



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME-ARP RENTAL HOUSING
2023-2 NOTICE OF FUNDING AVAILABILITY (NOFA)
Second Amendment Effective February 16, 2023

- (1) **Summary.** This second amendment suspends the assignment of Application Acceptance Dates as of 5:00 PM on February 16, 2023. Due to the large amount of funds requested during the First Application Acceptance Period (December 9, 2022-January 31, 2023), HOME-ARP staff anticipates that there will be insufficient funding available for Applicants during the Second Application Acceptance Period (February 1, 2023 – March 1, 2023).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$ \$48,384,528 in HOME Investment Partnerships Program (HOME) American Rescue Plan (ARP) for the development of affordable multifamily rental housing including funds for a portion of the property’s eligible capitalized operating expenses, and \$3,324,229 in nonprofit capacity building/nonprofit operating funds for eligible costs related to developing the capacity of nonprofit organizations to successfully carry out HOME-ARP eligible activities related to rental housing. Only applicants applying for development funds are eligible to apply for the operating funds. Applicants under the HOME-ARP 2023-2 NOFA will be accepted during two Application Acceptance periods, if sufficient funds remain. The first Application Acceptance period will be primarily for qualifying 4% Housing Tax Credit (HTC) or Multifamily Direct Loan Applicants. The second Application Acceptance period will be for layering HOME-ARP with the 2023 9% HTC Application. The availability and use of these funds are subject to the following rules, including definitions, with several waivers as listed in Appendix A:

- a. Texas Administrative Code¹
10 TAC Chapter 1 (Administration)
10 TAC Chapter 2 (Enforcement)
10 TAC Chapter 10 (Uniform Multifamily Rules)
10 TAC Chapter 11 (Qualified Allocation Plan)

¹ Waivers are listed in Appendix A of HOME-ARP NOFA 2023-2.

10 TAC Chapter 12 (Multifamily Housing revenue Bond Rules)
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 Investment Partnerships Program Final Rule](#))

CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (HOME-ARP Notice)
(<https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/>)

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:

Environmental Compliance

All projects must have some type of environmental review in accordance with 24 CFR Part 50 or 58 as applicable. <https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

HOME-ARP must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Section 104(d) of Housing and Community Development Act of 1974; and HUD Handbook 1378.
<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Labor Standards

HOME-ARP funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).
<https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm>

Employment Opportunities

HOME-ARP requires compliance with 24 CFR Part 75 (Section 3).
<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

NOTE – the Section 3 requirements changed in 2021. Applicants should review the changes to assure they can meet the new hiring and reporting requirements.

f. HOME-ARP Allocation Plan

HUD-approved amendment to the 2021 Action Plan for the HOME-ARP Allocation Plan.
<https://www.tdhca.state.tx.us/HARP.htm>

- (2) **HOME-ARP Background.** TDHCA was allocated \$132,969,147 of funds from the U.S. Department of Housing and Urban Development (HUD) under Section 3205 of the American Rescue Plan Act, which HUD has called the HOME-ARP Program. HUD issued waivers and new activities from HOME annual funds for HUD-ARP per CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (<https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/>).

In its approved HOME-ARP Allocation Plan, TDHCA programmed funds into affordable rental housing including Capitalized Operating Cost Assistance Reserves (COCA); non-congregate shelter; nonprofit capacity building/nonprofit operating cost assistance (NCO); and administration/planning for TDHCA.

TDHCA programmed \$56,511,887 for affordable rental housing, which is 42.5% of the total HOME-ARP funds. Within the rental housing activity is a \$10,000,000 set-aside for direct awards to qualifying National Housing Trust Fund (NHTF) Developments. This set-aside was created to preserve existing Department investments in NHTF-funded developments that may otherwise be at risk of not financially feasible. If the set-aside is not fully used prior to the opening of the HOME-ARP Rental NOFA, funds from the set-aside may amended into the HOME-ARP Rental NOFA.

TDHCA also programmed \$6,648,458 of HOME-ARP funding for NCO, which is 5% of the total HOME-ARP funds. Approximately \$3.3 million is programmed to support non-congregate shelter development and approximately \$3.3 million is programmed to support rental development. The \$3.3 million in NCO for rental development is being released in this affordable rental housing NOFA. However, should the total requests for HOME-ARP rental capital/COCA requests be greater than the amount released in this NOFA, TDHCA reserves the right to not award NCO within its NOFA and convert the NCO funds to rental capital/COCA funds, or to award the highest scoring eligible HOME-ARP rental award(s).

