



Texas Department of Housing and Community Affairs Housing Trust Fund (HTF)

2010 - 2011 HomeFree Barrier Removal and Rehabilitation Program

Notice of Funding Availability (NOFA)

Effective Date: February 18, 2010

1) Summary

- a) The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of \$1,500,000 in funding from the 2010 Housing Trust Fund (HTF) appropriation to fund organizations that will provide services through the HomeFree Barrier Removal and Rehabilitation Assistance Program (“the Program”) to Persons with Disabilities whose household incomes do not exceed 80% of the Area Median Family Income (AMFI). Assistance will be in the form of one-time grants of up to \$20,000 per household to make homes (rental or owner-occupied) more accessible. Because the assistance is in the form of a grant, no liens will be required.
- b) Applicants are encouraged to familiarize themselves with all of the state statutes and rules that govern the Housing Trust Fund Program, as well as applicable federal regulations. The availability and use of these funds are subject to the Texas Administrative Code (TAC), Title 10, Part 1, Chapter 51 (“Housing Trust Fund Rule”) and Chapter 2306 of the Texas Government Code, in effect at the time a contract is fully executed.
- c) Other regulations may also apply such as, but not limited to:
 - i. 24 CFR §5.609 and 24 CFR §5.611 for income qualification;
 - ii. Texas Government Code, Title 7, Chapter 783 - the Uniform Grant and Contract Management Act, as applicable; and
 - iii. Texas Administrative Code, Title 10, Part 1, Chapter 1, subchapter A, Rule §1.6, and Texas Government Code, Title 10, Subtitle F, Chapter 2254 for procurement as applicable.

2) Source of Housing Trust Funds

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

3) Allocation of Funds

In accordance with §2306.111 of the Texas Government Code, and as further outlined in the Plan, the funds being released under this NOFA are not subject to the Regional Allocation Formula (RAF) because the funds are programmed for Persons with Disabilities.

4) Application Cycle

- a) Funds under this NOFA will be awarded through a Competitive Application Cycle. The Application Acceptance Period will open on **Friday, February 12, 2010**, and Applications will be accepted by the Department on regular business days until 5:00 p.m., Central Time, on **Wednesday, March 31, 2010**, regardless of method of delivery. Applicants are encouraged to review the Competitive Application process cited in 10 TAC 51, the Housing Trust Fund Rule and described herein.
- b) Applications that do not meet minimum threshold criteria will not be considered for funding. Note that regardless of date of submission, all applications are evaluated competitively against one another. Earlier submissions do not rate higher than applications received on the deadline.

5) Limitation on Funds

- a) The maximum award amount **per Application** may not exceed \$250,000, which includes all project, administrative, and soft costs. For Applicants submitting more than one Application, the maximum cumulative award **per Applicant** is \$500,000.
- b) The Department reserves the right to make a recommendation for partial funding for any Application. In the event of a tie between two or more Applicants, the Department will determine which Application will receive a recommendation for funding or the Department may make a recommendation for partial funding to Applicants.
- c) Applicants may be eligible to receive up to ten percent (10%) of the \$250,000 total maximum award per Application for reimbursement of administrative costs. With the exception of the initial Administrative draw (up to 10% of the total allowed for Administrative Fees), reimbursement of eligible Administrative expenses will be dependent upon the percentage of performance benchmarks completed. Administrative costs are costs incurred for activities performed directly by the Administrator and/or professional services consultant, and include general management and oversight, salaries, wages and related costs of staff, and other costs required for the administration of the Program such as the purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (not purchase) of office space.
- d) Administrative costs may include, but are not limited to:
 - i. Application intake and processing;
 - ii. Affirmative marketing (as detailed in the Program Design);
 - iii. Travel costs directly related to contract administration and training;*
 - iv. Professional services;
 - v. Financial management, accounting and audit; and
 - vi. Procurement of general contractor(s).

*The awarded organization may incur and be reimbursed with administrative funds for travel costs incurred after the effective date of the Contract but prior to the start of Contract activities for contract administration training required by the Department as a condition of receiving a Housing Trust Fund Award and Contract.

