

TEXAS ADMINISTRATIVE CODE

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER J. HOUSING FINANCE CORPORATION COMPLIANCE MONITORING

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§10.1201 Purpose and Applicability.

The purpose of this Subchapter is to:

- (1) Establish rules governing Developments owned or sponsored by a Housing Finance Corporation (HFC) that are subject to Sections 394.9026 and 394.9027 of the Texas Local Government Code.
- (2) Enable the Department to communicate with Responsible Parties and persons with an interest in the Development, regarding the results of the Audit Report.
- (3) Establish qualifications for Auditors and reporting standards and formats.
- (4) Implement compliance requirements, tenant protections, and affirmative marketing requirements, as required by Sections 394.9026 and 394.9027 of the Texas Local Government Code.
- (5) This rule is not applicable to a Development that is a recipient of Federal Low Income Housing Tax Credits. For purposes of this rule, a recipient of Federal Low Income Housing Tax Credits is any development or HFC User that has received a commitment notice, or determination notice for an allocation of Federal Low Income Housing Tax Credits from the Department. For the construction period the property will be considered to be a recipient of Housing Tax Credits, unless more than five years have passed since the commitment notice or determination notice was issued without entering into the Land Use Restriction Agreement. After the construction period, the Development must have an executed Land Use Restriction Agreement (LURA) with the Department. The Development is considered to be a recipient of Federal Low Income Housing Tax Credits for the term of the LURA between the Department and the Development.

§10.1202 Definitions.

The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in the subchapter shall have the meaning defined in Chapter 2306 of the Texas Government Code, Chapter 394, Texas Local Government Code, and other state or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

- (1) Audit Report--A report required by Section 394.9027 of Texas Local Government Code completed by an Auditor or compliance expert, in a manner and format prescribed by the Department.
- (2) Auditor--An individual who is an independent auditor, a business entity that primarily performs audits and/or a compliance expert with an established history of providing similar audits on housing compliance matters, meeting the criteria established herein.
- (3) Board--The governing board of the Texas Department of Housing and Community Affairs.
- (4) Chief Appraiser--The chief appraiser of the appraisal district in which a Development is located.
- (5) Department--The Texas Department of Housing and Community Affairs.
- (6) Housing Choice Voucher Program--The housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437(f)).
- (7) Housing Finance Corporation (HFC)--a public, nonprofit corporation created under Chapter 394, of the Texas Local Government Code. This includes an instrumentality created by the HFC.
- (8) Housing Finance Corporation User or HFC User--A Housing Finance Corporation; or for a Multifamily Residential Development that is not owned directly by a Housing Finance Corporation, a public-private partnership entity or a developer or other person or entity that has an ownership interest or a leasehold or other possessory interest in a Multifamily Residential Development financed or supported by a Housing Finance Corporation.
- (9) HUD--The United States Department of Housing and Urban Development.
- (10) Lower Income Housing Unit--a residential unit reserved for occupancy by an individual or family earning not more than 60 percent of the area median income, adjusted for family size.
- (11) Maximum Market Rent--with respect to a particular Restricted unit, the average annual Rent charged for all non-income-restricted units in the development having the same or substantially similar floor plan as the Restricted unit.
- (12) Middle Income Housing Unit--a residential unit reserved for occupancy by an individual or family earning not more than 100 percent of the area median income, adjusted for family size.
- (13) Moderate Income Housing Unit--a residential unit reserved for occupancy by an individual or family earning not more than 80 percent of the area median income, adjusted for family size.
- (14) Multifamily Residential Development--(also called Development) any residential development owned by a Housing Finance Corporation consisting of four or more residential units intended for occupancy as rentals, regardless of whether the units are attached or detached.
- (15) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, Deed Restriction, or any similar restrictive instrument that is recorded in the real property records of the county in which the Development is located.

(16) Rent--any recurring fee or charge a tenant is required to pay as a condition of occupancy, including a fee or charge for the use of a common area or facility reasonably associated with the residential rental property. The term does not include fees and charges for services or amenities that are optional for a tenant, such as pet fees and fees for storage or covered parking.

