

**RULES
OF
THE TENNESSEE HOUSING DEVELOPMENT AGENCY
EXECUTIVE DIVISION**

**CHAPTER 0770-01-05
HOUSING CHOICE VOUCHER PROGRAM**

TABLE OF CONTENTS

0770-01-05-.01	General	0770-01-05-.24	Owner Responsibilities (24 C.F.R. 982.54(d)(5), (8); 982.153(b)(1); 982.306; 982.302(a)(8); 982.453)
0770-01-05-.02	Administrative Plan Purpose	0770-01-05-.25	Other Change of Unit/Portability (24 C.F.R. 982.354)
0770-01-05-.03	Objective of the Program	0770-01-05-.26	Annual and Interim Activities (24 C.F.R. 982.516, 982.405)
0770-01-05-.04	Basic Structure of the Program	0770-01-05-.27	Terminations (24 C.F.R. 982.552(b), 982.310, 982.455, and 982.354)
0770-01-05-.05	Conflict of Interest	0770-01-05-.28	Complaints, Conferences, Appeals (24 C.F.R. 982.54(d)(2), (13); 982.554; 982.555(a-f))
0770-01-05-.06	Application Process	0770-01-05-.29	Notice and Mailings Rules
0770-01-05-.07	Notice of Address Change	0770-01-05-.30	Fair Housing Compliance, Disability Accommodation, and the Violence Against Women Act (VAWA)
0770-01-05-.08	Special, Non-Waiting List Admission (24 C.F.R. 982.202(a), 203(a), (4))	0770-01-05-.31	Requests for Information Rules
0770-01-05-.09	Prohibited Selection Criteria (24 C.F.R. 982.202)	0770-01-05-.32	Resident Advisory Board (24 C.F.R. 964)
0770-01-05-.10	Eligibility Requirements	0770-01-05-.33	Special Housing and Housing Conversion Actions
0770-01-05-.11	Family Composition (24 C.F.R. 5.403, 982.201)	0770-01-05-.34	Homeownership Voucher Option (24 C.F.R. 982.625)
0770-01-05-.12	Income Limits (24 C.F.R. 982.201, 982.353)	0770-01-05-.35	
0770-01-05-.13	Citizenship (24 C.F.R. 5(e))	through	
0770-01-05-.14	Social Security Number Provision	0770-01-05-.45	Repealed
0770-01-05-.15	Student Status	0770-01-05-.46	Project-Based Voucher Program (24 C.F.R. 983)
0770-01-05-.16	Other Eligibility Criteria		
0770-01-05-.17	Eligibility Process		
0770-01-05-.18	Verification Process (24 C.F.R. 982.516)		
0770-01-05-.19	Income and Asset Determination (24 C.F.R. 5.609)		
0770-01-05-.20	Obligations of Participants (24 C.F.R. 982.551)		
0770-01-05-.21	Determination of Eligibility		
0770-01-05-.22	Lease-Up Process		
0770-01-05-.23	Housing Quality Standards (HQS) – Inspections (24 C.F.R. 982.305, 24 C.F.R. 982.4, 24 C.F.R. 982.401, 24 C.F.R. 982.405, 24 C.F.R. 982.407)		

0770-01-05-.01 GENERAL. These rules prescribe the policies, procedures, and authorization for the administration of the Housing Choice Voucher (HCV) Program by the Tennessee Housing Development Agency (“THDA”) and together form and promulgate the Administrative Plan that the THDA is required to prepare and adopt pursuant to 24 C.F.R. 982.54.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.02 ADMINISTRATIVE PLAN PURPOSE. This Administrative Plan states policy on matters for which the THDA has discretion to establish local policies in compliance with the program rules and regulations mandated by the Department of Housing and Urban Development (HUD) and covers requisite subjects as necessitated by state and federal law.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule

(Rule 0770-01-05-.02, continued)

filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.03 OBJECTIVE OF THE PROGRAM. The program is designed to assist low-income families of all ethnic backgrounds in obtaining affordable, decent, safe, and sanitary rental housing units of their choice that meet Housing Quality Standards (HQS), while promoting fair housing and providing an incentive to private-property owners to rent to low-income families at reasonable rents through subsidy vouchers.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.04 BASIC STRUCTURE OF THE PROGRAM.

- (1) HUD pays rental subsidies through the HCV Program so that decent, safe, and sanitary housing is affordable for eligible families. HUD provides housing assistance funds and administration funds to public housing agencies (PHAs), state or local government entities like the THDA, which generally administer the program.
- (2) Families select and rent suitable units subject to the PHA's approval of the unit and tenancy, the unit meeting program housing quality standards (HQS), and the reasonableness of the rent.
- (3) A unit may be located anywhere in the United States, in the jurisdiction of a PHA that runs a voucher program.
- (4) Upon the PHA's approval of the unit and tenancy, the PHA enters into a housing assistance payment (HAP) contract with the owner of the unit to make rental subsidy payments on the family's behalf. The amount of the subsidy is determined by a formula.
- (5) If the family moves out of the leased unit, the HAP contract between the PHA and owner terminates. However, the family may receive continued assistance and move to another unit if the family is in compliance with the requirements of the program.
- (6) Housing Choice Voucher Program Process. The process consists of the Application Process (see 0770-01-05-.06), Eligibility Requirements (see 0770-01-05-.10), Verification Process (see 0770-01-05-.18), Determination of Eligibility (see 0770-01-05-.21), Lease-Up Process (see 0770-01-05-.22), Moving/Portability (see 0770-01-05-.25), Annual Activities (see 0770-01-05-.26(1)), Interim Activities (see 0770-01-05-.26(2)), Terminations (see 0770-01-05-.27), and Case Conferences and Appeals (see 0770-01-05-.28).

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.05 CONFLICT OF INTEREST.

- (1) No present or former member or officer of the THDA or any subcontract agency, no employee of the THDA or any subcontract agency who formulates policy or influences decisions with respect to the Section 8 Programs, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to the Section 8 Programs may have any direct or indirect interest in a housing

(Rule 0770-01-05-.05, continued)

assistance payment contract or any proceeds or benefits arising from such a contract as a participant or owner during this person's tenure or for one year thereafter.

- (2) No member of or delegate to the U.S. Congress will be accepted as a participant or owner in the programs or allowed to receive any benefits that may arise from it.
- (3) The THDA reserves the right to request a waiver of the above requirement from HUD if the circumstances indicate that a waiver is warranted.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.06 APPLICATION PROCESS.

- (1) Pre-Application Stage.
 - (a) Each person who expresses a desire to participate in the program is given an equal opportunity to apply for assistance, unless the taking of pre-applications has been suspended.
 - (b) Due to the high volume of applicants for the HCV Program, the THDA is often unable to offer immediate assistance and may at times maintain an applicant waiting list through pre-application procedures or suspend the taking of pre-applications altogether. See 0770-01-05-.06(7)(d).
 - (c) However, an applicant does not have any right or entitlement to be listed on a waiting list, to any particular position on a waiting list, or to admission to the HCV Program. 24 C.F.R. 982.202.
 - (d) Pre-application. The purpose of the pre-application is to have available waiting lists of applicants per county for which applications are being accepted.
 1. The pre-application has less information than a full application, but enough information to determine placement on a waiting list and preliminary eligibility. The information on the pre-application is not verified on a routine basis. 24 C.F.R. 982.201-206.
 - (e) The THDA maintains its information regarding open and closed waiting lists on its website, www.THDA.org.
 - (f) A household wishing to apply for the HCV Program must complete a pre-application form at www.THDA.org for any open waiting list.
 - (g) Any household member may complete the online pre-application or the household may elect to have another person complete the application on the household's behalf.
 - (h) Once an applicant household has applied, the applicant household may only have one active application per county at any time.
 1. If an applicant applies to a county where they already have an active application, the most recent application will not be processed or added to the waiting list.
 2. An applicant is considered to have an active application until housed or denied assistance.

(Rule 0770-01-05-.06, continued)

3. A participant currently housed with a voucher through the THDA may not reapply and receive assistance under a concurrent voucher. The subsequent application will be denied. The proper procedure would be to request to move the existing voucher through the THDA. See Moving/Portability 0770-01-05-.25.
- (2) Disability Accommodation. A person with a disability may request a special accommodation when applying by contacting the local THDA field office that manages the selected waiting list and scheduling an appointment. Also see 0770-01-05-.30 on Disability.
 - (a) The THDA may choose to accept a written pre-application, assist the applicant with completing the online pre-application process at a THDA computer, or other alternative method determined by the THDA to be an accommodation for an individual's disabling condition.
- (3) Natural Disaster Preference. The THDA may assist applicants who qualify for the natural disaster preference and who have completed an online application at a local THDA field office. Although the regular waitlist may be closed, the THDA may issue vouchers during a natural disaster, if funding is available. See 0770-01-05-.06(7)(g)3.
- (4) Confirmation Page. After the applicant submits the online pre-application, the system directs the applicant to print a confirmation page of the pre-application.
 - (a) The confirmation page includes the date and time the pre-application was submitted.
 - (b) It also informs the applicant that the applicant must report any address changes upon occurrence in order to remain on the waiting list.
 - (c) If the applicant completes a written pre-application as a reasonable accommodation or a natural disaster preference, a confirmation letter will be mailed to the applicant at the address listed on the pre-application.
- (5) The pre-application is only maintained electronically in the tenant file record within the HCV Program software system.
- (6) Selection of Applicants (24 C.F.R. 982.202).
 - (a) The THDA may select applicants for participation in the program by a waiting list admission or by a special admission.
- (7) Waiting List Admission Process (24 C.F.R. 982.204).
 - (a) General.
 1. During an open-enrollment period for a particular county, when there are more applicants than there are available vouchers for that county, a waiting list will be established of applicants that appear to be eligible.
 2. Under 24 C.F.R. 982.202, there is no right or entitlement afforded to an applicant to be listed on a waiting list, to any particular position on a waiting list, or to be admitted to the HCV Program.
 3. Applicants under Other Housing Programs. An occupant of public housing, or any other housing program, may apply to participate in the HCV Program, but will not receive a preference based on their participation in the other housing

(Rule 0770-01-05-.06, continued)

program, and will go through the regular waiting list process like any other applicant.

(b) Public Notice.

1. When the THDA opens a waiting list to accept new pre-applications online, public notice will be given to alert families that they may apply for the HCV Program.
2. The public notice will be given per publication in a local newspaper of general circulation, on the THDA's website, or other suitable means.
3. The public notice will notify potential applicants where, when, and how to apply, give the THDA's website address, include a brief description of the HCV Program, provide information for requesting a reasonable accommodation for a disability in submitting the pre-application, comply with Fair Housing requirements, and state any limitations on who may apply for available slots.

(c) Maintenance. The waiting list is maintained in the HCV Program software system and includes:

1. The date and time the pre-application was submitted.
2. County specification.
3. Name, Social Security number, race, and gender of the head of household.
4. Family unit size (voucher size) (24 C.F.R. 982.204(b)).
5. Annual Income and Assets at the time of pre-application submission.
6. Current residential/physical address, including zip code, of the head of household.
7. Mailing address of the head of household, if different than the residential/physical address.
8. Local Preference Specification.
9. Position on the waiting list.
10. Program Status (eligible, ineligible, housed).

(d) Closing a Waiting List - Suspension of Pre-application Acceptance.

1. Once a waiting list contains more applicants than the THDA determines may be served within the next twelve-month (12) time period, the waiting list will be closed, will remain closed, and the acceptance of pre-applications will be suspended until the number of applicants on the list is reduced and/or vouchers are available for issuance.
2. See the exception to the suspension of pre-applications acceptance during a closed enrollment period under Preferences below.

(e) Updating/Purging a Waiting List.

(Rule 0770-01-05-.06, continued)

1. The THDA will update a waiting list by issuing purge notices to applicants as needed in order to ensure that a waiting list is current and accurate.
 2. The THDA will issue a purge notice to all applicants' last given address requesting information regarding an applicant's continued interest in maintaining a place on a particular waiting list.
 3. The purge notice will include a deadline date by which applicants must inform the THDA of their continued interest by returning the purge notice to the appropriate THDA field office within fourteen (14) calendar days of the date of the notice.
 4. An applicant will be removed from the waiting list(s) if:
 - (i) The applicant requests in writing to be removed from the waiting list(s);
 - (ii) The applicant is deceased; or
 - (iii) The applicant fails to respond to a purge notice within 14 calendar days of the notice.
 - (I) Failure to Update Address. The applicant is required to notify the THDA in writing of any address changes. If the applicant does not notify THDA in writing of any address change, and the post office returns the purge notice to THDA as undeliverable, the applicant will be removed, without further notice, from all active waiting lists. If a discrepancy exists, the applicant must prove that a change of address was submitted to the THDA prior to the postmark date of the purge notice.
 - (II) Failure to Return the purge notice to the THDA by the Deadline.
 - I. The purge notice must be returned to the THDA within 14 calendar days of the date of the purge notice. If the purge notice is returned by mail, it must be postmarked no later than 14 calendar days from the date of the purge notice. The THDA will not accept any responsibility for mail delays.
 - II. The applicant shall bear the burden of proof where the applicant claims that the notice was not received due to circumstances beyond the applicant's control. Sufficient proof includes, but is not limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the applicant's address that there have been problems with delivery that might have caused the notice not to be properly delivered.
 5. Applicants with Disabilities. An applicant with a disability that is removed from the waiting list(s) for failure to respond may inform the THDA that the non-response was due to the disability and request to be reinstated to the former position on the waiting list(s) as a reasonable accommodation. See 0770-01-05-.30.
- (f) Selection of Applicants from a Waiting List.
1. As vouchers become available, the THDA will determine whether there are enough applicants to meet the funding.

(Rule 0770-01-05-.06, continued)

- (i) If there are not enough applicants on a waiting list, then the waiting list will be opened to take pre-applications.
 - (ii) When there are enough applicants on the waiting list, the waiting list is closed and applicants are selected by the date and time the pre-application was submitted and any local preference.
- 2. Lottery Selection. Per HUD guidelines, the THDA may choose to select applicants from a waiting list by a randomized selection lottery. If a randomized selection lottery is utilized, all waiting list applicants will be notified.
- (g) Local Preferences. Under 24 C.F.R. 982.207, the THDA may establish local preferences for the selection of applicants from the waiting list based on local housing needs and priorities, as determined by the THDA. The THDA reserves the right to request any verification necessary to determine preference eligibility.
 - 1. The THDA has adopted the following local preferences and have weighted them as follows:
 - (i) Involuntary Displacement Due to Natural Disaster Preference.
 - (ii) Local In-State Preference.
 - (iii) Elderly or Disabled Families Preference.
 - (iv) Non-Elderly Disabled (NED) Preference.
 - 2. To ensure that pre-applications are weighted properly, applicants will not be selected during an open-enrollment period. A waiting list must be closed and sorted before any applicant is selected.
 - 3. Involuntary Displacement Due to Natural Disaster Preference.
 - (i) Eligibility. Applicant households that have been involuntarily displaced from their primary residence due to a natural disaster (e.g., fire, flood, tornado, etc.), may claim a preference as long as all of the following conditions have been met:
 - (I) The household must not have secured permanent replacement housing at the time of the pre-application;
 - (II) The displacement event must have occurred within six (6) months of the applicant household applying for assistance within the state of Tennessee;
 - (III) The displacement event must have occurred within the past six (6) months; and
 - (IV) There must be major damage to the primary residence caused by the natural disaster that occurred within Tennessee that renders the unit uninhabitable. The preference is not available for minor storm damage, including but not limited to, reparable siding and shingles blown off in a storm.
 - (ii) Verification.

(Rule 0770-01-05-.06, continued)

- (I) The applicant must provide a valid Tennessee Driver License or Tennessee Identification Card;
 - (II) The applicant must demonstrate by proof of ownership, lease, or other documentation, that the damaged unit is the applicant's primary residence; and
 - (III) At the time the pre-application is submitted, the applicant must provide documentation within fourteen (14) calendar days from a third-party source that verifies that the damage to the unit from the natural disaster made the unit uninhabitable.
 - I. The documentation should include the type of damage that made the unit uninhabitable and the date the damage occurred; and
 - II. If the displacement was due to a fire, the applicant must present a fire or damage report from a reputable source (e.g., local fire department, The American Red Cross, etc.) that verifies the fire caused the unit to be uninhabitable, the date the damage occurred, and that no member of the household on the pre-application intentionally caused the fire to occur.
 - (IV) If the THDA does not receive the third-party verification within fourteen (14) calendar days of the date the pre-application is submitted, the pre-application and preference will be denied and the applicant will be placed in the proper order on the waiting list without the preference and may request an informal review for the denial of the preference.
- (iii) Availability of Funding. If funding does not become available within six (6) months from the date of the displacement event, the preference will be denied and the applicant will be placed in the proper order on the waiting list without the preference and may request an informal review for the denial of the preference.
- (iv) Closed Enrollment. Even during periods of closed enrollment, when the acceptance of pre-applications has been suspended, the THDA will accept a handwritten pre-application form from an applicant that claims a natural disaster local preference according to the above procedures and the following:
- (I) If the THDA receives the third-party verification within fourteen (14) calendar days of the date the pre-application is submitted and a subsidy voucher is available, the applicant must complete a Personal Declaration and eligibility will be determined.
 - (II) If the THDA receives the third-party verification within 14 calendar days of the date the pre-application is submitted and a subsidy voucher is not available, the applicant will be placed on the waiting list by preference and date of the pre-application until a voucher is available for a maximum of six (6) months from the date of the displacement event.
 - (III) When the THDA is going to call in applicants from any particular area's waiting list, any applicant with this preference will be called in

(Rule 0770-01-05-.06, continued)

before other applicants on the waiting list, even if the applicant with the natural disaster preference was not listed on the waiting list for that area, and such applicant may be issued a voucher for any THDA area wait list they wish.

- (IV) If funding does not become available within six (6) months from the date of the displacement event, the pre-application will be denied and the applicant will be placed in the proper order on the waiting list without the preference.
 - (V) If the THDA does not receive the third-party verification within 14 calendar days of the date the pre-application is submitted, the pre-application and preference will be denied and the applicant will be placed in the proper order on the waiting list without the preference and may request an informal review for the denial of the preference.
4. In-State Residency Preference. An In-state Residency Preference may be claimed by an applicant on a pre-application when, at the time the pre-application is submitted, the applicant actually lives in the state the pre-application was submitted.
- (i) The residential/physical address entered on the pre-application will be used to determine residency.
 - (ii) If an applicant selects the in-state residency preference and enters a residential/physical and/or mailing address that is not actually local, the THDA will not contact the applicant to verify the preference, but will remove the preference selection and return the applicant to the appropriate position on the waiting list and the applicant may request an informal review for the denial of the preference. Reference Rule 0770-01-05-.28.
 - (l) A post office box address within the county of application is not sufficient proof to verify residency and qualify the family for the local residency preference.
5. Elderly or Disabled Families Preference. An applicant may claim the Elderly or Disabled Families Preference when the applicant's household contains an elderly (sixty-two (62) years of age or older) or disabled head of household or spouse that receives social security, social security disability, or supplemental security income (SSI) from the Social Security Administration (SSA), determined at the time of the eligibility determination.
- (i) A current SSA benefit letter must be provided to THDA. Persons who have applied for SSI, but are not receiving SSI income as of the date of the application, do not qualify for the preference.
6. Non-Elderly Disabled (NED) Preference. Pending availability of funds for this special preference, an applicant may claim the NED Preference when the applicant's household contains a non-elderly person with disabilities (persons who are 18 years or older and less than 62 years of age) who is transitioning out of institutional or other segregated settings, or who is at serious risk of institutionalization. Persons who have applied for the NED preference, must be verified by a Continuum of Care partner and eligible for the HCV program.
- (h) Split Household Waiting List Determination. Applicant households may have a change in a family/household composition due to a legal separation, divorce, etc., which results

(Rule 0770-01-05-.06, continued)

in a split of the household into two otherwise eligible households, where each household wants to retain the current position on the waiting list(s), but only one household unit may retain the position.

1. If the households cannot agree which one should retain the position on the waiting list, unless there is a court determination, the THDA will make the determination considering the following:
 - (i) Which household member applied as head of household?
 - (ii) Which household retains children or disabled or elderly members?
 - (iii) Was domestic violence involved? See § 0770-01-05-.30 for a discussion on the Violence Against Women Act (VAWA).
 - (iv) Were any restrictions or conditions in place at the time the original household applied?
2. The documentation of the above considerations will be the responsibility of the household requesting to retain the waiting list position.
3. The documentation must be provided to the THDA within fourteen calendar (14) days from the date the household notifies the THDA of the change in family/household composition, and if not provided within such timeframe, the THDA will make the decision based on the head of household listed on the pre-application.
 - (i) Staff Responsibility for Waiting Lists. Any manipulation of a waiting list by a THDA employee, other than defined by this Administrative Plan, may result in the termination of the employee.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.07 NOTICE OF ADDRESS CHANGE.

- (1) Applicants and participants must notify the THDA of any address change immediately and in writing upon occurrence of the change.
- (2) Oral requests of an address change will not be accepted, but must be received in writing by the THDA before such request will be accepted.
- (3) An applicant that fails to comply with this requirement risks being removed from the waiting list.
- (4) Once a request for an address change is submitted to the THDA in writing, the address is updated on all waiting lists the applicant is on. The software used to update the waiting lists will notate whether the address change was received by mail, fax, email, or delivery to a THDA field office.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule

(Rule 0770-01-05-.07, continued)

filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.08 SPECIAL, NON-WAITING LIST ADMISSION (24 C.F.R. 982.202(a), 203(a), (4)).

Special admission is admission of an applicant or issuance of a voucher to a participant not on a waiting list or admission of an applicant without any consideration as to the applicant's placement on a waiting list. In the categories listed below, applicant/participants will not go on a waiting list and will be offered an available voucher before a voucher is issued to the next applicant on a THDA waiting list:

- (1) Participating families relocating to a new housing unit;
- (2) Families absorbed under portability;
- (3) Families included in project-based opt outs and conversion actions; and
- (4) Families assisted through HUD disaster programs.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.09 PROHIBITED SELECTION CRITERIA (24 C.F.R. 982.202).

- (1) Where the Family Lives Now. The THDA may not base admission to the program on where an applicant family lives before admission to the program, but the THDA may target assistance for families who live in public housing or other federally assisted housing or adopt residency preferences.
- (2) Where the Family Will Live. The THDA may not base admission to the program on where an applicant family will live, within the geographic region for a particular waiting list, with assistance under the program.
- (3) Family Characteristics. The preference system that the THDA develops may provide a preference for admission of families from the waiting list that have certain characteristics, but admission to the program may not be based on:
 - (a) Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;
 - (b) Discrimination because a family includes children (familial status discrimination);
 - (c) Discrimination because of age, race, color, religion, sex, or national origin;
 - (d) Discrimination because of disability; or
 - (e) Whether a family decides to participate in a family self-sufficiency program.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.10 ELIGIBILITY REQUIREMENTS. All applicants must meet HUD's, as well as the THDA's, criteria for eligibility determinations. The eligibility of the applicant is not verified until the applicant household is selected from the waiting list. 24 C.F.R. 982.201 outlines that only eligible families

(Rule 0770-01-05-.10, continued)

may be admitted to the HCV Program. The THDA applies the requisite eligibility factors of Family Composition (see 0770-01-05-.11), Income Limits (see 0770-01-05-.12), Citizenship (see 0770-01-05-.13), Social Security Number Provision (see 0770-01-05-.14), Student Status (see 0770-01-05-.15), and Other Eligibility Criteria (see 0770-01-05-.16) in determining an applicant or participant's eligibility for the HCV Program.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.11 FAMILY COMPOSITION (24 C.F.R. 5.403, 982.201).

- (1) Definition of Family. An applicant must meet the definition of family as defined by HUD and the THDA in order to be eligible for assistance. Family is generally defined as one or more persons sharing residency, or who intend to share residency, regardless of actual or perceived sexual orientation, gender identity, or marital status, whose income and resources are available to meet the household needs. Family includes, but is not limited to:
 - (a) A Single Person. The person may be elderly, displaced, disabled, near-elderly, or any other single person, if they meet the other eligibility criteria; or
 - (b) A Group of Persons Residing Together:
 1. A family with or without children.
 2. An elderly family, defined as a family whose head, co-head, spouse, or sole member is at least sixty-two (62) years old and may include two or more persons living together who are at least 62 years of age or one or more persons who are at least 62 years old that are living with one or more live-in aides.
 3. A near-elderly family, defined as a family whose head, including co-head, spouse, or sole member is a person who is at least fifty (50) years old, but below the age of sixty-two (62); or two or more persons living together who are at least 50 years old but below the age of 62; or one or more persons who are at least 50 years old but below the age of 62 that are living with one or more live-in aides.
 4. A disabled family, defined as a family whose head, co-head, spouse, or sole member is a person with a disability and may include two or more persons with disabilities living together or one or more persons with disabilities living with one or more live-in aides.
 5. A displaced family, defined as a family in which each member, or whose sole member, is a person displaced by government action or a person whose dwelling has been extensively damaged or destroyed because of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.
 6. The remaining member of a tenant family.
- (2) Family Relationships. Applicants and program participants are required to identify the relationship of each household member to the head of household.
 - (a) Head of Household. The adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

(Rule 0770-01-05-.11, continued)

1. The household may designate any qualified household member as the head of household.
 2. Has the legal capacity to enter into a lease under local/state law or has a conservator that has the legal capacity to enter into a lease under local/state law.
 3. The person who assumes legal and moral responsibility for the household.
 4. Listed on the pre-application as the head and accepts sole responsibility for reporting true and accurate information for the household.
 5. A household may not designate a family member as the head of household solely to qualify the household as an elderly or disabled household.
- (b) Spouse of the Head of Household. The marriage partner of the head of household, equally responsible with the head for the legal and moral responsibility of the household.
1. The term “spouse” does not apply to domestic partners or co-heads.
 2. A spouse never qualifies as a dependent.
- (c) Co-head. An individual, equally responsible with the head of household for the legal and moral responsibility of the household, such as a domestic partner or paramour.
1. A household may have a co-head or a spouse, but not both.
 2. A co-head never qualifies as a dependent.
- (d) Other Adult. A member of the household, excluding foster adults and live-in aides, other than the head, spouse, or co-head, who is eighteen (18) years old or older on the effective date of any action.
- (e) Emancipated Minor.
1. A youth is considered to be an emancipated minor once the age of eighteen (18) is attained.
 2. The marriage of a minor is considered an emancipating event, thereby terminating the responsibility of the parent(s) for the support of the minor.
 3. Generally, graduation from high school is also an emancipating event, thereby terminating the responsibility of the parent(s) for the support of the minor.
- (f) Dependents. A dependent is a family member who is under the age of eighteen (18), or a person of any age who either has a disability or is a full-time student.
1. The head of household, spouse, co-head, foster children/adults, and live-in aides can never be dependents.
 2. Dependents do not need to be related to the head of household.
 3. A child absent because of temporary placement in foster care outside of the home, as evidenced by court order, is considered a member of the family, and therefore considered in determining family size at initial eligibility. However, if the

(Rule 0770-01-05-.11, continued)

- child continues to be absent at any annual certification, then the child will be removed from the household until the court places the child back with the family permanently.
4. Joint Custody of Children. In order for a child to be considered a dependent member of a household, the child must be living, at least fifty-one (51%) percent of the time, with the parent applying for or receiving assistance.
 - (i) Fifty-one percent is defined as at least one hundred eighty-three (183) days of the year and the days do not have to run consecutively.
 - (ii) Only one parent may claim a child under any of the HUD housing programs at one time, even if both parents are seeking or receiving assistance and share joint custody. Therefore, if both parents are trying to claim a child and the 51% rule cannot be determined, the parent whose address is listed in the school or other official record will be allowed to claim the child.
 - (iii) Children subject to a joint custody agreement that live with both parents an equal percent of time, will be considered members of applicant or participant households as long as the other parent is not applying or receiving assistance under any HUD housing program.
 5. Full-Time Student over the Age of Eighteen. A member of the household, other than the head, spouse, co-head, foster child, or foster adult, who is eighteen (18) years of age or older, and carries a subject load that is considered full-time status under the standards and practices of the educational institution the student attends is considered a dependent.
 - (i) Educational institution also includes vocational schools with diploma or certificate programs, as well as degree-granting institutions.
 - (ii) A home-school student must satisfy all applicable state and local laws covering home schooling
- (3) Household. Household is not the same thing as family. Foster Children, Foster Adults, and Live-in Aides may all be considered household members if they are approved by the THDA, but they are not family members. Therefore, they will only be considered in determining subsidy size upon initial eligibility or allowed to be added to the household under the following guidelines, but they are not allotted a dependent allowance.
- (a) Foster Children and Adults.
 1. Foster Child Definition. A member of the household under the age of eighteen (18) or a full-time student that is 18 years or older that is in the legal guardianship of a State, county, or private adoption or foster care agency, yet are cared for by foster parents in the assisted unit, under some kind of short-term or long-term foster care arrangement.
 2. Foster Adult Definition. A member of the household, usually a person with a disability unrelated to any member of the household who is unable to live alone, who is eighteen (18) years of age or older for whom the household provides necessary shelter, care, and protection.
 3. Determination of Subsidy Size. Foster Children and Foster Adults will be considered in the subsidy size if the arrangement is pre-existing at the time of

(Rule 0770-01-05-.11, continued)

approval of initial eligibility to the Program. After initial eligibility, Foster Children and Foster Adults will not be used to determine subsidy size, but may only be added to the household if:

- (i) The family follows the THDA's policies for obtaining approval and adding additional household members; and
 - (ii) The addition of the Foster Child(ren) or Adult(s) will not cause overcrowding of the unit.
- (b) Live-In Aide. According to 24 C.F.R. 982.316, a live-in aide is a person who lives with the elderly, near-elderly, or disabled member(s) of a household.
 - 1. A person must receive approval from the THDA to be designated as a live-in aide by meeting the following conditions:
 - (i) Must be an adult or emancipated minor;
 - (ii) Must be essential to the care and well-being of the elderly, near-elderly, or disabled household member(s), as verified by a knowledgeable healthcare professional;
 - (iii) Would not be living in the household unit, except to provide the essential care;
 - (iv) Must not be obligated for the support of the elderly, near-elderly, or disabled member; and
 - (v) May not be considered the remaining member of a household, but may be changed from a live-in aide to an "Other Adult" during the course of the assistance as long as:
 - (I) The live-in aide is otherwise eligible according to the rules under this plan for additions to the household;
 - (II) The household follows the rules for additions to the household.
 - (III) The change is not for the purpose of attempting to make the live-in aide the remaining member of household. If the THDA discovers that such manipulation has occurred, the household will be terminated from the program. The THDA reserves the right to conduct an audit inspection of the assisted unit to verify compliance as it relates to an additional bedroom allocation.
 - 2. A caregiver may only be defined as a full-time live-in aide if a healthcare provider certifies that care is needed on a full time basis. THDA defines a full-time live-in aide as:
 - (i) Care is needed twelve (12) hours or more per day; or
 - (ii) Care is needed overnight.
 - (iii) If care is needed on full-time basis, the addition of a live-in aide should follow the current bedroom allocation specified by household composition currently outlined in the Administrative Plan. However, THDA may make an accommodation to the voucher size allowing an additional bedroom

(Rule 0770-01-05-.11, continued)

- allocation as a reasonable accommodation for the family based on verified medical need.
- (iv) If care is needed on a part-time basis, no additional bedroom allocation or accommodation of the voucher size will be granted.
- 3. A relative may serve as a live-in aide as long as they qualify according to the above requirements.
- 4. If the person does not qualify as a live-in aide, they may be added as an "Other Adult."
- 5. The THDA may deny or withdraw approval of a person as a live-in aide if such person:
 - (i) Commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program; or
 - (ii) Commits drug-related criminal activity or violent criminal activity; or
 - (iii) Currently owes rent or other amounts to any Public Housing Authority in connection with Section 8 or public housing assistance under the U.S. Housing Act of 1937.
- (4) Multiple Families in the Same Household. Even though it may appear that there are two or more families within the same household (ex. Mother and father with a daughter who also has her own family), all will be treated as one family if they apply as a single household unit.
- (5) Verifications.
 - (a) Legal Identity/Age.
 - 1. Applicants and participants must furnish verification of legal identity and age for each household member. The household member must furnish documents for viewing and copying.
 - 2. A birth certificate or mother's copy from the hospital will be requested, unless the family offers a reasonable explanation for not having access to their birth certificate. Typically, unless a person was born prior to 1950, a birth certificate is readily available through vital records in the state of birth (or vitalcheck.com).
 - (i) Verification when birth certificate is not available, including, but not limited to:
 - (I) Naturalization papers.
 - (II) Church-issued Baptismal certificate.
 - (III) U.S. passport.
 - (IV) Adoption papers.
 - (V) Military discharge papers.
 - (VI) Social Security Administration Benefits Printout.

(Rule 0770-01-05-.11, continued)

- (VII) For children, court orders which display birth date or age or school records may also be used.
- 3. If a document submitted is illegible or otherwise questionable, more than one of these documents may be required. The document will be retained in the permanent records section of the THDA participant file.
- 4. Legal identity will be verified for program eligibility and on an as-needed basis.
- 5. Age need only be verified once during continuously assisted occupancy.
- (b) Family Composition. Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided at 0770-01-05-.11.
 - 1. Family relationships are verified only to the extent necessary to determine a household's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family or household relationships, unless stated otherwise.
 - 2. Marriage. If the THDA has reasonable doubts about a marital relationship, the THDA will require the family to document the marriage with a marriage certificate. To obtain a copy of the marriage certificate the client may apply to www.vitalcheck.com in order to request an official copy of the certificate. The THDA may also use an affidavit in cases of spouses that are married, but living separately.
 - 3. Separation or Divorce.
 - (i) A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced. If the couple has children, this decree will be used to verify child custody and child support payments.
 - (ii) A copy of a court-ordered maintenance, separation agreement, settlement agreement, or other court record is required to document a separation.
 - 4. Absence of Adult Member. If an adult member is permanently absent, the household must provide evidence to support that the person is no longer a member of the household and fill out whatever form the THDA is currently using to verify the status in writing. See Interim Recertifications 0770-01-05-.26(2), for more information on this topic.
 - 5. Minor Dependents. Documentation for household composition purposes may include, but is not limited to, birth certificates, custody agreements, tax returns, computer-generated documents from schools, or other social service programs.
 - 6. Foster Children and Foster Adults. Household must provide an acceptable computer-generated document or third-party verification from the state or local government agency responsible for the foster placement of the individual with the household.
 - (i) Appropriate verification includes documents showing the court assignment of the foster adult or child, computer-generated documents from a third-party source or third-party verification from the Department of Children's Services (DCS) or other social service agency contracted with DCS for foster child placement.

(Rule 0770-01-05-.11, continued)

- (ii) If the documentation is questionable, more than one document may be required to verify foster placement. Self-declaration is not acceptable to verify foster care placements.
7. Guardianship of Household Members Who are Minors. Although legal guardianship is not required, if a household has a minor in the household who is not a child by birth or adoption and who is not a foster child, and there is a question raised as to whether the child actually resides in the assisted unit, the head of household must verify that the minor resides in the unit by a preponderance of the evidence. Proper verification includes, but is not limited to:
- (i) Documentation from a social services agency with the minor listed as a resident in the assisted household, such as a DHS ACCENT report, computer-generated document from the child's school verifying their enrollment, the THDA Verification of School Enrollment completed by a school official, medical records, insurance plans, or other THDA verification forms, etc.
 - (ii) Verification of legal guardianship acceptable under the laws of the state in which guardianship was granted, a court order of temporary custody, a power of attorney, or a temporary guardianship form.
 - (iii) A minor who plans to reside in a household as an adult must provide a copy of the court's order of emancipation as verification of emancipation from his or her legal guardians.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.12 INCOME LIMITS (24 C.F.R. 982.201, 982.353).

- (1) For rules on how to calculate income, see Income and Asset Determination § 0770-01-05-.19.
- (2) Income Eligibility.
 - (a) Income limits only apply at admission and portability when the household is a new admission or issued directly from a waiting list, not at recertification.
 - (b) An applicant must be one of the following:
 - 1. An extremely low-income family (thirty percent (30%) of area median income),
 - 2. A very low-income family (fifty percent (50%) of area median income), or
 - 3. A low-income family (eighty percent (80%) of area median income) in any of the following categories:
 - (i) Continuously assisted (less than one hundred twenty (120) days of interruption between the assisted occupancy of one unit and the subsequent assistance of occupancy for another assisted unit), under the 1937 Housing Act, meaning the family is already receiving assistance from

(Rule 0770-01-05-.12, continued)

- any program under the act when the family is admitted to the HCV Program;
- (l) 1937 Housing Act programs include the Public Housing Program and all of the Section 8 project and tenant-based programs, as well as the old Section 23 leased housing and the Section 23 housing assistance payments programs.
- (ii) Physically displaced by rental rehabilitation activity under 24 C.F.R. 511;
- (iii) Non-purchasing family residing in a HOPE 1 or HOPE 2 project or a project similar to a homeownership program under 24 C.F.R. 248.173; or
- (iv) Displaced as a result of the prepayments of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing under 24 C.F.R. 248.101.
- (c) A household whose income increases above the extremely low or very low income limit may continue on the program as long as the household is still otherwise eligible.
- (3) Income Targeting. HUD's income targeting provisions require that seventy-five percent (75%) of new admissions each fiscal year have a gross annual income at or below the extremely low-income limit.
 - (a) The THDA tracks the percentages of new admissions by income for each county on a monthly basis to ensure that 75% percent of all new admissions are at or below the extremely low-income limit.
 - (b) At the Eligibility Interview, the THDA will compare the applicant's annual gross income to the appropriate income limit established by HUD.
 - (c) When the THDA is not meeting income-targeting standards, the following procedures will be implemented:
 - 1. Applicant households with a gross annual income at or below the extremely low-income limit will be admitted.
 - 2. Applicant households with a gross annual income greater than the extremely low-income limit, but less than the very low-income limit, will be returned to the waiting list by the date and time of their pre-application.
 - 3. Applicant households with a gross annual income that exceeds the very low-income limit will be denied admission and their name will be removed from the waiting list, unless the family meets the criteria for an acceptable low-income limit category as outlined above in 0770-01-05-.12(2)(b)3.
 - 4. Applicant households with a gross annual income that exceeds the very low-income limit, but meet the criteria for an acceptable low-income limit category, will be returned to the waiting list by the date and time of their pre-application.
 - (d) The THDA is exempt from income-targeting requirements when providing assistance to low-income or moderate-income families that are entitled to preservation assistance as a result of a mortgage pre-payment or opt out (enhanced vouchers).