- e) Soft costs are necessary costs incurred in addition to the direct construction costs and are limited to ten percent (10%) of the project costs estimated in the Application budget. All soft costs are included in the \$250,000 total maximum award per Application and must be directly related to the specific Project activity. Soft costs may include, but are not limited to:
 - i. Inspection fees;
 - ii. Scope of work and cost estimates;
 - iii. Plans;
 - iv. Building permits and fees; and
 - v. Construction supervision.

6) Eligible and Ineligible Applicants

- a) Eligible Applicants are Local Units of Government (including Participating Jurisdictions), Nonprofit Organizations, and Public Housing Authorities. Nonprofit Applicants must include a *Certificate of Account Status* from the Texas Comptroller of Public Accounts indicating good standing and a current copy of the IRS tax exemption ruling letter.
- b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §51.8(d). In addition, the following conditions will cause an Applicant, and any Applications they have submitted, to be ineligible:
 - i. The Applicant, Development Owner, or Developer is an Administrator of any active Contract in any Community Affairs Division funded program for which the Department has placed the funds on “reimbursement only” status due to failure to meet contractual obligations and the “reimbursement only” status remains as of the application submission date.
 - ii. The Applicant, Development Owner, or Developer is an Administrator of any previously funded Contract for the same Housing Trust Fund activity and is not currently meeting all current contract benchmarks and requirements unless the Applicant, Development Owner, or Developer has received a waiver of this requirement from the Executive Director.
 - iii. Should an Applicant or Application be determined ineligible for funding in accordance with this section or the Housing Trust Fund Rule, the Application will be terminated without be processed as a deficiency. Applicants are encouraged to familiarize themselves with the Department’s certification and debarment policies prior to application submission.
- c) Per 10 TAC §1.3(b), an Applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or *Audit Certification Form* has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance. This is a threshold requirement, therefore, Applications that

have outstanding past audits will be disqualified. Staff will not recommend Applications for funding to the Department's Board and Contracts will not be executed unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

- d) Applicants may not serve any household living in housing developed, owned or managed by the Applicant or an Affiliate, as defined in 10 TAC §51.2(3). This Program is intended and designed to benefit eligible individuals and is not to be used as a project-based rehabilitation program.
- e) In order to be considered eligible, an Applicant who is an Administrator of a previously funded Contract for the same activity must be in compliance with the requirements and benchmarks of the current Contract.

7) Eligible and Prohibited Activities

- a) Eligible activities will include those permissible in the Housing Trust Fund Rule at 10 TAC §51.6.
- b) Modifications for accessibility may include, but may not be limited to:
 - i. Handrails;
 - ii. Door widening;
 - iii. Countertop and cabinet adjustments;
 - iv. Ramps;
 - v. Buzzing or flashing devices (for persons with visual/hearing impairment);
 - vi. Accessible door and faucet handles;
 - vii. Tub/Shower grab bars and shower wands; and
 - viii. Accessible showers, toilets, and sinks.
- c) Prohibited activities include those as described in 10 TAC §51.7. Department awards may not be used to:
 - i. Assist individuals who owe payments identified by the Comptroller of Texas as relevant;
 - ii. Assist Households whose Property has current tax liens and/or judgments to the State of Texas against it.
- d) Funds made available through this NOFA may not be used for accessibility modifications of rental units in properties that are financed in whole or in part with federal funds. The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. §4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA requires that covered buildings comply with the Uniform Federal Accessibility Standards (UFAS). The ABA applies to public housing (24 CFR 40), and to buildings and facilities constructed with CDBG funds (24 CFR 570.614).
- e) Accessibility modifications funded through this NOFA must meet the needs of all eligible households in the Applicant's service area. Applicants may not limit Program activities to the extent that needed services are unavailable in the service area.

