

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
10 TAC §10.801, Affirmative Marketing Requirements

Disclaimer

Attached is a proposed rule action for 10 TAC §10.801, Affirmative Marketing Requirements. This rule action was approved by the TDHCA Governing Board on June 4, 2026. This document, including its preambles, is expected to be published in the June 19, 2026, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

In compliance with §2001.023, Texas Government Code, a summary of the proposed action follows:

10 TAC §10.801 provides the requirements associated with affirmative marketing required for all Developments in the Department's multifamily portfolio with five or more total units.

The Texas Regulatory Efficiency Office (TREO) coordinates with state agencies to review agency rules and recommends potential amendments to, or repeals of, those rules. In April 2026, TREO released a draft Regulatory Efficiency Review (RER) report of possible regulatory changes that the Texas Department of Housing and Community Affairs (the Department) could make to improve efficiency in some of its rules. The recommendations in the report were not mandates or directives, but rather ideas and opportunities for improvement. TREO requested that the Department share these ideas with stakeholders for a 14-day period to garner feedback, which occurred from April 30, 2026 to May 14, 2026.

The report included a recommendation, initiated by the Department that §10.801 be revised to improve efficiency, remove some non-federally required regulations on properties, and remove unnecessary language. No feedback on the suggestion was received. Therefore, staff is recommending that the rule be modified to reduce administrative burden on both the Department and developers required to comply with the rule.

In addition to seeking to make non-substantive revisions to improve the rule's efficiency, the Department is proposing to make the following changes to the rule in order to reduce regulatory burden:

- Clarify in §10.801(a), that the rule applies only to Developments that receive federal funding or for which affirmative marketing is required in a contract or LURA, but still requires all developments to affirmatively market to persons with disabilities.
- Remove references to HUD Form 935.2A and insert reference to TDHCA tool that is available to Developments to make the process more streamlined.

- Remove requirement that the Owner compares the demographic composition of the Development to the market area.

The rule will not apply to the Tax Exempt Bond Program or Low Income Housing Tax Credit Program other than the requirement to affirmatively market to persons with disabilities, except if the Development's LURA or Contract require it or if there is another source of federal funding that requires affirmative marketing. For Developments in these programs with no additional requirements the Department will ensure that the Developments have marketed to persons with disabilities and will provide guidance on where and how to market in the Department's provided "TDHCA Affirmative Marketing Tool" found on the TDHCA website, once this rule takes effect, <https://www.tdhca.texas.gov/MF-Affirmative-Marketing-Tool>.

The rule action will be made available for public comment from June 19, 2026, to July 20, 2026, and returned to the Board for final approval.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on June 19, 2026
End: 5:00 p.m. Austin local time on July 20, 2026

Comments received after 5:00 p.m. Austin local time on July 20, 2026, will not be accepted. Written comments may be submitted electronically within the designated public comment period to: brooke.boston@tdhca.state.tx.us.

Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment. Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Departamento de Vivienda y Asuntos Comunitarios de Texas
Borrador aprobado por la Junta Directiva del TDHCA
respecto a la sección [§] 10.801 [“Requisitos de comercialización afirmativa”] del título 10 del Código
Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta una propuesta de acción reglamentaria respecto a la sección [§] 10.801 [“Requisitos de comercialización afirmativa”] del título 10 del Código Administrativo de Texas (TAC). Esta acción reglamentaria recibió aprobación por parte de la Junta Directiva del Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) el 4 de junio de 2026. Se espera que este documento, incluyendo sus preámbulos, se publique en la edición del *Texas Register* del 19 de junio de 2026. Esa versión publicada constituirá la versión oficial para fines de comentarios públicos y se puede encontrar en el siguiente enlace: <https://www.sos.texas.gov/texreg/index.shtml>.

De conformidad con la sección [§] 2001.023 del Código de Gobierno de Texas, se incluye a continuación un resumen de la acción reglamentaria propuesta:

La sección [§] 10.801 del título 10 del Código Administrativo de Texas (TAC) establece los requisitos asociados con la comercialización afirmativa exigida para todas las urbanizaciones en la cartera multifamiliar del Departamento con cinco o más unidades en total.