One of the reasons HOME-ARP was created was to serve specific populations called qualifying populations (QPs). These include:

- Households that are experiencing homelessness, per 24 CFR §91.5;
- Households at-risk of homelessness with incomes below 30% Area Median Income (AMI), per 24 CFR §91.5;
- Households with at-risk of homelessness criteria and incomes up to 50% AMI, per HUD CPD Notice 21-10;
- Households fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, per HUD 24 CFR §5.2003;
- Households with 30% AMI with severe housing cost burden defined as paying more than 50% of monthly household income toward housing costs, per HUD CPD Notice

21-10;

- Households who have qualified as homeless previously, are currently housed with temporary/emergency assistance, and who need additional housing assistance or supportive services to avoid a return to homelessness, per HUD CPD Notice 21-10; or
- Veterans (and their families) that meet one of the above definitions.

At least 70% of the HOME-ARP Units must be for households that are QP. QP households pay no more than 30% of their income toward rent, and will be underwritten at zero rent, unless paired with project based assistance. In order to support zero rent Units, HOME-ARP has several flexibilities such as:

- No maximum unit subsidy
- COCA for up to 15 years or the term of the HAP Contract if the HAP Contract Units are not the HOME ARP Units
- Possibility to adopt the Public Housing Authority utility allowance which may better pair with project-based assistance (not available for Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF, unless the Development is all-bills paid)
- Up to 30% of the Units may be for low-income households (60% or 80% AMI) at high HOME rent

More information about HOME-ARP QPs, flexibilities and financial layering possibilities may be found online at <https://www.tdhca.state.tx.us/home-arp/index.htm>.

(3) Applicant Eligibility.

- a. The first Application Acceptance period will be for Developments that are only requesting HOME-ARP from TDHCA, or are requesting HOME-ARP layered with 2022 or 2023 4% HTCs, 2022 9% HTC, HOME annual, or National Housing Trust Fund (NHTF). NHTF Applicants are only eligible in the event that the per unit subsidy limit for NHTF would be exceeded with additional NHTF. Applications layered with 2020 or 2021 4% or 9% HTCs or 2023 9% HTCs are ineligible to apply during the first Application Acceptance Period.
- b. The second Application Acceptance period will be only for 2023 9% HTC Supportive Housing Applicants, if funding is available.
- c. A choice-limiting action may not have occurred, except for site acquisition that was completed before the contemplation of federal funds, or except where the Application had prior environmental clearance prior to the choice limiting action under 24 CFR Part 50 or Part 58, and where the prior 24 CFR 50 or 58 "Responsible Entity" agrees in writing by the Application Acceptance Date, to make a determination of supplemental funding or perform a re-evaluation of the original review.

- (4) Minimum and Maximum Amounts.** The minimum request amount is \$500,000. The maximum request amount for the first Application Acceptance Date is \$15 million, up to 100% of the HOME-ARP eligible costs, and is inclusive of COCA and NCO. The maximum request amount for the second Application Acceptance Date is \$7 million, up to 100% of

the HOME-ARP eligible costs, and is inclusive of COCA and NCO.

(5) **Set-Asides.** HOME-ARP funds are not subject to the Regional Allocation Formula, per waiver of Tex Gov't Code §2306.111. As a special purpose NOFA, the HOME-ARP Rental Development NOFA will not have set-asides.

(6) **Activity for Applications with Federal Housing Administration (FHA) Insured Senior Debt.** Applicants proposing to layer Federal Housing Administration (FHA)-insured senior debt with a HOME-ARP Loan are eligible to receive an Application Acceptance Date, if the application does not include COCA. Any award will be contingent upon specific FHA approval of the HOME-ARP LURA surviving a foreclosure or deed in lieu of foreclosure, which FHA has indicated it will do if the application meets all FHA program underwriting requirements. HOME-ARP Rental Housing Applications with COCA will not receive an Application Acceptance Date until such time as the Department reaches agreement with FHA regarding its HOME-ARP forms of Subordination Agreement and Rider (FHA Agreements) with COCA included. The Department will amend the NOFA if the agreement for loans with COCA is reached and advertise the amendment via the Homelessness Issues, Programs, and Policies list serve and by posting a notice here: <https://www.tdhca.state.tx.us/multifamily/special-initiatives.htm>.