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal and new rule

(Rule 0770-01-05-.12, continued)

filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.13 CITIZENSHIP (24 C.F.R. 5(e)). Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the making of financial assistance available to persons who are other than United States citizens, nationals, or certain categories of eligible noncitizens. Eligible immigrants are those in an eligible category of noncitizens as specified by HUD. The THDA's pre-application notifies applicants that they will be required to submit evidence of citizenship status before they are determined eligible for the HCV Program. Individuals who are not United States citizens, nationals, or eligible noncitizens may elect not to contend their status.

(1) Family Eligibility and Subsidy Status under the Noncitizen Rule.

- (a) Eligible for Full Assistance. The entire household provides documentation that each member is either a United States citizen, United States national, or eligible immigrant with verification from the United States Citizen and Immigration Services (USCIS).
- (b) Eligible for Full Assistance Pending Verification of Status. This applies:
 - 1. When the household provides documentation of eligible immigrant status, but the USCIS verification is not completed; or
 - 2. When the household is currently participating in the hearing process in reference to its ineligible noncitizen status.
- (c) Mixed Families. A household is eligible for assistance as long as at least one member of the household is a citizen or eligible noncitizen. Households that include both eligible and ineligible individuals are referred to as "mixed families." Unless a mixed family qualifies for continuation of full assistance or temporary deferral of termination of assistance as outlined below, a mixed family will be given notice that their assistance will be prorated and that they can request a hearing if they contest that determination.
 - 1. Qualified for Continuation of Full Assistance. Mixed families may qualify for continued full assistance if all four of the following conditions are met:
 - (i) The household was receiving assistance under a Section 214 covered program as of June 19, 1995, when the Noncitizens rule became effective; and
 - (ii) The head of household or spouse has eligible immigration status (24 C.F.R. 5.506); and
 - (iii) The only other people in the family without eligible immigration status are the head of household, spouse, and parents or children of the head or spouse; or
 - (iv) If the family was granted continued assistance after November 29, 1996, then the assistance must be prorated.
 - 2. Prorated Assistance. When one or more household members do not provide acceptable documentation of their citizenship or immigration status within the timeframe specified under 0770-01-05-.13(2)(c)1. and 2. below, the household's assistance, or subsidy, is prorated or calculated based on the percentage of the household members that did provide the acceptable documentation.

(Rule 0770-01-05-.13, continued)

- (i) All mixed families who were receiving housing assistance as of June 19, 1995, but do not qualify for continuation of full assistance must be offered prorated assistance.
- 3. Temporary Deferral of Termination of Assistance. Under this provision, the household remains at full subsidy for the temporary deferral period.
 - (i) This is an option for currently assisted mixed families not eligible for continued assistance that do not want prorated assistance and households assisted as of June 19, 1995, that do not have any eligible members.
 - (ii) The temporary deferral period is to provide additional time to such households to locate other affordable housing that is appropriate in size, is not substandard, does not result in a payment greater than one hundred twenty-five percent (125%) of what the household was currently paying towards utilities and rent.
 - (iii) The initial deferral period is granted for six (6) months. One extension of an additional 6 months may be granted if the household can demonstrate that they have actively searched for other appropriate housing and that no such housing is available. The temporary deferral of termination of assistance is not allowed to exceed one (1) calendar year.
 - (iv) After the temporary deferral period has expired, the THDA will make the option of prorated assistance available to the household.
 - (I) If the household requests the proration, the subsidy is adjusted accordingly and the household remains on the program.
 - (II) If the household does not request the proration, the household's assistance is terminated.
- (d) Non-eligible Members. Applicant households that include only non-eligible members are ineligible for assistance and will be denied admission with an opportunity for a hearing, even if it is a single pregnant individual.
 - 1. Except, a participant household without any eligible members who was receiving assistance as of June 19, 1995 will be eligible for temporary deferral of termination of assistance if the household desires. See 0770-01-05-.13(1)(c)3.
- (e) Noncitizen Students. A noncitizen student is defined by HUD in the noncitizen regulations and is not eligible for assistance. This prohibition on assistance extends to noncitizen spouses and noncitizen children as well. Citizen spouses and citizen children are not prohibited from receiving assistance.
 - 1. A noncitizen student is defined as a noncitizen who meets the following criteria:
 - (i) Has a residence in a foreign country with no intention of abandoning it; and
 - (ii) Is a student qualified to pursue full-time study; and
 - (iii) Is admitted to the United States temporarily and solely for educational purposes.
 - 2. Appeals. For this eligibility requirement, an applicant is entitled to a hearing exactly like those provided for HCV Program participants.

(Rule 0770-01-05-.13, continued)

(2) Verification.

(a) A household must provide verification that identifies each household member as a U.S. citizen, a U.S. national, an eligible noncitizen, or an ineligible noncitizen and submit the documents discussed below for each member. Once eligibility to receive assistance has been verified for an individual, it need not be collected or verified again during continuously assisted occupancy (24 C.F.R. 5.508(g)(5)).

(b) Citizen Declaration Form. When an applicant household is selected from the waiting list, each household member, regardless of age, must sign a Citizen Declaration form. A parent or legal guardian may sign for a minor. When a new member is added to the household and is residing in the unit, the new member must complete a Citizen Declaration form. This form need only be signed once.

(c) Other Documentation Required.

1. Citizens and Nationals.

(i) Citizen Declaration signed, no further verification of citizenship is needed.

(I) HUD requires a declaration for each member who claims to be a U.S. citizen or national, which must be signed personally by any household member eighteen (18) years of age or older or by a guardian for minors.

(II) The THDA also requests verification of legal identity by requiring presentation of a birth certificate, United States passport, or other appropriate documentation. See 0770-01-05-.11(5)(a).

(III) Household members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the THDA receives information indicating that an individual's declaration may not be accurate.

2. Person Claiming Eligible Immigrant Status. The documentation required for noncitizens claiming eligible immigration status varies depending upon factors such as the date the person entered the United States, the conditions under which eligible immigration status has been granted, age, and the date on which the household began receiving HUD-funded assistance.

(i) Age sixty-two (62) or older and who was receiving assistance on or before June 19, 1995.

(I) Citizen Declaration signed, no further verification of citizenship needed; and

(II) Proof of age must be submitted.

(ii) All other persons claiming eligible immigrant status. Household members, under the age of 62 who claim eligible immigration status, must present the applicable United States Citizenship and Immigration Services (USCIS) documents to the THDA to verify. The THDA will follow all USCIS protocols for verification of eligible immigration status. Acceptable documentation is as follows.

(Rule 0770-01-05-.13, continued)

- (I) Citizen Declaration signed;
 - (II) Verification Consent form signed;
 - (III) Verification documentation submitted (must submit original documents for the THDA to review and then copies will be maintained in the file).
 - I. Form I-551 Alien Registration Receipt Card (for permanent resident aliens) and Form I-94 Arrival-Departure Record annotated with "Admitted as a Refugee pursuant to Section 207," "Section 208" or "Asylum," "Section 243 (h)," "Deportation Stayed by Attorney General," or "Paroled pursuant to Section 221(d)(5) of the USCIS," and Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210."
 - II. Form I-94 Arrival-Departure Record with no annotation accompanied by:
 - A. A final court decision granting asylum, but only if no appeal is taken, or
 - B. A letter from a USCIS asylum officer granting asylum, if application filed on or after October 1, 1990 or from a USCIS district director granting asylum, if application filed before October 1, 1990, or
 - C. A court decision granting withholding of deportation, or
 - D. A letter from an asylum officer granting withholding of deportation, if application filed on or after October 1, 1990, and
 - III. Form I-688 B Employment Authorization Card annotated "Provision of Law 274a.12(11)" or "Provision of Law 247a.12."
 - (IV) Such household member may also submit a receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified, or
 - (V) Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register.
- (iii) The THDA initiates the INS-SAVE verification, primary, and if required, secondary.
3. Persons Who Declare Ineligibility. List the person on the Listing of Ineligible Family Members and no further verification is needed.
- (d) If an individual is found to be ineligible, the household's level of assistance will be reevaluated and prorated at that time.

(Rule 0770-01-05-.13, continued)

(e) Timeframe for Submitting Citizenship Documentation.

1. Applicants and Participants must submit the documentation within fourteen calendar (14) days of a request by the THDA.
2. Extensions may be granted to household members who request an extension in writing to the THDA if:
 - (i) The required declaration certifying eligible immigration status is submitted; and
 - (ii) The household member certifies that the evidence is temporarily unavailable, therefore additional time is required; and
 - (iii) The household member certifies that prompt and diligent efforts will be made to obtain evidence within a reasonable timeframe, not to exceed thirty (30) days.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.14 SOCIAL SECURITY NUMBER PROVISION.

- (1) Each member of a household for applicants and participants that is claiming citizenship or eligible immigration status must provide adequate verification of the member's social security number (SSN) at the time of admission or at the next interim or other reexamination for participants who have not provided the documentation previously, with the exception of the following individuals:
 - (a) Individuals who do not contend to have eligible immigration status (they may be unlawfully present in the United States) and have not been assigned SSN;
 1. A family that consists of two or more household members where at least one household member has eligible U.S. citizenship or eligible immigration status and an individual that does not or individuals that do not contend to have eligible immigration status, the THDA will not deny assistance, but will classify the family as a mixed family and will prorate assistance.
 - (b) Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid; and
 - (c) Existing program participants as of January 31, 2010, who are sixty-two (62) years of age or older (born on or before January 31, 1948), and had not previously disclosed a valid SSN. The exemption continues even if the individual moves to a new assisted unit.
- (2) Applicant Households.
 - (a) Every applicant household member must provide their complete and accurate social security number (SSN), as well as verification of the SSN, at the eligibility determination briefing to qualify for admission to the HCV Program or they must be able to show proof that they applied for a SSN and they will be given up to sixty (60) days. Further extension will require director approval.

(Rule 0770-01-05-.14, continued)

- (b) If a household is unable to fulfill this obligation within the deadline for legitimate, verified reasons that are outside of their control, the household must choose to either remove the member from the household prior to admission or the household must be returned to the waiting list by date and time of the pre-application.
 - (c) If the household otherwise just fails to provide the documentation, the applicant will be denied admission.
- (3) Participant Households.
 - (a) Any new member sought to be added to the household must disclose a SSN. The participant must disclose the SSN and provide the THDA with verification at the time of the request for assistance or before the member is added to the household through an interim or regular reexamination. The THDA is not authorized to generate an alternative identification.
 - (b) If the household requests to add a new member who is under the age of 6 and does not have a SSN, the child is to be added as part of the assisted household and is entitled to all benefits of being a household member during the allotted time for compliance, which is ninety (90) calendar days from the child being added to the household. Within that time the family must request a SSN, provide the new SSN to the THDA, and provide the proper verification. In the meantime, the THDA will generate an alternate identification to use for the new member.
 - (i) If the family is unable to disclose the SSN and provide verification within the 90-day compliance term, the THDA will give the family an additional 90 calendar days to comply, but only if the family was unable to comply due to circumstances that could not have reasonably been foreseen and were outside of the control of the family, including, but not limited to, delay by the Social Security Administration (SSA), natural disaster, death in the family, etc.
 - (ii) If the compliance term expires and the family has not complied with the SSN disclosure and verification, then the THDA must terminate the entire family's assistance.
- (4) If an applicant or participant is able to disclose their SSN, but cannot meet the verification requirements, the THDA will instruct them to obtain a duplicate card or other computer-generated verification from the local Social Security office within the timelines specified above.
- (5) Verification. Every member of an applicant or participant household, unless exempt under 0770-01-05-.14(1) above, must provide verification of each disclosed SSN by:
 - (a) An original or a copy of a SSN card issued by SSA;
 - (b) An original or a copy of a SSA-issued document, which contains the name and SSN of the individual; or
 - (c) A document issued by a federal, state, or local government agency, which contains the name and SSN of the individual (e.g., welfare agency documents, military papers, unemployment insurance documents).

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R. 982.552(c)(1)(ii).
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed

(Rule 0770-01-05-.14, continued)

September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.15 STUDENT STATUS.

- (1) Full-Time Students under Age Eighteen. The THDA may need to verify the full-time school enrollment of a household member under the age of eighteen (18) for household composition purposes.
- (2) Full-Time Students Age Eighteen or Older. The THDA requires families to provide information about the student status and income of all full-time student household members who are eighteen (18) years of age or older.
 - (a) Dependents. Usually a dependent is a family member who is under eighteen (18) years of age, but a dependent may also be a person of any age who is a person with a disability or a full-time student.
 1. The head of household, spouse, co-head, foster children/adults and live-in aides can never be defined as a dependent, even if the individual is a full-time student.
 2. Income must be verified for full-time student dependents, because up to \$480 of the annual income must be included in the income consideration.
 - (b) Non-dependents. The THDA must verify the full-time student status of certain adult, non-dependent household members. Student information for non-dependents will be verified in the following circumstances:
 1. To verify eligibility for single, adult student households;
 2. The household claims a child care deduction to enable a household member to further his or her education; and
 3. To determine student income of non-dependent adults who are enrolled in institutions of higher education.
- (3) Student Enrolled in Institutions of Higher Education, Whether Part-Time or Full-Time.
 - (a) Eligibility Restriction that Applies to Full-Time and Part-Time Students. On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937," implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006. The final rule became effective January 30, 2006. In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is individually ineligible for Section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.
 1. Under Section 8 of the 1937 Act, no assistance shall be provided to any individual who is already residing in a section 8 assisted unit without his or her parents, or who is seeking assistance to reside in his or her own unit with section 8 assistance, if the individual is a student enrolled in an institution of higher education, as defined by the Higher Education Act of 1965 (20 U.S.C. 1002) and:
 - (i) Is under twenty-four (24) years of age; and
 - (ii) Is not a veteran of the United States military; and

(Rule 0770-01-05-.15, continued)

- (iii) Is unmarried; and
 - (iv) Does not have a dependent child of his own (must live with student at least 51% of the time and pregnancy does not count); and
 - (v) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive section 8 assistance.
 - (l) Two-Part Income Eligibility Test. If a student is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the rule establishes a two-part eligibility test and both tests must be met for the student to receive Section 8 assistance. The student must be individually eligible to receive assistance and the student's parents, individually or jointly, must be income eligible for the student to receive assistance, unless the student can demonstrate his or her independence from the parents. In determining the parents' income eligibility to receive assistance, the THDA will use the applicable low income limit for the parents' family size for the locality where the parents reside.
- 2. Individual Capacity. This restriction only applies to students matching the above criteria that are seeking assistance in their individual capacity. It does not apply to dependents that are residing with their parents or guardians.
- 3. When to Obtain Declaration and Certification from Parents. If a student is under the age of 24, is not a veteran, is not married, and does not have a dependent child, then a declaration and certification of income must be obtained from the parents. In determining whether to obtain a declaration and certification of income from the parents individually or jointly, the THDA will consider the following
 - (i) If the student's parents are married and living together, a declaration and certification of joint income will be obtained from both parents;
 - (ii) If the student's parent is widowed or single, a declaration and certification of income will be obtained from that parent;
 - (iii) If the student's parents are divorced or separated, a declaration and certification of income will be obtained from each parent;
 - (iv) If the student has been living with one parent and has not had contact with the other parent or does not know how to contact the other parent, a declaration and certification of income will be obtained from the parent the student has been living with and a self-certification will be obtained from the student stating that the student has not received financial assistance from the other parent. (24 C.F.R. 5.612); or
 - (v) Verification of Independence. Whether the student can demonstrate independence from his parents, and if so, then a declaration and certification of income from the parents is not necessary. The criteria that the THDA will employ to determine and verify a student's independence from his or her parents includes, but is not limited to, the following:
 - (l) The individual must be of legal contract age under state law; and

(Rule 0770-01-05-.15, continued)

- (II) The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual must meet the U.S. Department of Education's definition of an independent student, which can be verified by reviewing previous address information to determine evidence of the separate household; and
 - (III) The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations, which can be verified by reviewing the prior years' tax returns to determine whether the individual was claimed as a dependent; and
 - (IV) The individual must obtain a certification of the amount of financial assistance that will be provided by parents, even if no assistance will be provided, and it must be signed by the individual providing support.
- 4. What if the Parents Refuse to Declare and Certify? In order for the student to be eligible for section 8 assistance, his or her parents must also be eligible for section 8 assistance, therefore, if the parents refuse to provide a declaration and certification of their income, the student is not eligible unless the student can demonstrate his or her independence from parents.
- 5. Students with Disabilities.
 - (i) Students with disabilities who were receiving section 8 assistance as of November 30, 2005, are exempt from the restrictions for providing section 8 assistance to college students as provided in Public Law 109-249.
 - (ii) Students with disabilities who are applying for, or who started receiving, section 8 assistance after November 30, 2005, are not exempt from the restrictions of the new law.
- (b) Additional Income Eligibility Restriction on Part-Time and Full-Time Students Seeking Assistance to Reside in Their Own Units.
 - 1. As an additional restriction on eligibility, certain types of financial assistance in excess of amounts received for tuition that the student receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education will be considered annual income to that individual.
 - (i) Under the Higher Education Act of 1965. This includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
 - (ii) Assistance from Private Sources. Non-governmental sources of assistance, including assistance that may be provided to a student from a parent(s), guardian or other family member, whether residing within the family in the section 8 assisted unit or not, and from other persons not residing in the unit.
 - (iii) From an institution of higher education requires reference to a particular institution and the institution's listing of financial assistance.

(Rule 0770-01-05-.15, continued)

- (iv) HUD has interpreted the term “financial assistance” to not include loan proceeds for the purpose of determining income. Therefore, Perkins loans, Stafford loans and Plus loans under the Higher Education Act of 1965 are not considered as financial assistance under 5.609(b)(9).
 - (v) For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at:
<http://www.ed.gov/policy/highered/leg/hea98/index.html>.
 - 2. The financial assistance described above is not considered annual income for persons over the age of twenty-three (23) with dependent children.
 - 3. This section also does not apply to students residing with his or her parents in the parents assisted unit.
 - 4. Amounts received by veterans for educational purposes are excluded.
 - 5. Financial assistance, includes money for food, clothing, personal items and other expenses, from a parent, guardian or other person, unless the student resides with the parent, guardian or other person providing the assistance.
 - 6. If the financial assistance is sporadic, rather than periodic or regular, it would not be counted as income.
- (c) Verifications.
- 1. Eligibility Determination.
 - (i) Age Verification. Use the birth certificate.
 - (ii) Veteran Verification. The applicant/participant must provide documentation from the United States Military Services showing honorable discharge and veteran status.
 - (iii) Marriage Status. Use marriage license to verify marital status.
 - (iv) Dependents. Use the birth certificate of the dependent child(ren). Dependent child is defined in HUD’s income eligibility regulations at 24 C.F.R. 5.603 as a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or a full-time student.
 - (v) Parental Income.
 - (I) If the parents of the student(s) are married and living together, a declaration and certification of joint income will be obtained from both parents.
 - (II) If the parent of the student(s) is widowed or single, a declaration and certification of income will be obtained from that parent.
 - (III) If the parents of the student(s) are divorced or separated, a declaration and certification of income will be obtained from each parent.

(Rule 0770-01-05-.15, continued)

- (IV) If the student has been living with one parent and has not had contact with or does not know where to contact the other parent:
 - I. A self-certification will be obtained from the student stating that no financial assistance has been received from that parent, and
 - II. A declaration and certification of income will be obtained from the parent with whom the student has been living.
- (V) Certification of Income of Student(s) or Parent(s). IRS tax returns, the four (4) most recent and consecutive pay stubs, bank statements, asset account statements, TANF award letter, SSA award letter, or other documents considered reasonably reliable for the purpose of verifying income.
- (vi) Ongoing Rent Calculation. To determine whether the student income should be included in the rent calculation, the THDA will consider the following:
 - (I) If the student household member is twenty-four (24) years or older and has dependent children, student income is excluded.
 - (II) If the student household member is twenty-three (23) years or younger and does not have dependent children, the student income that is not used towards tuition, is verified and included in the income determination.
- (vii) Financial Assistance Considered Income. Financial assistance in excess of amounts received for tuition that an individual receives under the Higher Education Act of 1965, from private sources or from an institution of higher education is considered income to that individual unless the person is over the age of 23 with dependent children.
 - (I) Student financial assistance includes: educational scholarships, educational entitlements, grants, income earned through work-study programs, and financial aid packages including Title IV. Amounts received by veterans for educational purposes are excluded.
 - (II) Financial assistance, including money for food, clothing, personal items and other expenses, from a parent, guardian or other person is counted as income for purposes of determining income eligibility and the rent calculation unless the student resides with the parent, guardian or other person providing the assistance. However, if the financial assistance is sporadic, rather than periodic or regular, it would not be counted as income.
- (viii) Financial Assistance Not Considered Income. Perkins loans, Stafford loans, Plus loans.
- (ix) Documents Required:
 - (I) Computer-generated document from the educational institution that includes the name of the institution, total amount of financial assistance, type of financial assistance, amount of tuition, and time

(Rule 0770-01-05-.15, continued)

period (quarter, semester, annual) covered by the financial assistance payment.

(II) If appropriate computer-generated documents are not available, third-party verification methods will be attempted by mailing the THDA Student Status/Income Verification form to the appropriate office at the institution.

(III) If third-party verification fails, a self-certification will be accepted.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019.

0770-01-05-.16 OTHER ELIGIBILITY CRITERIA.

(1) Violation of Family Obligations (24 C.F.R. 982.552(1)(c)(iii)). If an applicant, or any household member, has previously violated the family obligations listed in 24 C.F.R. 982.551 or on the voucher within the last three (3) years, the applicant household is denied even if they qualify for a local preference.

(a) Failure to Supply Timely Information (24 C.F.R. 982.551(b)(1)(3), 24 C.F.R. 982.552(b)(3)(c)(1)(i)). Failure to supply information in a timely manner requested by the THDA for use in the eligibility determination is a violation of the family obligations in the program and includes:

1. Consent forms for obtaining necessary information to determine eligibility, citizenship or eligible immigration status, social security numbers, or other information necessary to the eligibility determination;
2. Failure to keep appointments; and
3. Refusal to sign necessary paperwork.
4. The usual deadline for complying with requests for verification is fourteen calendar (14) days, unless otherwise specified.
5. If an applicant claims that a request for information or a request to attend an interview or appointment was not received, staff will determine whether the notice was returned to the office.
 - (i) If the notice was not returned, it is assumed the applicant received the notice unless the applicant can prove otherwise.
 - (ii) If the notice was returned to the office, but the applicant provides evidence that the applicant was living at the address the notice was sent to at the time that it was sent, then the applicant is reinstated according to the date and time on the pre-application.
 - (iii) The applicant shall bear the burden of proof where it is alleged that the address to which the THDA mailed the notice was not the proper address, or where the applicant argues that the notice was not received due to circumstances beyond the applicant's control.

(Rule 0770-01-05-.16, continued)

- (l) Sufficient proof includes, but is not limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the applicant's address that there have been problems with delivery that might have caused the request to not be properly delivered. Other sufficient proof must be at least as independently reliable as a letter from the postmaster in order to satisfy the applicant's burden of proof.
- (b) Duplicate Subsidy.
 - 1. If an applicant submits a pre-application for a THDA waiting list for one county while already receiving another housing subsidy under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program, the application will be denied as a duplicate subsidy.
 - 2. If an applicant is currently in public housing though, the applicant may give notice to their current PHA, but must vacate their current unit prior to their lease-up through the THDA. The lease and HAP contracts cannot start until the day after the current tenancy is terminated.
 - 3. If a participant family wishes to relocate to another county, they must comply with the THDA's requirements for portability and relocation. See Moving/Portability 0770-01-05-.25.
 - 4. If a family vacates their current unit without complying with these requirements, the family will be terminated and ineligible for housing assistance for a three-year (3) period.
- (c) Failure to Provide True and Complete Information. The applicant must provide any information requested by the THDA as part of the certification process within timelines outlined. (24 C.F.R. 982.551(b)(4), 982.552(c)(1)(i)).
- (d) Fraud (24 C.F.R. 982.551(k), 552(1)(c)(iv)). When any member of the applicant household has committed fraud in connection with any federal housing program, the admission may be denied. The application is not denied on this basis without documentation or proof of the alleged fraud.
- (e) Interest in Unit. An applicant that requests subsidy for a unit in which the applicant owns, has an interest in, or is buying will be denied, except for mobile homeowners who are leasing a pad and Homeownership Voucher participants.
- (2) No Household Member Is at Least Eighteen (18). There must be at least one member of the household that is eighteen years of age or older in order to serve as head of household and sign the lease contract, unless the underage member has their minority removed by court order or operation of law.
- (3) Conflict of Interest. If an applicant is a public official, member of a governing body, state or local legislator, or a member of the Congress of the United States who exercises functions or responsibilities with respect to the HCV Program, the applicant will be denied unless HUD grants a waiver to the applicant.
- (4) Total Tenant Payment Is Higher than Gross Rent. For new admissions only, if an applicant's income is below the very low-income limit, but the total tenant payment is greater than the gross rent, the applicant will be denied because there would not be a subsidy or Housing Assistance Payment (HAP).

(Rule 0770-01-05-.16, continued)

- (a) If there is no HAP payment due to a rental agreement that includes a free rent period, the applicant may be admitted.
- (5) Outstanding Debt to a Public Housing Authority (PHA).
 - (a) Any household who reports that they have previously lived in subsidized or public housing must certify that they have no outstanding debt to another public housing agency. The THDA will access the Public and Indian Housing Information Center (PIC) reports to determine debts owed.
 - (b) If the PIC reports show that any member of the household has an outstanding debt that is verified and considered current under state law, which is owed to any other public housing authority (PHA) or to the THDA, in connection with the HCV Program or other public housing programs, within fourteen (14) calendar days the household must provide the THDA with documentation that proves that:
 - 1. The debt is paid in full,
 - 2. The household is making regular payments under a court-ordered repayment plan, or
 - 3. The household has obtained a release from the public housing authority (PHA) the household is indebted to.
 - (c) The THDA enters debts owed and termination information for tenants who voluntarily or involuntarily leave the HCV Program, including any adverse status as of the end of participation (EOP) date, into the Enterprise Income Verification (EIV) System.
 - (d) If an applicant, or current or former participant, of a HUD rental assistance program disputes that the household owes a debt to a PHA, the household must contact the PHA in writing to dispute the information and provide supporting documentation.
 - 1. If the THDA determines that the disputed information is incorrect, an applicant may be admitted.
 - 2. If information the THDA entered is incorrect, the information will be updated or the record will be deleted in the EIV System.
 - 3. Information must be disputed within three (3) years of the EOP date.
 - (e) The household may also request an informal review, and if terminated a participant may request an informal hearing, to contest the report and bring supporting documentation.
 - (f) The THDA will not collect debts or accept payments for debts owed to another PHA and will not assume any responsibility for debts owed to a PHA that gives an applicant or participant a release of a debt.
- (6) Eviction from Public Housing (24 C.F.R. 982.552(c)(1)(ii)). An applicant will be denied if they, or any member of the applicant household, has been evicted from public housing for any reason with an effective date of eviction within the last five (5) year period, even if the household qualifies for a local preference. The family may request an informal review to contest the report and bring documentation from the housing authority.

(Rule 0770-01-05-.16, continued)

- (7) Threatening or Abusive Behavior Towards the THDA (24 C.F.R. 982.552(i)(c)(ix)). Denial of assistance will result if any member of the household engages in any type of verbal or physical abuse, violence, or threat of violence toward the THDA personnel while completing the eligibility process for the HCV Program.
- (8) Prior Criminal History (24 C.F.R. 982.553). The THDA processes a criminal background check on all adult members of the household when determining eligibility. Applicant households that include a member who has engaged in certain criminal activities, whether the criminal activities occurred on or off the premises where the household resides, will be denied admission to the program in order to protect the welfare of the HCV Program and the community where the household would reside if participating in the program.
 - (a) Mandatory Denial of Assistance for Criminal Activity. HUD regulations require prohibiting admission to an applicant household under the following circumstances:
 - 1. An applicant has been evicted from federally assisted housing for drug-related criminal activity with an effective date of eviction within the last five (5) year period.
 - 2. An applicant household includes a member who has ever been convicted of a drug-related criminal activity involving the manufacturing or production of methamphetamine on the premises of federally assisted housing.
 - 3. An applicant household that includes a member that is subject to a lifetime registration requirement under a state sex offender registry program will be denied.
 - (b) Local Discretion in Denial of Assistance for Criminal Activity. HUD regulations allow public housing authorities (PHAs) local discretion in establishing additional grounds in the denial of an applicant household when the PHA determines that any household member is currently engaged in, or has engaged in within a reasonable time before admission, certain criminal activities.
 - 1. In establishing local discretion policies, the THDA will deny assistance to a household when the THDA receives information, during the normal process of application or eligibility determination, from which the THDA may reasonably determine that a member of the household has a record of drug-related criminal activity, severe alcohol abuse, violent criminal activity, or other criminal activity that the THDA determines may be a threat to the health and safety of the community where the household would reside, including the following activities by any member the household:
 - (i) Conviction of a felony drug-related, alcohol-related, violent-criminal, or other criminal activity within the past twelve (12) months;
 - (ii) Conviction of two or more misdemeanor drug-related, alcohol-related, violent-criminal, or other criminal activity within the past twelve (12) months;
 - (iii) Three (3) or more convictions for a misdemeanor or felony drug-related, alcohol-related, violent-criminal, or other criminal activity, within the past three (3) years; or
 - (iv) One or more convictions for a felony-sex offense within the past ten (10) years or any conviction, misdemeanor or felony, of a sex offense involving a minor.

(Rule 0770-01-05-.16, continued)

2. For denial, the alcohol-related criminal activity must have threatened the health, safety or peaceful enjoyment of the community or neighborhood where the family resided at the time they applied for admission to the program.
 3. For denial, a household member must have threatened the peaceful enjoyment of the community or neighborhood where the family resided at the time they applied for admission to the program.
 4. A criminal conviction occurs, when on the date of final judgment for misdemeanor or felony offenses, a verdict or finding of guilty, a plea of guilty, or plea of nolo contendere is entered, and does not include a final judgment that has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.
 - (i) A judgment of pre-trial diversion will be treated as a judgment that is rendered nugatory and households that include a member with a criminal disposition of pre-trial diversion for a criminal act are eligible to receive assistance.
 - (ii) However, families that include a member with a judgment of post-trial diversion following a criminal conviction are not eligible until the terms of the diversion are met, the record is expunged, or the household becomes eligible otherwise (i.e., the offending household member has died, is imprisoned, or the remaining household members present appropriate documentation that the offending household member no longer resides with the family).
- (c) Denial may be waived if:
1. The drug-related or alcohol-related activity involved the use or possession of a controlled substance for personal use and the household member that engaged in the activity verifies that they successfully completed or are currently enrolled in a supervised drug or alcohol rehabilitation program with a successful completion date provided by the rehabilitation program, which is approved by the THDA.
 - (i) A supervised drug or rehabilitation program does not include Alcoholics Anonymous, Narcotics Anonymous, or other self-help programs.
 - (ii) A household member must provide proof of successful completion of the approved program within the timeframe provided to the THDA by the program the household member was enrolled at the time the waiver of denial was granted. Failure to successfully complete the program will result in termination of the household from the program.
 - (iii) Denial may not be waived when the activity involved the illegal manufacturing, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance.
 2. The circumstances leading to the eviction no longer exist, in that the offending household member has died or is imprisoned, or the remaining household members present appropriate documentation that the offending household member no longer resides with the family.
 3. As a condition to assistance, the THDA may require that a household member who has engaged in criminal activity not reside in an assisted unit.

(Rule 0770-01-05-.16, continued)

(d) Definitions.

1. **Drug-Related Criminal Activity.** The illegal manufacturing, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance as defined in the Controlled Substance Act: (<http://www.deadiversion.usdoj.gov/21cfr/21usc/>).
 2. **Violent Criminal Activity.** Any criminal activity, which one of its elements is the use, attempted use, or threatened use of physical force against the person or property of another.
 3. **Alcohol-Related Criminal Activity.** Any criminal activity involving the abuse of alcohol that interferes with or threatens the health, safety, or right to peaceful enjoyment of the community or neighborhood of the applicant household.
 4. **Sex Offense.** Any act defined in the Tennessee Code Annotated 40-39-202.
 5. **Other Criminal Activity, as Defined by the THDA.** Any criminal activity that the THDA determines threatens the health, safety, or right to peaceful enjoyment of the community or neighborhood of the applicant household.
- (e) After the initial eligibility process, if the THDA discovers through the verification process or from a report from a third party that a household member has been convicted for drug-related, alcohol-related, violent-criminal activity or other criminal activity that meets the THDA's criteria for termination of assistance, the THDA may directly verify the information with a local law enforcement agency or in some cases, if local information is not available, may process another criminal background search.
- (f) **Appeal/Dispute Procedures.** Applicants have the right to appeal and dispute any finding of a criminal record obtained by the THDA through the informal review process by providing documentation that contradicts the criminal background screening. See 0770-01-05-.31.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R. 982.552(c)(1)(ii).
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0770-01-05-.17 ELIGIBILITY PROCESS.

- (1) When a waiting list has been closed, sorted by pre-application submission date and time and any local preference, and it is estimated that there is enough funding available to issue a voucher to subsidize the household unit size of the applicant at the top the waiting list, then the THDA will start the process to determine eligibility.
- (2) Applicants are selected from a waiting list without regard to family composition/unit size. Once admitted, a household will receive a subsidy appropriate to the household's composition based on the THDA's subsidy standards. Therefore, it is possible that an applicant household may reach the top of the waiting list, but there may not be sufficient funds, based on the THDA's subsidy standards and the household composition, to subsidize a unit that is the allocated size of the household. In this case, the THDA will not skip the household in order to select an applicant household with a smaller unit size that could be immediately supported with available funding. Instead, the THDA will suspend the eligibility process for the selected applicant and the issuance of vouchers until adequate funding levels exist to support the applicant household at the top of the list.

(Rule 0770-01-05-.17, continued)

(3) Initial Determination Letter and Request for Information Sent to Applicant.

- (a) Once an applicant has been selected from a waitlist, the THDA will send the applicant an Initial Determination Letter, and, if needed, a local preference request for verification and any other requisite requests for information. An applicant must print a Personal Declaration, release forms, and any other required forms at www.THDA.org.

1. Personal Declaration. The Personal Declaration includes information concerning all of HUD's criteria for determining eligibility, including household income, composition, and demographics. The head of household must complete a Personal Declaration in order to determine eligibility and the amount of Housing Assistance Payments. The head of household and spouse or co-head are responsible for discussing the information requested in the Personal Declaration with other adult household members, providing true and complete information for every person who lives in the assisted household, and signing the document. The THDA will verify information provided on this Personal Declaration.

- (b) If the Initial Determination Letter/Request for Information is returned to the THDA because of an incorrect address, the applicant will be denied. The applicant must reapply during the next open-enrollment period and the pre-application will be placed on the waiting list according to the date and time of the new pre-application.

1. If the applicant claims that the letter was not received, staff will determine whether it was returned to the office.
2. If the letter is not returned to the THDA, it is assumed the applicant received it, unless the applicant can prove otherwise by a preponderance of the evidence.
3. If the letter is returned to the office, but the applicant provides proof by a preponderance of the evidence that the applicant was living at the address the letter was sent to at the time that it was sent, then the applicant is reinstated.
4. The applicant shall bear the burden of proof where it is alleged that the address to which the THDA mailed the letter was not the proper address, or where the applicant argues that the letter was not received due to circumstances beyond the applicant's control.

- (i) Sufficient proof includes, but is not limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the applicant's address that there have been problems with delivery that might have caused the request to not be properly delivered. Other sufficient proof must be at least as independently reliable as a letter from the postmaster in order to satisfy the applicant's burden of proof.

(4) Notice of Eligibility Briefing Appointment.

- (a) The THDA will include a notice of a final eligibility briefing appointment in the mailing of the initial determination letter.

- (b) The notice will state:

1. The date, time, and place of the eligibility briefing appointment.

(Rule 0770-01-05-.17, continued)

2. That all adult household members are required to attend the eligibility appointment and that admission will be denied to the applicant household if all adult members are not present.
 - (i) All adult household members must arrive at the eligibility briefing appointment on time. If all adults are not present or one adult, or more, is fifteen (15) minutes late, the appointment will be rescheduled.
 - (ii) The applicant will only be offered one additional eligibility briefing appointment. The applicant may reschedule for a subsequent briefing if one is available. However, if any adult fails to attend or is fifteen (15) minutes late for a rescheduled eligibility briefing appointment, the household will not return to the waiting list, but will be denied.
3. Exceptions to a denial for failure to attend the eligibility appointment is extenuating circumstances and medical emergencies affecting the household, but outside of the control of the household.
 - (i) In order to qualify for this exception the applicant must ensure that the THDA is in receipt of verification, within fourteen (14) calendar days from the missed eligibility appointment, that a member of the household had a documented extenuating circumstance or emergency, which made it impossible for the family to attend the eligibility appointment.
 - (ii) If verification is received by the THDA before the deadline, the household is offered one additional appointment.
 - (iii) If verification is not received by the THDA before the deadline, the application is denied and the applicant must reapply to the waiting list during the next open-enrollment period.
 - (iv) In the event that the original applicant/head of household is medically unable to attend the eligibility appointment and may be unable to assume the voucher for an indefinite period of time, the voucher may be transferred to the applicant's spouse or co-head, if verification of the medical condition is verified by a knowledgeable medical professional and the relationship between the original applicant and spouse is verified and documented, all within 14 calendar days from the date of the eligibility appointment, or the application will be denied and the applicant must reapply during the next open-enrollment period and will be placed on the waiting list according to the date and time of the new pre-application.
- (c) Disability Accommodation. If a household includes a person with disabilities, a reasonable accommodation may be requested to facilitate the eligibility interview process. The need for accommodation must be properly requested and verified according to 0770-01-05-.30 Disability Accommodation Procedures.
- (d) Before the eligibility briefing appointment, an applicant may request in writing to go back on the waiting list for any reason.
- (5) Eligibility Briefing (24 C.F.R. 982.204).
 - (a) The THDA may hold an individual household briefing or a briefing with a group of households depending upon the number of applicants that were able to be selected from a waiting list at any particular time.

