



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2021-3 NOTICE OF FUNDING AVAILABILITY (NOFA)
1st Amendment
EFFECTIVE September 3, 2021

- 1) **Summary.** This Amendment increases the funding and sources available, creates Set-Asides, provides for circumstances under which Developments in Construction may apply for funding, and ancillary revisions by amending Sections 1 through 7. The Texas Department of Housing and Community Affairs (the Department) announces the availability of ~~\$3748,575,662~~ ~~of National Housing Trust Fund (NHTF)~~¹ for the development of affordable multifamily rental housing for low-income Texans. Applicants in the General or HOME Set-Aside must have received a Low Income Housing Tax Credit allocation in 2019 or 2020, or have received an NHTF award under a 2019 or 2020 NOFA. The maximum Application request is \$5,000,000, unless the Application qualifies for the Supportive Housing Set-Aside, in which case the maximum request is \$6,000,000. Applications under the 2021-3 NOFA will be accepted from June 21, 2021, through October 15, 2021 (if sufficient funds remain). Developments that receive funds under this NOFA will be considered 2021 Developments on the Department's Site Inventory, unless the Development also receives force majeure treatment under 10 TAC §11.6(5).

The capitalized words in this NOFA, and the availability and use of these funds are subject to the following rules, as applicable:

- a. Texas Administrative Code (with the exception of waivers in Section 3 of this NOFA)
 - 10 TAC Chapter 1 (Administration)
 - 10 TAC Chapter 2 (Enforcement)
 - 10 TAC Chapter 10 (Uniform Multifamily Rules)
 - 10 TAC Chapter 11 (Qualified Allocation Plan)
 - 10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)
 - 10 TAC Chapter 13 (Multifamily Direct Loan Rule)
 - [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)
- b. Texas Government Code
Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

c. U.S. Department of Housing and Urban Development (HUD) Program Regulations

[24 CFR Part 92 \(HOME\)](#)

24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))

d. Fair Housing

Federal Fair Housing Act, 42 U.S.C. 3601-19. <https://www.tdhca.state.tx.us/fair-housing/index.htm>

e. Other Federal laws and regulations that apply:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with

[24 CFR Part 9258 \(HOME\)](#)

[24 CFR Part 93 \(NHTF\)](#)

<https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and HUD Handbook 1378. [HOME funds must follow Section 104d of the Housing and Community Development Act of 1974.](#)

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Employment Opportunities

NHTF requires compliance with 24 CFR Part 135 (Section 3).

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

NOTE – the Section 3 requirements have changed, Applicants should review the changes to assure they can meet the new hiring and reporting requirements.

If Federal regulations or subsequent guidance imposes additional requirements, such Federal regulations or guidance shall govern.

- f. HUD approval of an amendment to the 2020 Action Plan and HUD approval of the 2021 Action Plan may be required prior to the Department awarding funds. ~~Such approval is anticipated to occur by September 1, 2021.~~ The amendments to the Consolidated Plan/Action Plan required by the original NOFA were accepted by HUD on August 24, 2021.

2) Priorities

- a. Applications submitted by July 20, 2021, that request less than RAF amount in Attachment A for the region in which the Development Site is located will have an Application Acceptance Date of July 20, 2021. Applications submitted by July 20, 2021,

that request greater than RAF amount in Attachment A for the region in which the Development Site is located or if there were insufficient funds to award an application under Priority 2a, will have an Application Acceptance Date of July 21, 2021.

- b. Applications in the General Set-Aside received between July 21 and October 5¹⁵, 2021 will have an Application Acceptance Date the later of July 22, 2021, or the business day the Application is received.
- c. Applications received under the Supportive Housing Set-Aside will have an Application Acceptance Date of the latter of September 17, 2021, or the business day the Application is received.
- d. Applications received under the HOME Set-Aside will have an Application Acceptance Date of the latter of September 17, 2021, or the business day the Application is received.
- e. All Application Acceptance Dates will be determined in accordance with 10 TAC §13.5(b).
- f. Per 10 TAC §13.1(c), Applications granted an administrative waiver by the Governing Board will have a new Application Acceptance Date of the date the rule waiver was granted (if an amendment to the Consolidated Plan/Action Plan is not required) or the date that the Consolidated Plan/Action Plan amendment is approved by HUD.

