

Attachment A: Preamble and adoption of amendments of 10 TAC Subchapter I, §10.1103 Public Facilities Corporation Compliance Monitoring

The Texas Department of Housing and Community Affairs (the Department) proposes adoption of amendments to 10 TAC Subchapter I, §10.1103 Public Facility Corporation Compliance Monitoring. The purpose of the adoption of amendments is to provide compliance with Tex. Gov't Code §2306.053. The purpose of the rule is to codify requirements on which Public Facility Corporation multifamily residential developments are required to submit annual audit reports to the Department by June 1 of each year.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it is necessary to implement legislation with HB 2071 (88th Regular Legislature). 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, Executive Director, has determined that, for the first five years the proposed new rule does not create or eliminate a government program:

1. This adopted amendment to the rule provides for an assurance that properties created by a Public Facility Corporation must annually submit an Audit Report to the Department.
2. The adopted amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full-time employees through 2025.
3. The adopted amendment to the rule does not require additional future legislative appropriations.
4. The adopted amendment to the rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The adopted amendment to the rule will create new regulations; which was created and codified because of HB 2071.
6. The adopted amendment to the rule will not repeal an existing regulation; but will expand the existing regulation on this monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071. The Department must adopt rules to codify monitoring applicability.
7. The adopted amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit report to the Department.
8. The adopted amendment to the rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this adopted amendment to the rule, has attempted to reduce any adverse economic effect on small or micro-businesses or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. The rule relates to the procedures for Public Facilities Corporations. Other than in the case of a small or micro-business that is a PFC Operator or Sponsor submitting an audit report to the Department, no small or micro-business are subject to the rule. It is estimated that there may be 200 or less small or micro-businesses that may submit an audit report and be subject to the rule. For those entities, the adopted amendment provides clear expectations for entities that are subject to the rule to submit annual audit reports as required and does not result in a negative impact for those small or micro businesses. There are likely to be some rural communities subject to the new rule; however, because the Department does not know the number of PFC developments in these areas, it cannot be estimated how many may be impacted. The PFC Operators or Sponsors are required to submit annual audit reports to the Department. There is no fee collected by the Department for the review of PFC annual audit reports.
3. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities because it applies to all Public Facility Corporation multifamily residential developments regardless when approved.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the adopted amendment to the rule has no impact on local employment because the rule only addresses the requirement for PFC Operators and/or Sponsors to submit annual audit reports to the Department; therefore, no local employment impact statement is required to be prepared for the adopted amendment to the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on employment in each geographic region affected by this new rule..." Considering that the adopted amendment to the rule only provides requirements for a PFC Operator and/or Sponsor to submit an annual audit report to the Department, there are no "probable" effects of the adopted amendment to the rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the adopted amendment to the rule will be to codify requirements for PFC multifamily residential developments to submit annual audit reports to the Department. There will be an economic cost to any individuals required to comply with the adopted amendment because they are required to hire an independent auditor to complete the annual audits. It is estimated the cost per annual PFC audit report is between \$6,000 to \$8,000. There is no additional cost to the PFC Operator or Sponsor to submit the annual audit to the Department, as the Department does not collect a fee to review PFC audit reports.

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 adopted amendment to the rule is in

effect, enforcing or administering the adopted amendment to the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule only relates to the requirements for PFC Operators and/ or Sponsors to submit annual audit reports.

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

SUMMARY OF PUBLIC COMMENT. The public comment was accepted from August 9, 2024, through September 9, 2024. Comment was received from twenty-four commenters. Comments regarding the proposed amendment were accepted in writing and by e-mail with comments received from:

1. Alan Hassenflu, Chair, Houston Region Business Coalition
2. Nick Walsh, Vice President of Development, the NRP Group
3. Ben Martin, Research Director, Texas Housers
4. Erick Waller, President of NRP Management, LLC
5. Sandy Hoy, Vice President & General Counsel, Texas Apartment Association
6. Mark Jensen, Vice President, Weston Urban
7. Darren W. Smith, Managing Member, AUXANO Development, LLC
8. Daniel L. Smith, Managing Director, Ojala Partners
9. Cynthia L. Bast, Locke Lord, LLP
10. Dave Holland, Executive Director, Provident Realty Advisors
11. Shera Eichler, Director, Texans for Workforce Housing
12. Brian Alef, Founder & CEO, Town Companies,
13. Trey Embrey, President & Chief Executive Officer, Embrey
14. Kevin Cherry, Cherry Petersen Albert
15. Sara Black, oppressed renter, Austin/Travis County
16. David M Adleman, Principal of AREA Real Estate LLC
17. Paul Ahls, Senior Vice President, Starwood Capital Group
18. John Jeter, Post Real Estate Group
19. Jessica Antoniades, Vice President & Assistant Secretary, Fairfield
20. Pete Alanis, Executive Director, San Antonio Housing Trust
21. Jessica Kuehne, Director of Asset Management, San Antonio Housing Trust Foundation