(Rule 0770-01-05-.17, continued)

- (b) As part of the eligibility process, the applicant must submit verification documents (e.g., driver's licenses, social security numbers, birth certificates, verifications, etc.) for all household members. This information will be added to the applicant's file. The THDA will request additional information, as needed.
- (c) Eligibility will be determined based upon the circumstances and documentation provided as of the date and time of the eligibility briefing appointment.
- (d) Eligibility Briefing Purpose. The purpose of the eligibility briefing is to explain the general requirements of the HCV Program to the applicant household and to distribute and explain the requisite program materials and forms. The oral briefing includes at the least the following:
 - 1. A description of how the program works.
 - 2. The responsibilities of the participant household and of the owner-landlord. See 0770-01-05-.20 and .24.
 - 3. Where the family may lease.
 - (i) The briefing will include an explanation of how portability works if a household qualifies to lease a unit outside of the jurisdiction of the THDA.
 - (ii) Advantages of moving to an area that does not have a high concentration of poor households, if the household is currently living in a census tract with high poverty.
 - 4. If a briefing includes a household with a disabled person, the THDA will ensure communication is effective and in accordance with 24 C.F.R. 8.6.
 - 5. If briefing a welfare-to-work family, the THDA will include any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for the THDA to deny admission or terminate assistance.
 - 6. Housing Choice Voucher Applicant Booklet. This booklet is given to the household during the briefing and includes pertinent information regarding the HCV Program and covers the following topics including, but not limited to:
 - (i) Introduction to the HCV Program.
 - (ii) Term of a voucher and how to request an extension.
 - (iii) Total Tenant Payment (TTP). How the THDA determines how much the tenant and how much the THDA will pay, including information on subsidy standards (the number of bedrooms (unit size) and how the voucher relates to the unit size selected), Utility Allowances, and Payment Standards.
 - (iv) Maximum Initial Rent Burden Rules. The family may not pay more than 40% of their monthly adjusted income upon initially leasing a unit. For how this is determined and impacted by the utility allowance.
 - (v) Rent Reasonableness.

(Rule 0770-01-05-.17, continued)

- (vi) Searching for a Rental Unit. What the family should consider when selecting a unit, including strategies for locating an affordable, qualifying unit.
 - (vii) Where the Family May Lease.
 - (viii) Portability and Relocation Information.
 - (ix) Request for Tenancy Approval. Process involved once a unit is located.
 - (x) Statement of what information the THDA makes available to prospective Landlords regarding Tenants and vice versa.
 - (xi) Housing Quality Standards (HQS) and Inspection Procedures. HUD brochure, "A Good Place to Live," or any HUD brochure on how to select a unit that complies with HQS.
 - (xii) HUD lead-based paint brochure and information on available locations for blood-level testing.
 - (xiii) Information on Equal Opportunity Housing, including the pamphlet "Fair Housing: It's Your Right," and how to fill out and file a Housing Discrimination Complaint Form.
 - (xiv) Household Responsibilities and Owner Responsibilities.
 - (xv) Lease and Housing Assistance Payment (HAP) Contract requirements.
 - (xvi) Grounds on which the THDA may terminate assistance.
 - (xvii) Appeal, Informal Review, and Hearing Procedures.
 - (xviii) Procedures for Reporting Interim Changes.
 - (xix) Procedures for Reporting Fraud and Abuse. What constitutes fraud within the HCV Program and the associated penalties.
 - (xx) Family's Rights as a Tenant and Program Participant.
 - (xxi) Non-citizen Requirement.
 - (xxii) HUD Form 52675 for EIV - Debts Owed to Public Housing Authorities (PHAs).
 - (xxiii) Family Self-Sufficiency.
 - (xxiv) High Poverty and Minority Census Tracts. The THDA will explain the benefits of leasing in an area that does not have a high concentration of impoverished families.
- (6) Eligibility Interview (24 C.F.R. 982.204).
- (a) After the briefing, if needed or requested by the applicant household, the applicant household may meet with the THDA staff for an interview.

(Rule 0770-01-05-.17, continued)

- (b) If the applicant household failed to bring required verifications to the eligibility briefing or the THDA determines that further verifications are needed, a Notice of Verifications Needed is completed by the THDA for the household as a reminder of what is needed and the THDA must be in receipt of the requested documentation within fourteen (14) calendar days or the applicant will be denied.
 - (c) Discuss reasonable accommodations for disabled household members if needed to process the eligibility determination.
 - (d) If the criminal background check results are undetermined, then the THDA will explain to the applicant the delay in the ability to proceed to the final eligibility determination.
 - (e) Forms.
 - 1. Required forms must be signed by all adult household members before an eligibility determination may be made. Electronic and/or digital signatures may be accepted.
 - (i) Release forms.
 - (I) HUD Authorization for Release of Information/Privacy Act Form.
 - (II) THDA Authorization for Release of Information.
 - (III) HUD Enterprise Income Verification (EIV) System.
 - (ii) Citizen Declaration.
 - (iii) Criminal Background Authorization Form.
 - (iv) Grounds for Denial/Termination of Assistance/Notification of the Family Obligations.
 - (v) Debts Owed to PHAs and Terminations.
 - 2. Other forms and booklets explained and given to the household, which may change periodically.
 - (i) Housing Discrimination Complaint Form.
 - (ii) Landlord List/Information for Website TNHousingSearch.org.
 - (iii) Things You Should Know Brochure
 - (iv) HUD's Fraud Flyer.
 - (v) Housing Quality Standards (HQS) Summary
 - (vi) Informal Review/Hearing Procedures
 - (vii) Lead-Based Paint Brochure.
 - (viii) Notice of Portability/Relocation Requirements.
- (7) Changes Between Eligibility Briefing/Interview and Lease-Up. Changes that occur between the eligibility determination and the date a HAP Contract is executed for the family may affect

(Rule 0770-01-05-.17, continued)

eligibility to lease the unit with voucher assistance, which may result in denial of assistance. Applicants determined no longer eligible for the program between the initial eligibility determination and HAP Contract execution will be mailed a denial letter and are subject to the informal review procedures.

- (a) **Changes in Income.** If the household reports an increase in income at any time after the date and time of the eligibility briefing/interview appointment, but before the HAP contract has been executed by the THDA, the THDA will calculate the increase in the income to determine whether the family is still eligible for the program. If the household is found income eligible at the eligibility briefing, but later reports a decrease in income, the change will be processed as an interim after lease-up and the family share adjusted accordingly. If a household is found ineligible at the eligibility briefing due to being over income, a subsequent decrease in income does not make the household eligible for the program, unless staff failed to accurately calculate temporary or seasonal work that was properly reported at the eligibility briefing.
- (b) **Additions to Household Composition.** Requests to add additional household members, which are received at any time after the date and time of the eligibility briefing/interview appointment, but before the HAP contract has been executed by the THDA, will be denied, unless the addition is due to birth, adoption, court-awarded custody, return of a minor or disabled child to the household, or a new spouse. Any other additions will not be permitted until the family has been assisted for twelve (12) months.
- (c) **Reductions in Household Composition.** Notifications of a reduction in household composition, which are received at any time after the date and time of the eligibility briefing/interview appointment, but before the HAP contract has been executed, will be processed and any changes in income calculated.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.18 VERIFICATION PROCESS (24 C.F.R. 982.516).

- (1) **General Information.** The THDA must verify all information that is used to establish eligibility and the level of assistance. The THDA is also required to obtain the consent of each adult household member to collect this information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The THDA will not pass on the cost of verification to the household. Once consent is secured, the verification of eligibility factors, included income sources, asset sources, and deductions and allowances is gathered. Verification policies, rules, and procedures will be modified as needed to accommodate persons with disabilities in accordance with the THDA's reasonable accommodation policy. For more information see the section on Disability, 0770-01-05-.30.
- (2) **Verification Process.**
 - (a) **Consent to Release Information.**
 - 1. The household must supply any information that the THDA or HUD determines is necessary to the administration of the program and must consent to the THDA's verification of that information (24 C.F.R. 982.551).
 - 2. Forms.

(Rule 0770-01-05-.18, continued)

- (i) HUD-9886, Authorization for Release of Information. At initial eligibility determination and at any recertification or relocation, all adult household members are required to sign this form. The purpose of this form is to facilitate automated data collection and computer matching from specific sources, such as employers. This form provides household consent only for the specific purposes specified. HUD and the THDA may collect information from State Wage Information Collection Agencies (SWICAs), other wage matching systems, and current and former employers of adult household members. Only HUD is authorized to collect information directly from other federal agencies.
 - (ii) The THDA Authorization for Release of Information. This form must also be signed by every adult household member at initial eligibility determination and at any recertification or relocation. This form allows the THDA to collect information from sources not included on the HUD-9886, such as child care providers, medical professionals and educational institutions.
 - (iii) Once signed, both release forms are considered active for fifteen (15) months.
 - (iv) Adult household members may be asked to sign additional and specific consent forms as needed to collect information relevant to the household's eligibility and level of assistance.
- 3. Penalties for Failing to Consent (24 C.F.R. 5.232). If any household member who is required to sign a consent form fails to do so, the THDA will deny admission to applicants and terminate assistance of participants for failure to cooperate with the verification process. The household may request an informal review in accordance with the THDA procedures.
- (b) Personal Declaration. Once consent is secured, verification of eligibility factors, including income source(s), asset source(s), and deduction/allowances is gathered. The THDA requires the head of household to complete and all adult household members must sign the Personal Declaration form in their own handwriting verifying eligibility information at the time of application and when any changes in household income or composition take place (recertification). The Personal Declaration form completed by the family is used to guide the verification process and determine sources of income, assets, deduction/allowance qualification and eligibility factors.
 - 1. The head of household must discuss the questions with other adult household members as the form is completed to ensure that true and complete information for every household member is included.
 - 2. The Personal Declaration includes a household expense section. The section is included as an anti-fraud measure. The THDA is required to compare current, paid expenses to reported income. If a discrepancy is noted where current, paid expenses are higher than reported income, the family must provide information on additional income sources available to pay expenses.
 - 3. The Personal Declaration is placed in the tenant file and will be used to assist in the completion of the Form 50058.
- (c) HUD's Verification Hierarchy. HUD authorizes the THDA to use five methods to verify household information and specifies the circumstances in which each method will be used. In general, HUD requires the use of the most reliable form of verification that is

(Rule 0770-01-05-.18, continued)

available and to document the reasons when the THDA uses a lesser form of verification. In order of priority, the forms of verification that may be used are Up-Front Income Verification (UIV) whenever available, Computer-Generated Documents from third-party sources, Third-Party Written Verification, Third-Party Oral Verification, and Self-Certification.

1. Up-Front Income Verification (UIV). UIV refers to the THDA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the THDA.
 - (i) The THDA restricts access to and safeguards UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.
 - (ii) There may be legitimate differences between the information provided by the household and UIV-generated information. No adverse action can be taken against a participant until the THDA has independently verified the UIV information and the participant has been granted an opportunity to contest any adverse findings through the THDA's informal review/hearing process.
 - (iii) The THDA currently utilizes the following sources of UIV:
 - (I) Enterprise Income Verification (EIV) System. HUD maintains this system to collect employment and social security information for Housing Choice Voucher participants. An EIV report must be attempted for every participant during reexaminations. EIV is not available at initial eligibility.
 - I. Social Security Reports in EIV. Social security information in EIV is updated quarterly, therefore, supplemental information is not necessary unless the tenant disputes the EIV report. If the participant disputes the EIV report, they must provide a current benefit letter from the Social Security Administration (SSA), dated within sixty (60) days of a request by the THDA, to supplement the EIV report information.
 - II. Employment Reports in EIV. EIV data is updated quarterly, therefore, is not current for employment income. EIV may be used to calculate past income, but may not be used to calculate current income and rent without supplemental documents, preferably computer-generated documents or third-party documentation. If the participant disputes EIV, written third-party verification of the income source disputed must be initiated. Written third-party verification may also be required to supplement EIV, rather than computer-generated documents, if the THDA determines that additional information is necessary to determine income and rent.
 - III. Acceptable Documents to Supplement EIV Information for Employment Income.
 - A. The four (4) most recent, consecutive, pay stubs showing employee's gross pay per pay period and frequency of pay. If the participant has been employed

(Rule 0770-01-05-.18, continued)

for less than four (4) pay periods, they may provide all of the pay stubs they have received, up to the date of the reexamination appointment, in consecutive order;

- B. Letter from the employer to confirm effective dates of employment and other pertinent information;
 - C. Computer-generated payroll report.
 - D. Computer-generated letter or report from the unemployment office to confirm benefit status and payments; or
 - E. The most recent four (4) unemployment pay stubs. If the participant has been unemployed for less than four (4) pay periods, they may provide all of the pay stubs they have received up to the date of the reexamination appointment in consecutive order.
- (II) ACCENT. The Tennessee Department of Human Services (DHS) maintains a computer database, ACCENT, which includes income, asset and household composition records for families receiving TANF, food stamps and other transitional benefits through Tennessee's Families First program. The THDA has been given permission by DHS to access certain records through ACCENT as a UIV source.
 - (III) DHS Child Support Payment System. The Tennessee Department of Human Services maintains a web-based Child Support Payment System for child support payments paid through the court system. The system is located at www.tennesseeanytime.org/tcses. The THDA has access to this system when the participant provides a member identification number and/or when any member of the household receives other DHS benefits available for review through the ACCENT system.
 - (IV) Third-party, private contractors contracted by the THDA to provide income data collected from employers.
 - (V) The State Wage Information Collection Agency (SWICA). SWICA reports for employment and unemployment records are available to the THDA currently for a charge per household member record. Due to the cost of these records, it is currently financially prohibitive for the THDA to access a SWICA record for each household member. Therefore, the THDA will request SWICA information only during fraud investigations.
 - (VI) Other web-based systems for document retrieval, such as the State of Tennessee, Comptroller of the Treasury, Real Estate Assessment Data website.
- 2. Computer-Generated Documents (from third-party sources). The THDA will use certain computer-generated documents as a source of third-party information. The participant may provide the computer-generated documents if the document is an original, or clearly an authentic copy that has not been altered, damaged, or made illegible in any way and the source of the document is clearly identified.

(Rule 0770-01-05-.18, continued)

Where possible, the THDA staff may also assist the family with printing or requesting verification documents from web resources, such as online statements available from the unemployment provider or benefit letters from the SSA. Computer-generated documents may be used to supplement EIV reports or in some cases to replace third-party written verification.

(i) The following documents are acceptable examples of computer generated documents:

(I) The four (4) most recent, consecutive, pay stubs showing employee's gross pay per pay period and frequency of pay. If the participant has been employed for less than four (4) pay periods, they may provide all of the pay stubs they have received, up to the date of the reexamination appointment, in consecutive order.

(II) Payroll reports from employer.

(III) Unemployment Benefit Letters or web-based printouts of unemployment benefits.

(IV) SSA Benefit Letters.

(V) Childcare provider statements, such as those provided to persons for flexible spending account documentation (for child care deduction).

(VI) Printed statements from medical providers documenting medical appointments or costs (for medical deductions).

(VII) Pharmacy print-outs (for medical deductions).

(VIII) Printed statements from medical insurers, life insurance companies, investment managers (401K or other investment income), and other printed statements.

(IX) Bank statements (for assets).

(ii) At the THDA's sole discretion, a self-certification will be acceptable as the only means of verification if the service charge for a computer-generated document is more than \$5. The cost of verification will not be passed on to the applicant or participant.

3. Third-Party Written and Oral Verification. If UIV or appropriate computer-generated documents from a third-party source are not available to verify income, a case note should be made in the participant's file on the Verification Tracking form and third-party verification should be attempted. If EIV information is disputed, the THDA will also initiate third-party verification.

(i) The THDA will make one third-party written and one third-party oral verification attempt before using a tenant self-certification.

(I) Third-Party Written Verification. The THDA may mail, fax, e-mail or hand deliver third-party written verification requests using the THDA forms and will accept third-party responses using any of these methods. The THDA will send a written request for verification to each required source and give the source fourteen (14) calendar

(Rule 0770-01-05-.18, continued)

days to respond in writing. If a response has not been received by the deadline, the THDA will attempt third-party oral verification.

- (II) Third-Party Oral Verification. The THDA will attempt third-party oral verification by placing one call. If there is no return call by the 3rd business day from the last call, then a participant self-certification will be used.
 - (III) A record of each attempt to contact the third-party source, including no-answer calls and all successful contacts with the source, will be documented in the participant's file on the Verification Tracking form to ensure that all reasonable attempts are made to receive the highest level of verification. For third-party oral verification, the name and title of the person contacted, the date and time of the conversation or attempt, the telephone number used, and any information provided orally will be documented. A THDA staff member will fill out the appropriate verification form with the information provided and will make a note in the file. The staff member may choose to review tenant-provided documents if any question of the information exists.
- (ii) If the deadlines for submission are not met, the THDA will use the information from the participant's self-certification, in particular the Personal Declaration, on a provisional basis. If the THDA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the THDA will conduct an interim reexamination to adjust the figures used for the reexamination. The household will not be held responsible for late third-party information, but they will be responsible for repaying HAP and UAP due to underreporting.
 - (iii) The THDA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification.
 - (iv) The THDA will also determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification and when there is a service charge for verifying an asset or expense and the household has original documents or copies of original documents that provide the necessary information.
4. Self-Certification. When information cannot be verified by a UIV source, computer-generated documents from a third-party source, or third-party methods, household members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the THDA, unless the information is clearly certified on the Personal Declaration. The information contained in the Personal Declaration is considered a self-certification. The household may be asked to provide a separate handwritten statement in some cases. The self-certification must be written in the household member's handwriting and signed by the household member whose information or status is being verified.
- (i) In a case where the head of household cannot or will not provide the contact information for persons providing regular family

(Rule 0770-01-05-.18, continued)

support/contributions, a self-certification of the income amount and frequency may be accepted from the head of household.

- (ii) The THDA may require a household to certify that a member does not receive a particular type of income or benefit.

(d) Requirements for Acceptable Documents.

1. Any documents used for verification must be made from an original and appear authentic. The documents must not be damaged, altered or illegible in any way.
2. A certification is not considered complete and will not be processed until all required verifications have been received by the THDA. Failure to comply with the certification process may result in termination of assistance.
3. When verifications are received, they must be date stamped on the date of receipt.
4. All verifications, along with the authorizations for release of information, must be placed in the tenant file.
5. When determining eligibility and at initial move-in, documents generally must be dated within sixty (60) calendar days prior to initial issuance of a voucher, if available.
6. Documents provided by the participant or computer-generated documents should be dated within the past sixty (60) calendar days of the request date for the information. However, it is appropriate to accept documents older than sixty days as long as the income calculation includes documents within the past sixty days.
7. Interim and recertification (annual and relocation) verification documents usually must be dated within one hundred twenty (120) calendar days of the recertification date. If a document represents the most recent scheduled report from a source, the THDA will accept documents dated up to six (6) months before the effective date of the household's recertification.
8. For documents that cannot be copied for various reasons (including government checks), the THDA will verify the information, source, date, check number, etc.
9. Any self-certifications must be made in a format acceptable to the THDA. Any information contained in the Personal Declaration is considered to be a self-certification when other verification attempts fail.
10. The verification must be reasonable and acceptable to the THDA. If verification furnished by the applicant or tenant appears to be unreasonable or questionable, the THDA will make every effort to assist the applicant or tenant in providing adequate verification. If the needed verifications continue to be unreasonable or unacceptable, the THDA may not process the change until verification as outlined by the verification hierarchy is obtained, at which time assistance may be denied or terminated.

- (e) File Documentation. The THDA must document, in each participant's file, how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the file in sufficient detail to demonstrate that the THDA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a

(Rule 0770-01-05-.18, continued)

staff member or HUD reviewer to understand the process followed and conclusions reached. Staff will use the Verification Tracking form to document verification attempts when a UIV, computer-generated document or third-party verification is not available. Verification attempts and the barriers to obtaining verifications will be documented on this form.

(3) Verification Documentation Requirements.

(a) Waiting List Preferences Eligibility. Participants who claim a local preference must furnish documentation verifying their eligibility for each individual preference.

1. Involuntary Displacement Due to Natural Disaster Preference. See § 0770-01-05-.06(7)(g)3.

2. In-State Residency Preference. See § 0770-01-05-.06(7)(g)4.

3. Elderly or Disabled Families Preference. See § 0770-01-05-.06(7)(g)5.

(b) Legal Identity/Age. See 0770-01-05-.11(5)(a).

(c) Family Composition. See 0770-01-05-.11(5)(b).

(d) Income Limits. See 0770-01-05-.12 and 0770-01-05-.19.

(e) Provision of Social Security Numbers. See 0770-01-05-.14.

(f) Citizenship. See 0770-01-05-.13.

(g) Student Status. See 0770-01-05-.15.

(h) Debt to Another Public Housing Authority. See 0770-01-05-.16(5).

(i) Drug or Criminal Activity. See 0770-01-05-.16(8).

(j) Eviction from Public Housing. See 0770-01-05-.16(6).

(k) Verification of Existence of a Disability and Disability Accommodations. See 0770-01-05-.30.

(l) Minimum Rent Exception. See 0770-01-05-.21(3)(c).

(m) Violence Against Women Act (VAWA). See 0770-01-05-.30.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.19 INCOME AND ASSET DETERMINATION (24 C.F.R. 5.609).

(1) General Information.

(a) Gross annual income (annual income) is used to determine if the household falls within the Income Limits and to determine the Total Tenant Payment (TTP), the amount of the rent the program participant is responsible for paying. The income of every household

(Rule 0770-01-05-.19, continued)

member who resides in the assisted unit, including most persons who are temporarily absent but included in the unit size calculation, will be included when calculating income.

- (b) Definition of Annual Income. Annual income is the amount of income that is used to determine a family's eligibility for assistance and ongoing rent calculation. Annual income means all amounts, monetary or not, that go to or are on behalf of the family head or spouse (even if temporarily absent) or to any other family member, or all amounts received from a source outside the household, or in other words, income received or earned within a twelve-month (12) period. Annual income includes amounts derived (during the twelve-month period) from assets to which any member of the family has access. Annual income includes all amounts that are not specifically excluded by regulation

1. Applicants. For applicants, annual income is all amounts anticipated to be received or earned during the twelve-month (12) period following admission, since EIV income information is not available for applicants.
2. Participants. For participants, annual income is all amounts actually received or earned during the most recent 12 months of income information available in EIV. (Notice PIH 2013-03 (HA), January 22, 2013).

- (c) Calculating Income (24 C.F.R. 5.609). The following procedures are observed when calculating income:

1. Applicants.
 - (i) Current Circumstances. Generally, current circumstances are the basis of anticipated income, unless the self-declaration or verification forms indicate an upcoming change or income fluctuates. Projected annual income is determined by annualizing current income. Income that may not last for a full twelve (12) months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full twelve (12) months. If changes occur later in the year, an interim recertification can be conducted to change the household's rent. However, if information is available on changes expected to occur during the year, this information is used to determine the total anticipated income from all known sources during the year. Therefore, if the anticipated income from the employer shows a raise in pay, which will occur four (4) months from the effective date of the recertification, income is calculated at the old rate for four (4) months and at the new rate for eight (8) months.
 - (ii) Previous Year's Income. The previous year's income may be utilized to determine the amount of income to be anticipated when current income cannot be clearly verified or determined, such as:
 - (I) When a household member has a sporadic annual work history (factory production work, temporary services, teacher's aides, etc.).
 - (II) The household composition changes, and thus, household income is sporadic (a particular member moves into and out of the household frequently).
 - (III) For employment, unemployment, and social security income an Enterprise Verification System (EIV) report for the prior year may be used, supplemented with current documents where possible.

(Rule 0770-01-05-.19, continued)

Another preferred document for employment income is the previous year's W-2 Wage and Tax statement or the Social Security Earnings Statement for the prior year when the participant has the same employment at the time of the certification or recertification.

- (IV) When bonuses are anticipated, but the employer does not know how much the bonus will be, the bonuses from last year are used.
 - (V) When child support income is court-ordered, but the amount received fluctuates and does not consistently match the court order, the reports available from DHS's child support online system are appropriate documentation to determine annual child support income.
- (iii) Annualized Income Conversion. All income is converted from periodic amounts to an annualized figure to complete rent calculations.
- (I) The two following methods may be used to do this and vary depending upon the circumstances of the household.
 - I. Annualize current income and if the income changes after the initial move-in or recertification, conduct an interim if the income changes.
 - II. Average known sources of varying income to compute an annual income calculation; no interim is processed.
 - (II) In cases where a person works a nine-month schedule, to reduce administrative burden, the THDA will annualize the income over a 12-month period and not conduct an interim unless the person verifies they are separated from the employer permanently.
 - (III) Periodic income is converted to annual income using the following calculations:
 - I. Multiply weekly amount by 52.
 - II. Multiply bi-weekly amounts by 26.
 - III. Multiply monthly amounts by 12.
 - IV. Multiply hourly amounts by the number of hours worked per week to get the weekly amount.
- (iv) Irregular Income. Some circumstances present challenges to estimating anticipated income, including situations where a participant has sporadic work or seasonal income or a participant who is self-employed. In all instances, the THDA will make a reasonable judgment as to the most reliable approach in estimating what the participant will receive during the year. In many of these challenging situations, mid-year or interim recertifications may be required to reflect changing circumstances.
2. Participants. The THDA has chosen to calculate annual income for participants based on Notice PIH 2013-03 (HA), January 22, 2013, which allows Public Housing Authorities to use actual past income to calculate subsidy levels. Since the THDA is determining annual income based on actual past income, the THDA

(Rule 0770-01-05-.19, continued)

must use the most recent 12 months of income information available in Enterprise Income Verification (EIV) System, when available. Since the EIV report will give actual earnings data verified by a third party, the program participant is no longer required to provide third-party documentation (e.g., paystubs, payroll summary report, unemployment monetary benefit notice), instead the participant's declaration of income on the Personal Declaration, signed by all adult household members, will suffice.

- (i) Comparison between EIV and Personal Declaration. The THDA will total the EIV income information, as well as any non-wage information, for the most recent 12 months of income that are available in EIV and will compare this total to the information provide on the Personal Declaration.
 - (I) Substantially the Same. If the information provided by the participant is substantially the same (less than \$2400 annually or \$200 per month) as what is contained in EIV, this is the participant's annual income.
 - (II) Differs Substantially. If the source(s) or amount of income reported by the participant and contained in EIV differs substantially, the THDA must revert to using projected, anticipated income and conduct further verification, which may include at a minimum, four current, consecutive pay stubs. Other acceptable tenant-provided documentation (generated by a third-party source) include, but are not limited to: payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.
- (ii) Full Twelve Months Not Available in EIV. If there are not 12 consecutive months of income information available in EIV, then the THDA must revert to using projected, anticipated income here as well.
- (iii) Change in Circumstances or Dispute. If there has been a change in circumstances for an applicant or participant household or the household disputes the EIV-reported income information and is unable to provide acceptable documentation to resolve the dispute, the THDA must request written third-party verification.
 - (I) Example. If a program participant lost his/her job, changed jobs, or reduced their hours in the months subsequent to the time period covered in EIV, the THDA must use, at the participant's request, the more recent income information verified by participant provided third-party documentation (e.g., paystubs, payroll summary report, unemployment monetary benefit notice) or through written third-party verification, which reflects the new or current work circumstance.
- (iv) Sources Not Available in EIV. The THDA must continue to verify income from sources not available in EIV. However, the THDA must use the same time period for both wage and non-wage income. For example, if the THDA uses EIV information from July 2011 to June 2012 for the purpose of verifying income from wages, the THDA must use the same time period for any nonwage income.
- (v) Participant Requests Use of Anticipated Income. At their discretion, participants may request that anticipated income be used instead of past

(Rule 0770-01-05-.19, continued)

income. For example, if a participant recently retired, the participant may request that anticipated income be used to calculate their rental subsidy level, since the anticipated income will result in a higher subsidy.

- (d) **Minimum Income/Expenses Requirement.** The THDA follows HUD Rental Integrity Monitoring guidance when determining income. There is no minimum income requirement, but income reported must be reasonable in relationship to financial commitments reported by the household. For example, if the household reports no income, it is not reasonable that all bills/debts are paid in a timely manner. The THDA will review the Personal Declaration to compare self-declared paid current expenses to reported income for reasonability. If the THDA finds that the household has claimed less income than non-delinquent expenses, the household will be required to report the additional income sources and amounts available to cover their currently paid expenses. If the household refuses to cooperate, the THDA may tally the amount of paid current monthly expenses and count this amount as monthly income, using the Personal Declaration as verification of the income.
 - (e) A household claiming zero income will have an interim contact every ninety (90) days until the household shows some type of income.
- (2) **Income Considerations by Member Type (24 C.F.R. 5.609).**
- (a) **Income of Adults.** The annual income of the head, spouse or co-head, and other adult members of the family must be counted. In addition, persons under the age of eighteen (18) who have entered into a lease under state law are treated as adults and their annual income must be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.
 - (b) **Income of Dependents.** A dependent is a family member who is under eighteen (18) years of age, is disabled, or is a full-time student. The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.
 - 1. Earned income of minors (family members under eighteen) is not counted.
 - 2. Benefits or other unearned income of minors is counted.
 - 3. When more than one family shares custody of a child, and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.
 - (c) **Income of Full-Time Students.** When full-time students who are eighteen (18) years or older are dependents a small amount of their earned income will be counted. The THDA will count the earned income to a maximum of four hundred eighty dollars (\$480) per year. If the income is less than \$480, all of the income will be counted. If the earned income exceeds \$480, only \$480 will be counted and the amount that exceeds the \$480 will be excluded.
 - 1. A head, spouse or co-head can never be classified as a full-time student dependent. All income of a full-time student, eighteen years of age or older, is counted if that person is the head of the family, spouse, or co-head.

(Rule 0770-01-05-.19, continued)

2. For full-time students with financial assistance under the Higher Education Act of 1965, see Student Income-Grants & Scholarships below for additional guidance in the treatment of this income.
- (d) Income Received for the Care of Foster Children & Adults. Payments received by the family through the official relationships with local welfare agencies, specifically provided for the care of the foster child or adult, is not counted.
- (e) Income of Permanently Absent Household Members. Income of persons permanently absent will not be counted. The head of household must sign a certification that the member is permanently absent and the household will be required to verify that a member is permanently absent.
 1. Tax records, rental leases, utility bills, department of motor vehicle (DMV) records, criminal records, and other forms of computer-generated or third-party verification may be utilized to determine if a person is permanently or temporarily absent from the household.
- (f) Income of Temporarily Absent Household Members. Income of temporarily absent household members who are included in the unit size calculation is counted. This includes all household members who are working out of town or are temporarily absent from the unit for any other reason (see below for military deployment). If the family wishes to remove an adult from the household, the policies above under permanent absence will be followed.
 1. The THDA will count the income of the spouse of the head of the household, even if the spouse is not currently considered a household member, when the following applies:
 - (i) The spouse is temporarily absent;
 - (ii) The head of household files a joint income tax return with the spouse, unless the head of household can specifically verify that he did not have access to the joint income; or
 - (iii) The spouse shares access to resources, such as checking or savings account with the head of household or another adult household member.
 - (iv) The gross income, including all pay and allowances, is counted as income, regardless of the amount actually sent to the household members remaining in the unit.
- (g) Income of Deployed, Active Duty Military Personnel (24 C.F.R. 5.609(b)(8)). All regular pay, special pay, and allowances of a member of the Armed Forces, whether or not living in the unit, who is head of the family, spouse, or other person whose dependents are residing in the unit is counted.
 1. Hostile Fire Pay Exception. Special pay received by a person serving in the Armed Services who is exposed to hostile fire is an exception and is excluded from income under 24 C.F.R. 5.609(c)(7). Hostile fire pay is also called imminent danger pay and should be labeled as such on an armed forces member's leave and earnings statement.
- (h) Income of Confined Household Members (24 C.F.R. 982.54(d)(10)). An individual permanently confined to a nursing home or hospital may not be named as head, spouse or co-head, but may continue as a household member at the family's

(Rule 0770-01-05-.19, continued)

discretion. If a household member is confined to a nursing home or hospital on a permanent basis, the household may elect one of the following choices:

1. Include the income of the confined household member; accept any deductions for which the individual would qualify and maintain the same subsidy size; or
2. Exclude the income; not qualify for any deductions for the individual; accept a reduced subsidy size (if applicable).

- (i) **Persons Receiving SSI Who Have a Designated Payee.** For persons receiving Social Security Insurance (SSI) who are required to have a designated payee, their TTP calculation will be based on the net income available to the tenant. Net income is defined here as the tenant's gross income minus the actual fee amount charged by the designated payee. This fee is typically ten (10) percent of the person's SSI and is an administrative or processing fee. Expenses for the tenant that the payee pays out of the SSI amount is not excluded from net income and must be counted.

(3) **Income Inclusions.**

- (a) **Earned Income.** Earned income sources includes income from wages, own business, self-employment and other earned sources.

1. **Wages (24 C.F.R. 5.609(b)(1)).**

- (i) Gross income of adults is counted.
- (ii) \$480 of the gross earned income of adult students is counted.
- (iii) Earned income of minors (under 18) is not included.

2. **Own Business/Self Employment (24 C.F.R. 5.609(b)(2)).** Income from self-employment or operation of a business is counted using the calculation of net income equals gross income less expenses.

- (i) If the applicant or participant filed taxes in the prior year, they must supply a copy of their tax return. The information in the tax return will be used to determine current business income. If the applicant or participant cannot provide the prior year's tax return, they must supply other documents that verify gross income and expenses.

- (I) Expenditures for business expansion or amortization of capital indebtedness may not be used as deductions in determining net income.

- (II) An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations.

- (III) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

- (b) **Payments in Lieu of Earnings (24 C.F.R. 5.605(b)(5)).** This income category includes payments to individuals who are not working because they have lost their jobs or have been injured on the job and are included in annual income when they are received

(Rule 0770-01-05-.19, continued)

either in the form of periodic payments or as a lump sum that represents the delayed start of a periodic payment. They include:

1. Unemployment.
 2. Workers' Compensation.
 3. Severance Pay.
 4. Payments in lieu of earnings are excluded from income if they are received as a one-time settlement payment (e.g. for a claim dispute or a permanent work-related injury), but may be included as an asset.
- (c) Social Security & Supplemental Security Income (Periodic Amounts) (24 C.F.R. 5.605(b)(4)). The gross amount of any Social Security, SSI or SSDI benefit, before any type of garnishment or deduction (i.e. deduction for medical insurance), is counted as income for both adults and minors.
1. A reduction in a social security or SSI payment because of a prior overpayment is not considered a deduction from the usual full amount. When social security or SSI benefits are reduced for this reason, only the actual amount received during the reduction period is to be included in annual income.
- (d) Child Support and Alimony (24 C.F.R. 5.609(b)(7)). Child support and alimony specified in a divorce or separation agreement or child support order is counted unless the household provides appropriate verification that they are not receiving the support, or are receiving a different amount.
1. Alimony and child support paid by a household member to someone outside the household is not deducted from the gross annual income.
 2. When a person that has been making financial contributions to an assisted household is added to the household composition, the household income is recalculated to include that person's income. The amount of money contributed by the new member is included in the total household income. Thus, money previously shown as contributions such as child support and alimony, even if it is still ordered by the court, is no longer included separately as income. The contribution amount is not included because it is now declared as other income and verified and included in the total household income.
 3. For child support income, documentation that a child support enforcement order has been attempted through the Department of Human Services (DHS), another enforcement agency, or independent enforcement efforts must be provided.
 4. When determining the amount of child support to count as annual income, the following factors will be considered:
 - (i) The amount of child support ordered by the court in a divorce or separation agreement or child support order; or
 - (ii) Up-front verification or other computer-generated documentation showing the payments received over the last twelve (12) months; or
 - (l) If the amount received differs consistently from the court-ordered amount, the actual amount received will be used. In this case, the most appropriate documentation is verification from the Department

(Rule 0770-01-05-.19, continued)

of Human Services Child Support office of actual monthly amounts of child support received (e.g. Child Support Payment Summary).

- (iii) The amount of child support verified through third-party verification methods by the child support provider or the amount self-declared by the applicant or participant when UIV, computer-generated documentation, or third-party verification from the child support provider is not received.
 - (I) These are only acceptable when child support is not ordered or enforced by the court, but rather when the two parties have a verbal agreement for support. In this case, the appropriate THDA verification form should be used.
5. Annualizing Child Support. When annualizing the child support received, the amount currently received will be considered, not the amount ordered by a court order, when the amount received differs consistently from the court-ordered amount.
- (i) Notification Requirement. The household must notify the THDA within fourteen (14) calendar days of any changes in child support payments.
 - (ii) Payments Ceased. If the applicant or participant claims the payments have ended, this should be demonstrated through a computer-generated document, like the DHS child support summary, or through verification of an employment loss, a death, or an imprisonment of the child support provider, etc.
 - (iii) Payments Received for Twelve Months or More.
 - (I) If the household has received child support for the past twelve (12) months, but current verification shows a decrease or temporary stop in child support payments, the current circumstances should be used to calculate child support by multiplying the current amount by 12, but the household must notify the THDA within 14 days of a change in the child support received. The applicant or participant should be able to demonstrate that the payments have decreased or temporarily stopped either through computer-generated documentation or third-party verification.
 - I. Example. Child support of \$100 per month has been ordered. If the DHS child support summary shows that child support was \$100 per month for 6 months, but during the past 3 months, the support paid was \$25 per month, the \$25 will be used as the monthly amount received for annualizing child support. So, in this case, \$25 multiplied by 12 equals an estimated annual amount of \$300.
 - (II) However, if the household has been receiving child support for the last twelve (12) months, but the amount of child support received fluctuates frequently, then the entire last twelve (12) months will be considered for the annual amount. In order to determine the estimated monthly amount, add together the amounts received each month and divide the total by 12.
 - I. Example. Child support of \$100 per month has been ordered. The child support received is \$100 in January, \$50 February,

(Rule 0770-01-05-.19, continued)

\$25 March, \$100 April, \$100 May, \$125 June, \$25 July, \$125 August, \$50 September, \$125 October, \$75 November, \$100 December. In order to determine the estimated annual amount, add all 12 months together which equals \$1,000. Then, in order to determine the estimated monthly amount, divide the 12-month total of \$1,000 by 12, which equals \$83.33 per month.

(iv) Payments Received for Less than Twelve Months.

- (I) If child support has been received for less than 12 months, but the amount received has remained consistent, just multiply the amount received each month by 12 to get the estimated annual child support.

I. Example. Child support of \$100 per month has been ordered. The child support received is \$100 in January, \$100 February, and \$100 March, then multiply \$100 by 12 to get the estimated annual amount of \$1,200.

- (II) If the child support has been received for less than 12 months and the amount received has fluctuated, the amount received should be totaled and divided by the total months payments were received in order to determine the monthly amount and then multiplied by 12 to get the estimated annual amount.

I. Example. Child support of \$100 per month has been ordered. Child support has been periodically received for the past 6 months, but the amounts received have fluctuated. \$100 was received each month for 3 months, \$25 was received each month for 2 months, and \$0 was received for 1 month. In this case, the total child support received over the 6-month time period is \$350. In order to determine the monthly amount of child support, divide \$350 by 6 months, which equals an estimated monthly amount of \$58.33. Then to determine the estimated annual child support, multiply \$58.33 by 12, which equals an estimated annual amount of \$699.96.