3) Set-Asides¹

- a. General Set-Aside. NHTF and HOME are available in this Set-Aside. Eligible units are limited to 30% Rent and Household Income. Per 10 TAC §13.5(g), the Department will decide in its sole authority which fund source is recommended for an award to the Applicant.
- b. Supportive Housing Set-Aside. The NHTF will be reserved for Supportive Housing Adaptive Reuse Developments, that are not layered with federal historic tax credits, that will provide a preference for households with at least one member that meets the definition of Chronically Homeless at 24 CFR §576.8 (or subsequent HUD definition) for 40% or more of the total Units. Unrequested funds in this Set-Aside remaining after October 13, 2021, will be automatically moved to a Set-Aside that is oversubscribed or divided between the General Set-Aside and the HOME Set-Aside, if both are over-subscribed.
- f.c. HOME Set-Aside. To apply in this Set-Aside, the Applicant must receive written notice from the Department that its Application in the General Set-Aside is infeasible and would not be recommended for an award. For all Applicants that have an Application Acceptance Date before August 30, 2021, the Multifamily Finance Division will provide this notice on or before September 9, 2021.² The Applicant can then choose to withdraw the General Set-Aside Application and apply in the HOME Set-Aside or may appeal this determination in accordance with 10 TAC §1.7. Applicants in this Set-Aside may have units up to 80% AMI, but must have the income distribution required under 10 TAC

¹ Forty-on (41) cities, counties, and one consortium areas that receive a direct allocation of HOME funds from HUD, commonly known as Participating Jurisdictions, are eligible to apply for funds under this NOFA under waiver of Tex. Gov't Code §2306.111(c)(1) granted by the Governor.

² The Application could still be determined infeasible after this date by Real Estate Analysis Division or not be recommended for an award by the Executive Award Recommendation Committee.

§11.204(8)(D). If this Set-Aside has unrequested funds on October 13, 2021, the Department will automatically move the remaining funds into the General Set-Aside.

34) Limitations, Waivers, and Alternative Requirements

- a. The amount of funding that may be requested is limited to: the documented increase in Building Costs from the previous Application, within the limitations of 10 TAC §13.3(e) related to Ineligible Costs; the documented costs of compliance with Housing Trust Fund regulations at 24 CFR Part 92 and 93 (that are not already required by the funding sources identified as part of the ~~2019~~LIHTC or ~~2020 LIHTC~~NHTF award); and the documented costs of compliance with the Uniform Relocation Act/104d (that are not already required by the funding sources identified as part of the ~~2019 or 2020~~ LIHTC or NHTF award).
- b. The Developer Fee may not increase, and the deferred Developer Fee may not decrease from the original Real Estate Analysis report.
- c. For HOME, a choice-limiting action may not have occurred, except for site acquisition that was completed before the contemplation of the submission of the multifamily application, except where the Application has prior environmental clearance under 24 CFR Part 50 or Part 58, and where the prior 24 CFR 50 or 58 "Responsible Entity" agrees in writing by October 4, 2021, to make a determination of supplemental funding or perform a re-evaluation of the original review.
- d. For NHTF, if construction has started (except for necessary health and safety repairs) the Applicant must cease construction at application submission until environmental clearance is received, a period which could last 120 or more days; Applications will not be recommended for an award if they do not meet Department standards for environmental clearance, and will be denied further consideration for Direct Loan funds.
- e. Texas Administrative Code waivers and Alternative Requirements ~~provided for in this NOFA~~for the HOME and General Set-Asides:
 - i. 10 TAC §11.101(a)(2) related to Undesirable Risk Features, to the extent that the undesirable feature was disclosed at original Application;
 - ii. 10 TAC §11.101(a)(3)(B)(iii) related to blight and 10 TAC §11.01(a)(3)(B)(iv) related to schools, including disclosure requirements, to the extent that the risk factor was disclosed at original Application;
 - iii. 10 TAC §11.205 related to Required Third Party Reports, with the exception that the Department may request updates to any Report deemed necessary to evaluate an Application under this NOFA;
 - iv. 10 TAC §13.1(c)(1) related to Waivers for Layered Developments, instead Applicant requested Waivers will be treated under 10 TAC §13.1(c)(2);
 - v. 10 TAC §13.4(s)(1)(A)(ii)(III) related to 30% units restricted by Housing Tax Credits;
 - vi. 10 TAC §13.5(c) related to Market Analysis; 10 TAC §13.5(g)(2) and (3)(A)-(C) related to eligibility determinations;
 - ~~vii.~~ 10 TAC §13.5(i) related to Effective Rules, only to the extent that the requirements of the applicable 2019 or 2020 QAP requirements for prior LIHTC or Multifamily Direct Loan awards will instead be utilized 10 TAC §11.101(4) Mandatory Development Amenities, 10 TAC §11.101(5) Common Amenities, 10