(7) **Scoring items for Rental Development/COCA.**

During the second Application Acceptance Period, scoring for the 2023 9% Housing Texas Credits will determine the prioritization of HOME-ARP awards.

a. Previous rental experience with persons experiencing homelessness and persons with specific needs. A Development is eligible for a maximum of 9 experience points (cumulative) from i – vi of this subparagraph. Applicant may only apply for a maximum of 9 points.

i. Serving persons with homelessness-related rental assistance. Applicant will receive points based on their organization's previous experience owning and operating housing that support persons exiting homelessness, including HUD Veterans Affairs Supportive Housing (HUD-VASH), Emergency Housing Vouchers (EHV), Emergency Solutions Grants, Homeless Housing and Services Program Homeless Assistance, Ending Homelessness Fund Homeless Assistance, Continuum of Care Rapid Re-housing, or other federal, state, or local programs that serve a population that is defined as homeless. Acceptable documentation includes rental assistance agreements at properties owned/operated by Applicant showing government program used, or payments received at properties owned/operated by Applicant through government program (redacted for Personal Identifiable Information, if applicable). If the government program is not HUD-VASH, EHV, Emergency Solutions Grants, Homeless Housing and Services Program, Ending Homelessness Fund, or Continuum of Care rapid re-housing, then a description of the government program must be provided that highlights a requirement that assisted households are exiting homelessness. The persons assisted must have been served within ten (10) years of the Application due date. Applicant may receive six (6) points providing evidence of

having served with rental assistance the same number of persons exiting homelessness as the number of HOME-ARP Units requested in the Application for HOME-ARP. (6 points)

ii. Serving Persons with Specific Needs. Applicant will receive three (3) points based on their organization's previous experience owning and operating housing that support persons with specific housing needs, as defined in 10 TAC §11.2(d)(126)(C) with the exception of persons experiencing homelessness. This includes persons at-risk of homelessness; persons with physical, intellectual, or developmental disabilities; youth aging out of foster care; persons eligible to receive primarily non-medical home or community-based services; persons transitioning out of institutional care; persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing; Persons with Special Housing Needs including households where one or more individuals have alcohol or drug additions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized in 10 TAC §11.2(d)(126)(D) as represented in the Application and determined by the Department on a case-by-case basis. Acceptable documentation includes contracts/MOUs indicating provision of rental assistance through a source that requires one of the specific needs or existing tenant selection plans indicating leasing preference longer than the initial lease up of twelve months or limitation of Units for persons with specific needs. (3 points)

iii. Placement from referral. Applicant may receive three (3) points with submission of a letter from a Continuum of Care (CoC) lead agency or local homeless service providers that they have successfully referred and placed persons experiencing homelessness at one or more property(ies) owned/managed by Applicant within twenty-four months of the application due date. (3 points)

iv. Current marketing to homeless service providers. Applicant may receive three (3) points with submission of letter from a CoC lead agency or local homeless service providers confirming that the Principal of the Applicant has actively marketed available units in the past to the CoC or local homeless service provider within twelve months of the application due date. (3 points)

v. Existing property with preference for persons experiencing homelessness, at-risk of homelessness, or persons fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking. Applicant may receive three (3) points for having at least one existing Property owned/managed by the Applicant that has current tenant selection preference for persons experiencing homelessness, at-risk of homelessness, or fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, as evidenced by tenant selection plan, Land Use Restriction Agreement, Memorandums of Understanding

(MOUs), Admissions and Continued Occupancy Policies (ACOP), or letters from lenders at property owned/managed by the Applicant that has a tenant selection preference for persons experiencing homelessness or at-risk of homelessness. (3 points)

vi. Mitigation factors. Applicant may receive three (3) points for submission of a current a tenant selection plan or tenant eligibility forms showing that its screening criteria at an existing property owned by a Principal of the Applicant targeted for persons experiencing homelessness or at-risk of homelessness that allows for mitigation of two or more issues common to the population, such as not denying tenants based on credit history, prior rental payment history, or eviction at property owned/managed by the Applicant. An example of mitigation includes a process such as one described at 10 TAC §11.2(b)(126)(B)(v)(II) regarding criminal screening mitigation. (3 points)

b. Project Commitments. HOME-ARP rental application scoring takes into consideration commitments to reserve Units for persons who are experiencing or have experienced homelessness, and to have ongoing rental assistance available. A Development is eligible for a maximum of 15 commitment points (cumulative) from i – iv of this subparagraph. An Applicant may only apply for a maximum of 15 points. The award of any points claimed will require that the item(s) committed are reflected in the LURA and Contract for the Development.