- (e) Unearned Income/Recurring Contributions or Gifts (24 C.F.R. 5.609(a), (b)(7), and (c)(9)). Contributions and gifts from persons outside the household are counted as income when:

1. The contribution is recurring; or
2. Determined necessary to meet declared monthly expenses.
3. Regular, recurring contributions or gifts are counted, but casual contributions or sporadic gifts are not counted.
4. Rent and utility payments paid on behalf of the household and other cash or non-cash contributions provided on a regular basis to the household or on behalf of the household are included.

- (f) Contributions to Company Retirement/Pension Funds (24 C.F.R. 5.603(d)). Contributions to company retirement and pension funds are handled in the following manner:

(Rule 0770-01-05-.19, continued)

1. While an individual is employed, only the amounts the household actually withdraws without retiring or terminating employment are counted as income.
 2. After retirement or termination of employment, any amount the employee elects to receive as a lump sum, plus periodic payments, is counted.
- (g) Withdrawal of Cash or Assets from an Investment. The withdrawal of cash or assets from an investment received as periodic payments will be counted as income.
1. However, lump-sum receipts from pension and retirement funds are counted as assets, not income.
- (h) Student Income-Grants and Scholarships (24 C.F.R. 5.609(c)).
- (i) Lump-Sum Payments (24 C.F.R. 5.609(b)(4), (c)(3), (c)(14)). Generally, lump-sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income. The following lump-sum payments are included in income.
1. Lump-sum payments caused by delays in processing periodic payments for unemployment or welfare assistance.
 2. Lottery winnings paid in periodic payments.
 3. See § 0770-01-05-.19(8)(a) on Asset Inclusions for the treatment of all other lump-sum payments.
- (j) Treatment of Welfare Income Changes Resulting from Welfare Program Requirements. When a request for an income reexamination and rent reduction due to a reduction in Families First income is received, the THDA will verify with the local division of the Department of Human Services (DHS) whether the household's benefits have been reduced because of non-compliance with economic self-sufficiency requirements, work activities requirements, or fraud. Verification may be obtained, in written form, directly from the local DHS office, or through the ACCENT computer system. The verification will be maintained in the tenant file.
1. If verification is obtained from the DHS that the household's benefits have been reduced because of non-compliance with economic self-sufficiency requirements, work activities requirements, or fraud, the household's income will not be reduced for purposes of calculating the household's Total Tenant Payment. Instead, the household's welfare income must be "imputed" during the term of the welfare benefits sanction. The THDA will verify with the DHS the term of the sanction.
 2. The exclusion or reduction of rent contribution does not apply when the household loses welfare benefits because of a durational time limit, such as the five-year time limit for receipt of Families First benefits.
 3. To impute welfare benefits reduction, the THDA will perform the following calculation:
 - (i) Determine the amount of welfare income received prior to the sanction;
 - (ii) Determine the term of the sanction; and

(Rule 0770-01-05-.19, continued)

- (iii) Offset the amount of additional income the household receives that starts after the welfare sanction. If additional income received after the welfare sanction begins is equal to the amount of welfare income received prior to the sanction, the imputed welfare income is equal to \$0.
 - (iv) Example. If a household receives \$142.00 in welfare benefits prior to sanction for noncompliance, then the DHS identifies the term of the sanction as 3 years, and the household begins receiving \$100 monthly income from the head of household's babysitting, the imputed welfare income is \$42.00. The THDA would count \$100 per month in employment income and \$42.00 per month in imputed welfare income during the three (3) year sanction period (or until a change in income is reported).
- (4) Income Exclusions.
 - (a) Income for Families First Job Training Participants. Incremental earnings and benefits resulting from participation in a Families First job training program are disregarded or excluded.
 - 1. Definition of Incremental Income. Incremental income is defined as the increase in the total amount of welfare, benefits, and earnings of a household member prior to enrollment in the training program over the welfare, benefits and earnings of the household member after enrollment in the training program.
 - (i) Example. If a household reported \$185.00 per month in TANF prior to their enrollment in a job training program, and reported \$385.00 in TANF and job training earnings after enrollment in the job training program, the total amount of income excluded is \$200 dollars (\$385 minus \$185), not \$385 dollars. The amounts excluded by this provision are excluded only for the period during which the household member participates in the job training program.
 - 2. Training may include, but is not limited to, the following:
 - (i) Classroom training in a specific occupational skill;
 - (ii) On-the-job training with subsidized wages;
 - (iii) Basic education;
 - 3. If the following questions can be answered affirmatively, then the incremental earnings and benefits resulting from participation in a Families First job training program are excluded.
 - (i) Does the program have clearly defined goals and objectives?
 - (ii) Does the program enhance the individual's ability to obtain employment?
 - (iii) Does the program take place in a series of sessions over a specific period of time?
 - (iv) Is the program designed to lead to a higher level of proficiency?
 - (v) Does the program have performance standards to measure proficiency?

(Rule 0770-01-05-.19, continued)

(b) Earned Income Disallowance for Households with a Person with Disabilities (EID) (24 C.F.R. 5.617).

1. The EID is a special income exclusion, extended to qualified households that include a person with disabilities who chooses to work or earn additional income, where the additional income is temporarily excluded from income so that it does not result in a rent increase.
2. The purpose of the exclusion is to encourage persons with disabilities to be self-sufficient.
3. Qualified households consist of households that include a previously unemployed person with disabilities who has earned, in the twelve (12) months prior to employment, no more than would be received for ten (10) hours of work per week for fifty (50) weeks at the established minimum wage and whose:
 - (i) Annual income increases as a result of the employment of a person with disabilities who was previously unemployed for one or more years prior to their current employment; or
 - (ii) Annual income increases as a result of increased earnings by a person with disabilities who is participating in any economic self-sufficiency or other job training program; or
 - (iii) Annual income increases as a result of new employment or increased earnings of a person with disabilities during or within six months after receiving cash assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by DHS.
 - (l) The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.
4. The temporary disallowance is limited to two twelve-month (12-month) exclusion periods, one full and one partial, and a lifetime limit of forty-eight (48) months (four (4) years). The terms are not required to be consecutive, but must fall within the lifetime, 48-month period.
 - (i) Example. A person could use his first 12-month exclusion period during the year 2016, and then wait until the year 2018 to use his second 12-month exclusion period. In this case, however, both 12-month terms must fall between the years 2016 and 2020.
5. The disallowance/exclusion of an increase in annual income is applied as follows:
 - (i) Initial Twelve-Month Exclusion. During the initial twelve-month period, beginning on the date a member of a household who is a person with disabilities of a qualified family is first employed, or the household first experiences an increase in annual income attributable to the employment, and the household reports the income, the THDA will exclude from annual income any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(Rule 0770-01-05-.19, continued)

- (ii) **Second Twelve-Month Exclusion:** During the second-twelve month period after the date a household member who is a person with disabilities of a qualified family is first employed, or the family first experiences an increase in annual income attributable to employment and the household reports the income, the THDA will exclude from annual income of a qualified family fifty percent (50%) of any increase in income of such household member as a result of employment over income of that family member prior to the beginning of such employment.
 - (iii) **Maximum Four-Year Disallowance.** The disallowance of increased income of an individual household member who is a person with disabilities as provided above is limited to a lifetime, 48-month period. Both the first twelve-month exclusion and the second only apply to a maximum of twelve months for each disallowance during the 48-month period starting from the initial exclusion.
- 6. **Inapplicability to Admission.** The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program, including the determination of income eligibility or any income targeting that may be applicable.
- 7. **Failure to Timely Report Earned Income that would qualify for a Disallowance.** If a household fails to timely report a change in employment income, but it is determined that the income could have been excluded due to the Earned Income Disallowance, no repayment will be required.
- 8. If a household claims the earned income disallowance (disabled members only) for a source of income, both the source and the income must be verified.
- (c) There are other certain types of income that are specifically excluded by regulation and are not counted towards the household's Total Tenant Payment (TTP). Specific income exclusions include:
 - 1. Income from the employment of children (including foster children) under the age of eighteen (18) years;
 - 2. Income of a live-in aide (as defined at 24 C.F.R. 5.403);
 - 3. Payments received for the care of foster children, foster adults through official foster care relationships with local welfare agencies or kinship payments;
 - 4. Earnings in excess of \$480 for each full-time student 18 years of age or older other than the head, spouse, or co-head;
 - 5. The special pay to a family member serving in the armed forces who is exposed to hostile fire;
 - 6. Amounts received by a family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member are excluded from annual income;
 - 7. Any low-income subsidy received by an individual enrolled in the Medicare prescription drug plan program is excluded from annual income;

(Rule 0770-01-05-.19, continued)

8. Temporary, nonrecurring, or sporadic income of any kind, including employment income;
 - (i) The key element that causes the exclusion of this income is that it is neither reliable nor periodic. For example, the income of an individual who works occasionally as a handyman is neither reliable nor periodic if it cannot be anticipated and no historic, stable pattern of income exists.
9. The value of food stamps provided under the Food Stamp Act of 1977;
10. Adoption assistance payments in excess of \$480 per adopted child are excluded from annual income;
11. Amounts received by participants in publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (for special equipment, clothing, transportation, child care, etc.) and that are made solely to allow participation in a specific program;
12. Amounts paid by a state agency to a family to offset the cost of services and equipment needed to allow a developmentally disabled family member to live at home;
13. Amounts received by a person with a disability that are disregarded for a limited time for purposes of SSI eligibility and benefits because they are set aside for use under a plan to attain self-sufficiency (PASS) are excluded from annual income;
14. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act;
15. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
16. Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments;
17. Amounts received in the form of refunds or rebates under state or local law for property taxes paid on a dwelling unit are excluded from annual income (i.e. state homestead exemptions);
18. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
19. Any allowance paid under the provisions of 38 U.S.C. § 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran is excluded from annual income;
20. Any amount of crime victim compensation received under the Victims of Crime Act Reparation payments made by a foreign government pursuant to claims filed under the law of that government by persons who were persecuted during the Nazi era;
21. Payments to volunteers under the Domestic Volunteer Services Act of 1977 Programs funded under this act include:

(Rule 0770-01-05-.19, continued)

- (i) Programs for seniors, such as the Retired Senior Volunteer Program (RSVP), Foster Grandparent.
 - (ii) Program (FGP), Senior Companion Program (SCP), and the Older American Committee Service Program.
 - (iii) National Volunteer Antipoverty Programs, such as Volunteers in Service to America (VISTA), Peace Corps, Service Learning Program, and Special Volunteer Programs.
- 22. Small Business Administration programs, such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE);
- 23. Payments received from programs funded under Title V of the Older Americans Act of 1985 (i.e. Green Thumb);
- 24. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
- 25. Amounts received under a resident service stipend are excluded from annual income. A resident service stipend may not exceed \$200 per month, and no individual may receive more than one such stipend during the same period of time. If a resident service stipend exceeds \$200 per month, the entire amount must be included in annual income;
- 26. Payments received under the following claims settlement acts are excluded from annual income:
 - (i) Alaska Native Claims Settlement Act.
 - (ii) Maine Indian Claims Settlement Act of 1980.
 - (iii) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes.
 - (iv) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians.
 - (v) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands, are excluded from annual income.
 - (vi) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation.
- 27. Amounts received under training programs funded in whole or in part by HUD;
- 28. Incremental earnings and benefits resulting to a family member from participation in qualifying state or local employment training programs (including training

(Rule 0770-01-05-.19, continued)

programs not affiliated with a local government) or from training as resident management staff are excluded from annual income. See § 0770-01-05-.19(4)(a) for additional information on Families First Job Training Program;

29. Any participants who are eligible for and have received the \$250 stimulus payment as a part of the 2009 American Recovery and Reinvestment Act (ARRA); and
 30. Deferred periodic amounts from supplemental security income (SSI) and social security (SS) benefits that are received in a lump-sum amount (lump-sum distributions are treated as an asset);
- (5) Adjusted Income Allowances/Deductions (24 C.F.R. 5.611). Adjusted income is annual income minus allowances or mandatory deductions for dependents, elderly household allowance, child care, medical and handicap expenses/deductions.
- (a) Dependent Allowance (24 C.F.R. 5.611, 5.603(d)). The dependent allowance is \$480 for each household member who is under eighteen (18) years of age, is age 18 or over and a person with a disability, or 18 or over and a full-time student. The only requirement is that the THDA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions.
 1. The head, spouse, foster child or live-in attendant is never counted as a dependent.
 - (b) Elderly/Disabled Household Allowance (24 C.F.R. 5.611, 5.403(a)). The elderly/disabled household allowance is \$400 per household for all families in which the head or spouse is at least sixty-two (62) years of age or under age 62 and a person with a disability.
 1. The \$400 is a household deduction (only one per household, even if both head and spouse are elderly or have a disability).
 2. A household may have a member who is elderly or disabled, but if this person is not the head or spouse, the household does not qualify for the deduction.
 - (c) Medical Expenses, Reasonable Attendant Care, and Auxiliary Apparatus Expenses. The sum of these, to the extent that the sum exceeds three (3) percent of annual income, must be deducted from annual income.
 1. Unreimbursed Medical Expenses Deduction (24 C.F.R. 5.609(a)(2), 5.603, 5.611). The Unreimbursed Medical Expense Deduction is allowed only for households in which the head or spouse is at least sixty-two (62) years old or disabled.
 - (i) If the household is eligible for a medical expense deduction, the medical expenses of all household members are counted.
 - (ii) Verification. The THDA must verify that the household is eligible for the deduction, the costs to be deducted are qualified medical expenses, the expenses are not paid for or reimbursed by any other source, and costs incurred in past years are counted only once.
 - (I) Eligible Household. The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least age sixty-two (62) or a person with disabilities. The THDA will verify that

(Rule 0770-01-05-.19, continued)

the household meets the definition of an elderly or disabled household.

- (II) **Qualified Expenses.** To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. When it is unclear as to whether or not to allow an item as a medical expense, the IRS Publication 502 is used as a guide. These may include:
 - I. Services of doctors and health care professionals.
 - II. Services of health care facilities.
 - III. Medical insurance premiums.
 - IV. Prescription medication.
 - V. Non-prescription medicines that are prescribed by a doctor with a specific dosage.
 - VI. Transportation to treatment.
 - VII. Dental expenses, eyeglasses, hearing aids, batteries, etc.
 - VIII. Live-in or periodic medical assistance.
 - IX. Monthly payment on accumulated medical bills.
 - X. Medical care of a permanently institutionalized household member if his/her income is included in annual income.
 - XI. Allowable medical expense is that portion of total medical expenses in excess of three percent of annual income.
- (iii) **Unreimbursed Expenses.** To be eligible, the household must certify that the medical expenses are not paid or reimbursed to the household from any source. The Personal Declaration serves as a self-certification.
- (iv) **Expenses Incurred in Past Years.** When anticipated costs are related to ongoing payment of medical bills incurred in past years, the THDA will verify:
 - (I) The anticipated repayment schedule;
 - (II) The amounts paid in the past; and
 - (III) Whether the amounts to be repaid have been deducted from the household's annual income in past years.
- (v) **Amount of Expense.** The amount of the expense will be verified using the following (dependent upon the type of expense and verification available):
 - (I) Computer-generated documents or written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, etc., of the estimated medical costs to be incurred by the applicant or participant, regular payments due on medical bills, and the extent to

(Rule 0770-01-05-.19, continued)

which those expenses will be reimbursed by insurance or a government agency;

- (II) EIV or SSA written confirmation (current benefit letter) of Medicare premiums to be paid by the applicant over the next twelve (12) months;
- (III) Computer-generated documents or written verification from the insurance company or employer for health insurance premiums to be paid by the applicant or participant;
- (IV) Receipts, canceled checks, or pay stubs that indicate health insurance premium costs, etc., that verify medical costs and insurance expenses also likely to be incurred in the next twelve (12) months;
- (V) Copies of payment agreements with medical facilities or canceled checks that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months; and/or
- (VI) Receipts or other computer-generated record (pharmacy statement) of medical expenses incurred during the past twelve (12) months that can be used to anticipate future medical expenses. The THDA may use this approach for “general medical expenses” such as non-prescription drugs and regular visits to doctors or dentists but not for one-time, non-recurring expenses from the previous year.
- (VII) If computer-generated documents or third-party verification is not possible, written certification from the medical provider as to costs anticipated to be incurred during the upcoming twelve (12) months will be used.

2. Disability Reasonable Attendant Care and Auxiliary Apparatus Expenses Deduction (24 C.F.R. 5.611(c)).

- (i) A household may deduct anticipated expenses for care attendants and “auxiliary apparatus” for members with a disability if such expenses:
 - (I) Are associated with a household member with disabilities;
 - (II) Are necessary to enable a household member, which may be the person with a disability, to work;
 - (III) Sum of medical expenses, attendant care, and auxiliary apparatus expenses exceed three percent of Annual Income;
 - (IV) Expenses are unreimbursed by any other source; and
 - (V) Do not exceed the earned income of the household member(s) enabled to work.
- (ii) Eligible Disabled Household Member. The costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The THDA must verify the existence of the disability.

(Rule 0770-01-05-.19, continued)

- (iii) Is Required or Enables Household Member(s) to Work. The expenses claimed must actually be required or enable a household member or members, possibly the disabled household member(s), to work.
 - (I) The THDA will seek third-party verification from a knowledgeable physician indicating that the person with disabilities requires attendant care or an auxiliary apparatus, or that the attendant care or auxiliary apparatus enables another household member or members to work.
 - (II) If third-party verification has been attempted and is either unavailable or proves unsuccessful, the household must certify that the disability assistance expense is needed or frees a household member or members (possibly including the household member receiving the assistance) to work.
- (iv) Three Percent of Annual Income. There is a special calculation required for households who are eligible for both disabled and medical expenses. Three (3) percent of the annual income must first be deducted from the handicap expense and any remainder is then deducted from the total medical expense.
- (v) Unreimbursed Expenses. The costs of the attendant care or auxiliary apparatus must not be reimbursed by another source.
 - (I) The THDA will seek third-party verification from an attendant-care provider that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the household from any source; and
 - (II) The household will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the household from any source.
- (vi) Attendant Care. Expenses for attendant care will be verified through:
 - (I) A doctor's certification that the assistance of an attendant is medically necessary (form THDA HM-291);
 - (II) The attendant's written confirmation of hours of care provided and amount and frequency of payments received from the family or agency (or copies of canceled checks the family used to make those payments); and
 - (III) The applicant's or participant's certification as to whether any of those payments have been or will be reimbursed by outside sources.
- (vii) Auxiliary Apparatus. Auxiliary apparatus includes items such as wheelchairs, ramps, adaptation to vehicles, special equipment to enable a blind person to read or type, etc., if the apparatus is directly related to permitting the person with the handicap or disability to work. Expenses will be verified through:
 - (I) Computer-generated billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments, that will be due for the apparatus during the upcoming twelve (12) months;

(Rule 0770-01-05-.19, continued)

- (II) Third-party verification of anticipated purchase costs of auxiliary apparatus; or
 - (III) If computer-generated documents or third-party verification is not possible, written certification by the household member of estimated apparatus costs for the upcoming twelve (12) months.
- (d) Child Care Allowance (24 C.F.R. 5.603).
 - 1. Reasonable child care expenses for the care of children, including foster children, under the age of thirteen (13), may be deducted from annual income if all of the following are true:
 - (i) The costs claimed are not reimbursed by another source;
 - (ii) The costs enable a household member to pursue an eligible activity;
 - (iii) The costs are for an allowable type of childcare; and
 - (iv) The costs are reasonable, as defined below.
 - 2. Not Reimbursed by Another Source. Verification will be attempted through computer-generated documentation from the childcare provider. Any document must list the childcare provider's name, address and phone number, child(ren)'s names who are cared for and the daily, weekly or monthly childcare expenses.
 - (i) If the document provided to verify expenses does not clearly show that the household paid for the full expenses associated with the childcare, the family must certify on the Personal Declaration that the childcare expenses are not paid by or reimbursed to the household from any other source.
 - (ii) If appropriate computer-generated documents are not provided, third-party written verification will be attempted through childcare provider identified by the household using the THDA's Verification of Childcare Expenses form. The THDA form includes the childcare provider's name, address, and phone number, and asks if any other sources reimburse any of the childcare, other than a household member.
 - 3. Pursuing an Eligible Activity. The THDA must verify that the household member(s), which the household has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities. The THDA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study for students, the relationship of the household member(s) to the child, and any special needs of the child that might help determine which household member is enabled to pursue an eligible activity.
 - (i) Seeking Work. Whenever possible, the THDA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, the THDA will request verification from the agency of the member's job seeking efforts to date and require the household to submit to the THDA any reports provided to the other agency.

(Rule 0770-01-05-.19, continued)

- (i) In the event third-party verification is not available, the THDA will provide the household with a form on which the household member must record job search efforts. The THDA will review this information at each subsequent reexamination for which this deduction is claimed.
 - (ii) Furthering Education. The THDA will ask that the academic or vocational educational institution verify that the person permitted to further his education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. A computer-generated document that shows the appropriate information about enrollment and dates and times of classes is acceptable. If acceptable computer-generated documents are not available, third-party verification from the school is required (form THDA HM-360).
 - (iii) Gainful Employment. The THDA will seek verification from the employer of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more household members could be permitted to work, the work schedules for all relevant household members may be verified.
- 4. Allowable Type of Childcare. The type of care to be provided is determined by the household but must fall within certain guidelines. The THDA will verify that the type of childcare selected by the household is allowable.
 - (i) The THDA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible household members).
 - (ii) The THDA will verify that the childcare provider is not an assisted household member. Verification will be made through the head of household's declaration of household members who are expected to reside in the unit.
 - (i) Another example is that childcare expenses cannot be excluded when a minor household member is being paid by the head of household or other employed adult household member to care for other minor household members. For instance, the head of household cannot pay her sixteen-year-old child, who lives with her in the assisted residence, to care for other younger siblings. This amount may not be deducted.
 - (iii) If accurate and complete documentation is provided, the THDA will not make a determination of "adequate child care provided within the home" based on another adult being present within the unit while child care services are provided.
- 5. Reasonableness of Expenses.
 - (i) Only reasonable childcare costs can be deducted. The actual costs the household incurs will be compared with equivalent types of care in the same locality to ensure that the costs are reasonable.

(Rule 0770-01-05-.19, continued)

- (ii) If the household presents a justification for costs that exceed typical costs in the area, the THDA will request additional documentation, as required, to support a determination that the higher cost is appropriate.
 - (iii) The expenses incurred to enable a household member to work must not exceed the amount earned.
 - 6. Child support payments to guardians or estranged partners on behalf of a minor who is not living in the household are not deducted as child care payments.
 - 7. Payments to a minor child who lives in the assisted household for caring for other minor children in the household are not deducted. For example, a head of household pays her sixteen-year-old child, who lives with her in the assisted residence, to care for other younger siblings while she is working.
- (6) Asset Considerations (24 C.F.R. 982.516). Annual income includes amounts derived from assets to which family members have access.
 - (a) What is considered an Asset?
 - 1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the income from that asset.
 - 2. Some participants have assets that are not earning interest. A quantity of money under a mattress is an asset since it is a thing of value that could be used to the benefit of the participant, but under the mattress it is not producing income.
 - 3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset.
 - (b) Determining Income from Assets. The calculation to determine the amount of income from assets to include in annual income considers the following:
 - 1. The Total Cash Value of the Family's Assets. The "cash value" of an asset is the amount a family would receive if the family turned a noncash asset into cash. The cash value is the market value, or the amount another person would pay to acquire the asset, less the reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:
 - (i) Penalties for premature withdrawal;
 - (ii) Broker and legal fees; and
 - (iii) Settlement costs for real estate transactions.
 - 2. The Amount of Income Those Assets Are Earning or Could Earn, Typically Interest Income.
 - (i) Example. A family has a certificate of deposit (CD) in the amount of \$5,000 paying interest at 4%. So, $\$5,000 \times 0.04 = \200 in annual income. In this case, the penalty for early withdrawal is three months of interest, which must be considered when determining the cash value of the asset. First, the "cash" value of the asset must be calculated and then the reasonable costs to convert the asset to cash deducted. Three months interest must be deducted from the total asset to determine the cash value to count as

(Rule 0770-01-05-.19, continued)

an asset. $\$200/12 \text{ months} = \16.67 interest per month. $\$16.67 \times 3 \text{ months} = \50.01 . $\$5,000 - \$50 = \$4,950$ cash value of CD (counted toward total family assets).

3. The rule for calculating income from assets differs depending on whether the total cash value of family assets is less than five thousand dollars (\$5,000), or is \$5,000 or more.

- (i) When the net household assets are less than \$5,000, the actual income from the asset is used.

- (I) The THDA will accept a family's declaration of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets and will not request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets.

- (ii) When the net household assets are \$5,000 or more, the THDA must obtain supporting documentation (e.g. bank statements) from the family to confirm the assets and the amount used is the greater of the following:

- (I) Actual income from the assets; or

- (II) The imputed value of the assets based upon passbook rate approved by HUD, which is a percentage of the value of family assets based upon the current passbook savings rate as established by HUD.

- (III) First, to begin the calculation, the cash value of all assets will be added. Then the total cash value of assets will be multiplied by .02. The product is the "imputed income" from assets. Then, the actual income from all assets will be added. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

(7) Asset Inclusion/Exclusions.

- (a) Asset Inclusions. Household assets include the following:

1. Amounts in savings and checking accounts.

2. Stocks, bonds, savings certificates, money market funds, and other investment accounts, such as 401K accounts.

3. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.

4. Contributions to company retirement/pension funds:

- (i) While an individual is employed, only the amounts the household can withdraw without retiring or terminating employment are counted.

- (ii) After retirement or termination of employment, count as an asset any amount the employee elects to receive as a lump sum.

(Rule 0770-01-05-.19, continued)

(iii) Include in annual income any benefits received through periodic payments.

5. Equity in real property (real estate) or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs that would be incurred in selling the asset.
6. Cash value of trusts that are available to the household, not including irrevocable trusts.
7. Assets that, although owned by more than one person, allow unrestricted access by the household (such as joint checking or savings accounts).
8. Lump-sum receipts such as inheritances, capital gains, social security, lottery winnings, insurance settlements and other claims.
9. Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc.
10. Cash value of life insurance policies. Whole life insurance has a cash value, but term life insurance does not have a cash value.
11. Assets disposed of for less than fair market value during the two years preceding the certification or recertification. The difference between the market value and the actual payment received is counted.

(b) Asset Exclusions. The following household assets are not included:

1. Personal property.
2. Interest in Indian trust lands.
3. Assets not accessible by the household. In the case that a household member is listed as a beneficiary or is a joint holder of an asset that he claims he does not have access to, third-party verification will be obtained to verify the inaccessibility of the asset to the household member.
4. Assets that are a part of an active business or farming operation.

(8) Calculating Income from Assets-Specific Types.

(a) Checking & Savings Accounts. The full amount of the average balance of any checking account is counted toward total family assets, but for any savings account the full amount of the most recent balance is counted toward total family assets.

(b) Balances Held in Retirement Accounts.

1. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted. After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.
2. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.

(Rule 0770-01-05-.19, continued)

3. Include in annual income any retirement benefits received through periodic payments.
 4. Example of Balances Held in an IRA or 401K Retirement Account. Bill Smith's 401K account balance is \$35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, \$18,000, is the amount that is counted as an asset.
- (c) Annuities.
1. Income after the holder begins receiving payments.
 - (i) When verifying an annuity, the THDA will ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.
 - (ii) In cases where annuity payments have commenced, usually the holder cannot receive payment as a lump sum, therefore proof a holder is receiving payments will be sufficient to establish that the annuity is not an asset unless the THDA receives information to the contrary.
 2. Calculations when an annuity is considered an asset.
 - (i) When an applicant or participant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.
 - (ii) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn or lose, based on market fluctuations, as in a mutual fund.
 - (iii) The THDA will verify with the insurance agent or other appropriate source:
 - (I) The right of the holder to withdraw the balance (even if penalties are involved).
 - (II) The basis on which the annuity may be expected to grow during the coming year.
 - (III) The surrender or early withdrawal penalty fee.
 - (IV) The tax rate and the tax penalty that would apply if the family withdrew the annuity.
 - (iv) The cash value will be the full value of the annuity, less the surrender, or withdrawal, penalty, and less any taxes and tax penalties that would be due.
 - (v) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the

(Rule 0770-01-05-.19, continued)

coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

- (vi) The imputed income from the asset is calculated only after the cash value of all family assets has been determined. The imputed income of assets is calculated on the total cash valuate of all assets.
- (d) Real Estate Investments. If a family owns real estate, it may be necessary to consider the family's equity in the property, as well as the expense to sell the property.
- 1. To determine the family's equity, subtract amounts owed on the property from its market value, so market value minus the mortgage loan amount owed equals the amount of equity in the property.
 - 2. The cash value is calculated by subtracting the expense of selling the property (sales commissions, settlement costs, transfer taxes, etc.) from the amount of equity, so equity minus the expense of selling equals the cash value.
 - 3. Example. Juanita Player owns a rental house with a market value of \$100,000. She owes \$60,000. The cost to dispose of this house would be \$8,000. The cash value is determined by taking the \$100,000 market value and subtracting the \$60,000 mortgage amount, which equals \$40,000 equity in the property. Then after subtracting the \$8,000 it costs to dispose of the property, the cash value in this case is \$32,000.
- (e) Trusts.
- 1. How to Treat Trusts.
 - (i) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.
 - (I) Revocable Trusts. If any member of the participant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.
 - (II) Non-revocable Trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.
 - (ii) If only the income, and none of the principal, from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.
 - (I) Non-revocable Trust as an Asset Disposed of for Less than Fair Market Value. If a tenant sets up a non-revocable trust for the benefit of another person while residing in assisted housing, the trust is considered an asset disposed of for less than fair market value.
 - I. If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the

(Rule 0770-01-05-.19, continued)

creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

- (II) Non-revocable Trust Distributing Income. When a tenant places an asset in a non-revocable trust, but continues to receive income from the trust, the income is added to annual income and the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.
- (III) Payment of Principal from a Trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump-sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.
- (IV) Special Needs Trusts. A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.
 - I. If the beneficiary does not have access to income from the trust, then it is not counted as part of income.
 - II. If income from the trust is paid to the beneficiary regularly, those payments are counted as income.
- (f) Life Insurance. The cash value of life insurance policies is counted toward family assets.
- (g) Assets Owned Jointly.
 - 1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership, but if no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.
 - 2. If an asset is not effectively owned by an individual, do not count it as an asset.
 - (i) An asset is not effectively owned when the asset is held in an individual's name, but:
 - (I) The asset and any income it earns accrue to the benefit of someone else who is not a member of the family; and
 - (II) That other person is responsible for income taxes incurred on income generated by the assets.
- (h) Lump-Sum Receipts Counted as Assets. Lump-sum payments or additions to household assets, such as inheritances, insurance payments (including payments

(Rule 0770-01-05-.19, continued)

under health and accident insurance, social security and worker's compensation), capital gains, lottery proceeds paid in a single payment (ongoing regular lottery proceeds are counted as income), and cash from the sale of assets are not included in income. They may be included in the asset calculation, depending on when they are received and whether or not they are retained.

1. Commonly, when a family receives a large amount of money, a lump-sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. If the family has retained any of the lump sum in a verified asset account, such as a checking or savings account, the amount will be counted as an asset.
 2. If the family has received a lump sum during the previous twelve (12) months, but they self-certify that they have not retained any of the amount received, the amount will not be counted. A lump-sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset (i.e., a car or a vacation or education) the lump sum must not be counted.
 3. Lump-sum payments caused by delays in processing periodic payments (unemployment, welfare assistance) are counted as income, as are ongoing regular lottery proceeds.
- (i) Personal Property. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
- (j) Assets Disposed of for Less than Fair Market Value. At every certification and recertification, applicants and participants must declare, on the Personal Declaration, every asset that has been disposed of for less than fair market value during the two years preceding the certification or recertification. If the household disposes of more than \$1,000 in assets during a twelve-month period, the amount must be imputed and counted as income.
1. The amount counted as an asset is the difference between the cash value and the amount actually received. If the household declares that they have, the circumstances surrounding the transaction is verified.
 - (i) Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, the cash value of the asset is compared to any amount received in compensation.
 - (l) Imputed income is the difference between the actual amounts received and the fair market value, minus any costs incurred when selling the asset. Imputed income is included in household income for two years from the date when the asset was disposed.
 - (ii) Assets placed in non-revocable trusts are considered as assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.
 - (iii) Generally, assets disposed of as a result of divorce or separation are not considered as assets disposed of for less than fair market value.
 - (iv) Assets disposed of as a result of foreclosure or bankruptcy are not considered as assets disposed of for less than fair market value.

(Rule 0770-01-05-.19, continued)

- (9) Verification. Any assets and income reported by the household must be verified.
- (a) Verifying Income. When a household claims income of any amount from any type or source, unless the income may be excluded, an attempt to verify the income either through up-front income verification (UIV) sources, appropriate computer-generated documents from a third-party source, or by third-party written verification methods must be attempted. If UIV, appropriate computer-generated documents, or third-party written verification is unsuccessful, all attempts to verify the income must be tracked on the Verification Tracking Log, and the THDA will use third-party oral or tenant self-certification as verification.
1. Earned Income.
- (i) Wages. The following are acceptable documents for verifying wages in order of hierarchy level:
- (I) HUD EIV report with current, supplemental documents, preferably computer-generated.
- I. The most recent four (4) consecutive, current pay stubs showing employee's gross pay per pay period and frequency of pay.
- II. If the employee has been employed for less than four (4) pay periods, they may provide all of the pay stubs they have received up to the date of the reexamination appointment in consecutive order and the THDA will send the THDA Employer Verification Form to the employer for completion.
- III. Computer-generated payroll report.
- (II) Work Number report.
- (III) The THDA Employment Verification form completed and signed by the employer.
- (IV) Social Security Earnings Statement (form 7004) from most recent prior year, if other sources of current wage income are not available.
- (V) Copy of the most recent prior year's tax return if other sources of current wage income are not available.
- (ii) Tips. Unless tip income is included in a household member's W-2 by the employer and the household supplies a copy of the most recent tax return, tips should be included in the amounts declared for self-employment income. Persons who work in industries where tips are standard will be required to include an estimate of tips received for the prior year and tips anticipated to be received in the coming year on their Personal Declaration. The information in the Personal Declaration will document the amount of tips.
- (iii) Business and Self-Employment Income.
- (I) Business owners and self-employed persons are required to provide all of the following when available:

(Rule 0770-01-05-.19, continued)

- I. An audited financial statement for the previous fiscal year if an audit was conducted.
 - II. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
 - III. All schedules completed for filing federal and local taxes in the preceding year.
 - IV. If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.
 - V. If the aforementioned documents are not available:
 - A. Documents such as manifests, appointment books, cash books, bank statements and receipts from the prior six (6) months (or lesser period if not in business for six months) will be used as a guide to project income for the next twelve (12) months.
 - VI. If a household member has been self-employed for less than three (3) months, the THDA will accept the household member's certified estimate of income and schedule an interim reexamination in three (3) months.
 - A. If the self-employment has been from three (3) months to twelve (12) months, the household must provide documentation of income and expenses for such period and the THDA will use the information provided to project income.
 - VII. At any reexamination, the THDA may request documents that support submitted financial statements such as manifests, appointment books, cash books or bank statements.
- (II) Any tips should be included in the amounts declared for self-employment income.
- (iv) Child Care Business. If an applicant/participant is operating a licensed daycare business, income will be verified as with any other business. Follow above guidance under Business/Self Employment Income.
- (I) However, if the day care is operating as a "cash and carry" operation, which may or may not be licensed, verification of income received may be more difficult.
- I. The applicant/participant must complete the THDA Verification of Child Care Business form that shows the name of the child's guardian, phone number, number of hours child is being cared for, method of payment (check, cash, credit, etc.) and the signature of the client certifying to amounts paid for child care.

II. If the household owning the business has filed a tax return, they will be required to provide it.

- 80

(Rule 0770-01-05-.19, continued)

- (i) If payments are court-ordered and paid through a state or local agency:
 - (l) Appropriate verification is a record of payments for the past twelve (12) months and any known information about the likelihood of future payments from the web-based Tennessee DHS Child Support Summary (TCSSES) or other online child support system.
 - I. The household is required to submit their member identification number for any online system.
 - (ii) If payments are court-ordered, but not paid through a state or local agency:
 - (l) Copy of a separation agreement, settlement agreement, court decree, etc. stating amounts and types of support and payment schedules and/or copy of the latest check or payment stubs.
 - (iii) If payments are not court-ordered, but the participant declares they receive support:
 - (l) Third-party written verification from the person paying the support, i.e. the THDA Child Support Verification form for child support payments.
 - I. If the written verification is not returned, a self-certification of amount received and of the likelihood of support payments being received in the future.
- 5. Recurring Contributions/Gifts. Applicants and participants are required to disclose all forms of income including recurring gifts from household members, friends and others. The THDA must verify this income and include it when determining the Total Tenant Payment and Housing Assistance Payment.
 - (i) The person(s) providing the support will be mailed the THDA Verification of Family Support form stating the amount of support paid each month.
 - (ii) The THDA will compare the amount the household declared they were receiving on the Personal Declaration to the amount shown on the Verification of Family Support and use the higher of the amounts provided.
 - (l) If gift amounts vary, an average taken over six (6) months may be used for calculations.
 - (iii) If the household cannot or will not provide the contact information for the person(s) providing recurring support or the third-party verification is not returned, the Personal Declaration or another statement may be used as a self-certification.
 - (iv) When a household reports that they are no longer receiving the gifts, the household must complete a new Personal Declaration as part of the recertification process and the person(s) who had been providing the gifts will be mailed a new Verification of Family Support form to verify the gifts to the household have ceased.
- 6. Student Income (Part-Time and Full-Time Student(s)). See 0770-01-05-.19(4)(c) and 0770-01-05-.15 for Student Status Eligibility discussion.

(Rule 0770-01-05-.19, continued)

7. Interest Income from Sale of Real Property. Any interest income from the sale of real property pursuant to a purchase money mortgage, installment sales contract, or similar arrangement must be included as household income and verified by the THDA.
 - (i) The applicant/participant must provide a letter or printed statement from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next twelve (12) months.
 - (ii) The applicant/participant may provide an amortization schedule showing interest for the twelve (12) months following the effective date of the certification or recertification in lieu of a letter.
 - (iii) A copy of the check paid by the buyer is not sufficient since appropriate breakdown of interest and principal are not included.
- (b) Assets and Income from Assets. The applicant or participant must provide original computer-generated documents, such as bank statements or quarterly investment reports, for each asset account.
 1. The applicant or participant must provide appropriate original computer-generated documents for each asset account.
 2. Checking and Savings Accounts.
 - (i) For checking accounts, the most recent bank statement is required for review and copy.
 - (ii) For savings accounts, the most recent bank statement is required for review and copy.
 3. Stocks, Bonds, 401K and other Investment Accounts.
 - (i) The applicant or participant must provide the most recent, computer-generated statement showing the balance of the account or fund and any interest earned during the period.
 - (ii) The document should be dated within sixty (60) days of the request, unless the investment manager provides quarterly or less frequent statements. The document should not be dated earlier than six (6) months from the effective date of the examination, unless proof is provided that statements are only available annually.
 4. Retirement or Pension Accounts.
 - (i) Before Retirement. The applicant or participant must provide an original, computer-generated document from the entity holding the account.
 - (I) The document should be dated within sixty (60) days of the request, unless the investment manager provides quarterly or less frequent statements. The document should not be dated earlier than six (6) months from the effective date of the examination, unless proof is provided that statements are only available annually.