8) Program Requirements

- a) Awarded organizations will provide assistance to Households whose composition includes at least one member meeting the definition of a Person with Disabilities, as defined in the Housing Trust Fund Rule at 10 TAC §51.2(48), and who reside within the Applicant's defined service area, as stated in the Contract.
- b) All Housing Trust Fund-assisted Households must be determined to be eligible according to the income qualification guidelines and be consistent with the income targeting commitment described in §11(a) of this NOFA. Pursuant to 10 TAC §60.108, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350, as amended by HUD.
- c) For Households living in those counties where the AMFI is lower than the state median family income, awarded organizations may use the state median family income, adjusted for Household size, as defined by the U.S. Department of Housing and Urban Development (HUD) and provided by the Department, to determine income eligibility.
- d) The maximum amount of assistance provided to an eligible Household for Barrier Removal and Rehabilitation, along with eligible soft costs, is limited to \$15,000 for the scheduled scope of work and a maximum of an additional \$5,000 for unforeseen contingencies related to the barrier removal project. Use of contingency funds requires a change order pre-approved by the Department. The assistance shall be provided in the form of a grant.
- e) Assistance provided through the Program must be directly related to home modifications specifically needed for accessibility and other rehabilitation costs associated with the barrier removal project, including provision of an accessible route on private property.
- f) **Contract Terms.** The Contract term shall not exceed twenty-four (24) months and performance under the Contract will be evaluated according to the following benchmarks:
 - i. At Six (6) months from the Contract execution date, funds must be committed (a Department approved set-up) to at least one Household to be assisted;
 - ii. At Twelve (12) months from the Contract execution date, 75% of funds must be committed to Households and 50% of funds drawn;
 - iii. At Eighteen (18) months from the Contract execution date, 100% of funds must be committed to Households and 75% of funds drawn; and
 - iv. At Twenty-four (24) months from the Contract execution date, 100% of funds must be drawn.
- g) Failure to comply with all Program and Contract requirements may result in debarment, repayment of funds, deobligation of funds, and other penalties as determined by the Department.
- h) Awarded organizations may be invited to participate in a capacity building and training program.

9) Construction Standards and Requirements

- a) Rehabilitation or modifications funded by the Program must meet all applicable state and local housing quality standards and code requirements, including the International Residential Code, pursuant to Section 214.212 of the Local Government Code.
- b) All work carried out with the assistance of HTF funds must also meet the Texas Minimum Construction Standards (TMCS) for single family units, or HUD's Uniform Physical Conditions Standards (UPCS) for multifamily units.
- c) Awarded organizations must provide building construction contractor oversight and ensure that builder's risk coverage is provided.
- d) It is recommended that accessibility modifications be made with consideration of the design standards established by the Texas Accessibility Standards and/or Texas Government Code, Title 10, Subtitle G, Chapter 2306.514. If these standards are not used, a written justification must be provided.
- e) A project activity's scheduled scope of work and cost estimate (*Form 911.17*) shall not exceed \$15,000, including a standard contingency line expense of 3% to 5% of the cost estimate. Up to an additional \$5,000 in unforeseen contingency funds per project activity may be requested with a written *Change Order Request (Form 911.09)*. The change order request must be approved by the Department prior to incurring any costs to be paid as a result of the change order.
- f) Awarded organizations must ensure that all forms required by the Department are submitted during and upon completion of construction-related activities, as applicable.
- g) A retainage of 10% shall be withheld by the Contract Administrator from each construction contractor's interim draw request, to be released no sooner than the thirty-first day following the filing and recording of the *Final Bills Paid Affidavit (Form 911.08)* by the construction contractor.

10) Application Threshold Requirements and Competitive Scoring Criteria

The following threshold criteria are mandatory requirements at the time of Application submission, unless specifically indicated otherwise, and will be included in the written agreement should funds be awarded. Applications that do not meet minimum threshold criteria will not be considered for funding.

- a) **Tax Exempt Status.** Applications from Nonprofits must submit a Certificate of Account Status from the Texas Comptroller of Public Accounts indicating good standing, and a current copy of the IRS tax exemption ruling letter, as required by §6(a) of this NOFA.
- b) **Cash Reserve.** Each awarded Applicant will be required to expend funds according to Program guidelines and request reimbursement of funds from the Department for eligible expenses. Applicants must evidence the ability to administer the Program and commit cash reserves of at least \$30,000 to facilitate administration of the Program during the

Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by Program funds. Evidence of this commitment, the amount of the commitment, and the source of the funds must be included in the Applicant's resolution and budget. Applicants must submit Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves; and