La Oficina de Eficiencia Reglamentaria de Texas (TREG) se coordina con las agencias estatales con el fin de revisar las reglas de las agencias y recomienda posibles modificaciones o derogaciones de dichas reglas. En abril de 2026, la TREG publicó un borrador del informe de revisión de eficiencia reglamentaria (RER) respecto a los posibles cambios reglamentarios que el Departamento de Vivienda y Asuntos Comunitarios de Texas (el Departamento) podría efectuar para mejorar la eficiencia de algunas de sus reglas. Las recomendaciones del informe no eran mandatos ni directivas, sino más bien ideas y oportunidades de mejora. La TREG solicitó al Departamento que compartiera estas ideas con las partes interesadas durante un período de 14 días para recabar comentarios, lo cual tuvo lugar del 30 de abril de 2026 al 14 de mayo de 2026.

El informe incluyó una recomendación, impulsada por el Departamento, que propone una modificación de la sección [§] 10.801 con el fin de mejorar la eficiencia, eliminar algunas reglamentaciones no exigidas por el Gobierno federal en materia de propiedades y suprimir texto innecesario. No se recibió ninguna respuesta a la sugerencia. Por lo tanto, el personal recomienda que se reforme la regla para reducir la carga administrativa tanto para el Departamento como para los urbanizadores a los que se les exige su cumplimiento.

Además de intentar realizar modificaciones de carácter no sustantivo a miras de mejorar la eficiencia de la regla, el Departamento propone introducir los siguientes cambios en la misma con el fin de reducir la carga reglamentaria:

- Aclarar en la sección [§] 10.801(a) que la regla se aplica solo a las urbanizaciones que reciben fondos federales o para las cuales se exige comercialización afirmativa en un contrato o en un Acuerdo de Restricciones de Planificación Urbana (LURA), pero aún así exige que todas las urbanizaciones hagan comercialización afirmativa para personas con discapacidades.
- Eliminar las referencias al formulario 935.2A del Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos (HUD) e introducir una referencia a la herramienta del TDHCA que está disponible para las urbanizaciones con la finalidad de agilizar el proceso.
- Eliminar el requisito de que el propietario compare la composición demográfica de la urbanización con la del área de mercado.

Esta regla no se aplicará al Programa de Bonos de Exención Tributaria ni al Programa de Crédito Tributario para Viviendas de Bajos Ingresos, salvo en lo que respecta al requisito de realizar actividades de comercialización afirmativa dirigidas a personas con discapacidades, excepto si el contrato o el Acuerdo de Restricciones de Planificación Urbana (LURA) de la urbanización así lo exigen, o bien si existe otra fuente de financiación federal que exija dichas actividades de comercialización afirmativa. Respecto a las urbanizaciones en estos programas sin requisitos adicionales, el Departamento garantizará que las urbanizaciones hayan efectuado comercialización a personas con discapacidades y facilitará orientación sobre dónde y cómo hacerlo mediante la “herramienta de comercialización afirmativa del TDHCA” que brinda el Departamento y que se encontrará en su sitio web una vez que esta regla entre en vigor (<https://www.tdhca.texas.gov/MF-Affirmative-Marketing-Tool>).

La acción reglamentaria estará disponible para comentarios del público desde el 19 de junio de 2026 hasta el 20 de julio de 2026, y se remitirá a la Junta para su aprobación definitiva.

Comentarios del público

Periodo de comentarios del público:

Inicio: 8:00 a. m., hora local de Austin, del 19 de junio de 2026

Finalización: 5:00 p. m., hora local de Austin, del 20 de julio de 2026

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 20 de julio de 2026. Los comentarios por escrito pueden enviarse de manera electrónica dentro del período designado de comentarios del público a brooke.boston@tdhca.state.tx.us.

Se anima a quienes formulen comentarios públicos a que hagan referencia al borrador de la regla, política o plan específico relacionado con su comentario, así como una referencia o cita específica asociada a cada comentario. Tenga en cuenta que todos los comentarios enviados al TDHCA se considerarán información pública.

Departamento de Vivienda y Asuntos Comunitarios de Texas

Dirección: 221 East 11th Street, Austin, TX 78701

Dirección de correspondencia: P.O. Box 13941, Austin, TX 78711-3941

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Attachment A: Preamble, including required analysis, for the proposed repeal of 10 TAC Chapter 10, Subchapter G, §10.801 Affirmative Marketing Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 10, Subchapter G, Section 10.801 Affirmative Marketing Requirements. The purpose of the proposed repeal is to eliminate an outdated rule and replace it simultaneously with a new rule that clarifies when Affirmative Marketing Plans are required and reduces administrative burden on the Department and some development owners.