(Rule 0770-01-05-.19, continued)

- (ii) Upon Retirement. The applicant or participant must provide an original, computer-generated statement from the entity holding the account that reflects any distributions of the account balance, any lump sums taken, and any regular payments.
 - (I) The document should be dated within sixty (60) days of the request, unless the investment manager provides quarterly or less frequent statements. The document should not be dated earlier than six (6) months from the effective date of the examination, unless proof is provided that statements are only available annually.
 - (iii) After Retirement. The applicant or participant must provide an original, computer-generated document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken, and any regular payments.
 - (I) The document should not be dated earlier than twelve (12) months from the effective date of examination.
- 5. Real Estate Investments.
 - (i) Current Market Value of the Property.
 - (I) If the THDA can locate information online regarding the current market value of the property, then the information will be considered up-front income verification.
 - (II) If online information cannot be located for property located within or outside the state of Tennessee, a computer-generated statement or letter showing the current market value of the property from the applicable property assessor's office is acceptable.
 - (ii) Unpaid Balance of any Loans. The balance may be verified by a current statement, dated within sixty (60) days of the request, from the financial or lending institution that holds the loan(s).
- 6. Net Income from Rental Property. The household must provide:
 - (i) A current, executed lease for the property that shows the rental amount or certification from the current tenant; and
 - (ii) A self-certification from the household members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).
 - (I) If a Schedule E was not prepared, the household members involved in the rental of property must provide a self-certification of income and expenses for the previous year and the THDA will request documentation to support the statement (including tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense), if needed.
- 7. Cash Value of Trusts (including revocable trusts). The balance may be verified by a current statement, dated within sixty (60) days of the request, showing the balance of the trust and any interest earned during the period.

(Rule 0770-01-05-.19, continued)

8. Assets Disposed of for Less than Fair Market Value. The household must certify whether any assets have been disposed of for less than fair market value in the preceding two years.
 - (i) The THDA will only verify the value of assets disposed of if:
 - (I) The THDA does not already have a reasonable estimation of value from previously collected information; or
 - (II) The amount reported by the household in the certification appears to obviously be an error.
 - (III) Verification will be based on the methods described above under Real Estate Investments.
 - (IV) A self-certification will be accepted from a household as verification if computer-generated documents are not available.
 9. Life Insurance Policies. A computer-generated statement showing the name of the insurance company, policy number, type of insurance (whole or term), and cash balance if the insurance is whole life is acceptable unless the family can provide an updated statement dated within (sixty) 60 days of the request. If the life insurance company provides quarterly or less frequent statements, the most recent statement is acceptable. The document should not be dated earlier than six (6) months from the effective date of the examination unless the tenant provides proof that statements are only available annually.
 10. Lump-Sum Receipts.
 - (i) Included. Lump-sum amounts that represent the delayed start of a periodic payment for anything other than SSI, SS, and VA disability benefits are included in annual income.
 - (ii) Excluded. Any lump-sum receipts that do not represent the delayed start of a periodic payment, including lottery winnings, that are received in a single lump sum, are excluded from annual income. However, such lump-sum receipts may or may not be counted as assets, depending on when they are received and whether or not they are retained.
 - (I) Lump-sum amounts representing a delayed start of period payments for SSI, SS, and VA.
 - (II) HUD regulations describe excluded amounts as "lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses." The list of examples here is not intended to be complete.
- (c) Special Considerations/Exclusions.
1. Income Received from Training Programs. Special rules also apply to HCV participants who receive welfare assistance from a government program that requires a family member to participate in an economic self-sufficiency program. Economic self-sufficiency program is defined broadly as any program designed

(Rule 0770-01-05-.19, continued)

to encourage, assist, train, or facilitate the economic independence of HUD-assisted families. Programs that satisfy this definition include:

- (i) Job training, employment counseling, workfare, work placement, and apprenticeship programs. This also includes incremental amounts from qualifying state of local employment training programs.
 - (ii) In the Tennessee TANF programs, it is rare that persons participating in DHS job training programs receive income associated with a qualifying job training program under the HUD definition. Therefore, the THDA will seek information from the family regarding their participation in job training programs, and on a case by case basis determine the treatment of income for families who receive welfare assistance and participate in a job training program.
2. Zero Annual Income Status. Families declaring zero household income must complete a THDA Zero Income Statement form for each adult household member reporting no income and will have an interim contact every ninety (90) days until the household reports some type of income. There is no minimum income requirement, but income reported must be reasonable in relationship to financial commitments reported by the household. For example, if the household reports no income, it is not reasonable that all bills/debts are paid in a timely manner.
- (i) If a family reports an interim change in income at a time other than annual, all adult household members with no income will be required to complete zero income documentation, even if they have already done so at the recertification.
3. Income from Excluded Sources. The THDA must obtain verification for income exclusions only if, without verification, the THDA would not be able to determine whether the income is to be excluded. For example, if a 16-year-old household member has a job at a fast food restaurant, the THDA will confirm its records verify the child's age, but will not send a verification request to the restaurant.
4. The THDA will reconcile differences in amounts reported by the household and UIV, computer-generated documents or third-party verifications only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the THDA will report the amount to be excluded as indicated on documents provided by the household or any self-certification.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.20 OBLIGATIONS OF PARTICIPANTS (24 C.F.R. 982.551).

(1) Family Obligations.

- (a) In order to be approved as and remain participants of the HCV Program, families and their households must agree to and abide by program obligations.

(Rule 0770-01-05-.20, continued)

- (b) These obligations are stated in the Grounds for Denial/Termination and Notice of Family Responsibilities form that is given to families at initial admission and they are stated on the voucher.
- (c) Supplying Required Information.
 - 1. The household must supply any certification, release, information, or documentation the THDA or HUD determines is necessary for use in the administration of the program, initial eligibility, regularly scheduled reexaminations, and interim reexaminations, including, but not limited to, submission of required evidence of citizenship, eligible immigration status, family income and composition in accordance with HUD requirements.
 - 2. The household must disclose and verify social security numbers and must sign and submit consent forms for obtaining necessary information.
 - 3. Any information supplied by the household must be true and complete.
 - 4. The information requested must be supplied within the time allowed, which is usually fourteen (14) calendar days, unless otherwise specified.
- (d) Absence from the Unit. The household must supply any information requested by the THDA to verify that the household is living in the unit or relating to absence from the unit. The household must notify the THDA in writing prior to any of absence from the unit that will exceed fourteen (14) calendar days. In determining whether the household has been absent for more than the allotted time, the THDA's determination will be by a preponderance of the evidence and will include, but is not limited to, the following factors:
 - 1. Whether the household has been absent from the unit for fourteen (14) or more days consecutively;
 - 2. Whether rent is behind or not being paid;
 - 3. Whether utilities are turned off;
 - 4. Whether household furnishings are not present; or
 - 5. Whether the owner has reported that the household is absent from the unit.
- (e) Use and Occupancy of the Unit. The household must use the assisted unit for residence by the family's household only and the unit must be the family's only residence. In determining whether the assisted unit is the family's sole residence, the THDA will consider the factors included above under Absence from the Unit and including, but not limited to:
 - 1. Whether the utility bill is extremely low for current weather conditions over a three-month time frame or longer (e.g. in winter, the electric or gas bill is extremely low even though the weather is consistently inclement); or
 - 2. A household member has interest in another residential property or utilities are turned on in a household member's name at another residential property.
- (f) Household Composition. The composition of the assisted family's household residing in the unit must be approved by the THDA.

(Rule 0770-01-05-.20, continued)

- (g) Change in Household Composition.
 - 1. The household must request the approval of the THDA and the owner to add any other household member as an occupant of the unit, including new, current, or former spouses, co-heads, other adults, other children, foster children, and live-in aides, but excluding members added due to birth, adoption, or court-awarded custody of a child. However, as long as a new spouse is program eligible, they may be added to the household, and if they would overcrowd the unit, the THDA will terminate the HAP contract and issue a voucher to relocate.
 - 2. The household must inform the THDA and the owner of the birth, adoption, court-awarded custody of a child within thirty (30) days of such occurrence.
 - 3. The household must notify the THDA with 30 days if any household member no longer resides in the unit.
 - (h) Allowing Inspection of the Unit. The household must allow the THDA or its agent to inspect the unit at reasonable times and after reasonable notice.
 - (i) Tenant Family Responsibilities under the Lease. The household must comply with all responsibilities attributed to the tenant under the lease. The tenant family must pay utility bills that are the tenant's responsibility and supply appliances that the owner is not required to provide under the lease.
 - (j) Family Notice of Move or Lease Termination. The household must notify the THDA and the owner in writing at least thirty (30) days before the family vacates the unit or terminates the lease. 24 C.F.R. 982.314(d). If a notice to vacate is not given in writing, then the household is considered to have moved without notice.
 - (k) Owner Eviction Notice. The household must promptly give the THDA a copy of any owner eviction notice.
- (2) Prohibited Activities.
- (a) Violation of Lease. The household may not commit any serious or repeated violation of the lease.
 - (b) Profitmaking Activities on Premises. Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to the primary use of the unit for residence by members of the household and do not violate the lease.
 - (c) Sublease/Assignment. The household must not sublease or let the unit, assign the lease, or transfer the assisted unit.
 - (d) Interest in the Unit. No household member may own or have any interest in the assisted unit, except for Homeownership Voucher Program participants.
 - (e) Fraud or Other Program Violations. The members of the household must not commit fraud, bribery or any other corrupt or criminal act in connection with the HCV Program.
 - (f) Other Housing Assistance. An assisted family may not receive Section 8 tenant-based assistance while any member of the household is receiving another housing subsidy, for the same unit or for a different unit, under any federal, state or local housing assistance program which HUD determines to be duplicative.

(Rule 0770-01-05-.20, continued)

- (g) HQS Breach Caused by the Family Household. The family is responsible for an HQS breach caused by the family household, which is outside of normal wear and tear. (24 C.F.R. 982.404(b)).
 - (h) Crime by Household Members. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).
 - (i) Alcohol Abuse by Household Members. The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
 - (j) Threatening and Abusive Behavior towards the THDA. The members of the household must not engage in threatening or abusive behavior toward the THDA staff.
- (3) Appointment Policy.
 - (a) The THDA will provide written notification of any appointment, other than re-inspection appointments or rescheduled appointments, no less than ten (10) business days in advance. Re-inspection or rescheduled appointments may be scheduled by phone, but a written notation will be made in the tenant file.
 - (b) When the THDA must cancel a previously scheduled appointment, at least a twenty-four (24) hour notice will be given to the tenant or owner, except in an emergency notification may be given the day of the appointment.
 - (c) Appointment letters are mailed by regular USPS mail or sent via electronic communication (email/fax), as are all other required notices.
- (4) Mail Policy.
 - (a) Notices are served by USPS first class mail or by electronic communication (email, fax, etc.) to the address the THDA has been provided by the household unless:
 - 1. Electronic communication is the only means by which the THDA can reach the applicant or participant (i.e., household moves without notice; is evicted, etc.).
 - (b) Delivery of the notice is complete upon deposit in a mailbox or electronic communication transmittal. If the household requests proof of delivery, the delivery may be established prima facie by affidavit, certificate of service of mailing by the staff person who mailed the notice, or THDA email records.
 - (c) The household shall bear the burden of proof where it is alleged that the address to which the THDA mailed the notice was not the proper address, or where the household claims that the notice was not received due to circumstances beyond the household's control.
 - (d) Sufficient proof shall include, but is not limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the household's address that there have been problems with delivery that might have caused the notice to not be properly delivered.
- (5) Missed Appointment Policy.

(Rule 0770-01-05-.20, continued)

- (a) The THDA and its agents set appointments for families to provide requested documentation and to allow the unit to be inspected, as is required of the family under HUD regulations and outlined under sections (1)(c) and (1)(h) above.
 - (b) An initial appointment will be scheduled and the family will be mailed an appointment letter at least ten days before the appointment.
 - (c) The family may miss or reschedule the initial appointment for any reason.
 - (d) If the family reschedules or misses the initial appointment, a second appointment is scheduled and a new appointment letter will be mailed.
 - (e) If an applicant or a participant family misses a second appointment during any initial certification, interim, or recertification period, then a denial or termination letter will be mailed for failure to supply the information requested or failure to allow the unit to be inspected, unless the family provides the THDA with documentation of a medical emergency or death of an immediate family member that occurred on or within three (3) days prior to the second appointment. If documentation of such an event is received within fourteen calendar days of the missed second appointment, the denial or termination will be rescinded.
 - (f) The applicant or participant will be given an opportunity for an informal review or informal hearing if requested in accordance with this plan.
- (6) Missed Appointments: Housing Quality Standards (HQS) Inspections
- (a) Family-Caused Delay. It will be considered a missed appointment and the HQS inspection will not be conducted if an adult representative (age 18 or older) is not present for the scheduled inspection. A Missed Inspection Notice will be left on the participant's residence door.
 - (b) A participant may miss the first HQS inspection for any reason.
 - 1. If the participant notifies the inspector that no one is able to be present at the first scheduled inspection, a Notice of Rescheduled HQS Inspection will be mailed or emailed to the participant.
 - 2. If the participant does not notify the inspector that no one is able to be present for the HQS inspection prior to the inspection, and there is no one present for the inspection, a Missed Inspection Notice will be left on the door of the participant's residence and a Notice of Rescheduled Appointment will be mailed or emailed to the participant.
 - (c) After the first missed appointment, a Notice of Rescheduled Inspection will be mailed or emailed to the owner and the participant and a new HQS inspection will be automatically scheduled within fourteen (14) business days of the missed appointment.
 - (d) If the family misses two HQS inspection appointments during the annual inspection period, the family's assistance will be terminated, unless the second absence is due to a verified medical emergency of a household member. See the THDA's Missed Appointment Policy and Medical Emergency Exception for requirements, 0770-01-05-.20(5)(e).
 - (e) If assistance is terminated due to two missed HQS inspection appointments, failure to repair, or emergency HQS inspection and the participant requests a hearing, one

(Rule 0770-01-05-.20, continued)

additional HQS inspection will be scheduled pending the outcome of the informal hearing.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.21 DETERMINATION OF ELIGIBILITY. After the THDA makes all required calculations and verifications, then the final eligibility determination will be made.

- (1) Eligible. If an applicant has all required documentations and has met all eligibility requirements, then the THDA will continue with calculations to determine whether there is enough funding available to fund the family and issue the Housing Choice Voucher.
- (2) Ineligibility, Denial, and Opportunity for Informal Review. If an applicant fails the criminal background check, fails to return required documentation within fourteen (14) calendar days, or is otherwise ineligible based on HUD and the THDA Eligibility Requirements, the THDA will send a written notice of denial to the applicant household. The written notice of denial will include the federal citation on which the denial is based, include a brief explanation of the reasons for the denial, inform the applicant of their right to an informal review, and explain how to request an informal review. (24 C.F.R. 982.201(f)). A copy of the notice is filed in the applicant's file.
- (3) Subsidy Standards, Payment Standards, Minimum Rent, Total Tenant Payment, and Rent Calculation (24 C.F.R. Parts 5.628, 5.623, 982.201(b), 982.4, 982.501, 982.503, 505). The THDA compares the annual income to the income limits and calculates the Total Tenant Payment. If the THDA determines that there is funding available to fund the family, then final eligibility will be determined.
 - (a) Subsidy Standards.
 1. Subsidy Standards Definition (24 C.F.R. 982.4). The criteria established by the THDA for determining the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.
 2. The THDA has established subsidy standards which:
 - (i) Provide for the smallest number of bedrooms needed to house the family without overcrowding (24 C.F.R. 982.402(b)(1));
 - (ii) Comply with HQS space requirements (24 C.F.R. 982.402(b)(2); and
 - (iii) Are applied consistently for all families of the same size and composition, unless a defined exception exists (24 C.F.R. 982.402(b)(3) and (8)).
 3. General. The subsidy standards (voucher size), payment standards and minimum rent, as well as income, all contribute to the rent calculation and total tenant payment (TTP) per HUD regulation.
 - (i) The income of every household member who will reside or resides in the assisted unit, including members who are temporarily absent, is included in the subsidy standard calculation when calculating total tenant payment (TTP).

(Rule 0770-01-05-.21, continued)

- (ii) Subsidy Standards determine the unit size (number of bedrooms) for which an applicant or participant qualifies. The unit size determines the maximum amount of subsidy that will be paid through the Payment Standard. The goal of determining unit size is to assign an appropriate bedroom size allocation for the household that will require the minimum commitment of housing subsidy.
- (iii) The unit size is based on the household composition (the number of persons, their sexes, ages, and relationship). The unit size for which the household qualifies is shown on the voucher and is used to determine the payment standard, unless the family chooses a unit that is lower than the voucher size issued.
- (iv) Income limits for unit sizes that exceed a 4-bedroom unit size are calculated by applying a 15 percent adjustment to the previous unit size beginning with the 4-bedroom allocation. For example, the Fair Market Rate (FMR) for a 5-bedroom unit is 1.15 times the 4-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (i.e., efficiency) FMR.
- (v) Housing Quality Standards (HQS) allow two persons per living/sleeping room and allot for a maximum occupancy, assuming a living room is used as a living/sleeping area.
 - (I) Maximum Occupancy or Unit Size Chart
 - I. 0 bedroom voucher size, maximum occupancy is 2.
 - II. 1 bedroom voucher size, maximum occupancy is 4.
 - III. 2 bedroom voucher size, maximum occupancy is 6.
 - IV. 3 bedroom voucher size, maximum occupancy is 8.
 - V. 4 bedroom voucher size, maximum occupancy is 10.
 - VI. 5 bedroom voucher size, maximum occupancy is 12.
 - VII. 6 bedroom voucher size, maximum occupancy is 14.

4. Determining Unit Size and Subsidy Standard.

- (i) In the unit size determination, the determination is figured without requiring applicants or participants to use rooms other than bedrooms for sleeping purposes, i.e., the living room. However, if the THDA approves the addition of other members to the household, some members may have to sleep in the living room, in accordance with the maximum occupancy chart, until the next annual recertification. Then the family may move to larger unit if they are eligible according to all program guidelines, including the relocation conditions.
- (ii) For the purpose of determining subsidy standards, an adult is defined as any person eighteen (18) years or older. A minor is any person under the age of 18 years.

(Rule 0770-01-05-.21, continued)

- (iii) The maximum number of persons who may share a sleeping room is two and the number of bedrooms allocated is determined as follows:
 - (I) Two adults of the same or opposite genders, with or without a familial relationship, will be issued a one bedroom, except a high school student who turns 18 will not be subject to this rule until the recertification after they graduate or should have graduated;
 - (II) Two minors of the opposite gender will be issued one bedroom until one of the minors reaches the age of ten (10) years old;
 - (III) Two minors of the same gender will be issued one bedroom regardless of age;
 - (IV) A minor with a single, custodial parent will be issued one bedroom until the child reaches the age of four (4).
 - (V) A single, pregnant head of household is considered a two-person family, but will be issued one bedroom until the child reaches the age of four (4).
 - (VI) Minor children of any age will be issued a bedroom separate from a non-custodial parent or other adult.
- 5. Other considerations.
 - (i) If any of the above rules for determining the unit size have not occurred as of the annual or interim recertification, but would take place within thirty (30) calendar days of the recertification, the determination should be made as if the event has occurred, but only to the benefit of the participant, not the detriment.
 - (ii) Foster Children and Foster Adults are included in determining unit size if the arrangement is existing at the time of initial eligibility. Later, a Foster Child or Foster Adult may only be approved as part of the household if the placement does not overcrowd the unit.
 - (iii) A child absent because of temporary placement in foster care outside of the home, as evidenced by court order, is considered a member of the family, and therefore considered in determining family size at initial eligibility. However, if the child continues to be absent at any annual certification, then the child will be removed from the household until the court places the child back with the household permanently.
 - (iv) Space is not provided for minors who live out of the unit more than fifty (50) percent of the time. For example, if the tenant does not have custody of a child, but the child visits on weekends, then a bedroom is not allocated.
 - (v) Live-in aides may be provided a separate bedroom, but not their families.
 - (vi) Space is not provided for a full-time student who is away at school, but lives with the family during school recesses.
 - (vii) Space is not provided for a person who will be absent most of the time, such as a member who is away in the military.

(Rule 0770-01-05-.21, continued)

- (viii) A person who is confined to a medical facility for less than ninety (90 days), who plans to return to the assisted unit after treatment, will be included in the subsidy standard determination.
 - (ix) One-bedroom units, not zero-bedroom units, are assigned to single person households because very few efficiency or zero-bedroom units exist in the rental market. However, if the household selects an efficiency or a zero-bedroom unit, the zero-bedroom payment standard is used.
 - 6. Reasonable Accommodations. Persons requesting a reasonable accommodation of the THDA's subsidy standards may be approved for a larger unit if a knowledgeable healthcare professional verifies the need. See 0770-01-05-.21(3)(b)5. When determining whether a larger subsidy size request will be approved, the THDA must weigh the financial and administrative burden granting the larger bedroom size will have on the overall program and its' applicants and participants against the individual household's need for the larger size.
- (b) Payment Standards (24 C.F.R. 982.4, 982.503, 982.505). The Payment Standard is the maximum monthly assistance payment for the family, before deducting the Total Tenant Payment. A Payment Standard is used to calculate the monthly housing assistance payment for a family.
 - 1. HUD regulations require that a Payment Standard schedule be established for each county where the program is administered by bedroom size.
 - 2. Payment Standards for each bedroom must be established between 90 and 110 percent of the Fair Market Rent (FMR) for the county and published at least annually as a payment standard schedule. The decision of where to set individual payment standards by county is based upon funding available to serve to the baseline of units and average rents in the county by bedroom size.
 - 3. Determination of Payment Standard for the Family (24 C.F.R. 982.4). The Payment Standard is the lower of the following:
 - (i) The payment standard amount (per the THDA payment standard schedule for the county) for the family unit size; or
 - (ii) The payment standard amount for the size of the dwelling unit rented by the family; or
 - (iii) The gross rent of the unit.
 - 4. Increase or Decrease in the Payment Standard. The THDA does not respond individually to complaints about a general policy change or class grievance. Therefore, if the THDA changes the payment standards and applies it to all families uniformly, the THDA will not individually respond to any complaint regarding the change.
 - (i) If the THDA determines that funding will be insufficient to cover all occupied vouchers during a given funding term, the THDA will request a waiver from HUD to allow the immediate application of a payment standard decrease when such an action will allow the THDA to avoid termination of assistance for families. The determination of the generally applicable payment standard is not subject to appeal (24 C.F.R. 982.555(b)).

(Rule 0770-01-05-.21, continued)

- (ii) HUD may approve a Payment Standard amount that is higher than the basic range (90-110%) for a designated part of the FMR area if the field office determines that such approval is justified by either the median rent method or 40th percentile rent.
- 5. Reasonable Accommodation of Payment Standard Amount (Exception Standard) (24 C.F.R. 982.503(c)(2)(i), (c)(3)). If an applicant or participant requests a higher payment standard be used as a reasonable accommodation to enable the applicant or participant to obtain a unit that meets their special needs, the applicant or participant must complete the THDA Request for Reasonable Accommodation form. The THDA will mail a medical certification form to a knowledgeable medical professional to verify the need for the accommodation. If approved, the increase in the payment standard cannot exceed 120% of FMR.
 - (i) HUD has issued guidance, which allows the THDA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a household that includes a person with disabilities. This provision allows the THDA to establish a payment standard within limits, which were formerly permitted but designated for approval only by a HUD Field Office (24 C.F.R. 982.503(c)(2)(B)(ii)).
 - (ii) The THDA must perform a rent reasonableness determination in accordance with the section 8(o)(10) of the U.S. Housing Act of 1937 and the HCV program regulations.
 - (iii) The THDA must maintain documentation that the THDA performed the required rent reasonableness analysis.
 - (iv) In addition, the THDA must maintain documentation that the unit has the feature(s) required to meet the needs of the person with disabilities.
- 6. Effect of Decrease in Payment Standard Amount during the Term of the HAP Contract (24 C.F.R. 982.505(c)(3)). If the Payment Standard decreases during the term of a HAP Contract, the old higher payment standard is used to calculate the monthly housing assistance payment until the family's second regular recertification following the effective date of the decrease in the payment standard amount. The lower payment standard amount is used at the second annual recertification, unless the payment standard has been subsequently increased.
- 7. Effect of Increase in Payment Standard Amount during the Term of the HAP Contract (24 C.F.R. 982.505(c)(4)). If the Payment Standard amount is increased during the term of the HAP contract, the increased Payment Standard amount is used to calculate the monthly housing assistance payment for the family at the effective date of the family's first regular recertification on or after the effective date of the increase in Payment Standard.
- 8. Change in Family Unit Size during the HAP Contract Term (24 C.F.R. 982.505(c)(5)). If the family unit size changes during the term of the HAP contract either due to a change in family composition, a change in the THDA's subsidy standard, or a THDA error, the new family unit size must be used to determine the Payment Standard amount at the family's next annual recertification. The change in family unit size may be used sooner if specifically expressed within this Plan.

(Rule 0770-01-05-.21, continued)

- (i) During the annual recertification period, if a family now qualifies for a smaller unit, the family may choose to remain in the larger unit and pay the additional rent or relocate to a smaller unit.
- 9. The utility allowance is the lesser of the unit size selected than the size authorized on the voucher.
- (c) Minimum Rent (24 C.F.R. 5.623). HUD requires the THDA to establish an appropriate minimum that may range from \$0 to \$50 per month. It applies to all voucher families residing within the THDA's jurisdiction, but only when it is the highest amount in the TTP calculation.
 - 1. The minimum rent established by the THDA is \$50.
 - 2. Minimum Rent Hardship Exception (24 C.F.R. 5.630).
 - (i) The Quality Housing and Work Responsibility Act of 1998 (QHWRA) establishes certain exceptions to the minimum rent requirements for hardship circumstances. Financial hardship, for the purpose of determining a minimum rent exception, includes the following situations:
 - (I) The participant has lost eligibility or is awaiting an eligibility determination for a Federal, State, or local assistance program (includes a member who is a noncitizen lawfully admitted for permanent residence who would be entitled to public benefits);
 - (II) The household would be evicted as a result of the imposition of the minimum rent requirement;
 - (III) The income of the household has decreased because of changed circumstances, including loss of employment;
 - (IV) A death in the household has occurred; or
 - (V) Other circumstances as determined by HUD.
 - (ii) If a household requests a minimum rent exception, the minimum rent requirement is immediately suspended on the first of the month following the receipt of the request until a determination is made whether:
 - (I) The hardship meets the requirements listed above; and
 - (II) The hardship is temporary or long-term.
 - (iii) The following guidelines are followed after the hardship is verified:
 - (I) If it is determined that the reported hardship does not meet the criteria defined above, the minimum rent is imposed retroactive to the date of the suspension. In this case, a plan of repayment must be established to retrieve the previously suspended tenant rent contribution.
 - (II) If it is determined that the reported hardship meets the above-defined criteria, but is temporary in nature, the minimum rent also is imposed retroactive to the date of the suspension. A plan of repayment must be established to retrieve the previously suspended

(Rule 0770-01-05-.21, continued)

tenant rent contribution. If the household at some point in the future demonstrates that the financial hardship developed into a long-term situation, the household's minimum rent requirement will be retroactively reduced.

- (iv) If it is determined that the hardship is of a long-term basis, the household is exempted from the minimum rent requirement retroactive to the first of the month following the date the household's request was received.
 - (v) The THDA will not grant a minimum rent hardship exception during a Housing Assistance Payment (HAP) shortfall period. The THDA may reach shortfall status when the funding award for a particular calendar year is insufficient to meet regular, ongoing monthly HAP expenses for currently assisted families.
- 3. Verification. The household must verify that the hardship exists within ninety (90) days of the event. During the ninety-day verification period, the household's assistance may not be terminated for nonpayment of rent.
 - (i) The THDA will not consider requests for a minimum rent exception during a time when funding is insufficient to cover current HAP expenses for current participants.
 - (ii) Acceptable verification includes, but is not limited to, the following:
 - (I) A death certificate for a household member.
 - (II) A separation letter from an employer.
 - (III) A notification letter that benefits have been terminated or an award is pending from the Social Security Administration or other social services agency.
- (d) Total Tenant Payment Calculation (24 C.F.R. 5.628, 24 C.F.R. 982.4(b)). At initial move-in, relocation, annual and interim reexaminations, an application (form HUD-50058) is completed that includes a worksheet for calculating Total Tenant Payment.
 - 1. To calculate the TTP for a Housing Choice Voucher, the following procedures are followed:
 - (i) The gross annual income is calculated;
 - (ii) Any allowances and/or expenses to determine the total annual deductions are calculated;
 - (iii) The adjusted annual income is calculated; and
 - (iv) The monthly gross income and the monthly adjusted income are calculated.
 - (v) The TTP is the higher of the following:
 - (I) \$50 minimum rent; or
 - (II) 10% of gross monthly income; or

(Rule 0770-01-05-.21, continued)

(III) 30% of adjusted monthly income.

2. A copy of the 50058 form, which includes the total tenant payment calculation is maintained in the tenant file and may be viewed by the tenant at their request.

(e) Rent Calculation (24 C.F.R. 982.501).

1. A family who leases a unit with a gross rent at or below the Payment Standard pays as gross rent the highest of 30 percent of the monthly-adjusted income or 10 percent of the monthly gross income or the minimum rent.
2. A family that rents a unit with a gross rent that exceeds the Payment Standard pays as gross rent the highest of 30 percent of the monthly-adjusted income or 10 percent of the monthly income and any rent above the payment standard.
3. There is no voucher "shopping incentive" for a family who rents a unit that is below the Payment Standard. When the total rent for a unit is less than the payment standard, the family does not receive a discounted tenant portion.
4. Rental Subsidy Calculation for a Housing Choice Voucher Holder. Only the Total Tenant Payment (TTP) and forty (40) percent of the monthly-adjusted income are calculated at the time a Housing Choice Voucher is issued. The remainder of the calculation is completed after the family has selected a specific unit.

(i) The Total Tenant Payment (TTP) is calculated.

(ii) The family's maximum initial rent burden is calculated, which is 40% of monthly-adjusted income.

(4) Eligibility Does Not Equal Admission to the HCV Program.

- (a) Eligible, but No Funding Available. If the applicant is otherwise eligible for the HCV Program, but there are not sufficient funds to subsidize the unit size of the household, the THDA will suspend the eligibility process for the selected applicant and the issuance of vouchers until adequate funding levels exist to support the applicant household. (24 C.F.R. 982.204(d)(2)).
- (b) Admission Definition. During the stages of initial application, selection from a waitlist, final application, and verification, the family is still considered an applicant. The date used to determine when an applicant becomes a participant is the effective date of the first HAP Contract. An applicant has the right to an informal review, as defined in these rules, but not to an informal hearing, as provided to participants in these rules, except as specifically provided.
- (c) Final Eligibility Determination. Upon completion of final determination of eligibility, the applicant is issued a voucher, which is a contract between the THDA and the household specifying the rights and responsibilities of each party. This is the household's authorization to search for a unit.

Authority: T.C.A. § 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982. **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.22 LEASE-UP PROCESS.**(1) Voucher Issuance.**

- (a) Once final eligibility is determined, the THDA prints the voucher and the initial maximum rent burden estimate to issue to the applicant, which gives the applicant the authorization to search for a suitable unit.

1. The voucher shows the unit size for which the household qualifies. The unit size reflects the smallest number of bedrooms for which the family qualifies in order to comply with occupancy and HQS requirements.
2. As part of the initial and relocation briefing process, staff gives suggestions to the household on how to find a unit and refers them to TNHousingSearch.org. However, finding and selecting a unit is the family's responsibility.

(b) General Voucher Guidelines:

1. Vouchers are issued when contract authority is available either through a new allocation or a turnover of vouchers held by participating families.
2. Enough vouchers are issued to meet leasing schedules for all new allocations and to maintain an occupancy rate of at least ninety-eight percent (98%) of funds available under the Annual Contributions Contract with HUD over the twelve-month (12) period for which the contract applies (calendar year).
3. The THDA maintains a system of tracking the number of vouchers held by participating families and the number held by applicants searching for housing.
4. Any over-issuance for maintaining 98% or better occupancy is closely monitored so that over-leasing does not continue for a lengthy period of time. When over-leasing occurs, the issuance of vouchers ceases long enough to bring the number leased down to the authorized level.
5. The THDA may retract a voucher issued but not leased, if at any point in time it is determined that adequate funding is not available to provide ongoing assistance to the number of individuals issued vouchers but not leased in a unit. In this case, the affected individuals will be returned to the top of the waiting list with preference for first admission/issuance when funding is determined sufficient.
6. Regardless of the number of outstanding vouchers, the THDA issues a voucher if it is necessary to achieve the following:
 - (i) Move an overcrowded participating family; or
 - (ii) Move a participating family who is occupying unsafe housing if the owner refuses to make repairs.

- (c) Housing Choice Voucher Term. (24 C.F.R. 982.302; 982.303). The THDA follows the procedures outlined below when issuing vouchers, setting terms of vouchers, and assisting families in selecting units.

1. A voucher is issued for an initial term of sixty (60) days to allow the household time to search for a unit. The HCV software system will be utilized to print vouchers, and the voucher term will begin on the date the voucher is issued.

(Rule 0770-01-05-.22, continued)

2. Suspension of Voucher Search Term.
 - (i) Once a Request for Tenancy Approval (RTA) is received by the THDA, the voucher term is suspended until that RTA is either approved or denied.
 - (d) Suspension of Voucher Term for Medical Purposes. The voucher term may be suspended if a household member has a verifiable medical emergency or required medical procedure and the household requests a voucher suspension in writing, with appropriate documentation of the medical emergency or hospitalization prior to the voucher expiration, unless the head of household can verify that he or she was incapacitated and unable to contact the THDA during the voucher term.
 1. The voucher will be suspended for the number of days the head of household or minor child was hospitalized or otherwise incapacitated.
 2. Voucher suspensions are not granted for any other reason.
 - (e) Disability Accommodation. If the household cannot locate a unit within the initial sixty-day (60) voucher term and the head of household or spouse requests an extension to locate accessible housing that will meet the needs of a disabled household member, first, an extension of up to sixty (60) additional days, up to a total of one hundred twenty-day (120) maximum term, will be granted, if the request is made prior to the expiration date of the voucher, unless the head of household can verify that he or she was incapacitated and unable to contact the THDA during the voucher term.
 1. If the household does not find a unit within the 120 days, the THDA will consider a request for an extension beyond the 120 days when the family clearly illustrates that they actively searched for the 120 days and were unable to locate accessible housing within 120 days, but the extension may not exceed a total of 150 days.
 2. If an applicant does not find a unit within any extension that is granted, the applicant will be denied admission and must reapply if they are still interested.
 - (f) Where the Household May Lease Up.
 1. A family must remain in the jurisdiction of the initial PHA that issued their voucher for twelve (12) months before they are eligible for portability if neither the head of household nor the spouse had a legal residence in the jurisdiction at the time the household applied for admission to the program ("residency rule").
 2. A family may lease up anywhere within the jurisdiction of the local THDA field office through which they applied.
- (2) Request for Tenancy Approval (RTA) (24 C.F.R. 982.305(b)).
- (a) Submission of the Request for Tenancy Approval (RTA) and Requisite Documents by the Household. All RTAs must be received on or before the 60th day of the voucher term, even if the first RTA is denied, unless there has been an extension offered or a reasonable accommodation is approved. It is the household's responsibility to submit an approvable RTA to THDA within the specified voucher timeframe. Once a household finds a supposed suitable unit that is owned by an entity willing to participate in the HCV Program, the household must submit an RTA and a Substitute W-9 form, a Lead-Based Paint Disclosure, a blank copy of the lease, proof of ownership, and a Management Agent Agreement form from the owner to the THDA within the term of the voucher, or any extension, for the process to continue.

(Rule 0770-01-05-.22, continued)

1. Request for Tenancy Approval, HUD Form 52517. The RTA provides the THDA with the information necessary to determine approval of a unit, including the names of the parties to the lease, the effective date of the lease, the address of the unit, the utilities and appliances provided by the owner, which party is responsible for paying utilities, the amount of rent most recently charged for the unit, and the rent the owner is currently proposing.
 - (i) The RTA must be signed by both parties, the applicant/participant and the owner/landlord.
 - (ii) Only one RTA will be processed for a household at any given time. If the household submits a second RTA, the THDA will contact the household to determine which RTA the THDA should continue to process. If the household wants the THDA to consider the subsequent RTA, any other RTAs must be rescinded first.
 2. Substitute W-9 form and Proof of Ownership. Applicants must assure that a Substitute W-9 form (with the owner's Social Security or tax identification number and current residential or business address for mailing purposes) and a Proof of Ownership of the unit from the owner are submitted to the THDA.
 - (i) Owners of single-family dwellings, duplexes, triplexes and mobile homes must submit proof of ownership of the property. If a person other than the owner manages a property, or an agent is present, a Management Agent Agreement form must be completed as well.
 - (ii) Both the Substitute W-9 form and proof of ownership (and Management Agent Agreement form, if applicable) must be submitted before a HAP Contract may be executed.
- (b) Review of the RTA by the THDA.
1. Upon receipt of the RTA and the other requisite documents, the THDA will:
 - (i) Review the RTA;
 - (ii) Discuss any inconsistencies or omissions with the household and the owner;
 - (iii) Verify that there are no conflicts of interest with regard to the ownership of the unit;
 - (iv) Determine the appropriate utility allowance, gross rent, utility reimbursement/assistance, whether the household can afford the unit under the maximum initial rent burden rule (40% rule), and the reasonableness of the rent; and
 - (v) Negotiate the rent amount with the owner if needed.
 2. Utility Allowance (24 C.F.R. 982.153). The THDA is required to calculate a utility allowance for all counties in which the HCV Program is administered by the THDA, using HUD-approved methodology. The THDA then creates the Utility Allowance Schedule which shows the allocated allowance based on the county, type of unit (apartment, single-family home, or mobile home), and the unit size

(Rule 0770-01-05-.22, continued)

- (number of bedrooms). The THDA must also review the allowances on an annual basis to determine if any adjustment, upwards or downwards, needs to be made.
- (i) The unit size is determined by counting the number of bedrooms, regardless of how the bedroom is utilized, such as a sewing room or study. To be counted as a bedroom, the room must meet all of the Housing Quality Standards requirements for a bedroom (presence of a window, door for privacy, smoke detector located outside of the room, etc.). Other rooms used for sleeping purposes, such as a living room or den, are not to be included in determining unit size. The utility allowance will be based on the lesser of the actual voucher size issued and the actual size unit selected by the family.
- 3. Gross Rent. The Utility Allowance is added to the Contract Rent under the lease agreement to determine the Gross Rent for the unit.
 - 4. Utility Reimbursement/Assistance Payments.
 - (i) Reimbursement Payment. If the Utility Allowance is greater than the tenant's Total Tenant Payment (TTP), a Utility Reimbursement is sent directly to the tenant. The reimbursement is equal to the amount of the Utility Allowance that exceeds the TTP.
 - (ii) Assistance Payment. If the TTP is greater than the Utility Allowance, then the tenant pays a portion of the rent to the landlord. The tenant's obligation is equal to the amount the TTP exceeds the Utility Allowance.
 - (iii) When a household moves out of an assisted unit on a day other than the last day of a calendar month, the THDA will deduct the utility allowance payment (UAP) for the family.
 - 5. Maximum Initial Rent Burden (24 C.F.R. 982.305(a)(5) and 982.508). A household is prohibited from paying more than forty (40) percent of their monthly adjusted income for rent when the family initially moves into a unit under the HCV program (and when a participant relocates to a new unit with continued assistance).
 - (i) The household's Maximum Initial rent Burden is initially calculated at the time the voucher is issued, but the household's affordability will be reviewed when the RTA is submitted to ensure the proposed tenant rent is affordable.
 - 6. Rental Subsidy Calculation.
 - (i) The family's maximum initial rent burden is calculated, which is 40% of the monthly adjusted income.
 - (I) If the rent burden would exceed 40% of the monthly adjusted income, then the THDA will contact the owner by phone to see if the owner will reduce the rent so that the tenancy may be approved.
 - (II) If the rent burden would exceed 40% of the monthly adjusted income and the owner will not will not reduce the rent, the RTA will be denied.

