in service form that contains
4 summarized information for the development on a
5 building-by-building basis;

6 (9) an architect certification or substantial
7 completion form and permission to occupy form:

8 (A) that are completed and signed by the
9 development architect; and

10 (B) through which the development architect
11 certifies, for purposes of calculating the development's placed in
12 service date, the date of:

13 (i) the completion of the development's
14 buildings; and

15 (ii) the issuance of the certificate of
16 occupancy for the development;

17 (10) a complete copy of the executed and recorded land
18 use restriction agreement for the development;

19 (11) a projected operating pro forma to include a rent
20 schedule and annual operating expenses; and

21 (12) a summary of the sources and uses of funds for the
22 development.

23 (d) The form and contents of the documentation required
24 under Subsections (c)(1), (2), (3), (4), (5), (8), and (9) must be
25 the same as those prescribed by the department for the application
26 cycle that is based on the 2022 qualified allocation plan.

27 (e) If the department determines that a development owner

1 intentionally provided incorrect or inconsistent information in a
2 documentation packet submitted to the department under this
3 section, the department may assess an administrative penalty
4 against the owner in accordance with Subchapter B. In assessing an
5 administrative penalty under this subsection, the department may:

6 (1) impose a monetary penalty; or

7 (2) prohibit the owner or any person that has an
8 ownership interest in the development, except for a tax credit
9 purchaser or syndicator, from participating in the low income
10 housing tax credit program for a period of not more than two years.

11 (f) The department shall quarterly prepare and submit to the
12 legislature a written report that includes the following
13 information for the preceding quarter:

14 (1) the total number of submitted documentation
15 packets that the department is in the course of processing;

16 (2) the total number of Forms 8609 that the department
17 issued, aggregated by the total number issued:

18 (A) not later than the 120th day after the date a
19 documentation packet was submitted;

20 (B) on or after the 121st day but before the 151st
21 day after the date a documentation packet was submitted;

22 (C) on or after the 151st day but before the 181st
23 day after the date a documentation packet was submitted; and

24 (D) on or after the 181st day after the date a
25 documentation packet was submitted;

26 (3) a detailed statement of the reasons for the
27 department's delay in issuing Form 8609 in the time required by

1 Subsection (b), including complete copies of any requests for
2 information;

3 (4) the average time the department required for
4 issuing Form 8609;

5 (5) the total number of rejected applications for Form
6 8609; and

7 (6) a detailed statement of the reason for the
8 department's rejection of each application.

9 (g) The department shall adopt rules to implement this
10 section, including rules specifying the manner, deadline, and fees
11 for submitting a documentation packet under this section.

12 SECTION 2. The changes in law made by this Act apply only to
13 an application for low income housing tax credits that is submitted
14 to the Texas Department of Housing and Community Affairs during an
15 application cycle that is based on the 2023 qualified allocation
16 plan or a subsequent plan adopted by the governing board of the
17 department under Section [2306.67022](#), Government Code. An
18 application that is submitted during an application cycle that is
19 based on an earlier qualified allocation plan is governed by the law
20 in effect on the date the application cycle began, and the former
21 law is continued in effect for that purpose.

22 SECTION 3. This Act takes effect September 1, 2023.