



Texas Department of Housing and Community Affairs HOME Investment Partnerships Program

Rental Housing Development Program Notice of Funding Availability (NOFA)

1) Summary

- a) The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of approximately \$15,000,000 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, 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 unawarded and deobligated HOME funds that are set-aside for rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable rental housing development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).
- b) A rental application may be submitted in a PJ if the HOME units requested are serving persons with disabilities; however the submission will not be processed, reviewed or potentially recommended to the Board unless there are a balance of uncommitted funds available from the 5% PJ funds.
- c) In accordance with 10 TAC 53.58, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will

be accepted until 5:00 p.m. **June 2, 2008** unless all funds are committed prior to this date. 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.

- d) 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 53.54(2). Award amounts are limited to no more than \$3 million per development. The minimum HOME award may not be less than \$1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development cost must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC 1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.
- e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$12,000 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 Ineligible Activities

- a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR 92.205, the State HOME Rules at 10 TAC 53.53(g), which involve only the acquisition, rehabilitation and construction of affordable rental developments.
- b) Prohibited activities include those under federal HOME rules at 24 CFR 92.214 and 10 TAC 53.56.
- c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).
- d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five 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 may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule, clarification for §53.53(b)(6) creates ineligibility with any requirements under 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

- a) 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. 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.
 - i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than \$15,000 per unit; 10 years if the HOME investment is \$15,000 to \$40,000 per unit; and 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 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.
- c) 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.

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 200.926d. 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).
- c) Housing 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) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601–3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), 10 TAC 49.9(h)(4)(G), 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 Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A 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, Texas Government Code.
- d) All of the 2007 Qualified Allocation Plan and Rules 10 TAC 49.6, excluding subsections (d), (f), (g) and (h) apply.
- e) 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 53.53(f).

8) Threshold Criteria

- a) 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. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC 1.15.
- b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC 1.37, pursuant to 10 TAC 53.53(i).
- c) 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. 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.
- d) Pursuant to 10 TAC 53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:
 - i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;
 - ii) all neighborhood organizations whose defined boundaries include the location of the Development;
 - iii) executive officer and Board President of the school district that covers the location of the Development;
 - iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and
 - v) the State Representative and State Senator whose district covers the location of the Development.

- vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.
- e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:
 - i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC 53.53(k).
 - ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to 10 TAC 53.53(l).
 - iii) 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.
 - iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum of 10% of the total development cost from other public agencies and/or private entities.
 - v) To encourage reasonable and cost effective building strategies, applicants must limit development cost per square foot to \$70.00 for new construction and \$38.00 for rehabilitation. Please note, use normal rounding when performing this calculation. (\$69.50 and higher would be rounded up to \$70.00, \$69.49 and lower would be rounded down to \$69.00).
 - vi) All of the 2007 Qualified Allocation Plan and Rules at 10 TAC 49.9(h), excluding subsections (4)(I), (11), (12) and (15).
 - vii) 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).

9) Review Process

- a) Pursuant to 10 TAC 53.58, 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 Department. 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.

- b) Pursuant to the QAP 10 TAC 49.5(a)(9) 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. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

Phase One will begin as of the received date. Applications not being considered under the CHDO Set-Aside will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

Phase Two will include a review of all application requirements. The Department will ensure review of materials required under the NOFA, and application guidelines and will issue notice of any deficiencies as to threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies, and of threshold and eligibility requirements will the Application be forwarded to Phase Three. An Application that has not proceeded out of Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds. Application submitted for non-development Activities will not go through a Phase Three evaluation.

Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. 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 or grant amount and any conditions to be placed on the development. The Department will ensure

financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to the Department's Executive Awards Review and Advisory Committee for recommendation to the Board. Any application that has not finished Phase Three within 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HOME funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

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 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 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 10 TAC 53.59(3), a site visit will 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.
- d) 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.

- e) In accordance with §2306.082 Texas Government Code and 10 TAC 53.58(d), 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, 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.
- f) An Applicant may appeal decisions made by staff in accordance with 10 TAC 1.7.

10) Application Submission

- a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on June 2, 2008. 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 Barbara Skinner at 512-475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Skip Beaird at 512-475-0908 or via e-mail at skip.beaird@tdhca.state.tx.us.
- b) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.
- c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.
- d) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

- e) Third party reports – If third party reports are not received at the time of application submission, the Application will be terminated.
- f) 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. 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.
- g) 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. The Application fee is not an allowable or reimbursable cost under the HOME Program.
- h) 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 CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*