

Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed 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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

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

8. The repeal will not negatively or positively affect this 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.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate nor 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

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 repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 24, 2025, and November 21, 2025, with no comments on the repeal itself received.

The Board adopted the final order adopting the repeal on January 15, 2026.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

§12.1. General.

§12.2. Definitions.

§12.3. Bond Rating and Investment Letter.

§12.4. Pre-Application Process and Evaluation.

§12.5. Pre-Application Threshold Requirements.

§12.6. Pre-Application Scoring Criteria.

§12.7. Full Application Process.

§12.8. Refunding Application Process

§12.9. Occupancy Requirements.

§12.10. Fees.

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) adopts, with clarifying changes from the published draft, new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359, to make minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

The Department has analyzed this 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 will be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").
2. The rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule 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. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are

approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rule 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each

apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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 new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between October 24, 2025, and November 21, 2025. Comments from two commenters were received.

The Board adopted the final order adopting the new rule on January 15, 2026. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between October 24, 2025, and November 21, 2025, with comments received from: (1) Texas Housers and (2) Disability Rights Texas.

§12.6(6) and §12.6(7) – Pre-Application Scoring Criteria – Common Amenities and Resident Supportive Services (Commenter 1)

COMMENT SUMMARY:

Commenter (1) recommends removing language from §12.6(6) relating to Common Amenities, and §12.6(7), relating to Resident Supportive Services, which allows Development Owners to change the amenities and services offered at a property as long as the total number of points remains unchanged. The commenter believes that allowing changes to these items increases the difficulty for tenants to make an informed decision as to which property offers the amenities and services desired. Commenter (1) notes that 10 TAC §11.101(b)(5) of the QAP does not include language that allows Common Amenities to be changed and that §12.6(6) of the Multifamily Bond Rules does not mirror the QAP. Commenter (1) expressed strong opposition to the language in 10 TAC §11.101(b)(7) of the QAP and §12.6(7) of the Multifamily Bond Rules, as both allow changes to be made to Resident Supportive Services.

STAFF RESPONSE:

In response to commenter (1) and in light of the fact that the Bond Regulatory Agreement includes the complete list of common amenities that an owner can select from to meet the minimum point requirement, staff recommends removing the following sentence under §12.6(6). Moreover, in making the change the requirement will be consistent with the Qualified Allocation Plan.

“The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein. ~~The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.~~”

As it relates to similar requested changes to the resident supportive services by commenter (1), staff notes that tenant profiles change over time and the type of services offered initially may or may not be useful to tenants in the future. The Department’s Bond Regulatory Agreement (and Housing Tax Credit Land Use Restriction Agreement) includes a list of all the possible Resident Supportive Services for this reason. Staff recommends the commenter bring up this topic during the comment period for 10 TAC Chapter 10, the Compliance Monitoring Rule, and roundtable discussions regarding the development of the 2027 Qualified Allocation Plan.

§12.6(8) – Pre-Application Scoring Criteria – Underserved Area (Commenter 1)

COMMENT SUMMARY:

Commenter (1) recommends that the language pertaining to the Underserved Area scoring item be changed to reflect the current QAP.

STAFF RESPONSE:

In response to the commenter, the Multifamily Bond Rules do not recite the exact options for this point item, but instead refer to 10 TAC §11.9(c)(6) of the QAP for the scoring criteria. There are two options included in the QAP that are excluded in the Multifamily Bond Rules because the options reference the At-Risk Set-Aside and/or subregions, which are specific to the Competitive HTC program. Moreover, the Multifamily Bond Rules clarify that regardless of the varying point options listed in the QAP, the number of points attributed to this point item shall be four points.

Staff believes there is an additional option under 10 TAC §11.9(c)(6) that could be applicable, and therefore added to the Underserved Area scoring criteria. Specifically, option (H) under 11.9(c)(6) of the QAP allows the election of points for Underserved Area if the Development Site is located entirely within a Census tract with a median household income in the highest quartile among Census tracts within the uniform service region, according to the Site Demographics Characteristics Report.

Staff recommends adding the following to §12.6(8) of the Multifamily Bond Rules, “An Application may qualify to receive up to four (4) points if the Development Site meets the criteria described in §11.9(c)(6)(A)-(E), or (H) of this title.”

§12.11(g) – Qualified 501(c)(3) Bonds – Accessibility Requirements (Commenters 1 and 2)

COMMENT SUMMARY:

Commenters (1) and (2) strongly oppose the exemption from visitability requirements and 10 TAC §11.101(b)(8)(D) of the QAP, relating to Development Accessibility Requirements, for rehabilitation applications requesting Qualified 501(c)(3) Bonds. Specifically, the commenters oppose the exemption from visitability and Section 504 of the Rehabilitation Act of 1973, which requires that developments provide 5% of the units to be mobility accessible and 2% of the units to be audio/visual accessible. Commenter (1) understands that federal requirements differ for developments funded with bonds

exclusively, however, the commenter believes that the Department should promote accessibility and visitability requirements, regardless of the funding source. Commenter (2) is alarmed that the proposed language will exclude too many persons that are part of the aging and/or the low-income populations in Texas.

STAFF RESPONSE:

In response to the commenters, staff has accepted the suggestion that the accessibility requirements in the QAP apply to New Construction, Reconstruction, and Adaptive Reuse. Furthermore, the Department has clarified that Rehabilitation Development only is exempt from the construction requirements in 24 CFR §8.23, if the Development does not already have to follow Section 504 of the Rehabilitation Act of 1973.