January 26, 2026

Ms. Wendy Quackenbush, Director Multifamily Compliance
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711
wendy.quackenbush@tdhca.texas.gov

Re: Consensus recommendations on proposed new 10 Texas Administrative Code, Chapter 10, Subchapter J, Housing Finance Corporation Compliance Monitoring

Dear Ms. Quackenbush:

The Texas Affiliation of Affordable Housing Providers (TAAHP), the Texas Apartment Association (TAA), and the Texas Chapter of the National Association of Housing and Redevelopment Officials (TXNAHRO) sincerely thank TDHCA staff and the Board for the time, technical work, and ongoing engagement devoted to developing the proposed Housing Finance Corporation (HFC) Compliance Monitoring rules.

We especially appreciate the Multifamily Compliance team's hands on collaboration throughout this process, including convening stakeholder roundtables, making time for technical follow up, and continuing to refine the rule language through reposting. That openness has made it easier for the industry to understand the direction of implementation, prepare operationally, and keep HFC users and compliance partners aligned with the Department's expectations.

The attached recommendations reflect consensus among our memberships. We appreciate your consideration and welcome continued collaboration as TDHCA finalizes the rule and related guidance.

Sincerely,

Meghan Cano
TAAHP President.

Chris Newton
TAA Executive Vice President

Benjamin Davis
TXNAHRO President

About the Texas Affiliation of Affordable Housing Providers (TAAHP)
The Texas Affiliation of Affordable Housing Providers (TAAHP) is a non-profit trade association serving more than 800 affordable housing industry professionals involved in the financing, design, development, and management of affordable housing communities in Texas through public/private partnerships.

About the Texas Apartment Association (TAA)
The Texas Apartment Association (TAA), representing more than 12,000 housing owner/operators statewide is a non-profit trade association that provides exceptional advocacy, education and communication for the Texas rental housing industry. We serve all types of rental professionals, including property owners, builders, developers, property management firms and service providers.

About the Texas Chapter of National Association of Housing and Redevelopment Officials (TXNAHRO)
Established in 1976, the Texas Chapter of the National Association of Housing and Redevelopment Officials (TXNAHRO) is a long-standing advocate of affordable housing in Texas. TXNAHRO and its Public Housing Authorities (PHAs) membership champion quality affordable housing and support vibrant communities across Texas through strong advocacy, education, and empowerment initiatives. PHAs are committed to providing affordable living solutions to more than 500,000 Texans in local communities.

In addition to the comments below, please see the proposed rule with track changes, which includes administrative edits to improve clarity and align the rule with statute. Comments have been added where edits were made to provide context. The detailed comments below include the rule reference, the rationale for the requested change, and the recommended revision.

§10.202(2)

(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.

§394.9027(b) requires

> *A housing finance corporation or housing finance corporation user that claims an ad valorem tax exemption for a multifamily residential development under Section 394.905 must annually submit to the department an audit report for a compliance audit, prepared at the expense of the housing finance corporation user and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, that:...*

The rule, as proposed in §10.1202(2), further regulates §394.9027(b) with the inclusion of *a business entity that primarily performs audits* to the definition of Auditor.

It is our understanding that the reason why this language has been added is:

1. what constitutes "an independent auditor or compliance expert" (the individual auditor him or herself, or the auditing/compliance firm) is not described in either HB21 or its analysis documents; and,
2. because of the rotation requirements of §394.9027(h), it is reasonable to presume that the purpose of requiring rotation requirements of three consecutive years, followed by a cooling-off period of two years by the auditor, was to remove the practice or appearance of an ongoing business relationship with a particular auditor that would over time jeopardize the independence if the auditor

We disagree that 1) what constitutes "an independent auditor or compliance expert" is not described in statute and 2) the interpretation that the rotation requirement applies to the auditing firm rather than the individual auditor or compliance expert.

Plain Language of the Statute

Both the term independent auditor and compliance expert <u>are</u> described in statute.

Neither term is capitalized in statute. When a term is not capitalized, the term is to be interpreted using its plain, ordinary meaning, informed by context and relevant case law.

The term independent auditor <u>does</u> have an existing definition in the audit space (i.e. its plain, ordinary meaning). An independent auditor is an individual who is free from bias, external control, or authority,

ensuring that they can make judgments based on evidence, without conflicts of interest, and with impartiality in auditing activities. An independent auditor is not part of the organization being audited, and has no financial, managerial, or personal relationships that could impair objectivity where the audit is conducted under applicable auditing standards.

Separately, a compliance expert can prepare the annual compliance audit. A compliance expert does not have an existing definition in the audit space but should be interpreted (i.e. informed by context) by the use of the preposition with that connects its object of compliance expert to the rest of the sentence as *an individual with an established history of providing similar audits on housing compliance matters*.