i. Active marketing to homeless service providers. Applicant may receive five (5) points for commitment to actively market available QP Units to the CoC lead agency or local homeless service provider at least annually for the affordability period. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points)

ii. Mitigation factors commitment. Applicant may receive five (5) points for commitment to have a tenant selection plan at the proposed HOME-ARP development that will have screening criteria to allow for mitigation of two or more issues common to the homeless or at-risk of homelessness population, such as not denying tenants based on credit history, prior rental payment history, or eviction at property owned/managed by the Applicant. An example of mitigation includes a process such as one described at 10 TAC §11.2(b)(126)(B)(v)(II) regarding criminal screening mitigation. The tenant selection plan with the mitigation factors would need to be in effect during the federal compliance period. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points)

iii. Exiting homelessness. Applicant will receive points based on a commitment to have Units for two Qualified Populations (QPs): Homeless per 24 CFR §91.5, and formerly homeless but housed with temporary resources, per HUD CPD Notice 21-10. Any commitment will be reflected in the written agreement and LURA for HOME-ARP. At initial lease-up, the Department will require a ninety-day period during which Units

must either be occupied by persons who meet the definition of homeless under 24 CFR §91.5, or were formerly homeless but housed with temporary resources per HUD CPD Notice 21-10; or the Units must be held vacant. After the initial lease up and if a HOME-ARP Unit becomes available, the Department will require a sixty-day period during which Units must either be occupied by persons who meet the definition of homeless under 24 CFR §91.5, or were formerly homeless but housed with temporary resources per HUD CPD Notice 21-10; or the Units must be held vacant. After the ninety-day or sixty-day periods, respectively, the Development Owner will no longer be required to hold Units vacant but will be required to specifically market Units to persons exiting homelessness. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the development. An Application may receive a maximum of ten (10) points according to the range below.

A. 30% of QP Units reserved for persons exiting homelessness or formerly homeless but housed with temporary resources (10 points)

B. 20% of QP Units reserved for persons exiting homelessness or formerly homeless but housed with temporary resources (5 points)

iv. All Bills Paid. Applicants will receive five (5) points based on their commitment, to be reflected in the HOME-ARP agreement, to provide all bills paid units in the Development. Bills to be paid include heating, cooking, any other electric, air conditioning, water heater, water, sewer, trash, and any other occupancy fee(s) charged to each tenant at the Development. Note that utilities are an eligible cost under COCA for the QP units. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points).

c. Resident Services

Applicant will be eligible for 10 points for agreeing to provide the services reflected in 10 TAC §11.9(c)(3)(A) (relating to Resident Supportive Services) and an additional 1 point for agreeing to provide the community space and outreach reflected in 10 TAC §11.9(c)(3)(B) (relating to community space and outreach for Resident Supportive Services). Applicant will be eligible for up to eleven (11) points total under Resident Services.

(8) **Tie breaker criteria.** If more than one application is received with the same score and the Department cannot fund both applications, the Development with the lowest HOME-ARP capital cost per unit will be awarded HOME-ARP funds, subject to the application review process. If a tie exists after the first tie breaker, the Department will use a random draw to determine recommendation for funding.

(9) **Nonprofit Capacity Building and Nonprofit Operating Cost Assistance (NCO).** NCO is limited to \$50,000 if applying for either nonprofit capacity building or nonprofit operating cost assistance, or \$75,000 if applying for both. The time period for NCO is one to three years. If the HOME-ARP rental NOFA receives more funding requests than funds available, the Department reserves the right to award no NCO or to award the highest scoring eligible

HOME-ARP rental award(s). NCO will be awarded based on threshold items, and not be scored.

- a. Nonprofit Capacity Building Approach.** A nonprofit applicant must describe their approach to implementing the Capacity Building Assistance. A narrative must answer the questions: How will funds be used? How does the use of the funds in that way build capacity specific to HOME-ARP QPs? The narrative must also describe the uses of capacity building for each of the eligible capacity building activities, as listed in HUD CPD Notice 21-10:
- i. Payroll. Salaries for new hires including wages and other employee compensation and benefits.
 - ii. Training. Employee training or other staff development that enhances an employee's skill set and expertise.
 - iii. Equipment. Computer software or programs that improve organizational processes, upgrades to materials, and supplies, limited to less than \$5,000.
 - iv. Technical Assistance/Consultants. Contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.
- b. Nonprofit Operating Assistance Approach.** The Nonprofit Operating Assistance will be available only to nonprofit Supportive Housing Developers as defined in [10 TAC §11.1\(d\)\(126\)](#) or Qualified Nonprofits, as defined in [10 TAC §11.1\(d\)\(108\)](#). An Applicant will describe the need for Operating Cost Assistance. A narrative must answer the questions: How will funds be used? How does the use of the funds in that way support the nonprofit to build the rental development? The narrative must also describe the uses of nonprofit operating cost assistance for each of the eligible activities, as listed in HUD CPD Notice 21-10.
- i. Payroll. Employee salaries, wages and other employee compensation and benefits.
 - ii. Training. Employee education, training and travel.
 - iii. Equipment. Equipment, materials, and supplies, limited to less than \$5,000.
 - iv. Operating/overhead. Rent, utilities, communication costs, taxes, and insurance.