(17) Rent Reduction--The projected difference between the Rent charged for a Restricted Unit and the Maximum Market Rent that could be charged for that same unit without the income restrictions.

(18) Responsible Parties--The Housing Finance Corporation that owns or is associated with the Development, the Housing Finance Corporation User of the Development, the Texas Comptroller, and/or the governing body of the Sponsor.

(19) Restricted Unit--A residential unit in a Multifamily Residential Development that is reserved for or occupied by a household meeting certain income limitations established in the Regulatory Agreement, in accordance with §394.9026(c)(1) of Texas Local Government Code, with Rent for such unit restricted as set forth in these rules. Restricted Units may float in a Development and need not be permanently fixed.

(20) Sponsor--a municipality, county or collection of municipalities and counties that causes a corporation to be created to act in accordance with Chapter 394, of the Texas Local Government Code.

(21) Tax Year--Is a calendar year. For the purposes of all provisions within the rule, the terms "Tax Year" and "Calendar Year" shall have the same meaning and shall be interchangeable.

(22) Unit Type--Means the type of unit determined by the number of bedrooms.

§10.1203 Reporting Requirements.

The following reporting requirements apply to all Housing Finance Corporation (HFC) Multifamily Residential Developments claiming an ad valorem tax exemption under Section 394.905 of the Texas Local Government Code and to which §§394.9026 and 394.9027 of Texas Local Government Code apply, regardless of when approved or acquired.

(1) All Multifamily Residential Developments owned by an HFC as defined by this subchapter must submit an Audit Report as described in this paragraph.

(A) No later than June 1 of each year, with approved extensions as described in subparagraph (B) of this paragraph HFC Users must submit to the Department an Audit Report from an Auditor, obtained at the expense of the HFC User. The Audit Report determines whether the Multifamily Residential Development is in compliance with Sections 394.9026 and 394.9027 of the Texas Local Government Code.

(B) Audit Report extension requests must be submitted to hfc@tdhca.texas.gov no later than May 1 of each reporting year. The request for an extension must include an explanation of the reason and the requested submission date, not to exceed 120 days from the June 1 reporting deadline. Within seven calendar days of receiving the request, the Department will respond to the request and determine if good cause exists prior to issuing a determination of approval or denial for an extension.

(C) No later than when the first Audit Report submission is due, the HFC User must provide their auditor with a copy of the underwriting assessment as published on the HFC website and as conducted pursuant to §394.905(b)(3) of Texas Local Government Code; a copy of the resolution or order required by §394.031(d) and §394.037(a-1)(2) if applicable; and a copy of the board meeting minutes, public hearing transcript or adopted resolution, or other document evidencing approval of the Development. The auditor will include these with the first Audit Report. Additionally, a copy of the Regulatory Agreement and a copy of the one-time exemption application submitted to the Texas Comptroller's office shall be included in the first Audit Report. These items being submitted are the responsibility of the HFC User; if the Auditor indicates in their Audit Report that the HFC User has not provided the documents required in this subparagraph, a compliance finding will be issued.

(D) The first Audit Report for a Development must be submitted no later than June 1 of the Tax Year following:

(i) The date of acquisition by the HFC for an occupied Development; or

(ii) The date a newly constructed Development first becomes occupied by one or more tenants.

(2) A Multifamily Residential Development is not entitled to an ad valorem tax exemption for any Tax Year in which the HFC User has not timely submitted the full Audit Report by the deadline, with approved extensions as required by §394.9027 of the Texas Local Government Code.

(3) All Audit Reports must comply with subparagraphs (A) to (C) of this paragraph:

(A) be for at least the full prior reporting year ending December 31 and include a rent roll for the same period.

(B) include contact information for all Responsible Parties.

(C) be completed and submitted in the Department prescribed manner.

(4) The HFC User must submit an annual service fee to the Department by June 1 of each year of the greater of \$20 per Restricted unit or \$500. This fee shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. This fee, when received in connection with an Audit Report, is earned and is not subject to refund.