- i. A letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
 - ii. Evidence of an available line of credit or equivalent of at least \$30,000.
- c) **Resolution.** All Applications submitted must include an original resolution, signed and dated within the six (6) months preceding the application submission date, from the Applicant's direct governing body (Board, Council or Commission) which includes:
- i. Authorization of the submission of the Application;
 - ii. Commitment, amount and source of cash reserves for use during the Contract period; and
 - iii. Name and title of the person assigned signatory authority to execute a Contract on behalf of the organization.
 - iv. If Applicant is a Nonprofit Organization that offers expanded services such as childcare, nutrition programs, job training assistance, or health services and would like the application fee waived pursuant to Section 2306.147(b) of the Texas Government Code, this request must be stated in the resolution and services must be described in the Program Design required in §10(e) (i) of this NOFA.
- d) **Experience Providing Services to Persons with Disabilities and Housing Rehabilitation**
- i. Applicants must have at least two (2) years of experience providing services specifically targeted to the needs of Persons with Disabilities as evidenced by previous Contracts with funding entities for these services. To satisfy this requirement, applicant may provide evidence of a partnership with an entity or organization that meets the requirement.
 - ii. Applicants must have at least two (2) years experience providing housing rehabilitation program services, as evidenced by current or previous Contracts with funding entities for these services. To satisfy this requirement, applicant may provide evidence of a partnership with an entity or organization that meets this requirement.
- e) **Program Design.** Applicants must complete a detailed description of the program design used to implement this Program using the format detailed in the Application and forms provided by the Department. The program design will include information such as, but not limited to:
- i. Organizational Capacity. Applicants must submit a description of the Applicant's organizational capacity and readiness, including its history, mission, governance policies, business plan and financial management systems.
 - ii. Evidence of Need. Specific to the purpose of this NOFA, the Applicant will provide current and quantified data documenting the need for the proposed housing activity,

including a description of the population to be served, as evidenced by a current housing needs survey. If the survey is older than 24 months, it must be accompanied by an update from the survey preparer either confirming or amending the findings of the survey. Absent a housing needs survey, the Applicant may submit a waiting list of identified clients and income levels to be served.

- iii. Local Resources. The Applicant must describe local resources, such as partnering organizations that will assist with the marketing and implementation of the program, funding partners that will be leveraged by the Housing Trust Fund grant, and local material providers or construction trades that will participate in the program, as evidenced by a written agreement, such as a memorandum of understanding, contract or resolution.
- iv. Construction Costs per Unit and Budget. The budget shall be based on the need evidenced in the Program Design. The budget must include the anticipated project cost per beneficiary (cost per Household or unit) and the estimated costs of material and labor, as evidenced by recent local construction bids or generally accepted cost estimation guidelines.
- v. Affirmative Marketing and Fair Housing Plan. In accordance with Section 2306.257, Texas Government Code, Applicants must describe their plan to carry out an affirmative marketing program to attract prospective program applicants regardless of race, color, religion, sex, disability, familial status or national origin. The affirmative marketing program should also assure that any group(s) of persons normally NOT likely to apply for the housing without special outreach efforts know about the Barrier Removal and Rehabilitation Program, feel welcome to apply, are assisted in applying, and have the opportunity to do so. In addition to the specific advertising activities, Applicants must describe proposed staff training on responding to fair housing concerns and how they will document results of actions taken.
- vi. Program Implementation and Compliance. The Applicant will describe their plan to implement this Program and ensure compliance. The Plan must include a description of processes to ensure the organization meets contractual requirements for this NOFA, such as program marketing, application intake, applicant eligibility, conflict of interest, procurement, construction quality and inspection, accounting using Generally Accepted Accounting Principles (GAAP), audits and recordkeeping. If the proposed housing activity includes single or multifamily rental, Applicant must provide a plan for long-term management. Resumes of key staff associated with the Program or job descriptions for unfilled positions must be provided.

11) Competitive Scoring Criteria. In addition to the Threshold Requirements, Applications will be scored according to the criteria listed in this section. **A maximum of 38 points are available.**

- a) **Income Targeting.** In order to meet its annual goal of assisting very low to extremely low income families, the Department provides point incentives for Applicants that assist households with very low and extremely low incomes. Table 1 will be used to determine income targeting requirements and associated points, as follows: **(Maximum 20 points)**

Table 1 - Point Incentives for Income

Income Target	Points
50% of units ≤ 60% AMFI	5
80% of units ≤ 60% AMFI	10
80% of units ≤ 50% AMFI	15
50% of units ≤ 30% AMFI	20

- b) **Leveraging of Other Project Funds.** Pursuant to §2306.203(3)(A) of the Texas Government Code, the criteria used to evaluate Applications will include the extent to which the project will leverage state funds with other resources, including federal resources and private sector funds. Other sources must be clearly substantiated. Table 2 will be used to determine percentage of funds leveraged and associated points, as follows: **(Maximum 5 points)**

