TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA Governing Board Approved Draft of proposed new 10 Texas Administrative Code, Chapter 10, Subchapter I, Public Facilities Corporation Compliance Monitoring

Disclaimer

Attached is a draft of proposed new 10 TAC Chapter 10, Public Facilities Corporation Compliance Monitoring Rule that was approved by the TDHCA Governing Board on July 9, 2026. This document, including its preamble, is scheduled to be published in the July 24, 2026, edition of the *Texas Register,* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment. Please visit the following link: https://www.sos.texas.gov/texreg/index.shtml.

In compliance with Texas Government Code, §2001.023(c), a summary of the proposed rule follows:

The rule clarifies program requirements, removing redundancies and adding new language to improve readability. Changes also include remove duplicative language and establish consistency with 10 TAC, Chapter 10, Subchapter J, Housing Finance Corporation rule when requirements and definitions are the same. The Public Facilities Corporation Compliance Monitoring rule outlines audit and monitoring requirement for Public Facilities Corporation multifamily properties. Also in compliance with Texas Government Code, §2001.023(c), this cover sheet and summary are provided in both English and Spanish.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on July 24, 2026
Ends: 5:00 p.m. Austin local time on August 24, 2026

Comments received after 5:00 p.m. Austin local time on August 24, 2026, will not be accepted.

Written comments may be submitted, in hard copy or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Wendy Quackenbush
P.O. Box 13941
Austin, Texas 78711-3941
Email: wendy.quackenbush@tdhca.texas.gov

Written comments may be submitted in hard copy or email formats within the designated public comment period. 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 citation associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

Departamento de Vivienda y Asuntos Comunitarios de Texas

Borrador aprobado por la Junta Directiva del TDHCA de una nueva propuesta: subcapítulo I ["Supervisión de cumplimiento para corporaciones de instalaciones públicas"] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC)

Descargo de responsabilidad

Se adjunta un borrador de la nueva propuesta ("Regla de supervisión de cumplimiento para corporaciones de instalaciones públicas") del capítulo 10 del título 10 del Código Administrativo de Texas (TAC), que recibió aprobación por parte de la Junta Directiva del Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) el 9 de julio de 2026. Se espera que este documento, incluyendo su preámbulo, se publique en la edición del *Texas Register* del 24 de julio de 2026. Esa versión publicada constituirá la versión oficial para fines de comentarios del público. La versión aquí mencionada es solo informativa y no debe considerarse como fundamento para comentarios del público. Sírvase visitar el siguiente enlace: https://www.sos.texas.gov/texreg/index.shtml.

De conformidad con la sección [§] 2001.023(c) del Código de Gobierno de Texas, se incluye a continuación un resumen de la regla propuesta:

La regla aclara requisitos de programas, eliminando redundancias y añadiendo nuevo texto para mejorar la legibilidad. Los cambios también incluyen la eliminación de texto duplicado y el establecimiento de coherencia con la regla estipulada en el subcapítulo J ["Corporación de financiación de vivienda"] del capítulo 10 del título 10 del Código Administrativo de Texas (TAC) cuando los requisitos y las definiciones sean los mismos. La regla relativa a la supervisión de cumplimiento para corporaciones de instalaciones públicas describe los requisitos de auditoría y supervisión para propiedades multifamiliares de corporaciones de instalaciones públicas. Asimismo, de conformidad con la sección [§] 2001.023(c) del Código de Gobierno de Texas, esta portada y resumen se ofrecen tanto en inglés como en español.

Comentarios del público

Periodo de comentarios del público: Inicio: 8:00 a. m., hora local de Austin, del 24 de julio de 2026
Finalización: 5:00 p. m., hora local de Austin, del 24 de agosto de 2026

No se aceptarán los comentarios que se reciban después de las 5:00 p. m., hora local de Austin, del 24 de agosto de 2026.

Los comentarios por escrito pueden presentarse en formatos impreso o electrónico a la siguiente dirección:

Departamento de Vivienda y Asuntos Comunitarios de Texas
A la atención de: Wendy Quackenbush
P.O. Box 13941
Austin, Texas 78711-3941
Correo electrónico: wendy.quackenbush@tdhca.texas.gov

Los comentarios por escrito pueden presentarse en formatos impreso o de correo electrónico dentro del período designado de comentarios del público. 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.

