BACKGROUND

The Texas Department of Housing and Community Affairs (the Department) through legislative action in HB 21 (89th Reg. Session) has been tasked with the compliance monitoring oversight of all Housing Finance Corporation (HFC) multifamily residential developments. The law amends Texas Local Government Code Chapter 394 to apply to all HFC multifamily residential developments that do not have low-income housing tax credits under Subchapter DD, Chapter 2306, Government Code, the Low-Income Housing Tax Credit program.

The law requires HFC multifamily residential developments to submit an audit report to the Department. The first audit reports for the HFC developments subject to the new law are required to be submitted to the Department by June 1, 2026. Subsequent reports are due to the Department no later than June 1 of each year.

The rules were adopted on March 5, 2026, and submitted to the *Texas Register* for publication. After the Board's adoption, input was received from stakeholders and members of the Texas Legislature (see letter attached) that one issue in particular in the rule was out of alignment with the statutory language. (See attached letter dated March 17, 2026). In the newly adopted 10 TAC §10.1204(3)(I)(ii)(II), relating to Audit Requirements, the rule requires that a Rent Reduction calculation be performed that identifies the difference between the annual Rent charged for each Restricted Unit and the estimated annual Maximum Market Rent that could be charged for such units if they were not restricted. The rule specified that in making this calculation "Restricted Units occupied by households with Housing Choice Vouchers or rental assistance will utilize the tenant-paid portion of the Rent for the Rent Reduction calculation."

However, the statutory language specifies that the rent in the Rent Reduction calculation should be the 'rent charged for an income-restricted unit', and does not refer to only a tenant paid portion of that rent. If applied as drafted in the current adopted rule, the HFC Development is attributed a rent reduction for the voucher-holding household that is not in fact being provided by the HFC, but rather the public housing authority subsidizing the voucher.

As an example in the table below, if a unit at the HFC property has a market rent of $1,700, while that same unit is leased at $1,200, the rent reduction benefit attributed to the HFC is $500. In a unit occupied by a voucher holder, however, if the tenant paid portion is $300 and the voucher is for $900, the rent reduction calculation being made between the market rent and the tenant paid portion would suggest that the rent reduction benefit by the HFC is $1,400, when in reality $900 of that benefit is not contributed by the HFC property at all, but the public housing authority paying for the voucher.

No Voucher Scenario			Voucher Scenario	
Market Rent	$ 1,700		Market Rent	$ 1,700
Rent at Property	$ 1,200		Rent at Property	$ 1,200
			Tenant Paid Portion	$ 300
			PHA Paid Portion	$ 900
Rent Reduction Benefit by HFC	$ 500		Rent Reduction Benefit by HFC	$ 1,400

To remedy this issue, staff is recommending the following amendment to 10 TAC §10.1204(3)(L)(ii)(II):

(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 Rent on the rent roll for the Rent for the Restricted Unit. ~~*Restricted Units occupied by households with Housing Choice Vouchers or rental assistance will utilize the tenant-paid portion of the Rent for the Rent Reduction calculation.*~~ *Units that are vacant for any portion of the Tax Year will be considered as follows for the for the purposes of the Rent Reduction calculation:*

(-a-) for a Restricted Unit the maximum permitted Rent for such unit under the Regulatory Agreement will be utilized for all months of vacancy, and

(-b-) for any market rate unit the Maximum Market Rent that would be charged for that Unit Type will be utilized in the months that the Unit was vacant.

The elimination of the rent calculation distinction in cases of Housing Choice Vouchers would have "Rent" figured as with any other tenant. Functionally it would mean that the rent reduction calculation in the case of a voucher household is based on the Maximum Market Rent less the combined tenant paid and voucher paid portions of rent, which is the total rent due on the unit. Because this amendment needs to be applicable to Audit Reports submitted in June 2026, this requires emergency action which will be effective for 120 days.

Additionally, the same amendment is being proposed as a non-emergency rule that will be released for public comment from April 24, 2026 to May 24, 2026, and subsequently returned to the Board for final adoption.

Following this Board Action Item is one preamble reflecting the emergency action, one preamble reflecting the non-emergency proposed amendment, and a copy of the amended rule in blackline.

