



## **Texas Department of Housing and Community Affairs HOME Investment Partnerships Program**

### **Rental Housing Development Program Notice of Funding Availability (NOFA)**

- 1) **Summary.** The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of approximately \$18,090,030 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (“HOME Rules”) in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and 84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.
- 2) **Allocation of HOME Funds.**
  - a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for rental housing development activities involving new construction, rehabilitation, acquisition and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides.
    - i) **CHDO Set-Aside.** At least \$5,590,030 in funds are set-aside to eligible Community Housing Development Organizations (CHDOs) meeting the requirements of 10 TAC §53.50 and this NOFA.
    - ii) **Persons with Disabilities Set-Aside.** \$1,000,000 in funds are set-aside to fund Applications proposing all of their HOME units to be restricted for persons with disabilities and are subject to the Department’s Integrated Housing Rule at 10 TAC §1.15. Funds requested and awarded under this set-aside may be located in any area of the state including within other Participating Jurisdictions. Funds requested and awarded under this set-aside are subject to a \$500,000 per Application funding limit.
    - iii) **General Set-Aside.** The remaining \$11,500,000 in funds shall be available to all other Applications proposing Rental Housing Development that meet the requirements of this NOFA, the HOME Program Rule, and the Federal HOME regulations. Of the \$11,500,000 available under this set-aside, \$6,500,000 in funds is not subject to the Regional Allocation Formula under subsection (b) of this section.
    - iv) An Applicant may have only one active Application under at a time and may apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:

- (1) Once all funds from the CHDO has been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General set-aside;
  - (2) Once all funds from the Persons with Disabilities Set-Aside have been awarded, pending Applications under this set-aside must reapply to be considered under the General or other set-asides due to the different statutory and NOFA requirements for these Applications; and
  - (3) The Department may complete the CHDO Certification process for Applications that originally applied under the CHDO set-aside but receiving funds from the General set-aside in order to meet the Department's future obligations to award funds CHDO activities.
- b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. Applications for funds under the CHDO or General Set-Asides, submitted prior to 5:00 p.m. on **August 31, 2009** are subject to the Regional Allocation Formula (RAF) in Tables 1 and 2 as follows, except as provided in subsection (a)(iii) of this section.

Table 1. CHDO Set-Aside Regional Allocation

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$300,082	5.4%	\$300,015	100.0%	\$67	0.0%
2	Abilene	\$204,588	3.7%	\$198,870	97.2%	\$5,718	2.8%
3	Dallas/Fort Worth	\$1,095,392	19.6%	\$317,968	29.0%	\$777,423	71.0%
4	Tyler	\$624,559	11.2%	\$530,815	85.0%	\$93,744	15.0%
5	Beaumont	\$282,240	5.0%	\$258,373	91.5%	\$23,867	8.5%
6	Houston	\$412,502	7.4%	\$145,989	35.4%	\$266,514	64.6%
7	Austin/Round Rock	\$292,062	5.2%	\$120,252	41.2%	\$171,810	58.8%
8	Waco	\$178,041	3.2%	\$126,300	70.9%	\$51,741	29.1%
9	San Antonio	\$282,362	5.1%	\$184,797	65.4%	\$97,565	34.6%
10	Corpus Christi	\$378,105	6.8%	\$266,651	70.5%	\$111,454	29.5%
11	Brownsville/Harlingen	\$1,109,964	19.9%	\$623,975	56.2%	\$485,989	43.8%
12	San Angelo	\$245,995	4.4%	\$105,935	43.1%	\$140,060	56.9%
13	El Paso	\$184,137	3.3%	\$134,428	73.0%	\$49,709	27.0%
	Total	\$5,590,030	100.0%	\$3,314,369	59.3%	\$2,275,661	40.7%