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JULY 9, 2026

Presentation, discussion, and possible action on an order proposing amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter I, Public Facility Corporation Compliance Monitoring §10.1101 Purpose, §10.1102 Definitions, §10.1103 Reporting Requirements, §10.1104 Audit Requirements, §10.1105 Income and Rent Requirements and §10.1107 Options for Review and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter I, Public Facility Corporation Compliance Monitoring rules ensure compliance with HB 2071 (88th Regular Legislature) and Chapter 303 Local Government Code;

WHEREAS, the rule was originally adopted in 2024, and changes are now needed to add direction for Public Facility Corporation (PFC) Users and Auditors on clarifying program requirements, processes, and language in multiple sections; for establishing consistency with the rule in 10 TAC Chapter 10, Subchapter J; to further clarify language and requirements on topics for which questions are often received; to correct references to required forms that have been updated; and to clarify, add and remove requirements for Public Facility Corporation Developments that are annually required to report to the Department;

WHEREAS, Compliance Monitoring staff, on May 20, 2026, met with a group of interested parties and stakeholders on the proposed PFC rule to review, discuss and receive feedback on the proposed rule prior to the rule being presented to the TDHCA Board; and

WHEREAS, such proposed amendments in this item will be published in the *Texas Register* for public comment which will be accepted from July 24, 2026, to August 24, 2026, and the rule will be returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed amendments of 10 TAC Chapter 10, Subchapter I Public Facility Corporation Compliance Monitoring, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC, Subchapter I, Public Facilities Corporation (PFC) Compliance Monitoring rule to clarify program requirements in multiple sections, remove or correct duplicative language and establish consistency with rule in 10 TAC Chapter 10 Subchapter J (relating to Housing Finance Corporation compliance) when requirements and definitions are the same. The Public Facilities Corporation Compliance Monitoring rules are an integral part of monitoring PFC Developments tasked to the Department by HB 2071 (88^{th} Regular Legislature) for compliance monitoring oversight. The purpose of this amendment is to clarify language and requirements on which questions have been received, correct references, and add and remove necessary language to ensure consistency with requirements in HB 2071.

On May 20, 2026, Compliance Division staff meet in person and virtually to solicit feedback from interested parties and stakeholders on the PFC rule prior to it being presented to the Board. The Compliance Division accepted several verbal and written comments and incorporated some of the comments into the proposed rule action when practical and feasible.

The proposed draft of the 2026 Public Facilities Corporation Compliance Monitoring rule reflects staff's recommendations for the Board's consideration. Behind the proposed preamble for the proposed rule action is the rule shown in its blackline form reflecting proposed changes to the rule.

The proposed amendment will be published in the *Texas Register* and released for public comment from July 24, 2026, to August 24, 2026. This rule action will be returned to the Board for final adoption.

Only the sections noted in the recitals and proposed for action will be published in the *Texas Register* for public comment. Proposed substantive changes are explained below.

Summary of Proposed Changes:

§10.1101 Purpose. Staff is proposing new language and citations to make clear what monitoring requirements are applicable to pre- and post- June 18, 2023, PFC Developments.

§10.1102 Definitions. Staff proposes a new definition of Rent Reduction to better clarify the required components that must be used for this calculation as required in HB 2071.

§10.1103 Reporting Requirements. Staff proposes the deletion of language that is no longer applicable regarding the one-time extension granted to PFC Users in 2024. Additional language was added to codify the time frame which an Audit report must cover, adding the requirement of a rent roll with the Audit report and notifying Auditors that published forms on the website may not be altered or modified. In addition, staff proposes changes to existing language to make the time frames clear to PFC Users and stakeholders in which the Department will publish a summary report, a final monitoring letter, the time frame for the PFC User to submit corrective action and when the Department will publish its final close out letter. Lastly, staff proposes changes in the language to make clear when the Department will report any uncorrected noncompliance to the Responsible Parties, Chief Appraiser and the Texas Comptroller with a recommendation of loss of ad valorem tax exemption for the tax year being audited.