Attachment 1: Preamble for adoption of emergency amendment to 10 TAC Subchapter J, Housing Finance Corporation Compliance Monitoring, §10.1204, Audit Requirements

The Executive Director of the Texas Department of Housing and Community Affairs (the Department) adopts on an emergency basis, an amendment to 10 TAC Subchapter J, Housing Finance Corporation Compliance Monitoring, §10.1204, Audit Requirements. As authorized by Texas Government Code §2001.034, the Department may adopt an emergency rule with abbreviated prior notice or hearing if it is necessary due to imminent peril to the public welfare, or finds that it is necessary as a requirement of state or federal law, and requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

a. BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to implement in rule changes that require immediate correction to place the rule into alignment with HB 21 as it relates to the calculation of the Rent Reduction Test on units occupied by households using rental assistance vouchers. The Department accordingly finds that the state requirement warrants immediate adoption of this emergency amendment.

b. STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 2001.036.

c. FINDING REGARDING EMERGENCY RULEMAKING

On March 17, 2026, TDHCA received comment from stakeholders and members of the Texas Legislature challenging the propriety of the rent reduction calculation distinction in cases of Housing Choice Vouchers, and stating that it fails to comport with the statutory definition of “rent.” Furthermore, they purport that failing to remove this distinction will jeopardize the “real, measurable benefits to Texas renters and taxpayers” of having reduced rents at HFC developments. These challenges to a single sentence in rule (distinguishing how voucher-supplemented rent is considered for audit purposes) have been raised as a requirement under state law, as well as creating imminent danger to the welfare of Texans seeking affordable rents in HFC developments under HB21. Audit reports under HB21 are due beginning June 1, 2026, raising the need for immediate adoption. TDHCA accepts the concerns raised and finds the amendment is justified to be brought forward as an emergency rule under Tex. Gov’t Code §2001,034, to become immediately effective upon filing with the secretary of state pursuant to §2001.036.

Attachment 2: Preamble, including required analysis, for the proposed amendment of 10 TAC Subchapter J, Housing Finance Corporation Compliance Monitoring, §§10.1204, Audit Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC Subchapter J, Housing Finance Corporation Compliance Monitoring, §10.1204 Audit Requirements. The purpose of the amendment is to bring the rule into greater harmony with HB 21 (89th Regular Legislature). HB 21 tasks the Department with the compliance monitoring oversight of all Housing Finance Corporation (HFC) multifamily residential developments.

In §10.1204 relating to Audit Requirements, the rule requires that a Rent Reduction calculation be performed that identifies the difference between the annual Rent charged for each Restricted Unit and the estimated annual Maximum Market Rent that could be charged for such units if they were not restricted.

On March 17, 2026, TDHCA received comment from stakeholders and members of the Texas Legislature challenging the propriety of the rent reduction calculation distinction in cases of Housing Choice Vouchers, and stating that it fails to comport with the statutory definition of "rent." Furthermore, they purport that failing to remove this distinction will jeopardize the "real, measurable benefits to Texas renters and taxpayers" of having reduced rents at HFC developments. These challenges to a single sentence in rule (distinguishing how voucher-supplemented rent is considered for audit purposes) have been raised as a requirement under state law, as well as creating imminent danger to the welfare of Texans seeking affordable rents in HFC developments under HB21. TDHCA accepts the concerns raised and finds the amendment is justified.

The rule revision is being made to ensure that in the case of units assisted with vouchers, the HFC User is only being attributed their actual rent reduction contribution and not the contribution of the public housing authority supporting the voucher.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it is necessary to implement the requirements of legislation, HB 21.

The Department has analyzed this new rulemaking, and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule is in effect:

1. The amendment does not create or eliminate a government program but clarifies a provision relating to audit requirements.

2. The amendment will neither increase nor decrease the number of employees of the Department.

3. The amendment will not require additional future legislative appropriations.

4. The amendment will not increase or decrease fees paid to the Department.

5. The amendment is not creating a new regulation but amending an existing regulation to bring the rule into greater alignment with the requirements of HB 21.

6. The amendment will not limit or repeal an existing regulation.

7. The amendment will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this amendment and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities because these rules apply to all Housing Finance Corporation multifamily residential developments equally and this amendment revises how a particular calculation is determined.

3. The Department notes that the proposed amendment will make satisfying the public benefit test more difficult than the current version of the rule (for those Developments with voucher holders), but the current version was not required by statute and no audit reports utilizing the version adopted less than a month ago have been submitted. As stated in the referenced letter, the longer the voucher distinction remains in rule, the greater the perceived financial effect would be on HFC developments.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect the amendment does not create a local employment impact except a potentially more accurate reflection of rent reduction at HFC developments.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule…" Considering that no impact is expected on a statewide basis, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the new rule will be to provide a rule in greater harmony with HB 21 and ensure that when calculating rent reductions the public benefit is attributed accurately to a HFC development.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does have some foreseeable implications related to costs or revenues of the state or local government.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the amendment and also requests information related to the cost, benefit, or effect of the amendment, including any applicable data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The public comment period will be held April 24, 2026 to May 24, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, May 24, 2026.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amendment affects no other code, article, or statute.

Attachment 3: Amendment that will be released with both preambles

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER J. HOUSING FINANCE CORPORATION COMPLIANCE MONITORING

§10.1204. Audit Requirements.

