



**Preamble for proposed amendments to 10 TAC Subchapter G, §10.801, Affirmative Marketing Requirements.**

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §10.801, Affirmative Marketing Requirements. The purpose of the proposed amendments is to provide clarification on marketing requirement to veterans, the timeframe when marketing must begin, and to provide a sample of the Fair Housing logo which is required on all affirmative marketing materials.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, and therefore no costs warrant being offset.

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.**

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendments would be in effect:

1. The proposed amendments do not create or eliminate a government program but more clearly describes the Fair Housing requirements relating to Affirmative Marketing to veterans for Multifamily properties in the Department's portfolio, the timeframe when marketing must begin, and provides a sample of the Fair Housing logo that is required on all affirmative marketing materials.
2. The proposed amendments do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed amendments do not require additional future legislative appropriations.
4. The proposed amendments will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed amendments are not creating a new regulation.
6. The proposed amendments will not expand, limit, or repeal an existing regulation.
7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendments 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 these proposed amendments, 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 §2306.053.

1. The Department has evaluated these proposed amendments and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be \$0 as the revisions being proposed are minor and add no costs to the property's operations. There are no rural communities subject to the

proposed rule as these properties are not owned directly by municipalities; therefore the economic impact of the rule on rural communities is projected to be \$0.

3. The Department has determined that because the proposed amendments apply to existing multifamily developments, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed amendments do 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 proposed amendments have no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; 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 proposed amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be a clarification of existing affirmative marketing requirements. There will not be economic costs to individuals required to comply with the amendment 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 proposed amendments are in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule has already been in effect elsewhere in rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from September 17, 2021, to October 18, 2021, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, October 18, 2021.

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

### **§10.801. Affirmative Marketing Requirements.**

(a) Applicability. Compliance with this section is required for all 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.

(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, 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. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Although not related to Affirmative Marketing requirements in this section, some Some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities.

(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 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 include 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. Attached Graphic: (Sample 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) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA

properties, as otherwise required by HUD or USDA.

(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 placement in service as required under subsection (e)(1) of this section.