(Rule 0770-01-05-.22, continued)

- (ii) The appropriate Payment Standard is determined. The appropriate Payment Standard is the lower of the following:
 - (I) The Payment Standard for the family unit size; or
 - (II) The Payment Standard for the unit rented by the family.
 - (iii) The total family contribution is calculated.
 - (iv) The tenant rent to owner is calculated.
7. Rent Reasonableness (24 C.F.R. 982.507). In order to assure that the presence of the HCV Program does not cause rents to become inflated within any of the communities where the THDA administers the program, the THDA will not approve a lease until it is determined that the rent to owner is a reasonable rent.
- (i) The Housing Assistance Payment Contract, which is executed between the THDA and the owner regarding the subsidy payment, advises the owner that by accepting each monthly Housing Assistance Payment he is certifying that the rent to owner is not more than the rent the owner charges for comparable unassisted units on the premises.
 - (ii) The rent reasonability test will be applied at admission and before any increase in the rent to the owner, at any relocation, and if there is a five percent (5%) decrease in the published Fair Market Rent in effect sixty (60) days before the contract anniversary for the unit size rented by the family as compared with the FMR in effect one year before the contract anniversary.
 - (iii) Performing the Rent Reasonableness Test. The method applied to determine the rent reasonableness is dependent upon the type of unit.
 - (I) Multi-family Complex Unit.
 - I. Owners of complexes with four (4) or more units must provide rent information for three (3) comparable, unassisted units in the multi-family complex as part of the RTA and certify that the information contained within the RTA is accurate. If there are not at least 3 unassisted comparables, the owner must give information on any comparable, unassisted units they have, but for the analysis, the THDA will have to compare the requested rent to 3 other comparable units outside of the complex.
 - II. The THDA may use the RTA Owner's Certification section to document rent reasonableness if the rents proposed will not exceed rents charged for other similar unassisted units on the premises.
 - (II) Low Income Housing Tax Credit (LIHTC) or HOME Project. If the unit under consideration is located within a LIHTC or HOME project, a rent reasonableness test is not required if the rent for the unit under consideration is equal to or less than the rent for other units within the complex leased by unassisted renters or the rent does not exceed the payment standards for the appropriate unit size.

(Rule 0770-01-05-.22, continued)

- I. To determine if the rents charged are equal to or less than the rent for other units within the complex or within the payment standard, the "Owner's Certification" of the RTA will be used.
 - II. The payment standard is related to gross rent, the contract rent plus utilities. To determine rent reasonability, the appropriate utility allowance should be deducted first from the gross rent to compare with the payment standard when conducting the rent reasonability test.
- (III) If the unit under consideration is not within a multi-family complex with four (4) or more units, the THDA will conduct a rent reasonableness test using the Rent Reasonableness Database by comparing at least three (3) comparable units within the same market area (county or cluster).
- (iv) Rent Reasonableness Database. The THDA contracted with a third party to develop a rent reasonableness database, which collects information on rents for unassisted units in all of the THDA's counties of operation. The information is maintained within the TNHousingSearch.org database.
- (I) Where possible, the information includes:
- I. Data on the type of unit.
 - II. Location of the unit.
 - III. Age of unit.
 - IV. Size of the unit, approximate square footage.
 - V. Overall quality of the unit.
 - VI. Number of bedrooms.
 - VII. Amenities (bathrooms, dishwasher, air conditioning, etc.).
 - VIII. Housing services and maintenance.
 - IX. Utilities.
- (II) The presence or absence of these features will be considered when making rent approval determinations.
- (III) For each market area, the THDA will attempt to collect comparables for units:
- I. Leased within the past two (2) years;
 - II. Of various sizes and types and in various neighborhoods; and
 - III. Those higher and lower than the payment standard.
- (IV) The rent comparables are arranged by unit type and county and are stored electronically in the TNHousingSearch.org database.

(Rule 0770-01-05-.22, continued)

- (V) The market area for the rent reasonableness test is neighborhoods within the county where the unit under consideration is located unless enough units of comparable type are not available in that county.
 - (VI) If a unit under consideration is located in a county where the THDA cannot locate three (3) comparable, similar units, the THDA will utilize a cluster method to locate comparable units in another similar market area.
 - I. During a cluster search, TNHousingSearch.org creates “clusters,” which combine appropriate rental units in counties with common demographics to the target county, to project an acceptable range of rent.
 - II. The cluster function will only be utilized when rented and available comps cannot be located in the TNHousingSearch.org database within the county where the unit under consideration is located.
 - (VII) The data is updated on an ongoing basis and purged when it is more than twelve (12) months old.
 - (VIII) A summary of the number of rent comparables available for each county (by bedroom size and unit type) is available as a report through the TNHousingSearch.org database to ensure that an adequate number of comparables is available for rent tests.
 - (IX) Units with assistance through the LIHTC program or the HOME program may not be used to determine rent reasonableness for non-subsidized properties and will not be included in the rent comparable database.
- (v) Rent Reasonableness File Documentation.
- (I) If the RTA is used to document the rent is reasonable, a notation is made on the file checklist, and the RTA is retained in the tenant file for reference.
 - (II) If the rent reasonableness database is used to document the rent is reasonable, the THDA will print a Rent Reasonableness Certification form from TNHousingSearch.org, which becomes part of the tenant file.
 - I. The certification form shows that the approved rent is reasonable in relation to rents charged by other owners for comparable units in the same or a similar market area. The form lists the address and other pertinent information for the other three (3) comparable units.
- (c) Approval of the RTA by the THDA. The THDA will approve the RTA and schedule an inspection, usually within fifteen (15) days of the submission of the RTA, if:
- 1. All required documentation has been submitted;
 - 2. The rent is reasonable;

(Rule 0770-01-05-.22, continued)

- (i) If the rent is in excess of rents for comparable units, the owner has the option of lowering his rent or removing the unit from consideration.
 - 3. The proposed lease complies with HUD and the THDA's requirements;
 - 4. The owner, unit, and family continue to be eligible; and
 - 5. The owner is not related (parent, stepparent, child, stepchild, grandparent, sister or brother) to the HCV participant, unless approving the unit is necessary as a reasonable accommodation for families that include a member with disabilities.
- (3) Inspection of a Unit. If the RTA and other requisite documents are submitted within the initial 60-day term of the voucher:
- (a) Upon receipt of the RTA, the voucher is suspended to give the applicant time to have the unit pass inspection, but no further RTAs will be accepted after the 60th day of the voucher term, unless there is an extension or reasonable accommodation approved.
 - (b) The THDA will schedule the Housing Quality Standards (HQS) inspection of the unit, within fifteen (15) days of submission of the RTA; and
 - (c) In general, if the unit does not pass HQS after two inspections, the RTA will be cancelled for that particular unit, but the family may search for another unit if they are still within the first 60 days of the voucher term or any reasonable accommodation or other approved extension. For further instruction, see 0770-01-05-.23, Housing Quality Standards (HQS) – Initial.
 - (d) If the unit is approved, final computations of Total Tenant Payment, Tenant Rent, Utility Reimbursement Payment and Housing Assistance Payments are completed and the Housing Assistance Payment (HAP) Contract is prepared for execution.
- (4) Owner and Applicant Household Execute the Owner's Lease. (24 C.F.R. 982.308(b)(1)). Under the HCV Program, the tenant signs a lease with the owner, which defines the terms and conditions of their relationship.
- (a) The executed lease must be received by the THDA within fourteen (14) calendar days of the approval of the unit or assistance will be denied or terminated.
 - (b) The THDA is not a party to the lease and does not sign it.
 - (c) Copies of the lease and other documents will be furnished to the parties who signed them.
 - (d) The tenant must have the legal capacity to enter into a lease under State and local law or have a conservator or guardian.
 - (e) The owner must use the same standard lease form with a HCV participant that is used with non-assisted tenants. If the owner does not have a standard lease form, the THDA will refer the owner to online resources or the local library to search for a suitable lease document.
- 1. The Housing Assistance Payment (HAP) Contract between the THDA and the owner contains an owner certification that the lease is in a standard form used in the locality by the owner, and that the terms and conditions of the lease are consistent with state and local law.

(Rule 0770-01-05-.22, continued)

2. The THDA must approve the lease as part of the Request for Tenancy Approval (RTA) process.
- (f) Content of Lease & THDA Review. The THDA will review the lease and or addendums for the following requirements:
1. The name of the owner and tenant.
 2. The address of the unit leased.
 3. The contract rent of the unit.
 4. The term of the lease, the initial term and any provisions for renewal.
 5. The notice required to terminate the lease after the initial term.
 6. Specifications about which utilities and appliances are to be supplied by the owner and which are to be supplied by the family.
 7. The THDA staff also may review the lease to determine that it complies with state and local law and may decline to approve the lease if it does not comply.
- (g) Security Deposits. An owner may collect a reasonable security deposit from HCV tenants. The THDA does not impose any limit on the amount of security deposit that can be collected by an owner as long as the amount is comparable with open market practices, is not in excess of amounts charged to tenants of unassisted units, and complies with state law.
- (h) Initial Term. The term of the lease will begin on the date stated on the HUD Tenancy Addendum and continue until termination, but such term may not begin until the unit has passed the Housing Quality Standards.
1. The initial lease term must be for a period of 12 months, unless approving a lease for a shorter or longer term is determined to be prevailing market practice or will improve housing opportunities in the area and the initial lease must end on the last day of a month. For example, if a lease starts February 2nd, it will terminate January 31st of the following year.
 2. The term of the lease and HAP Contract must be the same, but the HAP Contract may be executed anywhere within sixty (60) days of the effective date of the lease.
 3. The lease term may not begin before the unit passes the HQS inspection since the HAP Contract may not be executed before this date.
- (i) Lease-Purchase Agreements. HUD does not specifically prohibit lease-purchase agreements (24 C.F.R. 982.317(a)), but approval of the unit, the lease, and the terms of the lease must meet normal program requirements, including Housing Quality Standards and rent reasonableness standards.
1. The full rental payment must be specified in the lease.
 2. The tenant must not make, and the THDA will not pay, any extra payments above rent payment as calculated by the THDA for the family.

(Rule 0770-01-05-.22, continued)

3. Unless the family is a participant in the Homeownership Voucher program, the HCV assistance terminates when the family takes title to the unit.
- (j) Lease Revisions. The execution of a new lease and HAP contract is required for certain revisions to the lease.
 1. A new lease and HAP contract are not required for changes in:
 - (i) Family composition; or
 - (ii) The amount of rent to owner.
 2. If the change does not require the execution of a new lease or HAP contract, the owner and tenant may both initial changes in the original document or draft an amendment and an Amendment Notice must be attached to the lease and HAP contract.
 3. A new lease and HAP contract must be executed if:
 - (i) There are changes in tenant or owner-supplied utilities or appliances;
 - (ii) The family moves to a new unit, including a unit in the same building or complex; or
 - (iii) There is a change in the term of a lease. If the owner attaches a lease addendum to the lease that changes the term, a new HAP Contract must be executed.
- (5) Lease Addendums. All addenda, agreements and house rules must be signed by the owner and tenant and attached to the lease. A copy of the lease and all attachments is given to the tenant and owner. A copy is retained in the tenant file.
 - (a) Required Lease Addendums.
 1. The HAP C - HUD Tenancy Addendum. The HUD Tenancy Addendum (HUD-52641A) is part C of the HAP contract that is executed between the THDA and the owner, but it must also be incorporated into the owner lease agreement between the owner and tenant as well.
 - (i) This gives the tenant the right to enforce the provisions of the Tenancy Addendum against the owner.
 - (ii) The terms of the HAP C Tenancy Addendum prevail over any other provision of the lease.
 2. THDA Lease Addendum. The THDA Lease Addendum is also required with all owner leases as it ensures that all HUD-required items are present in the owner lease.
 - (b) Owner Lease Addendums for Special Items. Owners and tenants may make special agreements by executing addendums to the owner lease for services, appliances (other than for a range or refrigerator), and other items provided:
 1. The owner and tenant agree on the amount of charges covered under the special agreement and the charges are reasonable and not intended to substitute for a higher rent. Costs for seasonal items may be spread over twelve (12) months.

(Rule 0770-01-05-.22, continued)

2. Any appliance, service, or other item that is routinely provided to unassisted tenants as part of the lease, such as an air conditioning unit, dishwasher, garage, or anything permanently installed in the unit cannot be placed under a separate special agreement, but must be included in the lease.
 3. If an appliance, service or other item is placed under a separate agreement, the tenant must have the option of not utilizing the services, appliances, or other item.
 4. The THDA is not liable for unpaid charges for items covered by separate special agreements.
 5. If the owner elects to offer the tenant an addendum to a lease, the THDA must receive a copy of the addendum at least sixty (60) days prior to the effective date of the addendum.
 6. If an owner offers a lease addendum each year, which renews or extends the lease term, the family and the THDA must be given a copy of the addendum at least sixty (60) days prior to the effective date of the addendum and a new HAP contract must be executed.
- (6) The Owner and the THDA Execute HAP Contract. (24 C.F.R. 982.305(e)). The Housing Assistance Payment (HAP) Contract is a contract between the owner and the THDA, which defines the terms and conditions of the owner's participation in the program and authorizes the payment of subsidy to the owner on behalf of the tenant.
- (a) The THDA may not make a housing assistance payment to the owner until the HAP contract has been executed.
 - (b) When the lease approval process is complete, the owner and applicant household are notified.
 - (c) Once the THDA receives the executed lease from the owner, the HAP Contract is prepared by determining the Total Tenant Payment, Tenant Rent, Utility Reimbursement (if any), and the Housing Assistance Payment.
 - (d) The HAP Contract must be executed no more than sixty (60) calendar days from the beginning of the lease term or assistance will be denied or terminated as the THDA may not enter into a HAP contract for a lease that is dated more than 60 days prior to the HAP contract execution date.
 - (e) If the HAP contract is executed within 60 calendar days of the beginning term of the lease, the THDA will retroactively pay a housing assistance payment to cover the time period between the beginning of the lease term and HAP contract execution. For example, if the beginning term of the lease is January 1, and the HAP contract is executed on February 15, the THDA will retroactively make housing assistance payments to cover the time period between January 1 and February 15.
 - (f) The THDA will only execute a HAP Contract when:
 1. The unit passes Housing Quality Standards;
 2. There is an acceptable lease dated on or after the HQS inspection pass date;
 3. Occupancy standards are met; and

(Rule 0770-01-05-.22, continued)

4. The rent is certified as reasonable when compared to other unassisted units.
- (g) The term of the contract stays in effect until one of the following occurs:
 1. Termination by the owner;
 2. Termination by the THDA; or
 3. The tenant moves from the unit.
- (h) A copy of the signed contract is maintained in the tenant file, and a copy is given to the owner.
- (7) HAP Contract Execution for Zero HAP Families. A HAP contract may be entered into when the housing assistance payment is zero if the family's housing assistance payment has been zero for less than six months (180 days). If the landlord refuses to enter into a HAP Contract for a zero amount, the family may decide to search for a new unit with continued assistance or to have their assistance terminated.
- (8) HAP Contract Execution for "Free Rent" Periods. If a household chooses a unit where the owner offers a "free rent" period, a HAP Contract may be executed with a zero housing assistance payment for the "free rent" period.
 - (a) For example, if an owner offers a family a 2-month free-rent period with a lease beginning July 1st, the HAP contract and lease will be effective July 1st, but the housing assistance payment will be \$0 for that free-rent period.
 - (b) The THDA will determine the ending date of the free-rent period, and will execute an interim change effective the day following the ending date of the free-rent period.
 1. Since interim changes must be processed at the beginning of the month, an adjustment may be necessary for the time period between the end of the free rent period and the beginning of the next month.
 2. When the free rent period expires, a HAP Amendment will be mailed to the family and owner, which updates the HAP Contract with the new housing assistance payment and tenant rent payment.
- (9) HAP Contract Transfer/Assignment.
 - (a) An owner may not transfer or assign a HAP Contract without the THDA's prior consent.
 - (b) If an owner requests an assignment or transfer of the HAP Contract due to a property sale, foreclosure, receivership, or death, the new owner must supply all information requested by the THDA and sign the THDA's HAP Contract Transfer form within sixty (60) days of such request or the THDA will relocate the participant. The new owner may request to enter into a new lease and HAP contract after the initial lease term, as long as the change does not displace and/or otherwise adversely affect the assisted participant. Any requests for rent increases will be subject to the rent reasonableness test.
 - (c) The payment may not be paid to the new owner until all appropriate transfer and ownership documentation is received by the THDA.

(Rule 0770-01-05-.22, continued)

- (d) Sale of Property. When a property with a HCV occupant is sold, the THDA will require proof of ownership, typically a valid, registered deed of trust, W-9, and the HAP Contract Transfer form before the payment may be transferred to the new owner.
- (e) Foreclosure. When a property with a HCV occupant is foreclosed on, the THDA will require documents from the bank or lender that show the date of the foreclosure. If the bank or lender wishes to have the payments transferred, a valid, registered deed of trust transferring ownership, a HAP Contract Transfer form signed by an authorized representative, and a W-9 form are required before the payment may be transferred to the new owner.
- (f) Death. When the owner of a property is deceased, the documents the THDA will require will vary based on the circumstances.
 - 1. If an executor or administrator of the estate has been appointed, the THDA will require valid testamentary documentation indicating appointment of an executor or administrator of the estate, the court order for the probate of the estate, and the HAP Contract Transfer form must be signed by the executor or administrator of the estate. The existing W-9 may be used while the estate is in probate.
 - 2. If the property is transferred after the owner's death, the THDA will require a court order, or other legal instrument recognized under state law, which transfers ownership of the property, control of the property, or the rights to rent. The new owner must sign the HAP Contract Transfer form and W-9 form. Also see 0770-01-05-.27(2)(d)3 regarding the death of the only remaining household member.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.23 HOUSING QUALITY STANDARDS (HQS) – INSPECTIONS (24 C.F.R. 982.305, 24 C.F.R. 982.4, 24 C.F.R. 982.401, 24 C.F.R. 982.405, 24 C.F.R. 982.407).

- (1) Responsibility for Locating a Suitable Unit. The applicant or participant is responsible for locating a suitable unit.
 - (a) An online database of available rental properties, TNHousingSearch.org, is provided for families to use to find available units.
 - (b) The THDA provides households with the basic information on what is required for a unit to pass the Housing Quality Standards (HQS) inspection.
 - (c) Ultimately, the selection of the unit is the applicant's preference as long as the unit meets the eligibility criteria.
 - (d) If the voucher expires before an applicant locates a suitable unit, the applicant must reapply to the program, unless there is an owner or THDA-caused delay, in which case the voucher will be extended for the amount of time of the delay.
- (2) Housing Quality Standards (HQS), Acceptable Subsidy Standards, and Criteria for Acceptable Housing (24 C.F.R. 982.4). Units are inspected according to HUD HQS, must meet acceptable subsidy standards, and must conform to certain criteria for acceptable housing.
 - (a) General Information.

(Rule 0770-01-05-.23, continued)

1. The THDA will not inspect a unit without either the owner or an adult member or representative of the tenant household (age 18 or older) present at the unit during the inspection.
 2. The THDA encourages the owner or management agent to be present at the initial move-in inspection so the inspector can answer questions about the inspection appointment.
- (b) Acceptable Subsidy Standards and Criteria for Acceptable Housing.
1. The rent requested by the owner must be reasonable when compared with similar, unassisted units in the same area.
 2. The owner must be in good standing with the THDA and other Public Housing Authorities.
 - (i) Owners may be barred from participation in the HCV Program for twelve (12) months and may be required to attend training from an approved Fair Housing agency, when there is evidence of repeated HQS violations, Fair Housing, HAP Contract violations under the voucher or other HUD programs, fraud, and bribery.
 3. The unit may not be owner-occupied, unless the household is participating in the Homeownership Voucher Program.
 - (i) The unit may not be approved if a parent, stepparent, child, stepchild, grandparent, grandchild, sister or brother of any member of the family owns the unit, unless approving the unit is necessary as a reasonable accommodation for a household that includes a member with a disability.
 - (ii) This rule applies to elderly households as well, unless the household includes a member with a disability.
 4. The unit may not be located in a neighborhood or community with an unacceptable high rate of criminal activity as demonstrated on maps available on the THDA website through the THDA's Research and Planning Division.
 5. The unit may not have another subsidy as defined under the U.S. Housing Act of 1937, other than assistance under Section 17.
 6. If the unit is located in a development, such as project-based Section 8, where some of the units receive another type of federally assisted housing, voucher holders are only permitted to occupy a unit that does not receive another federal subsidy.
 7. The unit may not be a nursing home or other unit where continual medical, mental, or nursing services are provided. However, elderly, disabled, or displaced households may use Congregate Housing and elderly or disabled persons who require a planned program of continual supportive services may use Independent Group Residences, Group Homes, or Assisted Living Facilities.
 8. The unit may not provide services of a penal or reformatory institution.
 9. Shared housing arrangements, where more than one assisted household shares a bedroom in a facility, are not permitted by the THDA.

(Rule 0770-01-05-.23, continued)

- (c) Eligible Housing Types (24 C.F.R. 982.353; 982.54(d)(15)). The following types of housing are eligible for leasing under the HCV program as long as they pass Housing Quality Standards and meet occupancy standards:
 - 1. Single family homes.
 - 2. Apartments, Duplexes, Townhouses, Condominiums.
 - 3. Mobile homes or manufactured homes where the participant leases the mobile home and the pad from the same owner.
 - 4. For disabled and elderly households only:
 - (i) Independent group residences.
 - (ii) Group Homes.
 - (iii) Assisted Living Facilities.
- (3) Types of Inspections and General Requirements (24 C.F.R. 982.401(a) and 982.405).
 - (a) Initial Inspection. A unit must be inspected and have a pass rating prior to the execution of the Housing Assistance Payment (HAP) Contract. The owner must complete all required repairs. If the unit fails the final inspection, the Request for Tenancy Approval (RTA) will be denied. This also applies to relocations for participants.
 - 1. Scheduling of the Inspection.
 - (i) THDA will request an inspection of the unit within three (3) business days of the approved RTA. Within fourteen (14) business days of THDA's request, the inspector will notify the owner of the unit, schedule, and conduct the inspection.
 - (ii) The inspector will provide the owner with the date and approximate time, within a four (4)-hour block of the inspection.
 - (iii) A Confirmation of Scheduled Initial Inspection will be mailed to the owner and tenant.
 - (iv) The inspector will give the owner a courtesy call approximately forty-five (45) minutes prior to arriving at the unit.
 - (v) In the case of a missed inspection, the inspector will notify the owner, reschedule, and conduct the inspection within seven (7) business days.
 - (vi) If two (2) inspection appointments are missed during the initial certification, the RTA will be cancelled, unless the second absence is due to a verified medical emergency of the owner or a household member.
 - (vii) If an inspection of the unit has been scheduled, and the applicant/participant does not want to rent the unit, the inspection will be cancelled.

(Rule 0770-01-05-.23, continued)

- (viii) The owner will ensure that the unit has the utilities (electric, gas, water, etc.) connected prior to the day of the scheduled inspection. If the utilities are not connected, the unit will not be inspected and will result in a failed inspection.
- 2. Notice of Initial Inspection Failure will be sent to the owner and applicant/participant within two (2) business days following a failed inspection. The notice will provide the necessary repairs and the fourteen (14)-business-day deadline to make the repair. This may be completed sooner if the issues are corrected prior to the appointment date. At the re-inspection, only the previously failed items will be inspected, unless a new failed item is observed. The deadline may be extended, by request, if it is impossible for the repair to be completed within fourteen (14) days. This must be approved by the Program Director or the assigned HQS Coordinator.
 - (i) If the unit does not pass HQS after two inspections, the RTA will be cancelled for that particular unit, but the family may search for another unit if the household is still within the first 60 days of the voucher term or any reasonable accommodation extension or other approved extension.
- 3. Pass Results. If the unit passes the inspection, a HQS Compliance Notice will be mailed to the applicant/participant family and either left with the owner at the unit, if the owner was present for the inspection, or mailed to the owner as documentation of the unit's passed status.
- (b) Annual/Biennial Inspections. HCV assisted units are inspected annually and/or biennially as long as the units remain on the Program. Each unit must be inspected before or during the same month each year (annual) or every other year (biennial).
 - 1. The Notice of Inspection will be mailed to the owner and participant with the scheduled date and time within fourteen (14) business days prior to the inspection. An automated reminder call will be placed to the participant a minimum of forty-eight (48) hours prior to the inspection.
 - 2. A unit that passes an inspection will be moved to a biennial inspection.
 - 3. Missed Appointments. See Missed Appointments Policy in 0770-01-05-.20(5) OBLIGATIONS OF PARTICIPANTS (24 C.F.R. 982.551).
 - 4. Delays in Completing the HQS Inspection.
 - (i) Administrative Delay. If an administrative delay occurs that causes an inspection or re-inspection to be delayed, no action may be taken that negatively affects the participant or owner.
 - 5. Extensions. The THDA policy allows extensions when a repair must be delayed due to circumstances that are not within the landlord or participant's control (such as severely inclement weather). An extension must be requested within the initial 30-day repair period. At THDA's discretion, extension periods are granted, not to exceed 30 days, unless approved by the Program Director or HQS Coordinator. The THDA is responsible for approving, tracking, and documenting allowable extensions. Requests for extensions must be accompanied by documentation that supports the need for the request.
 - (i) Extensions will not be granted during the abatement period.

(Rule 0770-01-05-.23, continued)

6. Self-Certification for Non-Emergency Failed Items. HUD allows owners and participants to self-certify that repairs for non-emergency failed items have been completed. This eliminates the need for re-inspections.
 7. Self-Certification Form. When the unit fails inspection, the inspector mails the Self-Certification Form and the Notice of HQS Violations to the owner and participant within two (2) business days. The owner and the participant are required to sign the Self-Certification Form verifying that all repairs are complete.
 8. Self-Certifications may be sent electronically or via USPS. If mailed, the postmark date will be used to determine timeliness. If the above requirements are not completed by the 30th day, Housing Assistance Payments for the assisted unit will be abated (stopped).
 9. In cases where no violations of the minimum acceptability standards are present, but one party declines to sign the self-certification form, the THDA will make a final determination about whether to pass or fail the unit.
 10. Rural Development and Tax Credits may be transitioned to a biennial inspection schedule at the THDA's discretion.
- (c) Special or Complaint Inspection. A unit may also be inspected at the request of the owner or the household because of a complaint or special issue, but only if the issue reported represents a potential violation of Housing Quality Standards (HQS). Inspection and notice criteria for special or complaint inspections are the same as identified for annual/biennial inspections.
- (d) Quality Control Audit. A supervisory quality control inspection is conducted on a certain percent of all units under lease by the THDA. The units to be included in the quality control sample are selected at random.
- (4) Inspection Booklets and Certifications.
- (a) The Inspection Booklet is completed for every inspection type and all correspondence related to HQS is retained in an electronic file. The inspector will collect all required THDA and HQS Owner Certifications. Inspectors will provide blank forms, if needed.
 - (b) Owners are responsible for returning all owner certifications to the THDA or its agent. Failure to do so will result in a failed item on an inspection.
- (5) Inspection Results.
- (a) The inspection results must be signed by the adult that allowed entry into the unit. If the unit passes the HQS inspection, a HQS Compliance Pass Letter will be mailed to the owner and left with the participant family.
 - (b) Failed Results. The Inspector may perform onsite maintenance at inspected units using their own provided supplies when such replacement would eliminate the need to perform a 24-hour emergency re-inspection or 30-day re-inspection at the unit (repair/replace damaged or missing light switch and outlet covers; repair/replace missing smoke alarm batteries). The Inspector is not responsible to provide such maintenance when other repair items are found that would require re-inspection of the unit within 24 hours (for emergency repair items) or 30 days (for routine items).
1. If other non-compliant fail items are present, the inspector will mail the Notice of HQS Violations to the owner and participant family within three (3) business

(Rule 0770-01-05-.23, continued)

days. The necessary repairs will indicate who is responsible for the repairs, the THDA action that will result from non-compliance, and the requirement of self-certification for non-emergency items.

(6) Abatement.

- (a) When a repair is not completed within the 30-day repair period, Housing Assistance Payments (HAP) are suspended for an additional 30 days. This is known as the Abatement Period. If the repairs are completed and the Self-Certification is submitted within the abatement period, the HAP will resume. THDA does not retroactively issue HAP for abated units and the participant is not responsible for the abated HAP. If later the THDA determines that certified repairs were not made, the THDA will deduct HAP, terminate the HAP Contract, terminate the participant's assistance, and disbar the owner from program participation.

1. Failure to Repair and Certify Timely (24 C.F.R. 982.404). If the owner or participant fail to complete repairs, sign the Self-Certification Form, or submit a completed Self-Certification form by the 30-day deadline or by the extension deadline, the following actions will be taken:

- (i) Owner's Responsibility. If the repairs are not made by the end of the abatement period, the HAP contract will be terminated and the participant will be issued a relocation voucher.
- (ii) Participant's Responsibility. If the repairs are not made by the end of the 30-day repair period, a proposed termination will be issued to the participant and the family's assistance is terminated; the HAP Contract will be terminated in thirty (30) days.
 - (I) The participant has the right to appeal a termination decision that results from the failure to make HQS repairs.
- (iii) If either party does not make the repairs at the end of the 30-day repair period, the unit will be abated and the participant will be issued a proposed termination.

2. Special Circumstances.

- (i) Owner and Participant Responsibility. In cases where there is a discrepancy, THDA will investigate. For example, in cases where one party completes the repairs and the other party is unwilling/unable to sign the self-certification form, THDA will determine if the repairs are completed satisfactorily. If the repairs are the participant's responsibility, the family may be issued a proposed termination and the landlord may not be abated.
- (ii) Affidavit in Lieu of Self-Certification. In cases when the landlord and/or participant claim that the self-certification was submitted, but it was not received, the THDA may accept an affidavit in lieu of the self-certification. The THDA will consider the self-certification as timely.

(7) Emergency Repairs.

- (a) Emergency Repair Items are those defects that the reasonable person would deem to be life threatening. Emergency Repair Items include, but are not limited to:

1. Escaping gas from stove;

(Rule 0770-01-05-.23, continued)

2. Major plumbing leaks or flooding;
 3. Natural gas leak or fumes or other air pollutant levels that threaten the occupants' health;
 4. Electrical situation which could result in shock or fire;
 5. No heat when outside temperature is below 50 degrees;
 6. No running water;
 7. Utilities turned off, including no running hot water;
 8. Broken glass or other conditions that present the imminent possibility of injury;
 9. Obstacle which prevents or hinders entrance to or exit from the unit;
 10. Absence of a functioning toilet or an overflowing toilet;
 11. Unit cannot be adequately secured;
 12. Inoperable smoke detector (if when tested, smoke detector fails test); or
 13. Combustible materials near the gas water heater or gas furnace.
- (b) **Deadline for Emergency Repairs.** Such defects must be corrected within twenty-four (24) hours of the repair notice or the HAP will be abated or terminated, depending on the circumstances as outlined below.
1. **Extension of Emergency Repairs.** A short extension of no more than forty-eight (48) hours will be given where the owner or participant cannot be reached or if it is impossible to repair within the twenty-four (24)-hour period, i.e., it is a weekend, etc.
- (c) **Owner Responsibility for Emergency Repairs.**
1. If the owner is responsible for the repair, the owner must correct the defect or the HAP contract will be abated immediately and the participant will be issued a voucher to relocate.
 2. If the owner takes steps to correct the defect, but it is impossible for the defect to be corrected in twenty-four (24) to seventy-two (72) hours; the participant does not want to relocate; and the family wants and is able to make alternative living arrangements during the repairs, the HAP will be abated until repairs are complete for a maximum of thirty (30) days. If the participant is unable to find alternate housing, the household must be relocated and the HAP contract will be terminated.
- (d) **Participant Responsibility for Emergency Repairs.**
1. If an HQS violation caused by the family is identified as an emergency, the family must correct the defect within seventy-two (72) hours.
 2. **Disconnected Utilities.**

(Rule 0770-01-05-.23, continued)

- (i) If utilities, which are the participant's responsibility, are disconnected for more than seventy-two (72) hours, assistance will be terminated.
 - (ii) HAP Contract Termination. The effective date of the HAP Contract termination is as follows:
 - (I) If the THDA is informed of the disconnected utilities during the same month that the utility was disconnected, the HAP will be paid to the owner through the end of the month in which the utility was disconnected.
 - (II) If the THDA is informed of the disconnected utilities after the month the utilities are disconnected, and the THDA has no reason to believe that the owner had knowledge of the disconnected utilities, the owner may keep the HAP through the end of the month in which the THDA became aware of the disconnected utilities.
 - (III) If the THDA is informed of the disconnected utilities, and the owner was aware that the utilities were disconnected or that the participant vacated the unit, but the owner failed to notify the THDA in a timely manner, the HAP will be terminated at the end of the month in which the utility was disconnected.
 - (iii) For verification purposes, information from the utility company should be reviewed to determine the exact date the utility was disconnected. If this cannot be determined, the THDA will schedule a case conference prior to issuing a proposed termination. The participant will be required to provide supporting documentation to confirm that the utilities are connected.
 - (e) If any of the above emergency repair items can be remedied in such a manner that the health and safety of the occupants is not compromised, the Inspection Booklet must be documented with an explanation of the manner taken to temporarily remedy the situation, but the emergency repair guidelines will not be required.
- (8) Lead-Based Paint Standards. Lead-based paint is only an HQS issue if the unit was built before 1978 and there is a child under age six (6) who resides, or is expected to reside in the unit, which includes a pregnant woman.
- (a) This rule is not applicable to 0-bedroom units, units specifically designated or reserved for households of elderly or disabled persons, units that have been tested and have been certified to be free of lead-based paint, or units in which all lead-based paint was identified, was removed, and passed a clearance examination.
 - (b) Inspection Requirements and General Actions.
 - 1. For units that were not constructed prior to 1978, owners are not required to have their units tested for the presence of lead-based paint. However, if the owner chooses to have the unit tested, the owner must employ an entity certified by the State of Tennessee to conduct the test. If the unit is found to be lead-free, a copy of the certification must be given to the tenant and a copy must be maintained in the tenant's file.
 - 2. Units constructed prior to 1978 with a child under six (6) years old must be visually assessed (inspected) for deteriorated paint surfaces on the interior and exterior of the unit, prior to execution of the HAP Contract at move-in, and at each annual recertification.

(Rule 0770-01-05-.23, continued)

3. All painted interior surfaces within the unit should be inspected for deteriorated paint. This includes ceilings, walls, floors, doors, windows, baseboard, trim, etc. Furniture is excluded from the inspection.
 4. The entrance and hallway providing ingress and egress to a unit in a multi-unit building should be inspected for deteriorated paint.
 5. Exterior surfaces including walls, stairs, decks, porches, railings, windows, and doors should be inspected for deteriorated paint. This includes outbuildings such as garages and sheds. In multi-unit complexes, laundry rooms and playgrounds should be inspected for deteriorated paint.
 6. All deteriorated paint that is identified during the inspection must be stabilized, except units that have been tested and found to be lead-free, or when the deterioration is limited to hairline cracks or small nicks, scratches, or nail holes. However, the area of deteriorated paint must be determined to permit the inspector to know how to proceed.
 7. If the area of deteriorated paint exceeds set de minimis levels, a person who has received training in lead-safe work practices through a HUD-approved training course must stabilize the paint. Proof of the training is required, or the owner must employ a person or company certified by the State of Tennessee to conduct the lead-hazard control activities.
 8. The de minimis levels are:
 - (i) 20 square feet on exterior surfaces.
 - (ii) 2 square feet in any one interior room or space.
 - (iii) 10% of a type of building component with a small surface area, such as painted windowsills, on interior and exterior surfaces.
- (c) Cost of Stabilizing Deteriorated Paint. Even though the THDA may not provide assistance until the deteriorated paint surfaces have stabilized, the THDA is not responsible for paying the costs incurred when stabilizing deteriorated paint.
- (d) Clearance Examinations.
1. The unit does not pass HQS until the unit passes the Clearance Examination.
 2. Once the deteriorated paint has stabilized, the unit must be visually assessed (inspected) by the THDA or its agent to ensure that the area of deteriorated paint has been repaired and all visible dust, debris or residue has been eliminated.
 3. Once the unit has passed the visual assessment, the owner must employ an entity certified by the State of Tennessee to conduct a Clearance Examination and the entity cannot be the same as the one that performed the lead-hazard control activities.
 4. Once the unit passes the Clearance Examination, within fifteen (15) calendar days of receipt of the results, the owner must supply the tenant and the THDA with the certification.