Table 2. General Set-Aside Regional Allocation

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$268,408	5.4%	\$268,348	100.0%	\$60	0.0%
2	Abilene	\$182,994	3.7%	\$177,879	97.2%	\$5,115	2.8%
3	Dallas/Fort Worth	\$979,773	19.6%	\$284,407	29.0%	\$695,366	71.0%
4	Tyler	\$558,636	11.2%	\$474,787	85.0%	\$83,849	15.0%
5	Beaumont	\$252,450	5.0%	\$231,102	91.5%	\$21,348	8.5%
6	Houston	\$368,963	7.4%	\$130,580	35.4%	\$238,383	64.6%
7	Austin/Round Rock	\$261,234	5.2%	\$107,559	41.2%	\$153,675	58.8%
8	Waco	\$159,249	3.2%	\$112,969	70.9%	\$46,279	29.1%
9	San Antonio	\$252,558	5.1%	\$165,291	65.4%	\$87,267	34.6%
10	Corpus Christi	\$338,196	6.8%	\$238,506	70.5%	\$99,690	29.5%
11	Brownsville/Harlingen	\$992,807	19.9%	\$558,115	56.2%	\$434,693	43.8%
12	San Angelo	\$220,030	4.4%	\$94,754	43.1%	\$125,277	56.9%
13	El Paso	\$164,701	3.3%	\$120,239	73.0%	\$44,462	27.0%
Total		\$5,000,000	100.0%	\$2,964,536	59.3%	\$2,035,464	40.7%

- c) Any funds not requested in an Application received by 5:00 p.m. **August 31, 2009**, will collapse into an open Application cycle with funding available statewide and not subject to the RAF. Applications for funds under the Persons with Disabilities Set-Aside are not subject to the Regional Allocation formula and are available statewide. Applicants are encouraged to review the Application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. **April 30, 2010**. The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Project funds awards are limited to no more than **\$3,000,000** per Application except for Applications receiving funds from the Persons with Disabilities set-aside as provided in §(2)(a)(iii) of this NOFA.
- d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME Application. The award amount for CHDO Operating Expenses shall not exceed \$50,000. Awards for operating expenses will be drawn over a two (2) year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.
- e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

**3) Eligible and Prohibited Activities.**

- a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, and at 10 TAC §§53.34 and 53.50, which involve only the acquisition, rehabilitation or construction of affordable rental developments.
- b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.
- c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities set-aside.
- d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five (5) years of the submission of an Application for assistance will not be permissible.

**4) Eligible and Ineligible Applicants.**

- a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.
- b) Applicants will be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 or as provided in 10 TAC §49.5(a) excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to Application submission.

**5) Matching Funds.** Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

**6) Affordability Requirements.**

- a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Unless further restricted, initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.
- b) Each development will have a two-tier affordability term to be structured as follows:
  - i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than \$15,000 per unit; ten (10) years if the HOME investment is \$15,000 to \$40,000 per unit; and fifteen (15) years if the HOME investment is greater than \$40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.
  - ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a ten (10) year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

- c) All Applicants will be required to enter into a contract with the Department and properties will be restricted under a Land Use Restriction Agreement (“LURA”), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.
- d) Applications receiving funds from the Persons with Disabilities set-aside will be required to designate all HOME units as “fixed HOME units” as provided in 24 CFR §92.252(j). All other Applications are required to designate all HOME units as “floating HOME units” as provided in 24 CFR §92.252(j).

**7) Site and Development Restrictions.**

- a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
- b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a) (1). All multifamily rehabilitation developments are subject to a Uniform Physical Conditions Standards inspection. All deficiencies identified in that inspection must be corrected before final retainage is released.
- c) Housing developments must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). Multifamily housing developments must meet the design and construction requirements at the Texas Administrative Code, Title 10, Chapter 60, Subchapter (B) 10 TAC §§60.201-211). Covered multifamily dwellings, as defined at 24 CFR §100.201 as well as common use facilities in developments with covered dwellings must meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601–3619) and the design and construction requirements of the Fair Housing Act Design Manual. Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the design and construction requirements of the Fair Housing Act Design Manual, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A compliance certification

will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514 of the Texas Government Code.