TAC §11.101(6) Unit Requirements, and 10 TAC §11.101(7) Resident Supportive Services will apply.

~~viii-vii.~~ 10 TAC §13.6 relating to scoring, only to the extent that scoring in 10 TAC §11.9 will not apply.

viii. 10 TAC §13.8(a)(2) relating to the requirement that HOME loans be structured as fully repayable (must pay and only as described in Section 5 of this NOFA).

ix. 10 TAC §13.11(c)(2) relating to environmental review, the 90-day requirement will be 30 days from the Application Acceptance Date.

f. Texas Administrative Code waivers and Alternative Requirements in the Supportive Housing Set-Aside

i. A waiver of 10 TAC §13.3(d)(2)(A)

ii. For NHTF purposes only, the Department may choose to identify this activity as other than New Construction, despite the language in 10 TAC §11.1(d).

45) Loan Terms

a. **Construction-to-Permanent Loans in the General Set-Aside and the Supportive Housing Set-Aside.** Loans will be structured as deferred-forgivable, deferred-payable, Surplus Cash (sometimes referred to as cash-flow), or with must pay monthly provisions, as required to optimize assistance to the Development, as recommended by Real Estate Analysis (REA). For Federal Housing Administration layered transactions subject to the MAP Guide, only the Surplus Cash option is available. The term of the loan and the amortization period (not to exceed 40 years) will match any superior debt, with an interest rate as low as 0% interest.³

b. **Construction to Permanent Loans in the HOME Set-Aside.** Applicants may only apply for loans structures allowed under 10 TAC §13.8(a)(2) with a 2.5% interest rate, even if sources and uses appear unbalanced. REA may recommend a lower interest rate, a deferred-forgivable, or a deferred payable option, as required to meet the federal rules or the Administrative Rules.

b.c. **Construction-Only Loans.** Requests structured as construction-only loans will have an interest rate of 0% with the principal amount of the Direct Loan due upon the end of the construction loan term as established in 10 TAC §13.8(e)(1).

6) Maximum Per Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.

The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the 2021 Maximum Per Unit Subsidy Limits table provided in this Section 446:

³ The Department does not currently have an agreement with FHA regarding its Subordination Agreement or Riders and thus at present cannot make awards to Applications layered with FHA funds that are subject to the MAP Guide in the permanent financing structure. The Department will reserve funds for these Developments through at least November 30, 2021, (or other date approved by the Executive Director, but not later than February 28, 2022). While the Department does not have an approved agreement with FHA, the Applicant may replace its FHA funds without getting receiving a new Application Acceptance Date.

| 2021 Maximum Per Unit Subsidy Limits ⁴ | | |
|---|---------------------------------|--------------------------|
| Bedrooms | Non-elevator property | Elevator-served property |
| 0 bedroom | \$145,685 | \$153,314 |
| 1 bedroom | \$167,978 | \$175,752 |
| 2 bedroom | \$202,586 | \$213,718 |
| 3 bedroom | \$259, 203 <u>20</u> | \$276,482 |
| 4 bedroom or more | \$288,893 | \$303,490 |

Smaller per unit subsidies are allowable and incentivized as point scoring items in 10 TAC §13.6. Once the Applicant commits a number of Direct-Loan Units in the Application, the number may be raised, at Department request, to account for a change in Development costs or to account for other federal funding, but the number may not be lowered.