(10) **Loan Terms and Market Rate Units**

- a. Products.**
- i. **Construction-to-Permanent Loans.** All HOME-ARP Applicants structured as construction-to-permanent loans will reflect an interest rate of 0% during construction and as low as 0.25% for the permanent term (0.0% for Supportive Housing not layered with FHA that elects deferred forgivable loan structure). If the Debt Coverage Ratio is less than the minimum 1.15, staff will not make adjustments to the interest rate and financing structure in accordance with 10 TAC §11.302. If COCA is awarded, a second note will be issued, and may be deferred forgivable at 0.0% interest or have the balance deferred payable at as low as 0.25%, as selected by the applicant in the application and approved by underwriting. COCA funds will be placed in a separate account; interest on that account may have to be returned to the Department annually (pending further HUD clarification). The second note will be payable in full or forgiven upon the greater of

fifteen years from the project completion, or the term of a HAP Contract layered on the property and reflected in the underwriting report. The Department will require that funds not expended during the Federal Affordability Period be returned to the Department in accordance HUD Notice 21-10, unless the Federal Affordability Period is being extended. If the Applicant selects a deferred forgivable note and also has Housing Tax Credits awarded to the property, a letter from the equity partner(s) is required before award stating that the partner(s) has considered the tax implications of a deferred forgivable loan.

- ii. **Construction-Only Loans.** All Direct Loan requests structured as construction only loans may request an interest rate as low as 0% with the principal amount of the HOME-ARP loan due upon the end of the construction loan term.

- b. **Loan Structure.** The term of the loan and the amortization period (not to exceed 40 years) will match any superior debt. Funds may be requested as fully amortizing, subject to FHA's definition of surplus cash and repayable annually out of 75% surplus cash, or deferred forgivable, as specified below.

- i. Fully Amortizing – Available to all Applicants, Loans will be structured with regular principal and interest payments sufficient to fully repay the loan within the loan term. Interest will be as low as 0.25%.
- ii. FHA-Insured –Federal Housing Administration (FHA) layered transactions are subject to FHA's definition of surplus cash and repayable annually out of 75% of surplus cash. FHA layered transactions layered with COCA are not eligible. Interest will be as low as 0.25%.

- iii. Deferred forgivable – Only available for Supportive Housing not layered with FHA. The Loan is only forgiven at the later of: (1) the end of the loan term, or (2) the end of the federal affordability period (e.g., at minimum the loan term must be 15 years). If Applicant selects a deferred forgivable loan and also has Housing Tax Credits awarded to the property, a letter from the equity partner(s) is required at Application stating that the partner(s) has considered the tax implications of a deferred forgivable loan. Interest will be 0.0% for deferred forgivable loans.

- c. **Ineligibility.** Developments that have been complete for greater than six months with existing HOME Units from any Participating Jurisdiction are not eligible to apply for these funds during the federal affordability period. Developments with HOME-Match Units but no HOME Units, are able to apply if otherwise eligible.

(11) **Maximum per Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.** HOME-ARP does not have a maximum per unit subsidy or maximum rehabilitation per-unit subsidy limit.

(12) **Application Submission Requirements.**

- a. **Application Acceptance Period and Review.**
 - i. **Applications under this NOFA will be accepted starting December 9, 2022, and the first Application Acceptance Date will be January 31, 2023, at 5:00pm Austin Local Time. Applications received on February 1, 2023, until March 1, 2023, will have the second Application Acceptance Date of March 1, 2023, at 5:00pm Austin Local Time. The second Application Acceptance period is for 2023 9% HTC Supportive Housing Applicants only. As of February 16, 2023, the NOFA is suspended; no Application Acceptance Dates will be issued for Applications as of February 16, 2023.**
 - ii. Applications will be processed by score and Application Acceptance Date. Applications with an Application Acceptance Date on or before January 31, 2023, will be reviewed and potentially awarded in order of high score to low score. If funds are remaining after Applications received January 31, 2023 are submitted, Applications with Application Acceptance Dates between January 31 and March 1, 2023, will be reviewed and potentially awarded in order of high score to low score. Applicants may have only one active Application per Development at a time under this NOFA or other TDHCA NOFAs.