Table 2.a – Points for Leveraging with Non-HTF Funds

Percent of HTF Award Leveraged	Points
Less than 20% of total HTF award Leveraged	0
20% to 50% of total HTF award Leveraged	3
Greater than 50% of total HTF award Leveraged	5

Table 2.b – Example (Based on a \$250,000 Total Award)

Percent of HTF Award Leveraged	Points
Less than 20% of total award = Less than \$50,000 Leveraged	0
20% to 50% of total award = \$50,000 to \$125,000 Leveraged	3
Greater than 50% of total award = More than \$125,000 Leveraged	5

- c) **Rural and Non-Metropolitan Areas.** Pursuant to §2306.203(5)(A) of the Texas Government Code, the criteria used to evaluate Applications will include the extent to which the project will provide a special emphasis on equitably serving rural and non-metropolitan areas. Local jurisdictions, cities or counties, which receive direct HOME funds or participate in a HOME Program Consortium, will not qualify for these points. Applications proposing to serve multiple jurisdictions will receive points based on the most populous jurisdiction. Table 3 will be used to determine population of service area and associated points, as follows: **(Maximum 10 points).**

Table 3 – Points for Serving Rural and Non-Metropolitan Areas

Population of Service Area	Points
City/Place <50,000 or County <200,000	3
City/Place <30,000 or County <120,000	5
City/Place <20,000 or County <80,000	8
City/Place <10,000 or County <40,000	10

- d) **Priority for Certain Communities.** Pursuant to §2306.127 of the Texas Government Code, the Department shall give priority through its scoring criteria to Applicants serving communities that are located wholly or partly in: **(Maximum 3 Points for one or more)**
- i. A federally designated urban enterprise community;
 - ii. An urban enhanced enterprise community; or
 - iii. An Economically Distressed Area or Colonia.

12) Application Procedures and Review Process

- a) The Department will publish on its website an Application and Application materials that, if completed and submitted properly, would satisfy the requirements for requesting funds available through this NOFA. Applications received by the Department in response to a Competitive Application Cycle will be handled in the following manner:
- i. All Applications must be received during business hours (8:00 a.m. to 5:00 p.m. Central Time) on business days (Monday through Friday).
 - ii. Applications submitted and accepted by the Department will be reviewed for eligibility, threshold and scoring criteria, and all Application requirements. The Department will ensure review of materials required under the NOFA and Application materials.
 - iii. The Department will issue a notice of any Administrative Deficiencies, defined in 10 TAC §51.2(1), upon review.
 - iv. If Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the Application score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated.
 - v. Upon completion of review and no unresolved Administrative Deficiencies, the Application will be reviewed for recommendation to the Board by the Committee.
- b) **Administrative Deficiencies.** An Administrative Deficiency is a deficiency or inconsistency, which in the Department’s reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or scoring criteria documentation and/or financial feasibility analysis. The Department staff may request clarification or correction in a deficiency notice in the form of an email

and/or a telephone call to the Applicant advising that such a request has been transmitted. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, increase their award amount, or revise their mix of income levels, except in response to a direct request to remedy an Administrative Deficiency as further described in this title or by amendment of an Application after a commitment or allocation of Housing Trust Funds.

- c) The Department may decline to fund 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 reserves the right to negotiate individual elements of any Application.

13) Adherence to Obligations:

- a) All representations, undertakings and commitments made by an Applicant in the Application process for a proposed activity, whether with respect to threshold or scoring criteria, program design or otherwise, shall be deemed to be a condition to the Contract, the violation of which shall be cause for cancellation of such Contract by the Department. Eligible Applicants that have been approved for funding and that require a material change in the project as described in the Application must provide a written request for the material change to the Department prior to implementing the change.
- b) A material change may include, but is not limited to, the following:
 - i. Change in eligible activities;
 - ii. Change in service area;
 - iii. Change in the maximum amount of assistance per Household;
 - iv. Change in the number of units or set asides;
 - v. An increase in funding that is not permitted under 10 TAC §51.14.
- c) Failure to operate the proposed activity as represented in the Application without receiving approval for an amendment to the Application by the Department prior to implementation of such amendment may result in cancellation of the Contract, deobligation of funds, and/or disallowed costs.