(Rule 0770-01-05-.23, continued)

5. The owner must certify, using the certification in the Inspection Booklet, that the deteriorated paint was stabilized in accordance with HUD regulations. The owner must also attach a copy of the certifications from the entity that conducted the lead-hazard control work and the clearance examination must be attached to the owner's certification.
 6. The owner must maintain the unit to ensure the paint remains intact.
- (e) Child with an Environmental Intervention Blood Lead Level. If a child under the age of six (6) is identified by a public health department or other medical health care provider as having an Environmental Intervention Blood Lead Level (EIBLL), a risk assessment of the dwelling unit must be conducted (24 C.F.R. 35.1225).
1. The THDA must contact the Child Health Director of the Tennessee Department of Health and the Tennessee Department of Health will then contact the Tennessee Department of Environment and Conservation, which will be responsible for conducting the Risk Assessment with fifteen (15) days of notification.
 2. The assessor will issue a report to the THDA explaining the results of the investigation, as well as options and requirements for reducing lead-based paint hazards and the THDA must provide the report to the owner, who must notify the tenant of the results of the Risk Assessment within fifteen (15) days of receipt of the report from the THDA.
 3. If a lead-poisoned child is identified in a unit, any lead hazards identified in the risk assessment must be corrected. Clearance must be achieved, within thirty (30) calendar days of the issuance of the risk assessment, or the date specified by the THDA if an extension is granted for an exterior surface, before the unit can receive rental assistance, even if the lead-poisoned child is no longer present in the unit.
 - (i) The appropriate method of correction should be identified in the Risk Assessment.
 - (ii) Paint Stabilization. If the Risk Assessment states that just paint stabilization is required, then the owner may perform the paint stabilization if he, or someone he employees, has completed a HUD-approved training course.
 - (iii) Other Lead-Hazard Reduction Work. For every other type of lead-hazard reduction work, such as abatement, interim controls, and dust and soil contamination controls, the owner must hire an entity certified by the State of Tennessee to perform the work.
 - (iv) Clearance Examination. Once the lead-hazard reduction work is completed, the unit does not pass the HQS until the unit passes a Clearance Examination. The Clearance Examination cannot be performed by the same entity who performs the lead-hazard reduction work. See the Clearance Examinations requirements in 0770-01-05-.23(8)(d). The owner must notify the tenant and the THDA of the results of the Clearance Examination within fifteen (15) days.
 - (v) Companies Certified by the State of Tennessee. The owner must contact the Tennessee Department of Environment and Conservation to obtain a

(Rule 0770-01-05-.23, continued)

list of companies certified by the State of Tennessee to perform lead-hazard reduction work. The list is continually updated.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, 24 C.F.R. 35.1225, and 24 C.F.R., Part 982. **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.24 OWNER RESPONSIBILITIES (24 C.F.R. 982.54(d)(5), (8); 982.153(b)(1); 982.306; 982.302(a)(8); 982.453).

- (1) Owner Outreach (24 C.F.R. 982.54(d)(5); 24 C.F.R. 982.153(b)(1); 24 C.F.R. 982.153(b)(1)).
 - (a) Outreach to owners of decent, safe, and sanitary housing units is a critical part of the HCV Program, as the more owners participate, the wider the range of housing choices for families.
 - (b) The THDA continually invites owners to make dwelling units available for leasing by eligible families in areas outside of low income or minority concentration.
 - (c) Applicants and participants are referred to TNHousingSearch.org to search for available listings.
 - (d) Owner outreach outlines that:
 1. Rental assistance promotes stable occupancy and reduces tenant turnover.
 2. Tenant selection rests with the owner.
 3. Housing Assistance Payments (HAP) are not considered late until the 5th business day of the month. HAP by the THDA is deemed received by the owner upon transmittal of payment by the THDA. The THDA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the THDA's control. In addition, late payment penalties are not required if the THDA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract.
 4. The THDA does not interfere with the owner-tenant relationship, except to ensure compliance with HCV Program.
 5. Rents may only be adjusted at the family's annual reexamination.
 6. Owner's current tenants may be eligible to participate in the program.
 7. Owners will be notified of program changes via periodic mailers and/or the THDA website. The notices will contain updates on federal, state, and THDA regulations.
- (2) Owner Briefings. At the time of the initial leasing of a unit and periodically as needed, the basic features of the program are explained to the owner or manager by the THDA by informal briefings, usually by telephone. The purpose of the briefing is to assure successful owner participation in the program. Program requirements are explained and printed material is offered to acquaint the owner/manager with the opportunities available under the program.
 - (a) The briefing may include, but is not limited to, the following:

(Rule 0770-01-05-.24 continued)

1. Owner rights and responsibilities under the terms of the lease and the HAP contract.
 2. Tenant rights and responsibilities under the lease and the HCV Program.
 3. The role of the THDA in administering the HCV Program.
 4. How the rent is to be paid, the THDA portion and the tenant portion.
 5. What information and assistance is available from the THDA.
 6. Housing Quality Standards.
 7. Fraud.
- (b) For owners not able to attend a briefing at any time, the THDA supplies a Landlord Information Booklet with information pertinent to the program.
- (3) Owner Selection. Owners do not have a right to participate in the HCV Program.
- (a) Acceptance of the Owner by the THDA. The selection of a unit is the tenant's responsibility and any owner willing to participate in the program is accepted as long as:
1. The unit and rent meet the program requirements;
 2. The owner is in good standing with the program;
 3. There is no conflict of interest; and
 4. The owner is not barred or disapproved according to any guidelines under the next section below.
- (b) Disapproval of Owner (24 C.F.R. 982.306). The THDA will disapprove an owner from participation in the HCV Program if the owner:
1. Has a conflict of interest because of a position the owner or their agent occupies through employment, appointment, or election;
 2. Has committed fraud or bribery or any other corrupt act in connection with any federal housing program;
 3. Has violated an owner obligation under any Section 8 HAP contract (including contracts under the project-based Section 8 program or the HCV (tenant-based) program) or has a history of renting units that fail to meet State or local housing codes;
 4. Has engaged in drug-related criminal activity or violent criminal activity;
 5. Has broken a lease with a subsidized tenant without cause or other lease violation and not in accordance with HCV Program Guidelines;
 6. Noncompliance with HQS and/or any HUD-required inspection, such as REAC inspections;

(Rule 0770-01-05-.24 continued)

7. Has failed to comply with regulations, the mortgage or note, or the regulatory agreement for projects with mortgages insured by HUD or the THDA or loans made by HUD or the THDA;
 8. Has engaged in threatening verbal or physical abusive behavior towards the THDA's staff; or
 9. The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that threatens the right to peaceful enjoyment of the premises by other residents; threatens the health or safety of other residents, of employees of the THDA, or of owner employees or other persons engaged in management of the housing; threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or is drug-related criminal activity or violent criminal activity.
 10. The owner has not paid State or local real estate taxes, fines, or assessments.
 11. Other good cause as defined or directed by HUD.
- (c) Disbarment of an Owner from the HCV Program. When an owner engages in the following activities that are in direct violation of a THDA policy or HUD HCV Program regulations, the housing assistance payment will be discontinued and the owner will be barred from participating in the program for a period of three (3) years:
1. Making an alternative or side rent agreement with the tenant that is not included in the lease, without the THDA's knowledge or consent;
 2. Failing to notify the THDA that the tenant has vacated the unit and continuing to accept housing assistance payments from the THDA on behalf of the family;
 3. Failing to make repairs;
 4. Failing to submit required paperwork (leases, contracts, addenda) within the required timeframe;
 5. Evidence of discrimination;
 6. Evidence of documented harassment or abuse of tenants or the THDA's staff;
 7. Knowingly allowing unauthorized household members to reside in the assisted unit;
 8. Not following HUD and the THDA's guidelines in terminating the lease during the initial lease term and other subsequent terms;
 9. Failing to make requisite notifications to the THDA in the time specified under this plan;
 10. Terminating a lease or evicting an assisted family when the THDA is unable to approve a rent increase either because the rent requested is not found by the THDA to be comparable to other similar, unassisted units or when the THDA is unable to approve a rent increase due to funding restrictions;

(Rule 0770-01-05-.24 continued)

11. Committing fraud in any federal or state program. However, if the owner has knowingly committed fraud, but returns the overpaid HAP and repays the THDA in full, the owner will be allowed to continue in the program.
12. Breach of the HAP Contract under 24 C.F.R. 982.453. If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (i) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. § 1437f).
 - (ii) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.
 - (iii) If the owner has engaged in drug-related criminal activity.
 - (iv) If the owner has committed any violent criminal activity.
 - (v) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- (4) Owner Responsibilities. Failure to fulfill these requirements will result in the withholding, abatement, or termination of housing assistance payments or the disbarment of the owner from the HCV Program. The owner must:
 - (a) Comply with all requirements contained in the owner lease and HAP Contract.
 - (b) Perform routine management functions, including the screening and selection of tenants, maintenance of the assisted unit, rent collection, and handling of tenant relations and issues.
 1. Screening and Selection of Tenants. The THDA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. It is the responsibility of the owner to determine the suitability of prospective tenants. Owners are encouraged to screen applicants for rent payment history, eviction history, damage to units and other factors related to the family's suitability as a tenant.
 2. Maintenance of the Unit. The Owner shall maintain the unit at all times in accordance with HUD's Housing Quality Standards.
 3. Rent Collection. The Owner shall collect only the amount of rent from the tenant that is specified in the lease and the HAP Contract or in accordance to any interim adjustment approved by the THDA. Any charges in addition to the monthly rent must be stated in the lease or lease addendum.
 4. Owner and Tenant Relations and Issues. The legal relationship between the owner and tenant is defined by the lease and any addenda. The THDA is not a legal party to the lease. Therefore, owners are responsible for managing their relations with the assisted tenant and any problems that may arise. The THDA

(Rule 0770-01-05-.24 continued)

will not mediate between the two parties, but will only be involved to the extent necessary to administer the program.

- (c) Submit proof of ownership or proof of a management agent agreement.
 - (d) Furnish a social security number or tax identification number and complete a W-9 form.
 - (e) Promptly notify the tenant and the THDA prior to the commencement of eviction proceedings in accordance with HUD requirements and state and local laws.
 - (f) Notify the THDA in writing immediately upon knowledge of the tenant vacating the unit. Owners are not eligible to receive rental payments if the tenant is not living in the unit. The HAP Contract automatically terminates at the end of the month the tenant vacates the unit. If any rental payments are received by the owner for the month following the month the tenant vacates the unit, such payments must be returned to the THDA.
 - (g) Notify the THDA in writing immediately upon the unit being placed under receivership or in a foreclosure proceeding.
 - (h) Notify the THDA and tenant in writing at least sixty (60) days prior to the lease anniversary date if a rental increase is requested for the next year or if other lease revisions are requested and if applicable submit the new lease to the THDA for approval.
 - (i) Assure that utilities are connected to the unit at all times if paid for by the owner.
 - (j) Provide the owner's current residential address, not P.O. Box.
 - (k) Owners must notify the THDA in writing of any changes in mailing addresses or ACH (direct deposit) account numbers. The THDA requires thirty (30) days from the date the THDA received the notification to process the changes.
- (5) Information to Owners (24 C.F.R. 982.307(b); 982.54(d)(7)). In accordance with HUD requirements, the THDA must furnish prospective owners with the family's current address and prior address as shown in the THDA's records and, if known, the name and address of the landlord at the family's current and prior address. An exception will be made to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.
- (6) Making Housing Assistance Payments to Owners.
- (a) Once the HAP Contract is executed, the THDA begins processing payments to the owner. The HAP Contract allows the THDA a maximum of sixty (60) days to process the initial HAP payment. If the THDA does not meet the 60-day deadline for the initial payment, a late fee may be applicable.
 - (b) Once the initial payment is processed, payment will be made to the owner on the first working day of the month in which the payment is due. Monthly Housing Assistance Payments are not considered late until after the 5th of the month.
 - (c) Late Fees. If the owner does not receive the HAP by the fifth business day of the next month due to a delay caused by the THDA, the payment will be considered late and the THDA will be responsible for a late payment penalty if requested by the owner within thirty (30) calendar days.

(Rule 0770-01-05-.24 continued)

1. If the THDA can verify that the payment was processed appropriately, a late fee will not be allowed.
2. The THDA is not responsible for mail delays or other delays that are beyond the control of the THDA.
3. Owners must notify the THDA in writing of any changes in mailing addresses or ACH (direct deposit) account numbers. The THDA requires thirty (30) days from the date the THDA received the notification to process the changes. Therefore, the THDA is not responsible for delays in payments when an owner changes their mailing address or ACH (direct deposit) account number, and the THDA is not notified promptly.
4. The date of the check and the postmark date will be used to determine if the payment was mailed late or if the check was delayed due to the postal service.
5. If the THDA is responsible for the late fee, the fee will equal \$5.00 for each day the payment is delayed beyond the 5th working day, not to exceed 10% of the monthly HAP payment, as per the HAP Contract.
6. Checks lost in the mail will not be replaced by a duplicate check until a cancel payment is in place, and the State Treasury confirms the original check cannot be cashed.
7. Owners are required to set up ACH payments timely, and the THDA may terminate a HAP contract for an owner who fails to set them up.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.25 OTHER CHANGE OF UNIT/PORTABILITY (24 C.F.R. 982.354).

- (1) The Housing Choice Voucher Program was created with the intention of allowing participant families to move as necessary within reason. HUD has given local housing authorities the authority to develop policies and procedures regarding these moves in accordance with local needs and budget considerations. There are two types of moves. Relocation or Other Change of Unit is when a participant family requests to relocate within the jurisdiction of the housing authority that initially issued the family their voucher. Portability is when a participant family wants to move to an area that is located outside of the jurisdiction of the housing authority that initially issued the family their voucher.
 - (a) THDA-Initiated Relocation.
 1. There are no restrictions on the number of moves per year for THDA-initiated relocations, as long as the family remains program compliant. The THDA may require a family to relocate when:
 - (i) The relocation is necessary to prevent excessive administrative costs.
 - (ii) The THDA terminates a Housing Assistance Payments (HAP) contract, but the family remains eligible and wishes to remain under the HCV Program.

(Rule 0770-01-05-.25, continued)

- (I) A HAP Contract may be terminated by the THDA for one or more of the following reasons:
 - I. The unit does not meet Housing Quality Standards (HQS).
 - II. The owner is noncompliant with other terms of the HAP Contract.
 - III. The owner has committed fraud.
 - IV. The unit is under occupied, which occurs when a household member moves out of the unit during the lease term.
 - A. When a unit becomes under occupied, the THDA will use the new family unit size to determine the payment standard at the next regular annual recertification.
 - B. At the next regular annual recertification, the family may either remain in the unit, but pay any additional rent, or they may choose to relocate to a smaller unit at recertification.
 - V. The unit becomes overcrowded due to the addition of certain household members moving in to a unit during the lease term.
 - A. Birth, Adoption, Court-Awarded Custody, Emergency Placement of a Minor, or New Spouse.
 - (A) Notification. For additions due to birth, adoption, or court-awarded custody of a child the household must notify the owner and the THDA within thirty-(30) calendar days of the event.
 - (B) Emergency Placement of a Minor. To add a minor during a lease term, which would cause the unit not to meet HQS or subsidy standards (e.g. overcrowding), the household must prove by a preponderance of the evidence that the placement is necessitated by an emergency.
 - (C) New Spouse. The new spouse must meet eligibility criteria before being added.
 - (D) Overcrowding. When such additions cause the unit not to meet HQS or subsidy standards, the current lease and HAP contract will terminate on the last day of the next month following the notification, or approval in cases of emergency placement of minors. The THDA will conduct an interim recertification and issue the household a voucher to relocate.
 - B. If other additions to the household of other adults or minors would cause the unit to become overcrowded, the household must wait to add any additional household members until the end of the lease term. If

(Rule 0770-01-05-.25, continued)

eligible to relocate, the participant must secure a mutual lease termination and relocate to an appropriately sized unit, unless the placement is of a minor and is an emergency (i.e. child endangerment or homelessness) or is a new spouse.

- C. The family may also choose to remain in the current unit and remove themselves from the HCV program. The THDA will no longer be responsible for any rental assistance.
- (II) HAP Contract Termination Notice. When the THDA initiates a termination of the HAP Contract, the THDA sends a HAP Contract Termination Notice to the owner and the family giving at least a thirty (30) days' notice of the termination, unless the family has moved without notice, a death in the family has occurred, or a breach of the HQS for tenant-caused emergency repairs is outstanding. The HAP Contract Termination Notice includes the:
 - I. Effective date of the termination;
 - II. Date of the last Housing Assistance Payment; and
 - III. Reason for the termination.
 - (III) Relocation Notice. When the THDA initiates a HAP Contract termination, if the family is eligible for relocation, a Relocation Notice will be mailed at the same time. The Relocation Notice includes the:
 - I. Reason for the HAP Contract termination;
 - II. Termination date of the HAP Contract;
 - III. Last date a subsidy payment will be made for the unit; and
 - IV. Information on relocating with continued assistance.
2. The Owner Terminates the Lease.
- (i) Termination of the Lease.
 - (I) Families are not limited in the number of moves allowed due to owner-initiated actions, as long as the family remains eligible for and in compliance with HCV Program.
 - (II) If an owner wishes to terminate a lease, the owner must observe the terms and conditions of the lease and the HAP Contract in terminating the tenancy.
 - (III) The HAP Contract outlines that an owner may only terminate the lease for:
 - I. Serious or repeated violations of the terms and conditions of the lease;

(Rule 0770-01-05-.25, continued)

- II. Violations of Federal, State, or local law which directly relate to the occupancy or use of the unit or common areas; or
- III. Other good cause, which may include:
 - A. A family history of disturbance to neighbors, destruction of property, or habits that result in damage to the unit; or
 - B. Criminal activity by family members or guests of family members, including crimes of physical violence on or near the premises.
 - C. The family not accepting an offer of a new lease;
 - D. The owner's desire to use the property for personal use; or
 - E. Business or economic reasons such as the sale of the property, renovation, or a request for a rent higher than the THDA can approve. The owner must notify HUD of the intent.

(IV) Initial Term of the Lease.

- I. During the initial term of the lease, the owner may not terminate "other good causes", including:
 - A. The family not accepting an offer of a new lease;
 - B. The owner's desire to use the property for personal use; or
 - C. Business or economic reasons such as the sale of the property, renovation, or a request for a rent higher than the THDA can approve.
- II. If the owner terminates the lease during the initial lease term for any of the above prohibited causes, the THDA may bar the owner from future program participation.

(ii) Family Continues to Be Eligible. If the family continues to be eligible for the HCV Program, the family may relocate to another unit with continued assistance, but the HAP Contract at the new unit may not be effective until the day that the current lease ends.

(iii) Eviction. In order to evict, the owner must evict by a court order. If the owner obtains a court judgment to evict the tenant for a serious lease violation, the family will be terminated from the HCV Program. If the owner receives a judgment for possession only, but the judgment is not for a serious lease violation, then the THDA will relocate the participant.

(iv) Non-Renewal or Terminations for Good Cause after Initial Term Notices.

- (I) The owner must give the family and the THDA prior written notice that the lease will not be renewed at least 30 days before the expiration of the lease and at least 30 days before the owner plans

(Rule 0770-01-05-.25, continued)

on terminating, or otherwise permitted under state law, or the owner will be in violation of the HAP Contract and will be barred from participation in the HCV Program. However, the THDA recommends that the owner offer a sixty-day (60) notice to allow the family, if eligible, adequate time to relocate with continued assistance and to avoid holdover tenancies.

- (II) The effective date of the termination of the tenancy must be on the last day of a month.
 - (v) Termination of HAP Contract.
 - (I) When the THDA receives a non-renewal notice or good cause lease termination notice from an owner, the THDA will mail the owner a HAP Contract Termination Notice.
 - (II) The effective date of the HAP Contract termination will match the lease termination effective date. If the owner has not provided the THDA with a full 30-day lease termination notice, the THDA cannot provide the owner with the traditional 30-day notice of HAP Contract Termination.
 - (III) HAP Contract Termination Notice. The HAP Contract Termination Notice includes the:
 - I. Effective date of the termination;
 - II. Date of the last Housing Assistance Payment; and
 - III. Reason for the termination.
 - (vi) Relocation Notice. When the owner initiates a lease termination, if the family is eligible for relocation, a Relocation Notice will be mailed to the family. The Relocation Notice includes the:
 - (I) Reason for the HAP Contract termination;
 - (II) Termination date of the Lease and the HAP Contract;
 - (III) Last date a subsidy payment will be made for the unit; and
 - (IV) Information on relocating with continued assistance.
3. Family-Initiated Relocation.
- (i) Eligibility.
 - (I) In general, a family is eligible to relocate after the initial lease term:
 - I. At the annual recertification; or
 - II. Upon a mutual lease rescission;
 - III. As long as the family has not moved in the past twelve (12) months.

(Rule 0770-01-05-.25, continued)

- IV. The participant may only request to relocate twice within a 90-day period. The 90-day period begins at the initial relocation voucher date.
- (II) Initial Lease Term. Initial Lease Term is defined as the first term of the lease, typically the first twelve months in the same unit. If a family is in the initial lease term, they are not eligible to move with continued assistance.
 - I. The family must honor their current lease agreement.
 - II. The THDA does not pay overlapping HAP.
 - III. The new lease and HAP Contract may not be effective until the day after the current unit lease ends.
- (III) Good Cause for Relocation Exception.
 - I. On rare occasions and with good cause, a mutual rescission may be requested during an initial lease term. Eligibility and final determination of approval is at the discretion of program director.
 - II. The THDA will only approve a request to relocate or port a voucher during the Initial Lease Term or a family-initiated move when the family has already relocated in the past 12 months, if the family has "good cause."
 - III. If the family has been required to move in the past 12 months by the THDA or owner without meeting the standards for good cause.
 - IV. Good Cause Definition.
 - A. The family is overcrowded in a unit (more than 2 persons per bedroom);
 - B. The family is over housed (usually less than 1 persons per bedroom);
 - C. The family has an unreasonable rent burden (paying 60% of more of their monthly adjusted income for rent and utilities);
 - D. The family needs to relocate due to a disabling condition of a household member with verification from a knowledgeable medical professional;
 - E. The family has verified employment located an unreasonable driving distance, more than 75 miles, from the current unit (with verification of the hire and start date from employer);
 - F. Persons requesting protection under the Violence Against Women Act (VAWA) may qualify if verified.

(Rule 0770-01-05-.25, continued)

- (ii) Request to Relocate. The head of household must request the form from the THDA and submit it to the THDA.
- (iii) Notice of Intent to Vacate.
 - (I) The family must give the owner at least a thirty-(30) day written Notice of Intent to Vacate. However, the notice must comply with whatever the lease terms specify.
 - (II) The effective date must be on the last day of a month and if the family is in an initial lease term, the notice must be effective on the last day of the lease.
 - (III) The THDA will verify with the owner that the proper notice was given.
- (iv) The HAP Contract Termination Notice. The HAP Contract Termination Notice will be processed with every relocation approval (THDA or Family-Initiated). The effective date of the HAP Contract termination will match the lease termination effective date. The Notice includes the:
 - (I) Effective date of the termination;
 - (II) Date of the last Housing Assistance Payment; and
 - (III) Reason for the termination.
 - I. Effective date of the termination;
 - II. Date of the last Housing Assistance Payment; and
 - III. Reason for the termination.
- (v) Relocation Notice. The Relocation Notice will be processed with every relocation approval (THDA or Family-Initiated). The Notice includes the:
 - (I) Reason for the HAP Contract termination;
 - (II) Termination date of the HAP Contract;
 - (III) Last date a subsidy payment will be made for the unit; and
 - (IV) Information on relocating with continued assistance.
- (b) Other Items to Consider When Determining Eligibility to Relocate or Port.
 - 1. Existing Repayment Agreement. If the family has a plan of repayment prior to the request to relocate, they must be current in their repayment schedule to be eligible to relocate with continued assistance. If the family is not current, they will be advised how much they must pay to become current. The voucher will not be issued until the debt is paid current. If the family requests to port out of the THDA's jurisdiction, they must pay the debt in full before approval.
 - 2. Income Discrepancy. If an income discrepancy is discovered that results in a debt to the THDA, the family must enter into a repayment agreement before they may be issued a voucher within the THDA's jurisdiction. If the family requests to port out of the THDA's jurisdiction, they must pay the debt in full before approval.

(Rule 0770-01-05-.25, continued)

3. Serious Lease Violations. A household is not eligible to relocate when an owner has provided the THDA with proper notice of such violation. If a participant is otherwise eligible to move, but an owner stipulates that the participant is not in good standing, the owner must provide proof to the THDA within thirty-(30) days of a request for documentation that the owner has filed into court or the THDA will allow the participant to move.
 - (i) Unpaid Rent or Any Other Debt Owed to Owner. The family must be current in the tenant rent to owner and not owe any amounts to an owner (i.e. utility payments). The HAP contract requires participating owners to notify the THDA and the participant in a timely manner when a participant fails to make timely rent payments. When a participant requests to relocate, the THDA will send the owner notice of the participant's intent to relocate and will inquire whether any amount is outstanding before issuing a voucher to relocate. If the owner does not return the inquiry in a timely manner, the THDA will not consider the amounts owed in the approval to relocate the participant. However, if the owner later receives a judgment for unpaid rent or other amounts owed, the participant will be terminated. If the owner returns the inquiry in a timely manner and demonstrates that the family is not currently in good standing, the request to relocate will be denied, unless the owner and tenant enter into a repayment agreement. If the tenant defaults on the repayment agreement, the owner must provide the THDA with a court order for unpaid rent in order for assistance to be terminated.
 - (ii) Tenant-Caused Damages and Amounts Owed after Relocation. The family will be reminded in the relocation notice that they may not leave their current unit with any tenant-caused damages beyond normal wear and tear or owing any debt to the owner. Since damages are typically not found until after the move-out, a voucher will be issued unless the owner has already provided the tenant and the THDA with a court-ordered eviction notice for tenant-caused damages. If damages are discovered after the tenant has moved, then the owner must provide the THDA with a court order for damages, for which the household may be subsequently terminated.
- (c) Voucher Issuance. When a family is determined eligible to relocate two copies of the search voucher are issued and the family must keep one copy, sign the other copy, and return it to the THDA postmarked within fourteen (14) calendar days of the issuance of the voucher. If the family is in the initial lease term, the voucher will not be issued until 60 days prior to the annual recertification date. The family's new lease may not be effective until the day after their current lease ends.
 1. Voucher Term. The initial term of the voucher is sixty-(60) days. The family has 60 days to locate a suitable unit and submit a Request for Tenancy Approval.
 2. Disability Exception. The only exception to the initial 60-day voucher term is for families that include a member with a disability who may request an extension in 30-day increments to the initial 60-day term, for a maximum term of 120 days.
- (d) Request for Tenancy Approval. Once the family locates a suitable unit, the family must submit a Request for Tenancy Approval (RTA) signed by the owner and head of household within the initial 60-day voucher term or the family's assistance will be terminated for voucher expiration.
- (e) General Relocation Process.

(Rule 0770-01-05-.25, continued)

1. Initiation of Relocation.
 - (i) THDA-Initiated Relocation.
 - (ii) Owner-Initiated Relocation.
 - (iii) Family-Initiated Relocation.
2. The THDA determines the family's eligibility to relocate.
3. Voucher Issuance. When a family is determined eligible to relocate two copies of the search voucher are issued and the family must keep one copy, sign the other copy, and return it to the THDA postmarked within fourteen (14) calendar days of the issuance of the voucher. If the family is in the initial lease term, the voucher will not be issued until 60 days prior to the annual recertification date. The family's new lease may not be effective until the day after their current lease ends.
 - (i) Voucher Term. The initial term of the voucher is sixty (60) days. The family has 60 days to locate a suitable unit and submit a Request for Tenancy Approval.
 - (ii) Disability Exception. The only exception to the initial 60-day voucher term is for families that include a member with a disability who may request an extension of an additional 60 days to the initial 60-day term, for a maximum initial term of 120 days.
4. Request for Tenancy Approval. Once the family locates a suitable unit, the family must submit a Request for Tenancy Approval (RTA) signed by the owner and head of household within the initial 60-day voucher term or the family's assistance will be terminated for voucher expiration. If the RTA is submitted before expiration of the initial voucher term and is approved by the THDA, the voucher term is extended by 30 days, for a total term of 90 days (150 for disabled families). The THDA will contact the family with an approval or disapproval of the RTA within five (5) business days.
5. Affordability Estimate. At the time the voucher is issued, the THDA will give the family an estimate of their affordability based on the unit size, payment standard, and family income. This is to ensure that the family searches for a unit where they are not responsible for paying more than 40% of their monthly adjusted income (MAI), if the gross rent exceeds the payment standard. If the rent would exceed 40% of the MAI, the THDA will contact the owner by phone to negotiate reducing the rent.
 - (i) Approval of Rent Burden. If the unit is rent burden approved, the THDA will initiate the rent comparison.
 - (ii) Denial of Rent Burden. If the unit is denied due to the rent burden, the THDA will send an RTA Denial Letter with a new RTA and the time remaining on the 90-day voucher term.
6. Scheduling of the Inspection. If the THDA approves the RTA, then the inspector will schedule the inspection with the owner of the unit within fifteen (15) days of the submission of the RTA, giving the owner an exact date and approximate time

(Rule 0770-01-05-.25, continued)

for the inspection. The THDA will mail the HAP Contract, HAP C-Tenancy Addendum and THDA Lease Addendum to the owner for execution.

7. Family Decides Not to Relocate.

(i) Lease Termination/Notice of Intent to Vacate Not Effective Yet. If the family decides not to relocate, the owner approves of the family remaining in the unit, and the effective date of the Lease Termination or the Notice of Intent to Vacate has not passed and the family has not signed a lease for a new unit, the family and owner must sign, and the THDA must receive, a Mutual Rescission of Lease Termination no later than the day before the lease termination is effective. The family is responsible for the full rent until all necessary paperwork is processed. A retroactive payment will be made when the paperwork is received, but the THDA is not responsible for late fees associated with a late payment due to processing the Mutual Rescission of the Lease Termination.

(l) A family is prohibited to request to relocate within 90 days from the previous rescission of the intent to vacate

(ii) Lease Termination/Notice of Intent to Vacate Is Effective. If the family decides not to relocate, the owner approves of the family remaining in the unit, and the effective date of the Lease Termination or the Notice of Intent to Vacate has passed, but the family has not signed a lease for a new unit, the THDA will work with the family and owner to execute a Mutual Rescission of Lease Termination for the current unit. The family is responsible for the full rent until all necessary paperwork is processed. A retroactive payment will be made when the paperwork is approved, but the THDA is not responsible for late fees associated with a late payment due to processing the rescission of the relocation.

(iii) New Lease and HAP Contract Executed at New Unit. If the family has executed a lease at a new unit or the THDA has executed a HAP Contract for a new unit, the family is not eligible to change their mind and stay in the initial unit, unless the new owner is willing to terminate the lease agreement and HAP Contract without penalty.

8. The THDA Denial of Relocation. If the THDA determines that a family is not eligible to relocate, a Relocation Denial Letter will be mailed at the time the determination is made.

9. Rent Responsibility. Any participant, who moves without following the relocation procedures as outlined is responsible for the entire rent and will be terminated for violating the family obligations in the program.

(2) Portability. When a participant family requests to relocate to an area located in another public housing authority's (PHA) jurisdiction, this process is called "portability" (port-outs). The family takes their voucher with them to the new PHA. The receiving PHA has the ability to choose to administer the voucher or to absorb the voucher. Families who wish to relocate to the THDA's jurisdiction from other areas are also called portables (port-ins). Due to budgetary constraints, HCV participants are sometimes limited in their portability options. A HCV participant family may port to any PHA that administers the HCV program according to the guidelines set forth below. Each PHA has the ability to develop policies on accepting portables. Due to this, circumstances vary from one PHA to another.

(a) General Residency Rules.

(Rule 0770-01-05-.25, continued)

1. The residency rule requires that any household who applies for a waiting list that is not the county of their residence at the time of application, must reside in the wait list county for a period of twelve (12) months before they are eligible to port or relocate their voucher to another region or state.
 2. A family must remain in the jurisdiction of the initial PHA that issued their voucher for twelve (12) months before they are eligible for portability if neither the head of household nor the spouse had a legal residence in the area at the time they applied for admission to the program ("residency rule").
 3. If both the THDA and the receiving PHA agree, however, the family may lease a unit under portability sooner than twelve (12) months.
- (b) Moving out of the THDA's Jurisdiction under Portability.
1. Participants must follow the THDA's policies on vacating a unit and provide proper notice as required in the lease to be eligible to port to another PHA.
 2. When a THDA HCV participant family wants to relocate to a community outside of the THDA's jurisdiction, the THDA staff will assist the family in this process. The family must provide the THDA with the city where they desire to relocate. The THDA will give the participant family the contact information for all PHAs that service the area. At the household's request, the THDA must select the receiving PHA. If the THDA selects the receiving PHA, then the THDA is not required to provide the contact information for all receiving PHAs in the area.
 3. HUD has given individual PHAs the ability to decide whether they will administer or absorb portability vouchers based on funding availability. Every PHA has different policies on portability, which may change frequently based on budgetary concerns. The THDA will determine if the receiving PHA is billing or absorbing incoming portables.
 4. Absorbing. If the receiving PHA is absorbing incoming portables, the THDA will fax and mail Part I of HUD Form 52665 to the receiving PHA and will await Part II of the form back from the receiving PHA. The THDA will contact the family and advise them on the approval of the portability. When the other PHA absorbs the voucher, they treat the family like any other HCV participant family under that PHA's program.
 5. Administering.
 - (i) If the receiving PHA is administering and billing for incoming portables, the THDA will base the decision on whether the family may port to the area on funding availability and the following factors:
 - (I) If the payment standard for the receiving PHA is equal to or less than the family's current THDA payment standard, the THDA will allow the family to port out.
 - (II) If the payment standard is higher than the family's current payment standard due to the receiving PHA being in a higher cost area, the family will not be allowed to port to that community.
 - (III) When the THDA determines if the family is eligible to port out to a specific area, the family will be notified in writing.

(Rule 0770-01-05-.25, continued)

- (IV) All decisions are made with the assumption that the family will have a unit with the same number of bedrooms in the new community. If the receiving PHA issues the family a voucher for a larger unit, which would result in an increase in the cost of the voucher, the THDA will not accept the billing.
 - (ii) Receiving PHA Administering a THDA Voucher. When a Receiving PHA administers a THDA voucher, the Receiving PHA bills the THDA for HAP, UAP, and the lesser of 80 percent of the THDA's ongoing administrative fee or 100 percent of the Receiving PHA's administrative fee. The Receiving PHA is responsible for completing an annual reexamination along with any interim reexaminations for every port-in client. The Receiving PHA must send an updated Part II of HUD form 52665 and a new HUD form 50058 to the THDA for every annual and interim.
 - (iii) Ports to Counties Outside of THDA's Jurisdiction within the State of Tennessee. Families that port to THDA must reside in areas that are within THDA's jurisdiction. If a family requests to port to specific counties outside of the THDA's jurisdiction, the THDA reserves the right to refer the family to a housing authority with a presence in that area.
6. Port-Out Process.
- (i) The THDA issues the family a voucher and after the receiving PHA has determined the eligibility of the family, the receiving PHA issues a new voucher to the family.
 - (ii) The receiving PHA may change the size of the unit and/or extend the search terms of the voucher, but the new voucher must not expire before the expiration date on the original THDA voucher. If the voucher has expired before the family arrives at the receiving PHA, the family must contact the THDA for a voucher extension.
 - (iii) The THDA will notify the receiving PHA of its policies regarding payment of port-out billings.
 - (iv) The receiving PHA may not delay a family's search for a unit for any administrative issues including performing a criminal background check. Delays are only permissible if the receiving PHA must verify eligibility for an applicant or participant.
 - (v) In cases where a family has already been transferred from the THDA, as the initial agency, to another receiving agency under portability, and that family wishes to port from the receiving agency to a third agency, the family will not be required to return to the THDA to attend a portability briefing. In this case the portability briefing will be considered the responsibility of the receiving agency.
- (c) The THDA as the Receiving PHA.
- 1. When a HCV Program participant family from another jurisdiction wants to move to a location within the THDA's jurisdiction, their initial housing authority notifies the THDA.

(Rule 0770-01-05-.25, continued)

2. The THDA will notify the initial housing authority if the THDA plans to administer the voucher (bill the initial PHA) or absorb the client into the THDA's HCV Program and depending upon the THDA's decision, the initial housing authority will decide if they will approve the portability move or not.
 3. The THDA's Decision to Administer or Absorb. The THDA bases its decision on whether to absorb a HCV Program client or bill the initial housing authority on where the client is moving from and the availability of adequate funds. The THDA notifies staff about the current status of billing or absorbing through memorandum.
 4. The THDA Administering. When the THDA administers a voucher, the Initial PHA is billed for HAP, UAP, and the lesser of 80 percent of the Initial PHA's ongoing administrative fee or 100 percent of the THDA's administrative fee. The THDA is responsible for completing an annual reexamination along with any interim reexaminations for every port-in client. The THDA must send the updated Part II of HUD form 52665 and a new HUD form 5008 to the Initial PHA for every annual and interim.
 5. The THDA Absorbing. When the THDA absorbs a voucher, the voucher holder becomes one of the THDA's clients and there is no further contact with the initial PHA.
 6. Process.
 - (i) The initial PHA issues the family a voucher.
 - (ii) The THDA determines the eligibility of the family and if eligible, the THDA issues a new voucher to the family with a search term that matches the original PHA voucher. The receiving PHA is required to add a 30-day extension to the initial PHA's voucher expiration date. If an additional extension is requested, the receiving PHA's standard policies on voucher extensions apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.
 - (iii) A portability family's search may not be delayed for background checks or other administrative processes. The search may only be delayed to determine the eligibility of the family.
 - (iv) If the THDA determines that the family is ineligible or has violated their obligations under the HCV program after a lease has begun, the family's assistance may be terminated at that time.
 - (v) Within ten (10) business days from the date a HAP Contract is executed, the THDA will fax and mail Part II of HUD form 52665 to the initial PHA.
 7. Financial Requirements. The initial and receiving housing authorities must comply with the financial procedures set forth by HUD, including the use of HUD-required billing forms and the deadlines for billing and submitting paperwork.
- (3) Veterans Administrative Support Housing (VASH) Port-Ins. The Veterans Assistance Special Housing program is a special program administered by some public housing agencies; however, the THDA does not currently have an allocation of VASH vouchers. Housing agencies that do not have an allocation may still administer a VASH voucher through portability from another PHA with a VASH program.