Statue allows for two different types of *individuals* to prepare the annual compliance audit where the use of *or* means that either professional is acceptable. This means that the annual compliance audit can be conducted by:

1. an independent auditor; **or**,
2. compliance expert with an established history of providing similar audits on housing compliance matters.

Statue is clear in the intention.

It is important to understand that the use of the adjective independent is specific to the noun auditor as further emphasis that the applicability existing definition is contextually applicable. The use of the conjunction or is a coordinating conjunction used as a clause that presents alternatives for who can prepare the annual compliance audit.

Legislative Intent and Practicality

The Department's stated interpretation that the purpose of the bill would be negated if the auditing firm could maintain its business relationship with the HFC user, simply substituting auditors assigned to the client every three years. This interpretation is unfounded and the addition to the definition in §10.202(2) is an over-regulation of statute.

The Department's presumption that the intent behind rotation requirements was to remove the practice or appearance of an ongoing business relationship is inherently fulfilled at the individual level. Statue refers to "an independent auditor or compliance expert" in the singular form, which strongly reinforces that the focus is on the individual professional performing the annual compliance audit—not the entire firm. If the legislature intended to include firms, it would explicitly state "auditing firm" or "compliance organization."

The purpose of rotation is avoiding familiarity bias between the individual performing the audit and the entity being audited. This concern arises at the individual level, where personal relationships and repeated exposure to the same client could potentially compromise objectivity. Meaning, the practice or appearance of an ongoing business relationship with a particular auditor is eliminated when that auditor is rotated. Rotating individual auditors achieves this goal without unnecessarily limiting the pool of individuals qualified to perform the audit.

In addition, precedent exists in other regulatory contexts (e.g., SEC auditor independence rules), rotation requirements typically apply individuals, not entire firms. This approach balances independence with practicality and aligns with widely accepted compliance practices.

The Department effectively demonstrates how compliance professionals can work for the same organization while effectively mitigating familiarity threats in the audit process. For example, in 20X1, ABC Property was audited by compliance monitor A. Because of the affordable program at the development, the next audit is due in 20X3 and was performed by compliance monitor B. In 20X3, when compliance monitor B audited ABC Property, no familiarity threat existed because monitor B had no prior relationship with the owner during monitor A's 20X1 audit—even though both monitors worked on the same team at the time.

The most reasonable interpretation is that HB21 requires rotation of the individual independent auditor or compliance expert level, not the firm. This interpretation fulfills the objective without imposing unnecessary restrictions and costs on HFC Users or the auditing industry.

Unintended Consequences of Firm-Level Rotation

Requiring firm-level rotation would sharply reduce the number of professionals eligible to perform annual compliance audits, creating a scarcity of qualified resources. When demand exceeds supply, market forces drive prices up, meaning HFC Users would face higher costs to hire auditors than under individual-level rotation. Although the public benefit/cost note acknowledges economic impacts—such as Department monitoring fees and fees for third-party audits—it does not account for the increased cost resulting from a smaller pool of available auditors due to firm-level rotation that will result if the definition is adopted as proposed.

Recommendation:

We recommend that a business entity that primarily performs audits and be removed from the proposed definition so that it aligns with the plain language, legislative intent and practicality of the provisions of §394.9027(b) and §394.9027(h), as well as, mitigate the risk of an unintended cost burden.

> 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.

For purposes of satisfying the rotation requirement, the Department's obligations are limited to maintaining records identifying the individual independent auditor or individual compliance expert who conducts each annual audit. Any additional safeguards pertaining to auditor independence or familiarity fall squarely within the purview of the professional standards governing those practitioners, and do not require further rulemaking by the Department.

§10.1203(1)(D) and §10.1204(3)(L)(ii)(I)

As currently drafted, there is a material ambiguity within the proposed rule relating to the timing of submission of the annual audit and rent reduction tests for multifamily residential developments which

were acquired prior to May 28, 2025 and which undergo a refinancing, a conveyance of fee or leasehold title, or a sale or transfer of a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User. While the statute sets forth clear timing for new construction and acquisition developments in proposed §10.1203(1)(D) and §10.1204(3)(L)(ii)(I), there is no such guidance for developments that become subject to the rule pursuant to §10.1204(1).

Recommendation:

See draft markup for suggested edits.