14) Contract Administration Requirements:

- a) The following Contract administration requirements are imposed for administration of the Program.
 - i. Contract Required. Any activity funded under this Program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will be subject to the Housing Trust Fund Rule (10 TAC §51) in effect at the time the Contract is executed and will not be effective until executed by all parties to the Contract. Any amendments must be in writing and are subject to the requirements of the Rule in effect at the time of submission to the Department.

- ii. Contact Information. In accordance with 10 TAC §1.22, the Contract Administrator must make available the updated contact information, including the direct phone number, email address, mailing address and fax number, for the awarded organization or entity and Contract signatory on file at the Department.

b) In addition to the requirements outlined in the Contract, Administrators must meet the following requirements:

- i. General Requirements.

- A) Administrators must use the forms provided on the Department's website and comply with the Department's procedural and documentation requirements as outlined in this NOFA, the Application, and the Application materials.
- B) Administrators must ensure that all Contracts and forms are executed by all parties authorized and required to sign.
- C) All training required by the Department must be completed by the persons identified as the Administrators of the Contract. At a minimum, participants shall include all persons who perform or may perform the duties of submitting or approving draws and/or setups.
- D) Administrators must ensure that all Department Housing Contract System access requirements are met.
- E) Administrators may not retain any income generated through the operation of any Housing Trust Fund program or activity. Any income that is generated through the operation of any Housing Trust Fund program or activity must be submitted within ten (10) days of its receipt to the Department.
- F) Administrators must ensure compliance with applicable audit certification requirements.

- ii. Affirmative marketing procedures.

- A) Administrators must comply with a written affirmative marketing plan, as further described in §10(e) of this NOFA. The Plan must describe all procedures and requirements and shall be prepared in accordance with the Housing Trust Fund NOFA and as further required by the Department.
- B) Procedures must include the designation of an individual who will be responsible for marketing the Program, establishing the application intake and eligibility assessment process, and maintaining records that evidence affirmative marketing procedures have been implemented.

- iii. Application intake.

- A) To ensure compliance with the Texas Comptroller of Public Accounts requirements, Administrators are required to ensure the applicant Household does not owe a debt to the State of Texas including tax liens, child support liens, student loans, or other government loan delinquencies.
- B) In accordance with §51.18(12), Administrators must ensure that no conflict of interest exists between Households to be assisted and Persons designated to receive or assist with the application intake process.
- C) Administrators must document and verify all income and asset eligibility requirements for the Household to be assisted.

- iv. Applicant selection criteria. Administrators must develop and follow a written applicant intake and selection criteria to ensure Program eligibility, which must include, but is not limited to:
 - A) Written permission of the property owner, property manager or authorized representative to perform the work;
 - B) Income eligibility;
 - C) Assisted units must be located within the Administrator's Service Area, as defined by the Contract; and
 - D) That the assisted unit must be free of tax liens.
 - v. Administrators must notify each applicant Household in writing of either acceptance or denial of assistance within sixty (60) days following receipt of the application.
- c) Administrators must develop and comply with written procurement selection criteria. Administrators may procure consultants, if applicable. Consultants may not participate in or direct any part of the process for procuring consultants.
 - d) Recordkeeping. Administrators must develop and comply with Generally Accepted Accounting Practices (GAAP) as well as all reporting, filing, and documentation procedures required by 10 TAC §1.60 subchapter A.
 - e) Submission of documentation for project setups and disbursement requests. The Administrator must identify individuals to submit and approve draws and setups in the Department's Housing Contract System using the *Contract System Access Request Form*.
 - i. Required documentation must be submitted electronically through the Housing Contract System in order to proceed unless otherwise pre-approved by the Department.
 - ii. The Administrator must ensure that all support documentation for project setups and disbursement requests is received by the Department within thirty (30) days of entering the setup or disbursement request in the Housing Contract System.
 - iii. The Administrator must submit all Project setups and support documentation for Households to be assisted no later than ninety (90) days prior to the Contract end date. In the event that a loan closing is required for single family Rehabilitation, all Project setups and support documentation must be submitted no later than one hundred eighty (180) days prior to the Contract end date.
 - iv. The Administrator must submit required documentation for Project completion reports and *Final Inspection Certification (Form 911.03)* by no later than sixty (60) days from the Contract end date.