7) Application Submission Requirements.

- a. **Application Acceptance Period.** Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on June 21, 2021, through October ~~5~~15, 2021 at 5:00 p.m. Austin local time (if sufficient funds remain). **Applications requesting rule waivers or amendment to the Consolidated Plan or -Action Plan will be accepted through September 17, 2021, at 5:00 p.m. Austin local time.** An Applicant may have only one active Application per Development at a time under this or any other Department NOFA.
- b. **Application Submission Materials.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department’s website at <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of federal rules that may apply and subsequent guidance provided by HUD. Waiver of specific rules is made through this NOFA and accompanying Board Action Item.
- c. The following Application materials are required for the **HOME and General Set-Aside 2021-3 NOFA.**
 - i. Fully executed 2021 Development Owner Certification, Applicant Eligibility Certification(s), and Multifamily Direct Loan Certification;
 - ii. Tab 6b – Multifamily Direct Loan Self-score;
 - iii. Tab 7, Sections 7 and 8 - **Floodplain**, Prime Farmland Designation, Site and Neighborhood Standards;
 - iv. Tabs 11 and 12, Section 3 Site Information Form Part III and Support Documentation to the extent that it might have changed from the original Application, and if the Applicant does not own the property the contract for sale with the required language in 10 TAC §13.5(e).
 - v. Tab 17 - Development Narrative, including description of any value –

⁴ These limits are inclusive of any federal fund source in the Development. **If the Applicant already has a Contract with TDHCA for this Development, the subsidy limits are the lower per bedroom type of the subsidy limits at the time of the contract execution or these limits.**

engineering from the original Application, the loan type requested, and if requesting a deferred-forgivable loan, a description of how the loan is treated with respect to Eligible Basis;

- vi. Tab 19, Section 2 – Rent Levels of Residents;
- vii. Tab 21 – Occupied Developments, Uniform Relocation Act section, if applicable;
- viii. Tab 22 – Architectural Drawings, only to the extent that they may have changed from the original Application;
- ix. Tab 23 – Building/Unit Configuration, only to the extent that they may have changed from the original Application;
- x. Tab 23 - Rent Schedule reflecting 2021 rent limits;
- xi. Tab 26 – Annual Operating Expenses;
- xii. Tab 27 – 15 Year Rental Housing Operating Pro Forma;
- xiii. Tab 30 – Development Cost Schedule supported by a draft Construction Contract and Schedule of Values;
- xiv. Tab 31 – Schedule of Sources reflecting current financing structure, including required Match Funds proposed to offset development cost, as applicable
- xv. Tab 32 – MF Direct Loan Financial Capacity;
- xvi. Tab 33 – Match Funds;
- xvii. Tab 35 – Supporting Documents evidencing the current financing as shown by executed loan documents or current term sheets, as applicable;

~~xviii.~~ Tab 41 – Applications involving one or more nonprofit organization, housing finance corporation, governmental entity, public housing, or public facility corporation in Control should submit the printout showing the that the most recent Single Audit or Audits required by 2 CFR §200.501 was submitted to the Federal Audit Clearinghouse; if not required to have a federal Single Audit, but required to have a State Single Audit, a copy of the State Single Audit, or a statement that the entity/entities are not required to have a Single Audit;

~~xix-xviii.~~ Amendment request, if applicable per the Post Award Activities Manual; and

~~xx-xix.~~ Additional information as requested by the Department in its sole discretion.

d. Applicants in the Supportive Housing Set-Aside must submit a full Application.