- b. **Application Submission Materials.**
 - i. All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at www.tdhca.state.tx.us. 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.
 - ii. A pro forma for the greater of 30 years or the loan term will be required for HOME-ARP.
 - iii. HOME-ARP Applicants without previous Part 50 or 58 environmental clearance, must submit their completed Part 58 environmental review ninety (90) days after the Application Acceptance date to take into account the full range of review requirements.

- c. **Application Forms.** An Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in Uniform Multifamily Application Manual and the HOME-ARP Rental Application Manual (Manual) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Manual in effect at the time the Application is submitted.

- d. **Match Submission Requirements.** HOME-ARP has no match requirements.

- e. **Gap Funding Limitations for projects that already received TDHCA funding or credits, and need gap financing for cost increases.**
 - i. The amount of funding that may be requested is limited to a total that includes:
 - a. the documented increase in Building Costs and Site Work from the

previous Application submitted to the Department for the proposed property, within the limitations of 10 TAC §13.3(e) related to Ineligible Costs;

b. the documented costs of compliance with regulations at 24 CFR Part 92 and the HUD CPD Notice 21-10 and Appendix.

ii. The amount of the Developer Fee may not increase, and the amount of the deferred Developer Fee may not decrease from the original Real Estate Analysis report.

f. **Application Fee.** Application Fees are not required for HOME-ARP.

g. **Application Transmittal Required Steps.** An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C), and separate email notification must be made to Tiara.Hardaway@tdhca.state.tx.us.

(13) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements and 10 TAC Chapter 13, as well as the Compliance Monitoring requirements in 10 TAC Chapter 10, Subchapters F and G.

a. Awarded Applicants may in accordance with Department rule be charged fees for underwriting, asset management, and ongoing monitoring.

b. An Applicant will be required to record a Land Use Restriction Agreement (LURA) limiting residents' income and rent for the greater amount of Units required by the Direct Loan Unit Calculation Tool along, or as represented in the Application for the term of the LURA.

c. An Applicant may be required to meet additional requirements prior to Contract, as determined by the Board, or federal or state requirements.

d. An awarded Applicant may be required to meet additional documentation requirements in order to request funds, in accordance with its Previous Participation results.

(14) **Miscellaneous.**

a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the fund sources. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations.

b. An Applicant must have a current Unique Entity Identifier (UEI) and be registered in the federal System for Award Management prior (SAM) prior to execution of a Direct Loan contract. The General Services Administration (GSA) has provided tools to assist registering entities entity and obtaining a UEI. Visit the SAM website at <https://sam.gov/content/entity-registration> to access a number of resources related to the UEI implementation. Once Applicants have an UEI, it must [register with the SAM](#).

- c. There is an active waiver to §10.614 to allow the PHA utility allowance to be adopted for HOME-ARP Developments (as reflected in Appendix A); however, PHA utility allowance still has to be approved per 10 TAC §10.614. The proposed development may use the utility allowances for HUD-regulated buildings that is approved by TDHCA prior to application in keeping with 10 TAC §10.614, or the PHA utility allowance that is approved by TDHCA prior to application in keeping with 10 TAC §10.614. The PHA utility allowance may be requested only if there is no conflict with other funding sources (e.g. HOME, NSP, TCAP-RF, NHTF, or a property containing HOME Match Units, unless the Development is all-bills paid).
- d. All Applicants that have not previously applied for the Department's funds for the Development in the Application must comply with public notification requirements in 10 TAC §11.203. Applications that already received TDHCA funding or credits for this scope of work and already complied with 10 TAC §11.203 will not need to meet this requirement a second time.
- e. Initial lease-up reserves and replacement reserves for HOME-ARP Low Income Units are not eligible costs under this NOFA.
- f. At least 10% of the QP Units must be available to all QPs. This means that at least 10% of the QP Units cannot be layered on units restricted to 30% AMI because at least one QP has incomes up to 50% AMI.
- g. Up to 30% of the HOME-ARP Units may be low-income households (e.g., up to 80% AMI). If a Development chooses to build optional low-income Units for HOME-ARP, up to 10% of the low income Units can be High HOME 80% Units. The remaining low-income Units must be High HOME 60% units, per 24 CFR §92.216, Income Targeting.
- h. Applicants that would like to use the master lease option with a nonprofit sponsor listed in HUD CPD Notice 21-10 must request a waiver of 10 TAC §10.613(i) and 10 TAC §13.3(d)(2)(C) regarding the requirement to lease directly to residents. This waiver is not available to Developments with HOME annual funds, Tax Credit Assistance Repayment Funds, National Housing Trust Fund, or a property with HOME Match Units.
- i. HOME-ARP rental projects paired with a Housing Assistance Payment (HAP) contract will retain the HOME-ARP requirements for the greater of 15 years or the term of the HAP contract per HUD Notice 21-10. Applicants are encouraged to reflect on the rent schedule that each HOME-ARP QP Unit with HAP. A QP Unit without HAP support or other project based rental assistance will continue to pay 30% of their income toward rent and will be underwritten as zero income until the end of the HAP contract. The optional HOME-ARP Low Income (LI) Units will continue using the High HOME income and rent limitations until the end of the HAP Contract. If not all HOME-ARP QP Units and HOME-ARP LI Units are able to be layered with a HAP contract, an additional pro forma may be needed during the application process to determine financial feasibility of the project.
- j. When the HOME-ARP Federal Affordability Period is over at least 20% of the Units must be