§10.1203(1)(C)

The documents listed as required to be submitted with the first Audit Report are not all applicable to HFC deal prior to HB21. The Underwriting assessment pursuant to §394.905(b)(3) and Resolution or order required by §394.031(d) and §394.037(a-1)(2) are not document that HFC deals prior to HB21 may have. While the phrase *if appliable* is in the subparagraph, in the list of documents, it is after the Underwriting assessment and Resolution/order resulting in the appearance that only the items listed later in the subparagraph are subject to applicability, which is inaccurate.

Recommendation:

See draft markup for suggested edits.

§10.1203(4)

> (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 for Developments subject to an Audit Report. 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.

§394.9027(2)(i)(2) does allow for the Department to charge a fee for the submission of an audit report in a reasonable amount necessary to cover the expenses of administering §394.0927.

With HB21, statue was changed to, for deals structured after May 28, 2025, limit the number of Restricted Units from 90% of the total Development units to 50% of the total Development units. This means that all existing HFC deals (i.e. pre-May 28, 2025) have a much higher number of Restricted Units than those created under current statute. For example, a 300-unit Development in a pre-May 28, 2025 HFC deal would have, as a result of the statutory requirements in effect at that time, 270 Restricted Units (300 total units x 90%); whereas, a 300-unit Development in a post-May 28, 2025 HFC deal would have, as a result of the change in the statutory requirements, 150 Restricted Units (300 total units x 50%).

For the purposes of what changes as it relates to the Department's administration of §394.0927 is limited to the unit sample required under §10.1204(2):

(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.

Using the above example of a 300-unit Development, the unit sample size changes:

- 90% Restricted Occupancy = 270 Restricted Units
  - Sample Size: 50 units (270 x 20% = 54 units, capped at 50)
- 50% Restricted Occupancy = 150 Restricted Units
  - Sample Size: 30 units (150 x 20%)

The Department's increased administrative burden under §394.0927 is limited to adjusting the unit sample size following the shift from 90% to 50% Restricted Units. Therefore, the fee structure should correspond to that sample size.

In the above example, the difference between in the fees an HFC User would be required to remit to the Department would be:

- 90% Restricted Occupancy = 270 Restricted Units
  - Fee Total: $5,400
- 50% Restricted Occupancy = 150 Restricted Units
  - Fee Total: $3,000

Although the public benefit/cost note identifies economic impacts from monitoring fees, it does not account for HB21's reduction in the required percentage of Restricted Units, which significantly lowers the number of units subject to the unit sample in HFC deals going forward. It does not contemplate that, prior to HB21, the minimum percentage of Restricted Units was 90%.

Recommendation:

We recommend that the fee structure scale with the unit sample required under §10.1204(2):

> The HFC User must submit an annual service fee to the Department by June 1 of each year of the greater $35 per Restricted Unit includes in the unit sample described in §10.1204(2) of this Subchapter ~~of $20 per Restricted unit~~ or $500 for Developments subject to an Audit Report. 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.

§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. During the time the Development is under construction or Rehabilitation, it 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 and the Development Owner has not yet entered into the Land Use Restriction Agreement. Upon conclusion of the construction or Rehabilitation, the Development must have an executed Land Use Restriction Agreement (LURA) with the Department that covers all the Residential Units. Then, 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 Owner.

§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.

Commented [SN1]: See comment letter

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) Chief Appraiser--The chief appraiser of any 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).

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(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 Type, 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 Type.

(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. If multiple Developments are owned by the same HFC with the same HFC User under one single-purpose ownership entity, are within the same jurisdictional boundaries pursuant to Section 394.031 of the Texas Local Government Code, and are bound under one Regulatory Agreement, it will be considered as one singular Multifamily Residential Development.

(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 or a partnership agreement between the HFC and HFC User which is not recorded in the real property records.

(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, amenity, or facility reasonably associated with the residential rental property. The term does not include pest control fees, fees for utilities (including trash, phone, internet and cable) fees, and charges for services or amenities that are optional for a tenant, such as pet fees and fees for storage or covered parking.

Commented [SN2]: There has been some discussion is trash is considered a utility; for the avoidance of doubt, request that trash be included here

(17) Rent Reduction--The projected difference between the annual 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 the governing body of the Sponsor.

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(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 Section 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) Substantially Similar Floor Plan--means a Unit Type.

(22) 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.

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

(24) Very Low Income Housing Unit--a residential unit reserved for occupancy by an individual or family earning not more than 50 percent of the area median income, adjusted for family size.

§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 Sections 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 each HFC User 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 was in compliance with Sections 394.9026 and 394.9027 of the Texas Local Government Code for the immediately preceding Tax Year.

(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 issue a determination of approval or denial for an extension.