22. Timothy Alcott, Executive Vice President, Development and General Counsel, Opportunity Home

23. Barry J. Palmer, Director, Coats Rose

24. Miller Sylvan, Senior Vice President, JPI Regional Development Partner

Rule Section §10.1103:

Comment Summary: Commenters 1, 3, and 15 strongly support the proposed amendment to the rule and believe the language in HB 2071 supports these changes.

Commenters 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 have strong concerns that the proposed rule change is an unreasonable interpretation of the plain language and context in Chapter 303 Tex. Local Gov't Code and HB 2071. They feel the Department has misinterpreted HB 2071 and has undermined the intent of the legislation.

Commenter 2 requests that the Department withdraw the proposed changes and maintain the current rule because the plain language reading demonstrates that the new provisions in Sections 303.0421, 303.0425, and 303.0426 apply solely to new construction approved or acquisitions completed after June 18, 2023.

Commenter 4 expresses concern that the rule would subject affordable housing developments to undue scrutiny, increased cost during trying economic times and a variety of other issues like the lack of current auditing resources for this program with only a handful of approved auditors for hundreds of developments.

Commenters 8 and 12 echo Commenter 4's concerns above but also see the new proposed rule as having other major impacts on developments and residents. The concerns are that the publication of these annual reports to the county appraisal districts and to the Department's website, creates undue scrutiny and the potential for Nimbyism that may affect the broader mission of providing affordable housing.

Commenters 2, 4, 6, 8, 10, 12, 13, 16, 17, 19, and 24 have additional concerns about the administrative and unanticipated cost burden for existing Public Facility Corporation developments to complete the requested audit by the December 1, 2024, deadline.

Commenter 8 went on to state that requiring PFC properties approved prior to June 18, 2023, to submit annual audit reports, is adding new expenses that will total hundreds of thousands of dollars over a development's lifetime.

Commenters 2 and 4 also have additional concerns with the structure of the current audit workbook that seems to overlook Regulatory Agreement terms executed prior to June 18, 2023. For instance, many PFC projects initiated prior to June 18, 2023, only needed to reserve 50% of the units for households at or below 80% Area Median Income (AMI), which the current audit workbook does not address. Other areas of concern with the current audit workbook for pre-June 18, 2023, developments is the lack of options for selecting "Not Applicable" (N/A) for audit requirements that are not applicable to these developments. Lastly, Commenters 2 and 4 are

apprehensive that utilizing the current audit workbook for those pre-June 18, 2023, developments could easily lead to inconsistencies and potential misinterpretations. Such misinterpretations could affect property owners and operators, but also auditors, TDHCA, the public and others.

Commenters 4, 8, 9, 11, 12, 14, 20, 22, and 23 are requesting an extension to the December 1, 2024 deadline to allow the participants time to work through implementation issues without imposing undue burden or risk on TDHCA, the PFCs, or the other participants.

Commenters 9, 11, 14, 20, 22, and 23 suggest that if the Department moves forward with the December 1, 2024 deadline, that the information submitted will be for calendar year 2023.

Commenters 2, 6, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, and 24 believe these changes are not supported by the language in HB 2071, and that TDHCA lacks statutory authority; they request that the Department withdraw the proposed rulemaking.

Commenters 9, 11, 14, 20, 22, and 23 have concerns about PFC developments approved prior to June 18, 2023, specifically that some developments have been operational over roughly the last 7 years and will have different affordability requirements, different lease-up requirements, and different enforcement provisions; some may have Regulatory Agreements while others may not. Commenters 9, 11, 14, 20, 22, 23 go on to state that these older PFC developments may lack uniformity in their documentation, and many of the participants may not have prior experience with affordable housing. Meeting the December 1, 2024, deadline would be challenging as third-party auditors may not have the capacity to take on hundreds of audit reports.