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

(1) If the Multifamily Residential Development was acquired prior to May 28, 2025, the Development must comply with all requirements by January 1, 2026, with the exception of paragraphs (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 a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User occurred. For example, 1204(1): If a Development is refinanced on July 15, 2027, the tax year would be 2027, and the second tax year after refinance would be 2028; so the previous Audit Report requirements would be due on June 1, 2028. The above would no longer be exempt for Tax Year 2028 and should be included in the Audit Report submitted June 1, 2029. For purposes of this rule, refinancing of construction loans, whether by virtue of conversion from construction phase to permanent phase or replacement of construction, bridge, or short-term (less than 5 years) 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 into 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 Restricted 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 supporting documentation that the Auditor will submit with the Audit that:

(i) confirms that the Multifamily Residential Development is within its jurisdictional boundaries pursuant to Section 394.031 of the Texas Local Government Code such as a GIS boundary map, recorded legal description, local-government resolution, or other source approved by TDHCA.

(ii) confirms that a Multifamily Residential Development that is outside of the Sponsor's jurisdiction has been approved in accordance with Section 394.031(d) of Texas Local Government Code. For a Development not located within the Sponsor's 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. The Auditor may rely on a written certification and photographic evidence from the HFC User to support that a Development has equitable finishes, equipment and access to amenities and programs. Such certification must be submitted with the Audit Report.

(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 in the following manner:

(i) Where the household's income exceeds the AMI as designated, the household can be redesignated to the next AMI level in the Regulatory Agreement. The next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1204(2): Development Regulatory Agreement includes units at 80% and 120%, Unit 101, a one-bedroom Unit Type, is designated as 80%. At the annual income recertification, the household income was determined to exceed 80% AMI but was less than 120% AMI. The unit should be redesignated as 120% at the time the determination is made and the next available one-bedroom Unit Type in the Development must be reserved for and occupied by an 80% household. At the time of determination that the unit should be 120%, with proper notification, the household rent may increase to the new rent designation.

(ii) Where the household's income exceeds the AMI as designated and the household is designated at the highest AMI in the Regulatory Agreement, the next available unit of comparable size in the Development is to be reserved for and occupied by a tenant that meets the AMI of the household that was determined to exceed the income limit. Example 1204(3): Development Regulatory Agreement includes units at 80% and 120%. Unit 201, a two-bedroom Unit Type is designated as 120%. At the annual income recertification, household income was determined to exceed 120% AMI, the highest AMI in the Regulatory Agreement. The next two-bedroom Unit Type in the Development, must be reserved for and occupied by a 120% household. Unit 201 retains the 120% status until such time that the Available Unit Rule, as described here, is complied with or violated.

(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 home page of 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 or any other rental assistance.

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

(H) Multifamily Residential 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. To determine the adjustment for family size, the Auditor will defer to the Development's Regulatory Agreement and/or other operative document. In the event that the adjustment for family size is unclear, it is the responsibility of the HFC User to provide the Auditor support that the manner in which the adjustment was applied is acceptable by the HFC.

(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. It the sole responsibility of HFC User to:

(i) Identify the difference between the annual Rent charged for each Restricted Unit and the estimated annual Maximum Market Rent that could be charged for such units if they were not restricted. For Developments where all of the Units are Restricted Units, 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) The Audit Report shall include the following public benefit test:

(I) The 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(4): 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(5): An Multifamily Residential 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 Rent on the rent roll for the Rent for the Restricted Unit. ~~Restricted Units occupied by households with Housing Choice Vouchers or rental assistance will utilize the tenant-paid portion of the Rent for the Rent Reduction calculation.~~ Units that are vacant for any portion of the Tax Year will be considered as follows for the for the purposes of the Rent Reduction calculation:

(-a-) for a Restricted Unit the maximum permitted Rent for such unit under the Regulatory Agreement will be utilized for all months of vacancy, and

(-b-) for any market rate unit the Maximum Market Rent that would be charged for that Unit Type will be utilized in the months that the Unit was 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 jurisdiction(s) authorized to impose ad valorem taxes applicable to the Development the pro rata share of the Rent Reduction shortfall; the pro rata amount will be based on each taxing authorities share of the combined aggregate published millage rate of all applicable taxing authorities. 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 Report must include evidence of any payments made by the HFC User to each taxing jurisdiction(s) authorized to impose ad valorem taxes applicable to the Development.

(IV) In estimating the ad valorem taxes that would have been imposed, the HFC User 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 no earlier than the Tax Year prior to the acquisition by the HFC with a stated escalation factor.

(-b-) For occupied Developments acquired by an HFC which already receive a property tax exemption, estimated ad valorem taxes must be based on the public appraisal district value. In the event that the appraisal district does not provide a value, the following alternative valuation methods may be used: an independent appraisal, third-party property tax report, or other means acceptable to the Department.

(-c-) For new construction, estimated ad valorem taxes must be based on public appraisal district value. In the event that the appraisal district does not provide a value, the following alternative valuation methods may be used: an independent appraisal, third-party property tax report, 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.