(C) Prior to submission of the first Audit Report for a Development, the HFC User must provide the Auditor with a copy of the following, as applicable:

Commented [SN3]: See comment letter

(i) ~~u~~Underwriting assessment as published on the HFC website and as conducted pursuant to Section 394.905(b)(3) of Texas Local Government Code;

(ii) ~~a copy of the r~~Resolution or order required by Section 394.031(d) and Section 394.037(a-1)(2)~~;~~ if ~~applicable; and~~

(iii) ~~a copy of the board~~ 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~~

(iv) ~~the~~ Regulatory Agreement~~;~~ and~~,~~

~~(C)~~ (v) ~~a copy of the o~~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~~.~~; or,

~~(ii)~~(iii) The Tax Year during which a multifamily Residential Development acquired prior to May 28, 2025, undergoes a refinancing, a conveyance of fee or leasehold title, or a sale or transfer of a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User

Commented [SN4]: See comment letter

(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 Section 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 $35 per Restricted unit per unit included in the sample described in §10.1204(2) of this subchapter or ~~of $20 per Restricted unit~~ or $500 for Developments subject to an Audit Report. 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.

Commented [SN5]: See comment letter

(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 and indication that such notice does not constitute a final determination. 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 respective to the Tax Year being Audited.

(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 though the Departments 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.

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 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 a majority of the beneficial ownership interest in the Multifamily Residential 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, 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 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 Restricted ~~u~~Units.

Commented [SN6]: To add clarity that the percentage is to be applied to the Restricted Units and not all units

(3) The Auditor will ensure Development meets the following requirements and will identify any

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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 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(1): Development Regulatory Agreement includes units at 80% and 160%, 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 160% AMI. The unit should be redesignated as 160% 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.

(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(2): Development Regulatory Agreement includes units at 80% and 160%. Unit 201, a two-bedroom Unit Type is designated as 160%. At the annual income recertification, household income was determined to exceed 160% 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 160%

household. Unit 201 retains the 160% 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 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~~imputed persons per bedroom for the rent limit calculation (e.g. 1 Person/1Bedroom +1), the Auditor will defer to the Development's Regulatory Agreement and/or other operative document. In the event that the imputed persons per bedroom standard ~~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~~ standard 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 is the sole responsibility of the HFC User to:

(i) Using the average of the Rent charged of each Unit Type as of December 31st of the reporting year, 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 ~~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) 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(3): 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(4): 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.

(-c-) for Multifamily Residential Developments acquired prior to May 28, 2025 which undergo a refinancing, a conveyance of fee or leasehold title, or a sale or transfer of a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User, the first Audit Report that will include the rent reduction test is for the Tax Year after the occurrence undergoes such refinancing, conveyance of fee or leasehold title, or sale or transfer of a majority of the beneficial ownership interest in the Multifamily Residential Development or HFC User. Example 1204(5): Development that was acquired by an HFC prior to May 28, 2025 but which was refinanced on July 1, 2025. The refinancing tax year would be 2025, so the first Audit report would be due on June 1, 2026. The first rent reduction test would be for Tax Year 2026 on

Commented [SN7]: Adds technical clarity to rent limit calculation (not technically an adjustment for family size, rather an imputed person per bedroom adjustment)

Commented [SN8]: Add clarity that this comparison is required under **§394.9026. ADDITIONAL CONDITIONS FOR BENEFICIAL AD VALOREM TAX TREATMENT RELATING TO CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS** as something the HFC User must do to retain the tax exeption.

This is not a comparison that the Auditor is required to calculate in the Audit Report, rather include in the Audit Report that the HFC User completed this. Added clarify of who is responsible for the test vs what is required evidenced as complied with in the Audit Report.

Commented [SN9]: Added clarity on how the average should be calculated (average of the unit types as of a point in time vs average of a unit over the 12-month period) that aligns with the reporting year as noted in §10.1203(3)

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Audit Report submitted June 1, 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 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 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 ~~taxing authority~~ 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 ~~provide~~ 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. ~~the appropriate taxing authority in the Audit Report~~. In estimating the ad valorem taxes that would have been imposed, the ~~Auditor~~ 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 may be based on an independent appraisal, third-party property tax report, published appraisal district value, or other means acceptable to the Department.

(-c-) 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.

§10.1205 Income and Rent Calculations.

(1) 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

Commented [SN10]: See public comment

Commented [SN11]: Aligns with the language in statue- there could be multiple taxing jurisdictions with is different that the singular taxing authority.

Commented [SN12]: To align with the statute in who is completing the Rent Reduction calculation.

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further described in the HUD Handbook 4350.3 as amended from time to time by publication in the Federal Register.

(2) 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.

(A) 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).

(B) 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.

(1) 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.

(2) During any applicable 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.

(3) 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).

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