(5) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website including a detailed description of any noncompliance with this rule found by the Auditor. A copy of the summary notice will also be provided to the Development and all Responsible Parties.

(6) If noncompliance is identified by the Auditor in the Audit Report, no later than 120 days after receipt of the Audit Report by the Department, the Department will issue a monitoring report notice and make it available on the website. A copy of the monitoring report will also be provided to the Development and all Responsible Parties.

(A) The monitoring report will include a detailed description of any noncompliance and at least one option for corrective action to resolve the noncompliance. The HFC User will be given 180 days from the issuance of the monitoring report notice to correct the noncompliance. At the end of the 180 days, the Department will post a final report on its website.

(B) If there is any noncompliance with Section 394.9026 that is not corrected within the 180-day corrective action period, the Department will notify the Responsible Parties, appropriate appraisal district, and the Texas Comptroller in writing and recommend a loss of ad valorem tax exemption under Section 394.905 Texas Local Government Code.

(7) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules. HFC Users may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the HFC User must engage a new Auditor for the submission of at least two annual Audit Reports before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted through the Department's File Serve System. To obtain access to this system the HFC User or Auditor must request access by emailing hfc@tdhca.texas.gov.

\$10.1204 Audit Requirements.

HFC Developments must comply with the Audit Report requirements identified in this section:

(1) If the HFC Development was acquired prior to May 28, 2025, the Development must comply with all requirements by January 1, 2026, with the exception of subparagraphs (3)(B), (3)(C), (3)(J), (3)(K) and (3)(L) of this section, which must be met no later than the end of the 10th Tax Year following May 28, 2025, or the end of the first Tax Year following a Tax Year in which the Development was refinanced, fee or leasehold title was conveyed or a sale or transfer of ownership in the HFC Development or HFC User occurred. For purposes of this rule, refinancing of construction loans, whether by virtue of conversion from Construction phase to permanent phase or replacement of construction financing with permanent financing, will not be considered a refinancing.

(2) The Auditor must use the Department's HFC monitoring forms made available on the website. The review performed by the Auditor may be completed either onsite or electronically. Original records must be made available to the Auditor. The file sample used by the Auditor must contain at least 20% of the total number of Restricted Units for the Development, but no more than a total of fifty (50) household files. The selection of Restricted Units should include at least 75% of households that are newly moved in to the Development, but also include at least 10% of households that have recertified, or if 10% of households have not recertified, then units that have recertified. For Developments that are leasing up and not yet fully occupied the percentages reflected in this paragraph should be applied to all occupied units.

(3) The Auditor will ensure Development meets the following requirements and will identify any deficiencies in the Audit Report:

(A) The HFC User will provide the auditor with documentation that the Auditor will submit with the Audit that:

(i) confirms that the Multifamily Residential Development is within its jurisdictional boundaries pursuant to §394.031 of the Texas Local Government Code.

(ii) submit supporting documentation that a Multifamily Residential Development that is acquired outside of the Sponsor's jurisdiction has been approved in accordance with §394.031(d) of Texas Local Government Code. For a development not located within the jurisdictional boundaries, that was acquired on or before September 1, 2025, this requirement does not apply until January 1, 2027, after which this documentation must be submitted.

(B) The Restricted units in the Development have the same unit finishes and equipment and access to community amenities and programs as residential units that are not income restricted. Minor variations in floorplans, colors, and design are acceptable deviations and will not be noted as noncompliance; significant variations in floor plans and square footage will be considered noncompliance.

(C) The percentage of Restricted Units in each Unit Type and each category of income restriction in the Development must be the same or greater percentage as the percentage of each Unit Type of units that are reserved in the Development as a whole.

(D) Occupants of Restricted Units are required to recertify the income of the household using a Department-approved Income Certification form at lease renewal. If a household exceeds the income limit at annual income recertification, the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code will be implemented Development-wide.