- d) All Applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and Section 504 of the Rehabilitation Act of 1973 as reflected in §(7)(c) of this NOFA. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.
  - e) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186 of the Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).
  - f) 10 TAC §49.6 of the Qualified Allocation Plan and Rules apply, except for subsections (d), (f), (g), (h), and (k).
  - g) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).
- 8) Public Notification Requirements.** Evidence in the form of a certification of all of the notifications described in the subsections of this section is required. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.
- a) Neighborhood Organizations Request. Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in the clauses of this subsection and proof thereof is required. Notifications must not be older than three (3) months prior to the date the Application is submitted. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:
    - i) Not later than fourteen (14) days prior to submission of the Application, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
    - ii) If no reply letter is received from the local elected officials by seven (7) days prior to the submission of the Application, then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application materials;
    - iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected

officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

- b) **Written Notification.** Not later than the date the Application is submitted, Applicants are required to provide written notification by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Application Notification Template" provided in the Application materials to each of the following persons or entities. Failure to provide written notifications not later than the date the Application is submitted, at a minimum, will cause an Application to be terminated. Applicants must provide notifications to:
- i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in §(8)(a) of this NOFA;
  - ii) Superintendent of the school district containing the Development;
  - iii) Presiding officer of the board of trustees of the school district containing the Development;
  - iv) Mayor of the Governing Body of any municipality containing the Development;
  - v) All elected members of the Governing Body of any municipality containing the Development;
  - vi) Presiding officer of the Governing Body of the county containing the Development;
  - vii) All elected members of the Governing Body of the county containing the Development;
  - viii) State senator of the district containing the Development; and
  - ix) State representative of the district containing the Development.
- c) Each such notice must include, at a minimum, all of the following:
- i) The Applicant's name, address, individual contact name and phone number;
  - ii) The Development name, address, city and county;
  - iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for HOME funds with the Texas Department of Housing and Community Affairs;
  - iv) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;
  - v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing or elderly);
  - vi) The approximate total number of Units and approximate total number of low-income Units;
  - vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;
  - viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur;
  - ix) The expected completion date if funds are awarded; and
  - x) Any other information required in the ASPM or 10 TAC §49.9(h)(8) of the Qualified Allocation Plan and Rules (QAP).
- d) **Signage on Property or Alternative.** A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code. Scattered site Developments must install a sign on each non-contiguous Development Site. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within 20 feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application materials. In areas where the Public Notification Sign is prohibited by local

ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either §(8)(d) (i) or (ii) of this NOFA. This written notification must include the information otherwise required for the sign as provided in the Application materials. The Application must include a map of the proposed Development Site and mark the distance required by §(8)(d)(i) or (ii) of this NOFA, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code, evidence of the applicable ordinance or code must be submitted in the Application.

- i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or
  - ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.
- e) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications, if applicable.

**9) Threshold Criteria.** The following Threshold Criteria listed in this section are mandatory requirements at the time of Application submission unless specifically indicated otherwise.

- a) **Uniform Requirements.** All the Threshold requirements in 10 TAC §49.9(h) of the Qualified Allocation Plan and Rules (QAP) in effect at the time of Application submission are requirements except as provided herein. For the purposes of receiving funds under this NOFA, the definition of Application Acceptance Period in the QAP shall be the date that the Application is submitted. For the purposes of receiving funds under this NOFA, the following subsections of 10 TAC §49.9(h) are not required:
  - i) §49.9(h)(4)(J) regarding General Contractor requirements for tax credit Applications;
  - ii) §49.9(h)(11) regarding nonprofit set-aside requirements for tax credit Applications;
  - iii) §49.9(h)(12) regarding acquisition tax credits;
  - iv) §49.9(h)(14)(G) regarding third-party report deadlines for tax credit Applications; and
  - v) §49.9(h)(15) regarding self scoring for competitive cycle tax credit Applications.
- b) **Unit Restrictions.** Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. Additionally, each Application must meet the following requirements:
  - i) All Applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.
  - ii) To encourage the inclusion of families and individuals with the highest need for affordable housing, Applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from these minimum target requirements.
  - iii) All units targeting Extremely Low Income households at 30% or 40% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents

- calculated annually by the Department and available on the Department's website ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance but will not limit the amount of any rental assistance unless required by Federal law.
- iv) Applications requesting funds under the Persons with Disabilities Set-Aside are exempt from §(9)(b)(ii) of this NOFA, but must restrict 5% of the HOME units set-aside for persons with disabilities at 30% of AMI and 100% of the HOME units set aside for persons with disabilities at 50% of AMI.
- c) **Loan Terms.** All project funds awarded to eligible Applications under this NOFA will be structured as a loan(s), will be supported by documents required by 10 TAC §53.80, and will meet the following requirements at the time of Application and as underwritten:
- i) The interest rate may be as low as 0% and may be adjusted by the Real Estate Analysis division in accordance with 10 TAC §1.32(d)(4);
  - ii) The Loan term will be no less than fifteen (15) years and no greater than forty (40) years and the amortization period will be no less than twenty (20) years and no greater than forty (40) years;
  - iii) The Loan(s) will be structured with a regular payment due monthly based on the amortization period. Loan(s) will not be structured with contingent payments except as allowable for Applications meeting §(2)(c)(vi) of this NOFA or for Applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for Applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32, including being underwritten at a minimum DCR of 1.15 inclusive of the funds requested under this NOFA;
  - iv) The lien position of the Department's loan(s) shall generally be based on the amount of the Department's loan(s) in relation to the other sources of debt. However, the Department may require a superior position to sources that are greater than the Department's funds if the lender is a related party to any member of the development team or if the other source of debt is structured with a contingent payment or without any regular payment;
  - v) The Department's loan(s) must close within six (6) months of execution of the contract and each loan shall be structured with an eighteen (18) month development period. An extension to these timeframes may be requested as allowed in 10 TAC §53.74; and
  - vi) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow up to 50% of the total HOME award to be structured as a deferred forgivable loan with a term equal to the affordability period. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.
- d) **Leveraging of Other Public or Private Resources.** To encourage the involvement of other public agencies and private entities in affordable housing, Applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed

development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited per Table 3, as follows:

Table 3. Maximum HOME Award as a Percentage of Total Development Cost (“TDC”)

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR equal to High Home	No	93%	7%
FMR equal to High Home	Yes	95%	5%
FMR equal to Low Home	No	96%	4%
FMR equal to Low Home	Yes	98%	2%

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The Department’s underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum and 1.35 maximum.

- e) **Funding Limits.** In addition to the limits per Application described in §§(2)(a)(ii) and (2)(b) of this NOFA, Applicant awards will be limited as follows:
  - i) The Department will determine the maximum amount of HOME funds or minimum number of HOME units by pro-rating the total HOME eligible development costs of the project in accordance with 24 CFR 92.205(d). The total HOME funds as a percentage of total HOME eligible development costs may not exceed the total HOME restricted units as a percentage of the total units (For example: [total HOME funds / total HOME eligible cost] may not exceed [total HOME units / total units]). Applicants are encouraged to review “HOME eligible costs” in the HOME Final Rule, 24 CFR §§92.205 and 92.206;
  - ii) The total HOME funding may not exceed the per-unit dollar limitations established under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)(3)), which are applicable to the area in which the development is located, and as published by HUD; and
  - iii) Funds awarded under this NOFA shall meet all other subsidy and funding limits required in the HOME Rule at 24 CFR Part 92.
  
- f) **Financial Capacity.** If the Department’s loan(s) amount to more than 50% of the total development cost, except for developments also financed through the USDA-515 program, the Application will include:
  - i) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and
  - ii) A letter from the developer’s or owner’s bank(s) confirming funds amounting to 10% of the total development cost are available; or
  - iii) Evidence of a line of credit or equivalent tool equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities.
  
- g) **Affirmative Marketing.** Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and the Department’s Compliance Rules at 10 TAC §60.112(d). Applicants will be required to use HUD form 935.2a to meet these requirements.