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.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: the affirmative marketing requirements associated with developments in the Department's portfolio.
2. The repeal does not require a change in work that creates new employee positions, nor does it create savings that would allow for a reduction in employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in 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 repeal is not considered to expand an existing regulation.
7. The repeal does not increase the number of individuals subject to the rule's applicability.
8. The repeal 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 has evaluated the 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 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 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 changed sections would be an updated and more germane rule. 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.

REQUEST FOR PUBLIC COMMENT. The Department requests comments on the repeal of the rule. The public comment period will be held June 19, 2026 to July 20, 2026, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email Jeremy.stremler@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 P.M. Central Daylight Time July 20, 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 repeal affects no other code, article, or statute.

§10.801. Affirmative Marketing Requirements

Attachment B: Preamble, including required analysis, for the proposed new 10 TAC Chapter 10, Subchapter G, §10.801 Affirmative Marketing Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 10, Subchapter G, §10.801 Affirmative Marketing Requirements. The purpose of the proposed new section is to clarify when Affirmative Marketing Plans are required and to reduce administrative burden on the Department and some development owners.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for repeal because there are no additional costs associated with this action. No additional funds will be needed to implement this rule.

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 has determined that, for the first five years the new sections would be in effect:
 1. The rule does not create or eliminate a government program but relates to changes to an existing activity: the affirmative marketing requirements associated with Developments in the Department's portfolio.
 2. The rule does not require a change in work that creates new employee positions, nor does it create savings that would allow for a reduction in employee positions.
 3. The new section will not require additional future legislative appropriations.
 4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
 5. The new section is not creating a new regulation.
 6. The new section does expand on an existing regulation.
 7. The new section does not increase the number of individuals subject to the rule's applicability.
 8. The new section 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 has evaluated the new section and determined that it 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 new section 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 new section as to its possible effects on local economies and has determined that for the first five years the new section 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 new section is in effect, the public benefit anticipated as a result of the new section would be a rule compliant with the federal regulations for the HOME Program. There will not be economic costs to individuals required to comply with the new 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 new section is in effect, enforcing or administering the sections will have no economic costs.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the rule and also requests information related to the cost, benefit, or effect of the proposed rule, 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 from June 19, 2026 to July 20, 2026. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to Jeremy.stremmer@tdhca.texas.gov. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 pm Central Daylight Time, July 20, 2026.

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

10 TAC Chapter 10, Subchapter G, §10.801 Affirmative Marketing Requirements

§10.801 Affirmative Marketing Requirements

(a) Applicability. Compliance with this section is required for all federal or state funded Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968, ~~and Executive Order 13166~~. This section does not apply to the Tax Exempt Bond Program or Low Income Housing Tax Credit Program, with the following exceptions:

(1) To the extent required under the LURA;

(2) For affirmatively marketing to Persons with Disabilities; and

(3) To the extent that federal funds are in a Development's financing sources or provides operating assistance.

(b) General. A Development ~~Owner~~ with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use ~~Worksheet 1 of HUD Form 935.2A~~ the TDHCA provided tool and simplified form, but at a minimum the Owner must ~~document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply~~ document the method or methods used to determine which populations are least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Although not related to Affirmative Marketing requirements in this section, some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities. If a Development has included veterans in the Development's Affirmative Marketing Plan it will not be cited as noncompliance the first time the Development's Affirmative Marketing Plan is reviewed, but the Development will be directed to revise the Affirmative Marketing Plan to not include this subpopulation in the plan.

(c) Plan format. A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use the simplified form provided by TDHCA on its website. ~~any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.~~

(d) Marketing and Outreach.

(1) The plan must ~~identify~~include the special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo;

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, ~~and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.~~

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months prior to the anticipated date the first building is to be available for occupancy.

(2) Once every five years, Owners must determine if there have been any changes to the "least likely to apply" populations by ~~completing Worksheet 1 of HUD Form 935.2A~~ utilizing the TDHCA provided tool or a written process with equivalent information. In addition, owners must determine if current advertising sources still exist, and if the outreach that has been performed is still the most applicable. If the Owner determines that the plan does not need to be updated, the backup used to ~~complete Worksheet 1 or its equivalent~~ make this determination must be dated and maintained and may be reviewed by Department staff during reviews of the Affirmative Marketing Plan. If there have been changes to the least likely to apply populations or if the community contacts and advertising outlets no longer exist, the plan must be updated. ~~Developments funded by HUD or USDA must also update their plans in accordance with HUD or USDA requirements that apply.~~

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to the building being ready for occupancy as required under subsection (e)(1) of this section.