Commenter 5 has concerns regarding the audit workbook made available by the Department. The audit workbook requires additional data to be collected from Responsible Parties, which include all PFC governing body contact information, PHA board members contact information and elected official's contact information. In addition, the audit workbook asks about property information regarding utilities, fees, deposits, unit mix, square footage of each floorplan, occupancy information, number of voucher holders, qualification policies, marketing information etc., and believes this exceeds the governing statute and creates an undue financial and administrative burden for PFC Operators. Additionally, requesting this extra data requires extensive time to collect and complete the audit workbook. Due to the increased time required for the data collection and data entry, the average cost of a compliance audit is estimated to be \$8,000 or more per year. The compliance audit fee is higher than a standard audit, and is an unexpected expense for 2024. Commenter 5 also goes on to say, that if the additional data is only being collected for informational purposes, it should be optional and should be allowed to be provided to the Department in the form of a questionnaire directly from the PFC Operator. Commenter 5 also requested that the Audit Report as defined in §10.1102(1) be accepted in other formats. Also, they recommend that the term "Auditor" defined in §10.1102(2) be expanded to include not only an individual, but companies and firms to help broaden the options on who PFC Operators can engage with to conduct compliance audits to ensure large portfolios can complete them timely. It is strongly suggested that the Department extend the reporting

deadline to start with audit report due June 1, 2025, so that PFC developments are not having to report twice in a six-month period.

Staff Response: Staff agrees with Commenters 1, 3, and 15 in their support of the rule change.

Staff disagrees that the proposed rule change contradicts HB 2071 and believes that these costs and administrative actions have not been unforeseen. HB 2071 and Section 303.0421(c), Tex. Local Gov't Code, specifically require that existing PFC developments be required to comply and submit an annual audit.

Section 10(d) of HB 2071 states:

Notwithstanding any other provisions of this section: (1)Section 303.0426, Local Government Code, as added by this Act, applies to all multifamily residential developments to which Section 303.0421 applies and with respect to which an exemption is sought or claimed under Section 303.042(c); and (2)the initial audit report required to be submitted under Section 303.0426(b), Local Government Code, as added by the Act, for a multifamily residential development that was approved or acquired by a public facility corporation before the effective date of the Act must be submitted by the later of: (A)the date established by Section 303.0426(f), Local Government Code, as added by this Act; or (B) June 1, 2024.

PFC multifamily residential developments created under Chapter 303 of the Texas Local Government Code, with the exception of those described in Tex. Local Gov't code §303.0421(a)(1)-(4), must annually submit an audit report to the Department. PFC Developments acquired, approved, or occupied prior to the effective date of the Act, as described in Sections 10(b) and (c) of HB2071, are governed by the law in effect on the date the Development was approved by the corporation or sponsor. However, as Section 10(d) applies “notwithstanding any other provision of this section,” all PFC-owned multifamily residential developments 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 Tex. Local Gov't Code §303.0426(b). For those PFC-owned developments that pre-date the Act (as described in Sections 10(b) and (c) of the Act), the Audit Report requirements of Tex. Local Gov't Code §303.0426(b)(1) will be satisfied by simply demonstrating its eligibility to continue under the former law, but the Audit Report 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).

For those developments acquired by a Public Facility Corporation prior to the effective date of the Act, Section 10 (b) and (c) of HB 2071 speak to the applicability of sections 303.0421 and 303.0425 and restrict the need to be in compliance with Section 303.0425 new statutory provisions.

Therefore, all Public Facility Corporation approved developments must annually submit an audit report that includes 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 in compliance with Sections 303.0421 and 303.0425. The Department has created a new audit workbook for pre-June 18, 2023, developments, and has made it available on the Department's website.

In addition, the Department has extended the deadline to the December 15, 2024. The deadline is a cursory extension for those PFC developments that did not report by June 1, 2024.

The Department is required to publish summary of audits in accordance with HB 2071 and make them available on TDHCA's website. The Department deems that making the monitoring reports available on TDHCA's website and providing them to county appraisal districts is necessary to be transparent in this monitoring activity to the public and stakeholders. These monitoring reports are subject to public information requests and would be made available upon request by any person or entity.