- h) **Site and Neighborhood.** For Applications proposing new construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202 and as required in the Final Application and Submission Procedures Manual (ASPM).
- i) **Application Certifications.** All Applicants will be required to certify to compliance with the following:
  - i) Davis-Bacon Act (24 CFR §92.354);
  - ii) Environmental standards (24 CFR Parts 50 & 58);
  - iii) Uniform Relocation Act (49 CFR Part 24); and
  - iv) Lead Safe Housing Rule (24 CFR Part 35).
  - v) Other certifications may be required as specifically stated in the ASPM current at the time of Application.
  - vi) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).
  - vii) In accordance with 10 TAC §53.44(c), all entities receiving funds of \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.
- j) **CHDO Certification.** Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.50 at the time of Application submission. Additionally, the following apply:
  - i) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300;
  - ii) A separate Application process is required for CHDO Certification and to meet the CHDO set-aside requirements. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board; and
  - iii) A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside. The CHDO Application package will be available with all other Application materials on the Department's website.

## 10) Review Process

- a) Pursuant to 10 TAC §53.48, each Application will be handled on a first-come, first-served basis as further described in this section. Each Application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each Application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over Applications that may have an earlier Received Date but that did not timely complete a

phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

- i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.
  - ii) Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.
  - iii) Phase Three will only entail the review of the CHDO Certification Application, if applicable. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds or must elect to withdraw from the CHDO Set-Aside and withdraw the CHDO Certification Application. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.
- b) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the Applicant that their Application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.
- c) Pursuant to the QAP and 10 TAC §53.42, if a submitted Application has an entire Volume of the Application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, the

Application will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

- d) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.
- e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.
- f) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.
- g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

## **11) Administration.**

- a) All Applicants receiving an award under this NOFA will be required to enter into a contract with the Department and will be subject to the contract requirements in 10 TAC Chapter 53; Subchapters F and G. Additionally, Applicants are encouraged to review the Department's Rental Housing Development Manual for guidance on administration of rental housing development awards and contracts ([www.tdhca.state.tx.us/home-division/manuals-rules.htm](http://www.tdhca.state.tx.us/home-division/manuals-rules.htm)).
- b) When Department funds have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee and must be documented prior to closing. Applications also utilizing the USDA 515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

**12) Tie Breaker Factors.** In the event that two or more Applications receive the same priority based upon the provisions of §10 of this NOFA in any given Set-Aside category and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive a preference in consideration for an awarded of funds.

- a) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.
- b) The Application with the least amount of HOME funds per HOME restricted unit will win this second tier tie breaker.

### **13) Application Submission**

- a) All Applications submitted under this NOFA must be received on or before **5:00 p.m. on April 30, 2010**. The Department will accept Applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at 512-475-2669 or via e-mail at [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us).
- b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.
- c) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.
- d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the Application is submitted.
- e) The Application consists of several parts as described in the Final ASPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the Application is submitted.
- f) Third Party Reports. If all applicable third party reports are not received at the time of Application submission, the Application will be terminated.
- g) If a development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated Application for a HOME award or for an increase in the existing HOME award can be submitted under this NOFA. If additional funds are sought, such an Application may also request that the terms for the additional HOME funds also apply for the funds in an existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA for the respective set-aside. An Application qualifying for the abbreviated Application process may be considered by staff to have already met the threshold

requirements in §§(8) and (9)(a) of this NOFA without additional review unless staff determines additional documentation is required in accordance with §(13)(h) of this NOFA.

- h) The requirements of the abbreviated Application will be reflected in the Application Submission Procedures Manuel (ASPM). In addition to the Application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full Application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full Application and an amendment may be required for any Application that includes changes to the previous Board approved Application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.
- i) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. An Application fee is not required for Applications submitted pursuant to §(13)(g) of this NOFA and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.
- k) Applications must be sent via overnight delivery to:

**HOME Division**  
**Texas Department of Housing and Community Affairs**  
**Attn: Barbara Skinner**  
**221 East 11th Street**  
**Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**HOME Division**  
**Texas Department of Housing and Community Affairs**  
**Attn: Barbara Skinner**  
**Post Office Box 13941**  
**Austin, TX 78711-3941**

***NOTE:** This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all applicable State and Federal regulations.*