§10.1104. Audit Requirements. Staff proposed new language in this section to clearly identify Audit requirements for pre- and post- June 18, 2023, PFC developments that must be completed by the third-party Auditor. New language has been added for the selection of tenant files that mirrors the language in the Housing Finance Corporation (HFC) Compliance Monitoring rule since the requirements are the same. New language specifies the percentage of files to be reviewed when a property has achieved required occupancy as compared to when a property is still in lease up. Amendments further provide guidance on the percentage of new move in files and recertification files that must be selected by an Auditor for review.

Staff also proposes changes to the definition of monthly rent by deleting the following language, *"an imputed family size of one person per bedroom plus one person,"* since this language is not statutorily required or in HB 2071. Additional proposed language was added to monthly rent to make clear the adjustment to family size when calculating the maximum rent limit, should defer to development's Regulatory Agreement or operating documents that is also outlined in the HFC Monitoring Rule.

Staff also proposes new language and examples to be included in the rule that explain how 42(g)(2)(D), commonly known as the Available Unit Rule (AUR) must be applied when a household's income increases at annual renewal. Additionally, staff proposes new language for the rent reduction calculation that clearly codifies that the requirement applies to developments acquired in years two, three and four only as outlined in HB 2071.

Staff is also recommending removing a vague requirement of how an Auditor may establish a methodology for determining maximum market rent when a Development does not have any market rate units and replacing the language with acceptable methods of how maximum market rents may be established. The new proposed methods also mirror those in the HFC Compliance Monitoring rule.

§10.1105. Income and Rent Requirements. Staff proposes the addition of new language allowing the exemption of basic housing pay income for military households for Developments that are in or adjacent to counties with qualified military bases. This income exemption requirement was also adopted in the HFC Compliance Monitoring rule.

§10.1107. Options for Review. Staff is recommending the addition of new language on when and how a PFC User may appeal a finding of noncompliance. This appeal process is the same as the one adopted in the HFC Compliance Monitoring rule.

Attachment 1: Preamble, including required analysis for proposed amendments to 10 TAC Chapter 10, Subchapter I §10.1101 Purpose, §10.1102 Definitions, §10.1103 Reporting Requirements, §10.1104 Audit Requirements, §10.1105 Income and Rent Requirements and §10.1107 Options.

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 10, Subchapter I, §10.1101 Purpose, §10.1102 Definitions, §10.1103 Reporting Requirements, §10.1104 Audit Requirements, §10.1105 Income and Rent Requirements and §10.1107 Options. The purpose of the proposed action is to provide a clearer, more efficient and more concise rule for Public Facilities Corporation Developments over which the Department has compliance monitoring oversight. The proposed amendment removes unnecessary requirements from the rule; adds new language that simplifies requirements for pre and post June 18, 2023, PFC developments; adds a new definition; provides clear timeframes for the issuance of reports, corrective action and close out letters; and specifies what must be included with the submission of an Audit report and the mechanism of how a report must be submitted to the Department. Audit requirements were simplified and aligned with 10 TAC Chapter 10, Subchapter J, which are the Housing Finance Corporation rules, when appropriate to provide more detailed guidance to PFC Users, Auditors and stakeholders on what is required to be submitted, and when and how rent reduction calculation is to be completed. New examples were included to provide detailed guidance on how the available unit rule is applied and to establish methods for determining maximum market rent when a Development is 100% restricted. Additional proposed requirements were added to allow the exemption of basic military housing allowance income from the calculation of annual income and to expand the appeals process for findings of noncompliance.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because there are no costs associated with the amendment.

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. Robert Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect:

1. The amendment to the rule will not create or eliminate a government program but merely relates to the compliance monitoring processes already in place for PFCs;

2. The amendment to the rule will not require a change in the number of employees of the Department;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule will not create a new regulation, merely improves the existing rule related to PFCs;

6. The amendment to the rule will not repeal an existing regulation;

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

8. The amendment to the rule will neither positively nor negatively 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 action 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 action 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 action as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will 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 rule amendment is in effect, the public benefit anticipated as a result of the amended sections would be an updated rule that is more efficient, concise, and provides clearer guidance for PFCs. There will be no economic costs to individuals required to comply with the amended 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 amended rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT AND INFORMATION RELATED TO COST, BENEFIT OR EFFECT. The Department requests comments on the amendments and requests information related to the cost, benefit, or effect of the proposed amendments, including any applicable data, research, or analysis from any person required to comply with the proposed amendments or any other interested person. The public comment period will be held July 24, 2026, to August 24, 2026, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush at wendy.quackenbush@tdhca.texas.gov or by mail at P.O. Box 13941, Austin, Texas 78711-3941. ALL COMMENTS AND INFORMATION MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, August 24, 2026.