for households at 60% or below AMI, and all Units must be for households at 80% or below AMI. HOME-ARP Units during this period must have rent levels for a multifamily program that exists in the Department (e.g. HOME annual, NHTF, HTC 4% or 9%, etc.).

- k. The minimum amount for the COCA request is \$250,000. The maximum requests for COCA is dependent on the amount of net cash flow for the Development in year one. Projects with 80 or fewer Units that have net cash flow in the first year of \$250,000 or more and that are also requesting Capitalized Operating Cost Assistance (COCA) will have their COCA request reduced so that the net cash flow in year one will be no more than \$250,000. In this case, the COCA may be reduced to zero, if the net cash flow is still \$250,000 or more. Projects with 81 or more Units or Supportive Housing Developments that have net cash flow in the first year of \$500,000 or more and that are also requesting Capitalized Operating Cost Assistance (COCA) will have their COCA request reduced so that the net cash flow in year one will be no more than \$500,000. In this case, the COCA may be reduced to zero, if the net cash flow still exceeds \$500,000. Interest on Sponsor Loans will be considered net cash flow for this purpose.
- l. If the Department deems an Application to be better suited for another Department multifamily NOFA or funding opportunity, the Department will provide the Applicant a fourteen calendar day period (which may be extended another fourteen days for information required from third parties) to provide the supplemental information needed to evaluate the Application under that fund source without impact to the Application Acceptance Date. However, in this case the Applicant will not be provided an earlier Application Acceptance Date than could have achieved under the other NOFA.
- m. Waivers of any substantive or procedural provision of this NOFA, if available, will be treated in accordance with 10 TAC §13.1(c). 10 TAC §13.1(c) may not be waived.
- n. For questions regarding this NOFA, please contact Tiara Hardaway, HOME-ARP Manager, at Tiara.Hardaway@tdhca.state.tx.us.

Appendix A – Applicable Rules and Waivers
Texas Administrative Code Rental Waivers and Alternative Requirements for
HOME American Rescue Plan Rental Notice of Funding Availability

The waivers and alternative requirements listed in this document are meant to support the Texas Department of Housing and Community Affairs' (TDHCA) HOME American Rescue Plan's (ARP) Rental 2022 Notice of Funding Availability (NOFA). The additional flexibilities are needed to align state rules with the alternative waivers and alternative requirements for HOME-ARP issued in the U.S. Department of Housing and Urban Development's Community Planning and Development (CPD) Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program.

Background

The Texas Department of Housing and Community Affairs (TDHCA) was allocated approximately \$132 million in HOME American Rescue Plan (ARP) funds in a one-time allocation from the U.S. Department of Housing and Urban Development (HUD). HOME-ARP is based on HUD's HOME Investment Partnerships Program annual funding infrastructure. HOME-ARP also has significant differences compared to the HOME annual program.

TDHCA has programmed up to \$56,511,887 in HOME-ARP funding for rental development. The HOME-ARP Allocation Plan set-aside \$10,000,000 of these funds for National Housing Trust Fund (NHTF)-funded Developments that may otherwise be at risk of not financially feasible. If the set-aside is not fully utilized, the remaining balance will be available for the HOME-ARP funding for rental development.