15) Amendments:

- a) Amendment requests to be approved by the Executive Director are allowable under the following circumstances:
 - i. Time extensions. The Executive Director may collectively provide up to one six month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive

Director relating to unusual, non-foreseeable or extenuating circumstances. If the extension is longer than six months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension.

- ii. Changes in Area Median Family Income (AMFI) levels. The Executive Director may grant approval of a modification or amendment to the AMFI levels of the Households to be served under the Contract, if Administrator provides a statement relating to unusual, non-foreseeable or extenuating circumstances that warrant such a request to be granted and the Executive Director determines that the request does not violate Department rules. In the case that the Executive Director determines that the request is not warranted and/ or violates Department rules, the request will be presented to the Board for approval.
 - iii. Changes to Services Area. The Executive Director may grant approval of the modification or amendment to the Service Area being served under the Contract, if Administrator provides a statement relating to unusual, non-foreseeable or extenuating circumstances that warrant such a request to be granted and the Executive Director determines that the request does not violate Department rules. In the case that the Executive Director determines that the request is not warranted and/or violates Department rules, the request will be presented to the Board for approval.
 - iv. Changes in number of Households to be served. The Executive Director may grant approval of the modification or amendment to the reduction in the number of the Households to be served under the Contract, if Administrator provides a statement relating to unusual, non-foreseeable or extenuating circumstances that warrant such request to be granted and the Executive Director determines that such request does not violate Department rules. In the case the Executive Director determines that such request is not warranted and/or violates Department rules, the request will be presented to the Board for approval.
 - v. Increase in funds. In the case of a modification or amendment to the dollar amount of the award, such modification or amendment does not increase the dollar amount by more than 25 percent of the original award or \$50,000, whichever is greater. Modifications and/or amendments that increase the dollar amount by more than 25 percent of the original award or \$50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.
- b) All amendment requests must be accompanied by documentation justifying the amendment.
- i. Administrator must ensure they are in compliance with all monitoring and auditing requirements for all programs administered by the Department prior to submission of the amendment request unless the request is regarding a monitoring or audit issue.
 - ii. The authorized signatory must sign and submit a written amendment request.
 - iii. The amendment request must include the following at a minimum:

- A) A written request for the specified change to the HTF Contract, signed by the organization's executive director and/or Person with authorized signature authority;
 - B) Clear explanation and justification for the request;
 - C) Description of extenuating, unusual, and non-foreseeable circumstances and/or explanation of compelling reasons for necessity of request;
 - D) "Pipeline" report indicating number (and names, if known) of Households awaiting assistance or anticipated to be assisted;
 - E) A schedule of completion from the building contractor (if applicable); and.
 - F) A schedule indicating percentage of completion for construction currently underway (if applicable) and how Contract deliverables will be achieved.
- c) The Department shall have the sole discretion to determine whether the amendment is justified, subject to appeal under 10 TAC §1.7.
 - d) If the Administrator fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.
 - e) **Accounting Requirements.** Within 60 days following the conclusion of a Contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the Contract. Failure of a recipient to provide full accounting of funds expended under the terms of the Contract shall be sufficient reason to terminate the Contract and for the Department to deny any future Contract to the recipient.
 - f) **Individual benchmarks.** Each benchmark is an individual term and subject to the amendment processes. An interim milestone extension may or may not extend the entire Contract at the Department's discretion.

16) Deobligation of Housing Trust Funds:

- a) When the Department and the Applicant execute a Contract, the Department will obligate funds to cover the amount of the approved award. The Department may deobligate all or a portion of the awarded amount if such amount is not expended in a timely manner, the activity(ies) proposed in the Application are not provided in accordance with the approved Application, or in the event of any one or more of the following circumstances:
 - i. Department has notified Administrator of any outstanding compliance matter(s) and the Administrator has failed to either resolve the matter(s) or take sufficient action to correct the matter(s);
 - ii. Department has notified Administrator that they have failed to meet required timelines and/or benchmarks, including expenditure of funds, per the Contract and Administrator has not sufficiently corrected the deficiency;
 - iii. The Department provides notice of default to Administrator on any Contract by and between Administrator and Department and the default has not been cured within the required time frame;