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

§10.1101. Purpose and Applicability.

The purpose of Chapter 10, Subchapter I is to:

(1) Provide the reporting requirements described in §10.1103 of this Subchapter for the audit requirements detailed in §10.1104 in the following manner:
(A) Development enacted prior to June 18, 2023, are subject to §10.1104(a); or
(B) Development enacted on or after June 18, 2023, are subject to all subsections in §10.1104.

(~~1~~2) Establish rules governing Developments owned or sponsored by a Public Facility Corporation (PFC) that are subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code.

(~~2~~3) Enable the Department to communicate with Responsible Parties and persons with an interest in the Development, regarding the results of the Audit Report.

(~~3~~4) Establish qualifications for Auditors and reporting standards and formats.

(~~4~~5) Implement compliance requirements, tenant protections, and affirmative marketing requirements, as required by Sections 303.0421 and 303.0425 of the Texas Local Government Code.

(6) Applicability. This rule is not applicable to a Development that has at least 20 percent of its residential units reserved for public housing; that participates in the Rental Assistance Demonstration program administered by HUD; that receives financial assistance administered under Chapter 1372, Government Code, or that receives financial assistance from another type of tax-exempt bond; or that receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

§10.1102. Definitions.

The capitalized terms or phrases used herein are defined in the title. Any other capitalized terms in the subchapter shall have the meaning defined in Chapter 2306 of the Texas Government Code, Chapter 303, 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 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 or compliance expert with an established history of providing similar audits on housing compliance matters, meeting the criteria established herein.

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

(4) Chief Appraiser--The chief appraiser of the appraisal district in which a Development is located.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Development--A multifamily residential development owned by a Public Facility Corporation and operated by an Operator.

(7) 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).

(8) HUD--The United States Department of Housing and Urban Development.

(9) Public Facility Corporation (PFC)--A nonprofit corporation that can be created by a municipality, county, school district, housing authority or a Sponsor, as outlined in Chapter 303 of the Texas Local Government Code.

(10) Public Facility User--~~a~~A public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a public facility that is a multifamily residential development. For purposes of all provisions within this rule, the terms "Public Facility User" and "Operator" shall have the same meaning and shall be interchangeable.

(11) Rent Reduction--The projected difference between the annual rent charged for a Restricted Unit and the maximum market rent that could be charged for the same unit without income restrictions.

(~~11~~12) Regulatory Agreement--A Land Use Restriction Agreement (LURA), Ground Lease, Deed Restriction, and any similar restrictive instrument that is recorded in the real property records of the county in which the Development is located.

(~~12~~13) Responsible Parties--The Texas Comptroller of Public Accounts, and with respect to a Development, the applicable Operator, the PFC, the governing body of the PFC's Sponsor, and, if the PFC's Sponsor is a housing authority, the elected officials responsible for appointing the housing authority's governing board.

(~~13~~14) Restricted Unit--A residential unit in a Development that is reserved for or occupied by a household meeting certain income limitations established in the Regulatory Agreement, 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.

(~~14~~15) Sponsor--A municipality, county, school district, housing authority, or special district that causes a corporation to be created to act in accordance with Chapter 303, Texas Local Government Code.

(~~15~~16) Unit Type--Means the type of unit determined by the number of bedrooms.

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. The Department will reject any Audit Report received after June 1 of the applicable reporting year. Failure to submit an Audit Report, or submission of an Audit Report after the June 1 deadline, constitutes noncompliance and shall be reported to the responsible parties, the Chief Appraiser, and the Comptroller.

~~Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 15, 2024, with a one-time discretionary extension of 30 days available from the Department upon written showing of good cause, if submitted to pfc.monitoring@tdhca.texas.gov prior to 5:00 p.m. on December 15th), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must still fully address the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).~~

(2) All Audit Reports must comply with subparagraphs (A) to (C) of this paragraph:

(A) be for at least the full prior reporting period ending December 31 and include a rent roll for the same period;

(B) include contact information for all Responsible Parties; and

(C) be completed and submitted in the Department prescribed manner, including all published forms which may not be altered or modified.