In addition, the HOME-ARP Allocation Plan programmed \$6,648,458 in nonprofit operating and nonprofit capacity building (NCO) funds. Of this amount, \$3,324,229 is expected to be available for application within the HOME-ARP Rental NOFA.

Several chapters of Texas Administrative Code (TAC) apply to HOME-ARP, with waivers and alternate requirements to conform to the HUD CPD Notice 21-10 and the HOME-ARP Allocation Plan. These are:

- 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 Bond Rules)
- 10 TAC Chapter 13 (Multifamily Direct Loan Rule)

The 10 TAC above that apply to Multifamily Direct Loan or the HOME annual Program will also apply to HOME-ARP, unless specifically waived or provided alternative requirements below. This document may be updated from time to time, as HUD guidance is released and the applications are processed for HOME-ARP.

Certain waivers are not available to Developments with other funding sources, unless a waiver is received by the Department from HUD.

The items listed below are waived or have alternative requirements:

10 TAC Chapter 10

1. 10 TAC §10.614(d) and §10.614(k)(3) relating to utility allowance calculations. HOME-ARP is able to use the Public Housing Authority utility allowance. HOME-ARP will not be mandated to establish the Utility Allowance per 10 TAC §10.614(d). HOME-ARP may be able to establish the Utility Allowance per 10 TAC §10.614(k)(3). This waiver is not available to Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF, unless the Development is all utility bills paid.

10 TAC Chapter 11 for Developments that already received TDHCA funding or credits, and require gap financing

1. 10 TAC §11.101(a)(2) related to Undesirable Risk Features, waived only to the extent that the undesirable feature was already disclosed at original Application;
2. 10 TAC §11.01(a)(3)(B)(iii) related to schools, including disclosure requirements, waived only to the extent that the risk factor was already disclosed at original Application;
3. 10 TAC §11.203 regarding public notification have already been met for the scope of work for these HOME-ARP Applications.
4. 10 TAC §11.205 related to Required Third Party Reports, are waived except for environmental clearance, demonstration of current market demand for the proposed project for the HOME-ARP qualified population, and scope and cost review (if applicable). In spite of the waiver, the Department may request updates to any Report deemed necessary to evaluate an Application under this NOFA.

10 TAC Chapter 13

1. For Applications during the first Application Acceptance period, 10 TAC §13.1(c)(1) related to Waivers for Layered Developments is waived. Instead Applicants may request Waivers under 10 TAC §13.1(c)(2).
2. 10 TAC §13.3(e)(12) regarding reserve accounts (other than initial operating reserve accounts) as ineligible costs. HOME-ARP allows for a capitalized operating cost assistance reserve per HUD Notice 21-10.
3. 10 TAC §13.4 regarding set-asides, regional allocation and NOFA priorities do not apply to HOME-ARP. HOME-ARP is currently not subject to Tex. Gov't Code Section 2306.111, which requires regional allocation. HOME-ARP's set-asides priorities as outlined in the HOME-ARP Allocation Plan and in the NOFA.
4. 10 TAC §13.5(c) related to Market Analysis for Units reserved for Qualified Populations.
5. 10 TAC §13.5(h)(2) and (3)(A)-(C) related to eligibility determinations for Applicants.
6. 10 TAC §13.5(i) related to Effective Rules, waived only to the extent that the requirements of the applicable 2021 or 2022 QAP requirements for prior HTC or Multifamily Direct Loan awards will instead be utilized for 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.

7. 10 TAC §13.6, Scoring Criteria, for the Multifamily Direct Loan Rule is waived; the NOFA describes the alternative scoring criteria.
8. 10 TAC §13.7(b) and (c) regarding maximum new construction, reconstruction, rehabilitation per-unit subsidy limits will not apply for the HOME-ARP Units. The section of 10 TAC §13.7(d) regarding the per unit subsidy limits will not apply, though the required number of units determined by cost allocation analysis will apply.
9. 10 TAC §13.10(c) regarding unit match for the HOME annual program will not apply for the HOME-ARP Rental Development funding.
10. 10 TAC §13.11(c)(11), for the HOME-ARP Rental Development funding, as the requirements for marketing in HUD Notice 21-10 will also apply for the HOME-ARP Units.
11. 10 TAC §13.11(c)(12) regarding repayment of funds for Units that are not rented. HOME-ARP Units will have an alternative requirement of repayment if not rented in 12 months, instead of 18 months.
12. 10 TAC §13.5(b) related to application fees is waived.