- iv. Applicant materially misrepresents facts to the Department during an Application process, award of Contract, request for amendment, or administration of any Contract;
 - v. Department has notified Administrator of Administrator's inability to provide adequate financial support to administer the Contract as called for in the Agreement or meet any other material conditions and the Administrator has failed to sufficiently correct the matter;
 - vi. Department has notified Administrator of Administrator's inadequate or insufficient management controls and the Administrator has failed to sufficiently correct the matter;
 - vii. Administrator declines funds;
 - viii. Administrator fails to expend all funds awarded and voluntarily releases the funds;
 - ix. The Department receives program income and elects to use those funds in lieu of awarded Contract funds; or
 - x. Other circumstances approved by the Board as warranting deobligation.
- b) The Department shall have the sole discretion to determine whether sufficient progress or correction has been made under §16(a) and the sole discretion to determine what constitutes materiality in subsection §16(a), subject to appeal under 10 TAC §1.7.
- c) The Department shall not take any action resulting in deobligated funds until an appeal, as provided for under 10 TAC §1.7, has been completed. The Department may suspend reimbursement of funds during the appeal. If an appeal has not been requested, the Department may take action as allowed under this policy.

17) Appeals and Dispute Resolutions

- a) It is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154 of the 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.
- b) For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at TAC, Title 10, Part 1, Chapter 1, subchapter A, Rule §1.17 and TGC, Chapter 2306.082.
- c) An Applicant may appeal decisions made by staff in accordance with TAC, Title 10, Part 1, Chapter 1, subchapter A, Rule §1.17.

18) Application Workshop. The Department will present an Application workshop, which will provide an overview of the HTF HomeFree Barrier Removal and Rehabilitation Program, activities eligible under this NOFA, Application submission requirements and evaluation criteria, and applicable state program requirements. The Application workshop date and registration information will be posted on the HTF webpage of the Department's website at <http://www.tdhca.state.tx.us/htf/index.htm>.

19) Application Submission

- a) **All Applications submitted under this NOFA must be received on or before 5:00 p.m., Central Time, on Wednesday, March 31, 2010, regardless of method of delivery.**
- b) 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 in the *Texas Register* until the Application submission deadline. Question regarding this NOFA should be addressed to:

Texas Department of Housing & Community Affairs
Housing Trust Fund Program Division
Attn: Mark Leonard, Housing Trust Fund Program Specialist
221 E. 11th Street
Austin, Texas 78701
Telephone: (512) 936-7799
E-mail: HTF@tdhca.state.tx.us

- c) **Submission Format.** Applications must be submitted providing all documentation as described in this NOFA, Uniform Application and Application materials.
 - i. All Applicants must submit one (1) complete **PRINTED** Program Application **ONLY** with original signatures as required.
 - ii. In addition, all Applicants must submit one (1) compact disc (CD-R) containing the following **SCANNED** materials:
 - (A) A copy of the complete, signed HTF HomeFree Barrier Removal Program Application;
 - (B) The Board Resolution as required in §10(c) of this NOFA;
 - (C) The Program Design as required in §10(e) and following guidelines in the Application materials (*e.g. Program Design Submission Checklist*). The Program Design submission must include all associated and/or supplemental materials using forms and/or formats approved by the Department; and
 - (D) Any other supplemental material as required by the Department or described in the Application materials.
 - iii. NOTE: Documents containing personal information such as social security numbers or personal financial statements must be included separately from all other Application documents.
- d) All Application materials such as the NOFA, Program application and checklist(s), forms, Program guidelines, and all applicable HTF rules, will be available on the HTF

page of the Department's website at <http://www.tdhca.state.tx.us/htf/index.htm>. Applications are required to adhere to the Housing Trust Fund Program Rule and requirements established in this NOFA. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form prior to submission to the Department.

- e) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. **Do not send cash.** The Application fee is not an allowable or reimbursable cost under the Program.
- f) 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.
- g) Applications may only be submitted to the Department during the Application Acceptance Period.
- h) Applications may be hand-delivered to the Department or sent via overnight delivery to:

Texas Department of Housing & Community Affairs
Housing Trust Fund Division
Attn: Housing Trust Fund Program Administrator
221 East 11th Street
Austin, TX 78701-2410

or sent via the U.S. Postal Service to:

Texas Department of Housing & Community Affairs
Housing Trust Fund Division
Attn: Housing Trust Fund Program Administrator
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 Housing Trust Fund Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all applicable regulations.