(~~2~~3) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(~~3~~4) No later than ~~60~~ 45 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 of the Audit Report will also be provided to ~~the Development and~~ all Responsible Parties. ~~The summary must describe in detail the nature of any noncompliance.~~

(~~4~~5) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than ~~45~~ 60 days after receipt of the Audit Report ~~the Department~~, the Department will ~~notify the Public Facility User~~issue a monitoring report notice and make it available on the website. ~~The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.~~

(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 PFC User will be given 60 days from the issuance of the monitoring report notice to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(B) If there is any noncompliance that is not corrected within the 60-day corrective action period, the Department will notify the Responsible Parties, Chief Appraiser, and the Texas Comptroller in writing and recommend a loss of ad valorem tax exemption respective to the Tax year being Audited.

~~(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.~~

(6) 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.

(7) The Public Facility User 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 Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports, ~~and~~ supporting documentation, ~~and~~ required forms, and corrective action must be submitted through the Departments File Serve System. To obtain access to this system, the PFC User and / or Auditor must request access by ~~to the following~~ emailing ~~address:~~ pfc.monitoring@tdhca.~~state.tx.us~~texas.gov.

§10.1104. Audit Requirements.

(a) The Auditor must identify the difference in the rent charged for income-restricted residential Units and the estimated maximum market rents that could be charged for those Units without the rent or income restrictions.

(~~a~~b) ~~The Auditor must use the Department's Public Facility Corporation 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 tenant file sample used by the Auditor must contain at least twenty percent (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 primarily be new move-ins but should also include at least ten percent (10%) sample of all the household files that have recertified. For Developments that are leasing up and not yet fully occupied, the percentages reflected in this paragraph should be applied to all occupied Restricted Units.

(c~~b~~) The Auditor will ensure Development meets the following requirements and will identify any deficiencies found in the report:

(1) The Development has a properly recorded Regulatory Agreement with an initial minimum 10-year term.

(2) For newly constructed Developments:

(A) At least ten percent (10%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) Area Median Income (AMI), adjusted for household size, as established by HUD;

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD.

(3) For occupied Developments acquired by the PFC:

(A) At least twenty-five percent (25%) of the units in the Development are reserved for, or occupied by, households at or below sixty percent (60%) AMI, adjusted for household size, established by HUD; and

(B) At least an additional forty percent (40%) of the units in the Development are reserved for, or occupied by, households at or below eighty percent (80%) AMI, adjusted for household size, as established by HUD; or

(C) The Development meets the household income restrictions set forth in §10.1104(B); and

(D) The Operator expends at least fifteen percent (15%) of the gross cost of the Development, as shown in the settlement statement, on rehabilitating, renovating, reconstructing, or repairing, the Development, with such activities commencing no later than the first anniversary of the date of acquisition, and concluding no later than the third anniversary of the date of acquisition.

(4) Monthly rent for Restricted Units may not exceed thirty percent (30%) of the imputed household income limitation for the unit, adjusted for ~~an imputed family size of one person per bedroom plus one person~~ family size, as determined by HUD. To determine the adjustment for family size, the Auditor will defer to the Development's Regulatory Agreement and/or other operative document. In the event that the adjustment for family size is unclear, it is the responsibility of the PFC User to provide the Auditor support that the manner in which the adjustment was applied is acceptable by the PFC. 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 the immediately preceding sentence, the household may be required to pay the difference between the payment standard and the monthly rent.

(5) The percentage of Restricted Units in each Unit Type in the Development, must be the same or greater percentage as the percentage of each Unit Type of units that are not Restricted Units in the Development.

(6) Occupants of Restricted Units are required to recertify at the time of the renewal of a lease agreement, the income of the household using a Department-approved Income Certification form. If a household exceeds the income limit at an annual income recertification, the Operator should follow the Available Unit Rule as outlined in Section 42(g)(2)(D) of the Internal Revenue Code, which will be implemented in the following manner~~.~~:

(A) 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 1104(1): Development Regulatory Agreement includes units at 60% and 80%. Unit 101, a one-bedroom Unit Type, is designated as 60%. At the annual income recertification, the household income was determined to exceed 60% but was less than 80% AMI. The unit should be redesignated as 80% 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 60% household. At the time of determination that the unit should be 80%, with proper notification, the household rent may be increased to the new rent designation.