(E) The Development must affirmatively market available Restricted Units and non-Restricted Units to households participating in the Housing Choice Voucher program and notify local housing authorities of their

acceptance of voucher program tenants. Evidence of this must be provided to include, but not be limited to, notifications to the local housing authority, advertising that may be posted at the local housing authority properties, or mailings that were sent to local housing authority households.

(F) The internet website for the Development must include information about the Development and its compliance with Section 394.9026(c)(7), Texas Local Government Code, along with its policies on the acceptance of Housing Choice Voucher holders.

(G) HFC Developments cannot refuse to rent to an individual or family solely because the individual or family participates in a Housing Choice Voucher program.

(H) HFC Developments cannot require a minimum income standard for individuals or families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(I) The Auditor will review the Development's form of tenant lease, lease addendums and leasing policies to ensure the Development meets the following requirements and will report any deficiencies found in the Audit Report. Each residential lease agreement for a Restricted Unit must provide the following:

(i) The landlord may not retaliate against the tenant or the tenant's guests by taking action because the tenant established, attempted to establish, or participated in a tenant organization;

(ii) The landlord may only choose to not renew the lease if the tenant: committed one or more substantial violations of the lease; failed to provide required information on the income, composition, or eligibility of the tenant's household; or committed repeated minor violations of the lease that disrupt the livability of the Development, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related Development facilities, interfere with the management of the Development, or have an adverse financial effect on the Development, including the failure of the tenant to pay rent in a timely manner.

(iii) To non-renew a lease, the landlord must serve a written notice of proposed nonrenewal on the tenant no later than the 30th day before the effective date of nonrenewal.

(iv) Tenants may not waive these protections in a lease or lease addendum.

(J) Income Restrictions. A Development seeking an ad valorem tax exemption must meet the requirements of either clause (i) or (ii) of this subparagraph.

(i) at least 10% of the residential units are reserved as Lower Income Housing Units and at least 40% of the residential units are reserved as Moderate-Income Housing Units or;

(ii) at least 10% of the residential units are reserved as Very Low-Income Housing Units and at least 40% of the residential units are reserved as Middle Income Housing Units.

(K) Rent Restrictions:

(i) Monthly Rent for Restricted Units may not exceed thirty percent (30%) of the imputed household income limitation for the unit, adjusted for family size, as determined by HUD. HFC Users may apply to the Development an imputed family size of either one person per bedroom plus one person, or one and one half persons per bedroom. The Auditor shall indicate in the Audit Report which imputed family size was applied to the Development.

(ii) Notwithstanding the foregoing, if a Restricted Unit is occupied by a household with a Housing Choice Voucher, and the payment standard for that voucher is less than the monthly Rent for the Restricted Unit

established pursuant to clause (i) of this subparagraph, the household may be required to pay the difference between the payment standard and the monthly Rent.

(L) Rent Reduction Comparison:

(i) Identify the difference between the Rent charged for each Restricted unit and the estimated Maximum Market Rent that could be charged for such units if they were not restricted. For Developments that do not have market rate units the Auditor and/or the HFC User must provide evidence of reasonably comparable Maximum Market Rents, which may be based on market studies, leasing surveys, Fair Market Rents as published by HUD, or other methods acceptable to the Department.

(ii) Include the following public benefit test:

(I) The cumulative Rent Reduction for all Restricted Units at the Development in the preceding Tax Year must not be less than 50% of the amount of the estimated ad valorem taxes that would have been imposed on the Development in the same Tax Year if the Development did not receive the exemption.

(-a-) For a Development acquired by an HFC the first Audit Report that will include the rent reduction test is for the first Tax Year after the acquisition Tax Year. Example 1204(1): Development acquired by an HFC on July 24, 2025. The acquisition tax year would be 2025, and the second tax year after acquisition would be 2026, so the first Audit Report would be due on June 1, 2026. The first rent reduction test would be for Tax Year 2026 on Audit Report submitted June 1, 2027.