The Department has been tasked through HB 2071 to monitor PFC developments regardless of when approved and has no oversight of the cost of a third party auditor. The PFC Operator has the ability to choose their third-party auditor and negotiate the price of an audit. Further, the auditor list provided on the Department's Public Facility Corporation website is not an exclusive auditor list. The audit report may be submitted by any auditor who meets the qualifications outlined in §10.1103(6).

TDHCA Compliance Division has numerous years of experience monitoring affordable housing that often has multiple layers of different programs, affordability periods, and income/rent requirements. The Compliance Division has the capacity and knowledge to monitor third-party audit reports for PFC developments regardless of when they were approved. In addition, the Compliance Division, as needed will provide written technical assistance in its monitoring letters to help enhance and strengthen PFC compliance obligations. The Department agrees that reports submitted in 2024, should be reporting for calendar year 2023, while reports due June 1, 2025, should be reporting for calendar year 2024.

Staff appreciates the comments regarding the audit workbook; however, a majority of the information being collected is required statutorily. For instance, in accordance with HB 2071, §303.0426(c)(2), TDHCA must issue a copy of the report *"to a public facility user that has an interest in a development that is subject of an audit, the comptroller, the applicable corporation, the governing body of the corporation's sponsor, and, if the corporation's sponsor is a housing authority, the elected officials who appointed the housing authority's governing board."* Per §303.0425 the Department is required to monitor specific requirements for unit mix, rent, housing choice voucher and tenant protections, specific marketing requirements and qualification polices as it relates to the housing choice voucher holders. Department staff cannot appropriately monitor a PFC development without collection of the required information. The Department is collecting additional information on utilities, fees, and deposits, which takes very little time for an auditor to determine and complete the basic questions in the audit workbook. The only non-required information the Department is collecting on is utilities, fees, and deposits. This information is being collected in the interest of the Department for tracking purposes and the information is optional to provide. The Department has a very short timeframe of forty-five

days to review audit reports and provide a response and allowing other formats to be submitted would create a substantial burden on staff. Due to time constraints, staff needs the audit format to be consistent to ensure all monitoring report deadlines are completed on time. Department staff will update the definition of “Auditor” as suggested in the Public Facilities Corporation Monitoring Rule the next time that section of the rule is made available for public comment. The December 15, 2024, deadline is a cursory extension granted by the Department for those PFC developments that did not report by the June 1, 2024, deadline. The Department is statutorily required to monitor all PFC developments starting June 1, 2024.

Additional Comments and Concerns received:

Comment Summary: Commenter 7 is requesting that the Department acknowledge that developments that originated before HB 2071 will be reviewed per the current Regulatory Agreement. Commenter 7 goes on to describe how income limits should be calculated in the absence of an income definition in a Regulatory Agreement and that the Department should confirm that utility allowance and other charges are not included in the definition of rent. In addition, the TDHCA Income Certification form should be required for PFC developments approved prior to June 18, 2023.

Commenters 4, 9, 11, 14, 20, 21, 22, and 23 had many suggested changes for the audit workbook. Commenters 9, 11, 14, 22, and 23 also included suggestions for the TDHCA’s PFC Income Certification form.

Commenter 18 submitted comments requesting that 10 TAC §10.1104 be modified to reflect the different audit requirements for regulatory agreements of PFC developments that were approved prior June 18, 2023. Commenter 18 has the following specific concerns:

1. The inclusion of fees and other charges when determining rent,
2. The requirement for verifications of assets when determining income for a qualified household,
3. The review of one-time fee and deposits amounts, and
4. The percentage of units set aside in each unit type and the requirement of rent savings for the property must be equal to or exceed 60% of the tax savings.

Commenter 18 has also suggested for Regulatory Agreements in place prior to June 18, 2023, the rule should allow for the reservations of units to be occupied by income-qualified tenants to count towards the compliance threshold, and should allow developments with Regulatory Agreements to use those in determining program compliance requirements.