(B) 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 1104(2): Development Regulatory Agreement includes units at 60% and 80%. Unit 201, a two-bedroom Unit Type is designated as 80%. At the annual income recertification, household income was determined to exceed 80% AMI, the highest AMI in the Regulatory Agreement. The next two-bedroom Unit Type in the Development must be reserved for and occupied by an 80% household. Unit 201 retains the 80% status until such time that the Available Unit Rule, as described here, is complied with or violated.

(7) The Development must affirmatively market to households participating in the Housing Choice Voucher program and local housing authorities.

(8) The PFC's website must include information about the Development and its compliance with Section 303.0425, Texas Local Government Code, along with its policies on the acceptance of Housing Choice Voucher holders.

(d~~c~~) The Auditor will review the Development's form of tenant lease and leasing polices to ensure the Development meets the following requirements and will report any deficiencies found in the Audit Report:

(1) Public Facility User cannot refuse to rent to an individual or family solely because the individual or family participates in a Housing Choice Voucher program.

(2) Public Facility User cannot require a minimum income standard for families participating in a Housing Choice Voucher program that exceeds two hundred and fifty percent (250%) of the tenant portion of rent.

(3) Each residential lease agreement for a Restricted Unit must provide the following:

(A) 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;

(B) The landlord may only choose to not renew the lease if the tenant is in material noncompliance with the lease, including nonpayment of rent; 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.

(C) To non-renew a lease, the landlord must provide, at minimum, a thirty (30)-day written notice of non-renewal to the tenant.

(D) Tenants may not waive these protections in a lease or lease addendum.

(e~~d~~) For the Rent Reduction calculation for the second, third, and fourth years after the date of acquisition by the Public Facility Corporation, it is the sole responsibility of the PFC User to ~~For occupied Developments acquired by a Public Facility Corporation, the Audit Report must~~ calculate the annual savings to households living in Restricted Units (when compared to the annual rental income that would have been collected on those Restricted Units if they were charged market rate).~~.~~

(1) Market rate will be determined as the highest rent charged for the same Unit Type at the Development~~;~~. ~~f~~For Developments where all of the Units are Restricted Units, the PFC User must provide evidence of reasonable comparable maximum market rents, which may be based on market studies, leasing surveys, Fair Market Rent as published by HUD, or other methods acceptable to the Department. ~~that do not have market rate units the Auditor must submit a~~

~~proposed reasonable methodology for determining market rent. The calculated savings is required for exemption eligibility after the first anniversary of the acquisition of the Development.~~

(2) Total savings for rent-restricted households must be no less than sixty percent (60%) of the estimated amount of the annual ad-valorem taxes that would be imposed on the Development without an exemption.

(f~~e~~) 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.

§10.1105. Income and Rent Requirements.

(a) 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 further described in the HUD Handbook 4350.3, as amended from time to time.

(b) For purposes of determining income under this subsection, payment under section 403 of title 37, United States Code, as basic pay allowance for housing shall be disregarded with respect to any qualified building.

(1) The term "qualified building" means any building located:

(A) 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

(B) in any county adjacent to a county described in subparagraph (A) of this paragraph.

(2) 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.

(~~b~~c) Income and rent limits will be derived from data released by HUD.

(~~c~~d) The income and rent limits specified in the Regulatory Agreement will be used to determine if a household's income and rent is restricted.

(e) To document compliance, PFC User must maintain sufficient documentation to support income eligibility of households which includes an application that screens for all includable sources of income and assets, firsthand or third-party documentation of income and assets, and an Income Certification form signed by all adults in the household.

§10.1107. Options for Review.

(a) The Public Facility 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.

(b) During any applicable corrective action period, ~~T~~the Public Facility 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 60-day corrective action period. ~~request to meet with a Compliance Director or Manager at the Department.~~ The Public Facility User and Auditor, as applicable, must provide all documentation requested by the Department within ~~three~~ ten calendar days prior to the meeting.

(c) A Public Facility 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).