(-b-) For newly constructed Developments the first Audit Report that will include the rent reduction test for the first Tax Year after the Tax Year in which construction first begins. Example 1204(2): An HFC Development begins new construction on February 1, 2026. The first tenant occupies the Development on September 15, 2027. The first Audit Report is due on June 1, 2028, and must include the rent reduction test for reporting year 2027.

(II) The Rent Reduction calculation for each Restricted unit must be the difference between the Maximum Market Rent for the same Unit Type and the lease Rent on the rent roll for the Rent for the Restricted Unit. Restricted and Market Rate units occupied by households with Housing Choice Vouchers will be disregarded during the Rent Reduction calculation. Vacant units will also be excluded for the purposes of the Rent Reduction calculation.:

(-a-) for a Restricted Unit the maximum permitted Rent for such unit under the Regulatory Agreement, and

(-b-) for any market rate unit the maximum rent charged for that Unit Type in the months that were vacant.

(III) If the Rent Reduction calculation demonstrates that the Rent Reduction was less than 50% of the amount of the estimated ad valorem taxes that would have been imposed on the Development for the Tax Year, the HFC User must pay each taxing authority the pro rata share of the Rent Reduction shortfall based on the published millage rates of each taxing authority. The Rent Reduction shortfall is an amount equal to 50% of the estimated ad valorem tax amount minus the total Rent Reduction for the Tax Year. The Auditor must provide copies of any payments made by the HFC User to the appropriate taxing authority in the Audit Report.

(IV) In estimating the ad valorem taxes that would have been imposed, the Auditor may use, but is not limited to, the following:

(-a-) For occupied Developments acquired by an HFC, estimated ad valorem taxes should generally be based on the actual taxes applicable prior to the acquisition by the HFC with a stated escalation factor.

(-b-) For new construction, estimated ad valorem taxes may be based on an independent appraisal, third-party property tax report, published appraisal district value, or other means acceptable to the Department.

(4) A Development acquired by an HFC after May 28, 2025, must comply with all requirements in this Subchapter no later than the end of the tax year following the year of acquisition.

(5) The Auditor must maintain monitoring records and papers for each Audit Report for three years and must provide the Department and/or the Chief Appraiser a copy of their monitoring records upon request.

PROPOSED DRAFT

\$10.1205 Income and Rent Calculations.

(a) Annual Income for a household occupying a Restricted Unit shall be determined consistent with the Section 8 Program administered by the U.S. Department of Housing and Urban Development (HUD), using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3 as amended from time to time by publication in the Federal Register.

(b) Special rule relating to basic housing allowances. For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as basic pay allowance for housing shall be disregarded with respect to any qualified building.

(1) The term “qualified building” means any building located –

(i) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(ii) in any county adjacent to a county described in clause (i).

(2) Qualified military installation. The term “qualified military installation” means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(3) Income and rent limits will be derived from data released by HUD.

(4) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted.

(5) To document compliance, HFC Users must maintain sufficient documentation to support income eligibility of households which includes an application that screens for all includable sources of income and assets, first hand or third party documentation of income and assets and an Income Certification form signed by all adults in the household.

§10.1206 Penalties.

Noncompliance with Sections 394.9026 and or 394.9027 of the Texas Local Government Code, or this Subchapter, continuing after all available notice and corrective action periods, will result in a Department report to the Texas Comptroller and Chief Appraiser, and recommendation of loss of the ad valorem exemption for the Development for the Tax Year in which the Development that is owned by a HFC is determined by the Department based on an Audit Report to not be in compliance with the requirements of Sections 394.9026 and 394.9027.

§10.1207. Options for Review.

(a) The HFC User must attempt to address any issues of noncompliance identified in the Audit Report with the Auditor, prior to submission of the Audit Report to the Department.

(b) During the corrective action period, the HFC User may appeal any noncompliance issued as provided for in §1.7 of this Title relating to Appeals. The filing of an appeal does not extend or suspend the 180-day corrective action period, unless the Department authorizes an extension in writing. The HFC User and Auditor, as applicable, must provide all documentation requested by the Department within ten calendar days prior to the meeting.

(c) An HFC User may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (related to Alternative Dispute Resolution).