Commenters 20 and 21 seek clarification on the Public Facilities Corporation Monitoring Rule and the audit workbook. Specifically looking for the Department to expand on the definition of who the PFC’s Responsibly Parties are and what role they play in the PFC ownership and sponsor structure. Commenters 20 and 21 also ask what is an equivalent certification to the Certified Occupancy Specialist (COS), what business credentials and qualifications the Department requires for an independent auditor, how a vendor would get on the auditor’s list and why the

Department is requiring the HUD income and rent limits. They are also seeking clarification on how to initiate the Options for Review in 10 TAC §10.1107 and what the process is. Commenter 21 also asked what if a PFC development is not using the Income Certification form as required in 10 TAC §10.1104(b)(6). Commenters 20 and 21 also suggested the implementation of an “Affidavit or Ownership and no affiliation statement” for an independent auditor. They are also seeking information on what utilities the PFC Operator pay and how to complete Tab 7 on the audit workbook. Commenter 21 indicates that Tab 7 is problematic and only onsite staff or management will be able to complete it without detailed instructions or guidance. They would also like to know if the Department is requiring proof of marketing, for copies of the Income Certification to be submitted with the audit workbook.

Staff Response: Staff confirms that all PFC developments will be monitored in accordance with their Regulatory Agreement regardless of when the PFC was approved. In addition, for PFC developments which were approved before the effective date of June 18, 2023, they will be monitored in accordance with the law in effect on the date the development was approved by the Corporation or Sponsor. PFC developments approved on or after June 18, 2023, will be monitored under all new statutory provisions outlined in HB 2071. Staff disagrees with Commenter 7 regarding the Income Certification form; this form should be implemented when certifying and recertifying households as required in the PFC Compliance Monitoring Rule in §10.1104(b)(6).

Staff agrees that the current workbook contains areas that would not apply to the existing Public Facility Corporation (PFC) developments and appreciates the feedback on the audit workbook. Staff will consider all the suggestions as it updates the workbook for the 2025 audit cycle.

Staff agrees with the suggestions from Commenters 9, 11, 14, 20, 22, and 23 and will review and implement changes to the TDHCA Income Certification form.

Staff will take into consideration the concerns outlined by Commenter 18 during future rule revisions, as Section §10.1104 Audit Requirements is currently not out for public comment. Staff will monitor for requirements outlined in the developments specific Regulatory Agreement, HB 2071, and Public Facilities Corporation Monitoring Rule.

Fees and other charges are not considered rent for PFC developments. Assets are a part of determining a household’s gross annual income and should be verified by the development using the Department’s Assets Certification of Net Family Assets form; or verified using third party or firsthand documentation. One-time fee and deposits amounts are optional information to provide to the Department by a PFC Operator and/or Sponsor. PFC properties approved after June 18, 2023, must meet a specific unit mix requirement per HB 2071 and the sixty percent (60%) rent savings is only applicable to properties that are acquired, and not for new construction.

Department staff does monitor compliance with Regulatory Agreements.

10 TAC §10.1101 requires the Department to communicate with the Responsible Parties. Responsible parties are further described in HB 2071. It is the PFC Operator’s responsibility to

provide all Responsible Parties contact information to the independent auditor so the audit workbook may be accurately completed. The Department will rely on the information provided on the audit workbook completed by the auditor. An equivalent certification to the COS is the Certified Professional of Occupancy (CPO) provided through The National Affordable Housing Management Association (NAHMA). The Auditor is an independent Auditor or compliance expert with an established history of providing similar audits on housing compliance matters and qualifications must include experience auditing housing compliance, a current COS certification or an equivalent certification and resume. These Auditor qualifications must be submitted with each Audit report. An interested person/entity may request to be listed on the list of Auditors on the website by contacting Department staff listed on the PFC website. The development is not limited to only the income and rent limits published by HUD, but to the limits specified in the PFC development's Regulatory Agreement per 10 TAC §10.1105(b) and (c). Per 10 TAC §10.1104(b)(6), PFC developments should implement the Department approved Income Certification form moving forward. The Department will consider Commenter suggestion for the implementation of an "Affidavit or Ownership and no affiliation statement" the next time the audit workbook is updated. Tab 7 of the audit workbook should be completed by the Auditor who obtains the information from the PFC Operator, Sponsor, Owner and / or Property staff, which should readily have this property information available. The Department is not requiring proof of marketing or copies of Income Certification forms, as this is the independent Auditor's role to obtain, review and report to the Department. The independent Auditor will complete the audit workbook's relevant sections after reviewing required documentation, website, and household files.

Chapter 10, Subchapter I Public Facility Corporation Compliance Monitoring

§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) to be grandfathered under previous law pursuant to the criteria established by~~ 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. 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) 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) 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. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. 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.

(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 must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.