(Rule 0770-01-05-.25, continued)

- (a) **Eligibility and Selection.** HUD-VASH eligible families are homeless veterans. The Veteran Affairs Medical Center (VAMC) screens all families in accordance with its screening criteria. PHAs that agree to administer the HUD-VASH Program relinquish their authority to determine the eligibility of families in accordance with regular HCV Program rules and PHA policies. Specifically, under the HUD-VASH Program, PHAs do not have the authority to screen potentially eligible families or deny assistance for any grounds permitted under 24 C.F.R. 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), with one exception. PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.
- (b) **Income Eligibility.** The PHA must determine income eligibility for HUD-VASH families in accordance with 24 C.F.R. 982.201.
- (c) **Initial Term of the Housing Choice Voucher.** Recognizing the challenges that HUD-VASH participants may face with their housing search, HUD-VASH vouchers must have an initial search term of at least 120 days. Therefore, § 982.303(a), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days.
- (d) **Ineligible Housing.** HUD-VASH families will be permitted to live on the grounds of a VAMC in units owned by the VA. Therefore, 24 C.F.R. 982.352(a)(5), which prohibits units on the grounds of a medical, mental, or similar public or private institution, is waived for that purpose only. All other units found suitable under regular voucher program rules apply for VASH families.
- (e) **Portability of HUD-VASH Vouchers.** An eligible family issued a HUD-VASH voucher must receive case management services provided by the VAMC. Therefore, special mobility and portability procedures must be established. HUD-VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by the partnering VAMC.
 - 1. **Portability Moves Where Case Management Is Provided by the Initial PHA's Partnering VAMC.** The THDA does not manage a VASH program, thus, the initial PHA's partnering VAMC will still provide the necessary case management services due to its proximity to the partnering VAMC. The portability move-in will be processed in accordance with the portability procedures of 24 C.F.R. 982.355. However, since the initial PHA must maintain records on all HUD-VASH families receiving case management services from its partnering VAMC, the THDA must bill the initial PHA. 24 C.F.R. 982.355(d), which gives the receiving PHA the option to absorb the family into its own HCV program or bill the initial PHA, is not applicable.
 - 2. **Completing Form HUD-50058.** When the form HUD-50058 is completed, the action type that must be recorded on line 2a is "4" for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). In section 12 of the HUD-50058, line 12d is marked "Y," 12e must have an amount recorded, and 12f must include the initial PHA's code. The VASH special program code must be maintained on line 2n of the form HUD-50058 by the initial and receiving PHA for all HUD-VASH families when the family is admitted to the voucher program and throughout the family's participation in the program. If, under portability, the THDA does not enter the VASH code, the initial PHA will not get credit for the family's leasing.
- (f) **Case Management Requirements.** The VAMC responsibilities include:

(Rule 0770-01-05-.25, continued)

1. Screening of homeless veterans to determine whether they meet the HUD-VASH program participation criteria established by the VA national office;
2. Providing appropriate treatment and supportive services to potential HUD-VASH program participants, if needed, prior to PHA issuance of rental vouchers;
3. Providing housing search assistance to HUD-VASH participants with rental vouchers;
4. Identifying the social service and medical needs of HUD-VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout this initiative; and
5. Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

(g) Denials of Admission and Termination of Assistance.

1. Denials. The only reasons for denial of assistance by the PHA are failure to meet the income eligibility requirements and a family member that is subject to a lifetime registration requirement under a state sex offender registration program.
2. Termination of Assistance. The VASH Operating Requirements do not specify that PHAs must treat VASH clients any differently than regular HCV participants in terms of the requirements of the family obligations. Therefore, the termination policies outlined within this Administrative Plan apply.
3. If a VASH client is terminated from a THDA program for a program violation, but the same family is sent to the THDA by an initial PHA with a VASH allocation before the end of the three (3)-year penalty for re-admission, the THDA will not accept the portability move-in.
 - (i) HUD regulations and the THDA policy determine whether and when family may move to another unit.
 - (ii) If family moves to another unit, the same lease-up steps are followed. Annual recertification at this time is at the THDA's option.

(4) Only one request to port is allowed every ninety (90)-calendar days.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.26 ANNUAL AND INTERIM ACTIVITIES (24 C.F.R. 982.516, 982.405).

- (1) Annual Activities. The THDA must conduct an annual recertification for every participant household and an annual or biennial HQS inspection for every unit.
 - (a) Recertification. The THDA must conduct an annual recertification for every HCV Program participant that includes a re-assessment of household composition, income, and assets to determine continuing eligibility for the HCV Program, the correct Total

(Rule 0770-01-05-.26, continued)

Tenant Payment and subsidy payment, and the appropriate unit size. HUD requires that the THDA maintain a current record of this annual and such record must be submitted to HUD through the Public and Indian Housing Information Center (PIC).

1. Notices.
 - (i) The Recertification Letter, Personal Declaration, information on relocation, authorization forms, and a list of required verification documents will be mailed to the family within 90 to 120 days in advance of the family's recertification date. If other adult family members wish to view their online verifications, they must schedule an appointment or make a request to the THDA to mail the online verification separately to the other member in an envelope addressed only to requesting household member.
 - (ii) A family's failure to comply with the recertification requirements is grounds for denial of admission or termination of assistance.
 - (iii) A Notice of Recertification will be mailed to the owner as a reminder of the owner obligations, including new lease offers and rent increase requests, which must be received sixty (60) days prior to the annual date.
2. Deadline. The family is required to return and the THDA must receive all requisite forms, properly completed, within fourteen (14) calendar days of the postmark date on the Recertification Letter. The THDA will not assume the family's cost for postage.
 - (i) If at any point after the family receives the recertification paperwork a question or concern arises, the family may contact the THDA by phone.
 - (ii) The Head of Household is responsible for collecting full and complete information for other adult household members, including required signatures.
 - (iii) If all requisite documents are not received by the deadline or any document is incomplete, a Notice of Verifications Needed will be sent and will warn the participant that if all requisite documentation is not received, properly completed, within fourteen (14) calendar days of the postmark date on the notice, the family's assistance will be terminated.
3. Interviews. If the THDA has a question regarding the paperwork, the THDA may contact the family by phone for a follow-up interview by telephone, email, or mail to receive clarification. If the THDA makes any revision to a form, staff will initial, date, and place a note on the form that it was updated by the THDA staff. All phone calls also should be documented in the THDA's computer system in the notes area. Mail and email correspondence will be placed in the file.
4. Verification. The THDA will obtain verification of all sources of income, assets, allowable deductions, family composition and any other required information.
5. Calculations.
 - (i) If the annual recertification results in any changes in the contract rent, the tenant portion of the rent, the subsidy amount, the THDA will notify the participant and owner of such change and the effective date of the change.

(Rule 0770-01-05-.26, continued)

- (ii) All changes are effective the first day of the month, on the anniversary date of the annual recertification.
 - (iii) Zero HAP.
 - (I) If, at annual recertification, it is determined that the family no longer qualifies for a subsidy payment because the Total Tenant Payment is equal to or greater than the Gross Rent, the HAP Contract continues in effect for 180 days with a zero (0) subsidy payment. If the family's circumstances change during this 180-day period, they may request an interim recertification for the resumption of the subsidy. If circumstances have not changed by day 150, then the THDA will issue a termination notice, which will be effective on the 180th day of the zero HAP. The participant may appeal the termination, but in order to be reinstated the event that would qualify the participant for a subsidy payment again must have occurred before the 180th day, not between the termination and the hearing.
 - (II) If the owner refuses to continue the tenancy and HAP Contract for a \$0 housing assistance payment at the annual recertification, then the family may be issued a voucher for relocation or they may choose to stay in their current unit and pay the owner the full rent if the owner agrees. If the family decides to stay in their current unit, their assistance is terminated and the family is responsible for the full amount of the rent.
- 6. Termination Notification. Both the owner and participant are notified in writing if assistance or the HAP Contract will be terminated. The participant's notice includes the right to request an informal hearing. A copy of the notice is placed in the tenant file.
- (b) New Lease. After the initial lease term, usually twelve (12) months, the owner may offer the participant a new lease.
 - 1. When Not Required. If the lease has an automatic renewal provision for another term (usually 12 months), the lease has a periodic month-to-month term after the initial term, the owner and participant agree to allow the lease to become a periodic month-to-month tenancy after the initial term, or the only revision to the lease is the amount of the rent, then it is not necessary to execute a new lease and HAP Contract at the annual recertification.
 - 2. Owner Initiates a New Lease. If the owner chooses to offer a new lease, the owner must submit the new lease to the participant and the THDA sixty (60) calendar days prior to the lease anniversary date for lease approval, otherwise the lease will renew subject to any renewal provision or, if there is not a renewal provision in the initial lease, the tenancy will become a periodic month-to-month tenancy upon expiration of the initial lease term.
 - (i) The owner may not execute the lease with the participant until after the THDA approves it.
 - (ii) The participant may refuse the new lease, however, such refusal is grounds for termination of the tenancy by the owner and the participant must relocate if the family desires to remain in, and is still eligible for, the HCV Program.

(Rule 0770-01-05-.26, continued)

3. Term of New Lease. The new lease term must start on the first day of a month and end on the last day of a month.
 4. HAP Contract. If the THDA approves the new lease, and the participant accepts the terms of the new lease, a new HAP Contract must be executed to ensure that the lease and HAP Contract effective dates are the same.
 5. Deadline for Receipt of New Executed Lease. The THDA must receive a copy of the new, signed lease and THDA Lease Addendum no less than sixty (60) calendar days prior to the annual date.
 - (i) If the THDA does not receive the executed new lease and addendum no less than 60 days prior to the annual date, then the recertification will be processed using the terms of the old lease and the tenancy will either renew if such provision exists in the lease or it will convert to a month-to-month periodic tenancy and the owner and participant must wait until the next annual to enter into a new lease agreement.
 - (ii) If the new executed lease and addendum are received 60 days prior to the annual date, then the HAP Contract must be executed no more than sixty (60) calendar days from the beginning of the lease term.
 - (I) No Housing Assistance Payments (HAP) will be made under the new lease until after the expiration of the first lease and until the executed HAP Contract is received. The owner will not be eligible for a late fee on the delayed HAP because the owner caused the delay.
 - (II) If the executed HAP Contract is not received within 60 days of the effective date of the new lease, the THDA will notify the owner and participant that the HAP for the current unit is terminated, the participant will be offered a voucher to relocate, and the owner will be added to the barred landlord list for noncompliance. If the participant chooses to remain in the current unit, the family's assistance will be terminated and the family will be responsible for the full amount of the rent.
- (c) Rent Increases (24 C.F.R. 982.519, 24 C.F.R. 982.308).
1. Regular Properties (Non-USDA Properties).
 - (i) A rent increase may not be approved under the HAP Contract during the initial lease term, which is typically 12 months.
 - (ii) The owner must submit a request for a rent increase sixty (60) calendar days prior to the effective date. Only one increase request within a 12-month period will be considered. The increase will be approved, if the proposed increase is reasonable according to HCV rent reasonableness standards and the participant agrees to the increase. If the participant does not agree, a relocation voucher will be issued.
 - (iii) The THDA determines whether the increase is reasonable according to the Rent Reasonableness Test. For the increase to be approved under the HAP Contract, the increased rent must remain comparable with the rents of similar non-assisted units.

(Rule 0770-01-05-.26, continued)

- (iv) The THDA will notify the participant of the impact of the increase on the tenant portion of the rent and if the increased rent is reasonable, the participant decides whether or not to accept the proposed increase in rent.
- (v) If the participant does not agree to the new rent amount, the participant is allowed to relocate if the family is eligible.
- (vi) If the proposed increase is reasonable and the participant agrees to the increase, the increase will be effective on the first day of the first month at least 60 days after the THDA receives the owner's request.
- (vii) A change in rent amount does not require a new lease or HAP Contract and does not affect the automatic renewal of the lease unless there is a change in ownership. A HAP Amendment Notice is sent to the owner and family, which states the new contract rent, the amount of the Housing Assistance Payment, the amount the participant must pay, and any utility reimbursement to the participant and the participant and owner must execute a new THDA Lease Addendum.

2. USDA - Rural Development Properties.

- (i) Rent adjustments for units in the USDA programs, formerly Rural Development, are approved by HUD and are not subject to further approval by the THDA unless funding is not sufficient to pay for rent increases and continue to assist all current families.
- (ii) However, when the THDA is in "shortfall status," or determines that funds are not sufficient to cover the HAP and UAP expenses for all currently assisted families, rent increases will be denied to all owners uniformly.
- (iii) If approved, the rent increase may be effective during the initial term of the lease. When HUD approves an increase, the THDA must adjust the contract rent the first day of the month following notification from the owner, even if this does not coincide with the anniversary date of the lease for the family living in the unit.

(2) Interim Activities (24 C.F.R. 982.516).

- (a) Interim Recertification. An Interim Recertification may be necessary when household composition, income, allowances, or assets change after the initial or annual certification, but prior to the next annual recertification. Interim recertification follows the same procedures as annual recertification above, except interim recertification consists of the verification of changes only.

1. Deadlines for Reporting Changes. The failure to report an interim change by the deadline is grounds for termination of assistance.

(i) Changes in Household Composition.

- (I) The household must request the approval of the THDA and the owner to add any other household member as an occupant of the unit, including new, current, or former spouses, co-heads, other adults, other children, foster children, and live-in aides, but excluding members added due to birth, adoption, or court-awarded custody of a child. However, as long as a new spouse is eligible, they may be added to the household, and if they would overcrowd the unit, the

(Rule 0770-01-05-.26, continued)

THDA will terminate the HAP contract and issue a voucher to relocate.

- (II) The household must inform the THDA and the Owner of the birth, adoption, or court-awarded custody of a child within thirty (30) calendar days of such occurrence.
 - (III) The household must notify the THDA within thirty (30) calendar days if any household member no longer resides in the unit.
- (ii) Income/Asset Changes.
- (I) Any interim changes in assets such as an insurance settlements, inheritance, lottery or gambling winnings, worker's compensation settlements, settlements from any litigation or lawsuits, or any other sum of money or a lump sum that represents the delayed start of a periodic payment (other than Social Security) will be processed according to the policy for increase and decrease in income.
 - (II) Increases. The household must report any increases in income, including when any member starts to work, within thirty (30) calendar days of the occurrence. The participant will be responsible for repaying to the THDA any overpayment and if such overpayment exceeds \$3,000, then the participant will be terminated.
 - (III) Decreases. There is no deadline for reporting decreases in income.
2. Process for Changes. If the participant reports or the THDA discovers any changes in income or family composition, the THDA will first determine when the change occurred. In cases where the increase in income is less than \$200 per month, the change will be documented and no interim recertification will be processed.
- (i) The family is required to report all changes. THDA will process all changes in income.
 - (I) The THDA will provide the participant the Interim Letter and notify the participant which documents to download, complete, and return from the THDA's website.
 - I. Interim Decreases in Income. Decreases in income should be reported to the THDA within 14 days of the change. There is no time deadline for returning the Personal Declaration and supporting documents, but the change will not be processed or become effective until all documentation has been received. The change will become effective on the first of the month following the month in which the interim documentation was received by THDA. For the change to be effective on the first of the month following the month in which the documentation was received, the documentation must be received by the last day of the month. For example, if the documentation is received on April 30, the interim change will be effective May 1. If the documentation is received any time after April 30, the interim change will be effective June 1.

(Rule 0770-01-05-.26, continued)

- II. Changes in Household Composition or Interim Increases in Income. The participant has fourteen (14) calendar days to return the required documentation. If the documentation is not received by the THDA by the 14th day, the THDA will send a second Notice of Verification Needed giving the participant an additional 14 calendar days to return the documentation. If the participant still fails to comply, then a termination notice will be sent.
 - A. Increases in Income. The participant will be responsible for repaying to the THDA any unreported increases in income, which result in an overpayment. If the overpayment exceeds \$3,000, then the participant will be terminated.
 - B. Unit Becomes Under-Occupied. When a unit becomes under-occupied, the THDA will not use the new family unit size to determine the payment standard until the next regular annual recertification and the family may either remain in the unit, but pay any additional rent, or they may choose to relocate to a smaller unit at recertification.
 - C. Unit Becomes Overcrowded. If a birth, adoption, court-awarded custody, emergency placement of a minor, or a new spouse causes a unit to not meet HQS or subsidy standards, the current lease and HAP contract will terminate on the last day of the next month following the notification, or approval in cases of emergency placement of a minor. The THDA will conduct an interim recertification and issue the household a voucher to relocate. The family may also choose to remain in the current unit and remove themselves from the HCV program. The THDA will no longer be responsible for any rental assistance.
- (ii) Change Is within 120 Days of the Next Annual Recertification.
 - (I) Decrease in Income or Household Composition. The THDA will mail or email the participant the Interim Letter and notify the participant which forms to download, complete, and return from THDA's website.
 - I. Interim Decreases in Income. Participants shall follow the same procedure as outlined in Rule 0770-01-05-.26(2)(a)2.(i).
 - II. Unit Becomes Under-Occupied. When a unit becomes under-occupied, the THDA will not use the new family unit size to determine the payment standard until the next regular annual recertification and the family may either remain in the unit, but pay any additional rent, or they may choose to relocate to a smaller unit at recertification.
 - (II) Increase in Income or Household Composition. The THDA will process the change at the Annual Recertification and no Interim Recertification is required.

(Rule 0770-01-05-.26, continued)

3. Zero Income. Families with a reported income of zero income are scheduled for an Interim Recertification every 90 days and at any other interim certification until there is evidence of some household income.
4. Unstable Income. Interim Recertifications may be scheduled for any household whose income is unstable or when a change is anticipated.
5. THDA Errors. Interim Recertifications may also be conducted to correct any discovered errors that are made by staff at admission or reexamination. The household is not charged retroactive rent for errors made by staff.
6. Termination or Repayment Agreement Due to Unreported Income. Interim Recertifications are conducted for participants whose rent has been based on false or incomplete information supplied by any member of the household. If the income is determined to be higher than previously reported, all adult household members will be responsible for overpayment of HAP by the THDA, unless a court order assigns the debt to a particular party. If the amount of the overpayment exceeds \$3,000, then assistance will be terminated and the household may request an informal hearing to appeal the termination. The Hearing Officer may not offer a repayment agreement in lieu of termination for debts in excess of \$3,000. However, before the scheduled informal hearing, the household may reduce the debt to an amount less than \$3,000 and enter into a repayment agreement for the remaining balance in order to remain on the program. This will be considered as a repayment agreement. If the amount of the overpayment is \$3,000 or less, then in order to avoid termination, all adult household members must enter in to a repayment agreement to pay the debt back to the THDA.
 - (i) The household may not enter into more than two (2) repayment agreements during program participation.
 - (ii) A history or pattern of failing to report income on at least three occasions will result in termination versus a repayment agreement.
 - (iii) A household with an existing repayment agreement with the THDA or another PHA must pay the balance due in full before entering into an additional repayment agreement and may not add a subsequent debt to an existing repayment agreement with the THDA. However, the participant may pay a second debt to the THDA in full if the second debt amount is lower than the first debt and the total of the two debts does not exceed \$3,000.
 - (iv) Procedures for Repayment Agreement. The following procedures will be followed in the establishment of a repayment agreement:
 - (I) The THDA will hold a case conference with the head of household and all adult household members. The appointment letter will list the income type, amount, and household members who contributed to the debt and allow the family to dispute the debt during the conference.
 - (II) All adult household members must sign a repayment agreement and submit the initial payment within thirty (30) days of the case conference appointment. The household may pay a higher amount, which will reduce the balance owed and affect the monthly payment

(Rule 0770-01-05-.26, continued)

schedule outlined below. Failure to comply will result in termination of assistance.

- (III) The THDA will request full payment of the debt from all participants before a plan of repayment is established. Debts of \$200 or less must be paid in full. For amounts exceeding \$200, a plan of repayment will be established only when a participant is unable to pay the entire debt in full.
- (IV) Monthly Payments. Timely monthly payments must continue until the debt is paid in full. The first payment is due when the agreement is signed. Monthly payments are due to the THDA by the first (1st) day of each month and must be in the form of a money order or cashier's check. Cash payments and personal checks are prohibited. The minimum monthly payment is \$20, and the monthly payment is based on the following formula:
 - I. If the debt is \$200.01 to \$259.99, the monthly payment is divided into equal payments of at least \$20. The debt must be paid in full within 12 months or less.
 - II. If the debt is \$260.00 to \$519.99, the monthly payment is divided into 12 payments. The debt must be paid in full within 12 months.
 - III. If the debt is \$520.00 to \$779.99, the monthly payment is divided into 24 payments. The debt must be paid in full within 24 months.
 - IV. If the debt is \$780.00 to \$1,039.99, the monthly payment is divided into 36 payments. The debt must be paid in full within 36 months.
 - V. If the debt is \$1,040.00 to \$1,300, the monthly payment is divided into 48 payments. The debt must be paid in full within 48 months.
 - VI. If the debt is greater than \$1,300, the monthly payment must be at least \$20. Debts greater than \$1,200 must be paid in full within 60 months.
- (v) Untimely Payments. Failure to comply with a repayment agreement will result in termination of assistance. Participants must remain current in the plan of repayment. If a participant fails to make one (1) monthly payment, they are considered in default.
 - (I) When a participant misses their first payment under the agreement, a late notification letter is sent reminding them of the repayment policy and advising that rental assistance will be terminated unless the payment is made current within thirty (30) days.
 - (II) If the participant does not bring the debt current within sixty (60) days, a sixty (60)-day notification letter is sent advising the household that immediate payment of the delinquent amount is due or their rental assistance will be terminated.

(Rule 0770-01-05-.26, continued)

- (III) The participant will have fifteen (15) days from the date of the sixty (60)-day notification to comply with the terms of the repayment agreement or assistance will be terminated.
 - I. If the balance is brought current before the effective date of the termination notice, then only on the first occurrence will the termination notice be rescinded.
 - II. If the balance is brought current after the effective date of the termination notice, but the household does not request a hearing within the deadline, then the termination will stand and will not be rescinded.
 - III. If the balance is brought current after the effective date of the termination notice, but the household does request a hearing within the deadline, then only on the first occurrence will the THDA rescind the termination. For every occurrence thereafter, where the balance is brought current between the effective date of the termination notice and the hearing, the termination will not be rescinded.
- (IV) If the household is terminated due to a repayment delinquency, they will be afforded the opportunity for an informal hearing, 24 C.F.R. 982.555.
- (vi) Requests for Relocation. A request for relocation will be denied if the participant has an outstanding debt to the THDA or another PHA, unless a plan of repayment exists with a current balance or until the balance is paid in full.
- (vii) Record of Debts. The THDA will maintain a listing in the HCV software system of all active and inactive participants who owe a debt. The listing will be utilized by all field offices to determine applicant eligibility and repayment account balances.
- (viii) Voucher Transfer. The voucher may not be transferred to a residual household member when there is an outstanding debt. The debt must be paid in full or the repayment agreement must be renegotiated with the THDA to include the new head of household as an additional responsible party for the debt.
- (ix) Dispute of Debt. If a current or former participant disputes that the existence of a debt to owing to the THDA, they should contact the THDA to dispute this information in writing and must also provide any documentation that supports the dispute. If the THDA determines that the disputed information is incorrect, the information will be updated or the record will be deleted from EIV.
- (x) Recapturing Overpayment Debt after Termination. The THDA may recapture overpayment debt from former participants through litigation, settlement agreements, or repayment agreements using the monthly schedule outlined above. The THDA may retain a portion of program fraud losses that are recovered from a family (24 C.F.R. 982.163). However, the THDA must be the principal party initiating or sustaining the action to recover amounts due. 24 C.F.R. 792.202 permits the THDA to retain the greater of the following:

(Rule 0770-01-05-.26, continued)

- (I) Fifty percent (50%) of the amount it actually collects from a judgment, settlement agreement, or an administrative repayment agreement, or
 - (II) Reasonable and necessary costs that the THDA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.
 - (III) If HUD incurs costs on behalf of the THDA related to the collection, these costs must be deducted from the amount retained by the THDA.
 - 7. Knowledge of a Participant's Debt to Another PHA after Issuance. If the THDA has admitted a household to the voucher program and subsequently learns that any person in the household owes a debt to another PHA that the household failed to disclose, assistance will be terminated.
- (b) Additions to the Household.
- 1. Requests for Approval. The family obligations require the household to request in writing and obtain approval from the THDA and the owner prior to adding any household members, other than for additions due to births, adoptions, or court-awarded custody, or a new spouse. The household must make this request to the THDA in writing.
 - 2. Approval or Denial.
 - (i) Whether a request is required or not, any new member may be denied if that person fails to meet program eligibility requirements, their presence in the household makes the household ineligible, or their presence results in overcrowding at a time when the family is not eligible to relocate, but see exceptions below.
 - (ii) When the THDA receives a request to add a new member to the household, a determination is made if the addition will overcrowd the unit according to HUD subsidy standards. Usually, if the addition would overcrowd the unit, then the request will be denied until the Annual Recertification, unless the owner agrees to a mutual lease rescission and the household is eligible to move.
 - (I) Emergency Placement of a Minor Exception. The THDA will approve the addition of a minor during a lease term, which would cause the unit to not meet HQS or subsidy standards, if the household proves by a preponderance of the evidence that the placement is necessitated by an emergency, including, but not limited to, homelessness, medical emergency of permanent guardian(s), natural disaster, etc.
 - (II) Exceptions. Additions due to a birth, adoption, court-awarded custody, emergency placement of a minor, or a new spouse (as long as the spouse is eligible) are allowed even if the addition will cause overcrowding. The current lease and HAP contract will terminate on the last day of the next month following the notification. The THDA will conduct an interim recertification and issue the household a voucher to relocate. The family may also choose to remain in the

(Rule 0770-01-05-.26, continued)

current unit and remove themselves from the HCV program. The THDA will no longer be responsible for any rental assistance.

- (iii) Approval of Addition of an Adult. If the request is approvable (will not overcrowd the unit or is a new spouse), the THDA field office will schedule an appointment to determine the individual's eligibility for the Program and to sign required paperwork. The appointment will typically be scheduled within fourteen (14) days of the request to add the new adult. The new adult member must be determined individually eligible before they are added to the household and will therefore go through the same process as the adult household members during the initial eligibility determination of the household. Once the THDA has determined the new member individually eligible and income is fully verified, the interim may be processed to add them to the household and the person may move into the assisted unit. The new member must not move into the assisted household until this process is complete. Assistance may be terminated for a violation of the family obligations if a new member is added to the household before the THDA has fully completed the approval and interim processing.
 - (iv) Approval of Addition of a Minor. Additions of other minors to the household will be approved if the addition does not overcrowd the unit, but the head of household must provide all the same documentation which is required for children in the household at the initial eligibility determination, including documentation of legal identity, age, social security number, etc.
- (c) Adult Visitors/Unauthorized Household Member. Adult visitors are allowed to occupy (visit overnight) the assisted unit up to fourteen (14) inconsecutive, calendar days a year before becoming considered a permanent household member. If an adult visitor occupies the assisted unit for more than 14 calendar days per year the adult is considered to be living in the unit as a member of the household, unless a prior exception has been granted by the THDA. The processes outlined above for adult additions to the household, including reporting requirements, apply for the family to remain in good standing.
1. To determine whether a person is an unauthorized household member, the THDA will consider the following:
 - (i) Reliable statements from neighbors or the Owner.
 - (ii) Whether the visitor is receiving mail at the unit address.
 - (iii) Whether social service or government agencies, such as the Department of Motor Vehicles (DMV) or the Department of Human Services (DHS), list the visitor as a member of the household or as residing at the assisted unit address.
 - (iv) Whether the visitor uses the unit address for employment purposes.
 - (v) Criminal or arrest records that show the visitor as residing at the unit address.
 2. The burden of proving that the individual is a visitor and not a household member rests with the participant. The participant must prove by a preponderance of the evidence that the individual has a permanent residence, other than the assisted unit, or the person will be considered an unauthorized member of the household.

(Rule 0770-01-05-.26, continued)

3. Exceptions.

- (i) The household may request an exception to this policy if the participant requests an extension before the visitor has occupied the unit more than 14 days and the circumstances warrant it.
 - (ii) Full-Time Students. A full-time student who lives at school may visit up to 150 days per year without being considered a member of the household.
- (d) Absences from the Unit (24 C.F.R. 982.312 and 24 C.F.R. 982.551(i)). Families are required to notify the THDA of any absence from the unit that they know will exceed or that actually exceeds fourteen (14) calendar days, whether the absence is for an individual (adult or minor) or the entire household. In cases where a documented domestic violence incident necessitates a move, VAWA protections will be considered.
 - 1. Absence of an Individual. If a household member vacates the household, the head of household must report this change to the THDA, within fourteen (14) days of the occurrence, in writing and certify as to whether the member is temporarily absent or permanently absent.
 - 2. Permanent Absence of an Individual. If an individual household member is absent from the unit for more than ninety (90) consecutive calendar days, or for any of the following reasons below, they will be considered permanently absent and removed from the household. The income of a permanently absent member is excluded from family income.
 - (i) Absence Due to Death. To avoid paying HAP or providing assistance to a unit on behalf of a deceased sole member household or other household member, the THDA will review the HUD EIV Deceased Tenant Report monthly. If a head of household or family member is listed and an EOP is not already entered in Elite, the THDA will verify the death. The THDA will place a payment hold effective immediately on the HAP/UAP payment for the unit until the case is completed. HAP payments must stop at the end of the month in which the death occurs when a death occurs for a single member household and single member household with a live-in aide. The Owner will be notified in writing by the THDA of the deceased tenant and discontinuance of the HAP or change in HAP payment if there is a remaining tenant situation.
 - (ii) Court-ordered absence that will exceed 90 days.
 - (iii) Adult or Minor Vacates the Household with No Intention of Returning.
 - (I) Adult Child Leaves the Household. When an adult child leaves the household for military service, school, or other reasons, they are considered permanently absent. Even if the student lives with the household during school recesses, they are considered permanently absent and are not considered in the unit size or household income determination.
 - (II) Spouse, Co-head or Other Adult Leaves the Household. A spouse or other adult must be out of the household for at least thirty (30) days before being considered permanently absent, unless one of the following conditions is met:
 - I. There is proof of incarceration;

(Rule 0770-01-05-.26, continued)

- II. Legal separation is filed;
 - III. A copy of divorce decree is supplied, or evidence of filing for a divorce is submitted;
 - IV. There is proof the other adult has established a separate household before the end of the 30 days. Examples:
 - A. A lease is executed for another address before the end of the 30-day period with the other adult listed on the lease.
 - B. Another housing agency reports the other adult as a participant in another subsidized housing program before the end of the 30-day period.
 - V. If the THDA discovers that there is evidence to suggest that a spouse, co-head, or other adult is still in the household after being reported permanently absent, the person may still be considered as part of the household and their income counted for determining income. In this case, the burden will be on the participant to verify through third-party sources that the spouse, co-head or other adult is permanently absent by a preponderance of the evidence. The THDA may consider the following when determining if an adult member is permanently absent:
 - A. Federal income tax returns are filed jointly and the return lists the assisted unit as the address for both parties.
 - B. The absent member is receiving mail at the unit address.
 - C. Social service or government agencies, such as the Department of Motor Vehicles (DMV) or the Department of Human Services, list the absent member as a member of the household or as residing at the assisted unit address.
 - D. Absent member uses the unit address for employment purposes.
 - E. Criminal or arrest records show the absent member as residing at the unit address.
 - F. Reliable statements from the Owner or neighbors about the continued presence of the other adult.
 - G. Additional documentation may be requested and must be provided to verify a new address if the household member is the head, spouse or co-head.
3. Temporary Absence of an Individual. When a household member is absent from the unit for less than 90 calendar days, the individual continues to be part of the household and income of the absent member is included, unless the absence falls under one of the categories below.

(Rule 0770-01-05-.26, continued)

4. **Absence Due to Incarceration.** Any member of the household will be considered permanently absent if he or she is incarcerated for 60 consecutive days. THDA will process an interim reexamination to remove the absent member from the household. If the person who is determined to be permanently absent is the sole member of the household, THDA will terminate voucher program participation. If participation is terminated, the family will have the right to request an informal hearing within 14 days of the termination notice.
5. **Single Parent Leaves Temporarily (Non-Military).** When a single parent leaves a household and another adult comes into the household to take care of the children during the parent's absence, no change in household composition is made if the arrangement is for thirty (30) days or less. If the parent continues to be out of the household beyond 30 days, program eligibility will be re-determined.
 - (i) If neither parent remains in the household and an appropriate agency determines that another adult should be brought into the assisted unit to care for the children for an indefinite period, that adult is considered a visitor for the first ninety (90) days.
 - (ii) After 90 days, if court-awarded custody or legal guardianship has been awarded to the caretaker, the voucher is transferred to the caretaker if the guardian/caretaker is eligible for assistance. If the appropriate agency cannot confirm the guardianship status of the caretaker, the THDA reviews the status at 90-day intervals.
 - (iii) If the court has not awarded custody or legal guardianship, but the action is in process, the THDA will secure the status verification from the Department of Human Services (DHS) staff or the attorney of record. The caretaker can remain in the unit as a visitor until a determination of custody occurs.
 - (iv) When a person is approved to reside in the unit as caretaker for the children, their income is included pending a final disposition. The THDA will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.
6. **Adult Absence Due to Military Service.** Regulations provide support for families and dependents of military personnel, including reservists and guardsmen, called to active duty during designated military operations. Support can include, but is not limited to, the following:
 - (i) Allowing a guardian to move into the unit temporarily to care for the dependents when the military person leaves in the unit. The guardian's income is exempt.
 - (ii) Consideration of whether to allow delayed repayments;
 - (iii) Allowing family absences from the unit with continued Housing Assistance Payments (HAP) to exceed normal guidelines because a member of the assisted family has been called to active duty as a result of designated military operations.
7. **Children Removed from the Unit.** If it is a one-parent family and the children are removed from the parent for abuse or neglect or other reasons, the parent

(Rule 0770-01-05-.26, continued)

retains eligibility as a remaining member of the household (residual). To verify the absence of the child(ren), the Department of Children Services or another appropriate agency is contacted to determine how long the child(ren) will be out of the household. If the child(ren) have not returned to the unit by the next annual recertification, and DCS or another appropriate agency does not verify the absence as a temporary absence, the child is removed for purposes of subsidy standard calculation. To be included in the unit size determination, children must reside in the unit 51 percent of the time. Fifty-one percent of the time is defined as 183 days of the year, which do not have to run consecutively.

8. Absence Due to Medical Reason (24 C.F.R. 982.312). If a household member leaves the household to enter a facility such as a hospital, nursing home, or rehabilitation center, the THDA will contact a family member or a reliable qualified source (i.e. licensed health care provider) and will require verification as to whether the absence will exceed 90 days, but the inquiry will not include the specifics of the medical condition. If the verification indicates that the household member will return within a period less than 90 days, the household member will not be considered permanently absent. If the verification indicates that the family member will be confined for more than 90 days, that member will be considered permanently absent from the assisted unit, unless the household can provide the THDA with verification that the absence will not exceed 180 days. If the household member is determined to be permanently absent and is the sole household member, assistance must be terminated there is a reasonable accommodation.
9. Absence of Entire Household (24 C.F.R. 982.312(a);(d)(2)).
 - (i) Notice Requirements. Participants must notify the THDA and the Owner in writing at least 14 calendar days before leaving their unit if the entire household is going to be absent from the unit for more than 14 consecutive calendar days, as approval by the THDA is required for any absence of the entire household which will exceed 14 calendar days. The notice must include the beginning and ending dates of the vacancy. The temporary vacancy notice must be placed in the tenant file to confirm compliance with this policy.
 - (ii) Approval. The THDA will approve temporary vacancies of the unit at 30-day increments, not to exceed 90 consecutive, calendar days.
 - (iii) Permanent Absence. If the absence will be for more than 90 consecutive, calendar days, the absence will be considered a permanent absence and assistance will be terminated.
 - (iv) Unauthorized Vacancy. Assistance will also be terminated when the THDA can prove by a preponderance of the evidence that the entire household has been absent from the unit for more than 14 calendar days without approval from the THDA. In order to determine whether the household has been absent from the unit for more than 14 calendar days, the THDA or the landlord may take, including, but not limited to, the following actions:
 - (I) Write letters to the family at the unit;
 - (II) Telephone the family at the unit;
 - (III) Interview neighbors;

(Rule 0770-01-05-.26, continued)

- (IV) Verify whether the utilities are in service;
 - (V) Check with the Post Office; or
 - (VI) Request, and the household must supply any information or certification requested by the THDA related to the absence from the unit.
- (v) Reasonable Accommodation for Disability. A household that includes a person with a disabling condition may request an extension to the policy as an accommodation, as long as the extension does not go beyond the HUD allowed 180 consecutive calendar day limit, at which assistance would be terminated.
10. Move without Notice. In order to relocate or port, the household must follow the procedures outlined in the Plan. If the household moves without the proper notice, assistance will be terminated. The same evidence may be used to establish a move without notice, which is used to prove an unauthorized vacancy and permanent absence. Households are ineligible to relocate or port when a landlord has given proper notice of serious or repeated lease violations.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.27 TERMINATIONS (24 C.F.R. 982.552(b), 982.310, 982.455, AND 982.354).

- (1) General Information.
 - (a) HUD regulations specify the reasons for which the THDA may and must terminate a participant's assistance and the ways in which such termination is processed. HUD also allows the THDA to establish local policies for termination of assistance.
 - (b) HUD regulations also dictate the circumstances under which an owner may terminate the tenancy of an assisted household under the HAP contract. Tenancy may be terminated by the owner, initiated by the tenant, or terminated by mutual agreement between the tenant and owner.
 - (c) The Housing Assistance Payments (HAP) Contract may end automatically, the THDA may initiate the termination, or the owner may initiate the termination.
 - (d) Consideration of Circumstances. In determining whether to terminate assistance because of action or failure to act by members of the family:
 - 1. The THDA will consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.
 - 2. The THDA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The THDA may permit the other members of a participant family to continue receiving assistance.

(Rule 0770-01-05-.27, continued)

(2) Termination of Assistance (24 C.F.R. 982.552(b)).

(a) Involuntary Termination of Assistance Related to a Violation of the Family Obligations (24 C.F.R. 982.551, 982.552, 982.553, and 982.404).

1. The family obligations are listed on the voucher given to the household at initial move-in and relocation/portability in the Grounds for Denial/Termination, Notice of the Family Obligations form given to the household at initial move-in and each recertification, in this Plan and in the federal regulations. A violation of the family obligations not only subjects the participant family to termination, but also to a three-year (3) sanction from participation in the HCV Program.
2. A participant family may be involuntarily terminated from the HCV Program for any of the following family obligation violations by any one of the household members, including:
 - (i) Fraud or abuse in any federal housing assistance program;
 - (ii) Failure to sign and submit consent forms for obtaining information in accordance with program regulations within required time frames;
 - (I) This violation includes failure to attend appointments as per the THDA's missed appointment policy when the appointment is for the purpose of receiving signatures and collecting required paperwork;
 - (iii) Failure to promptly notify and provide the THDA (within 30 days) with documentation of the birth, adoption, court-awarded custody of a child, or a new spouse;
 - (iv) Failure to promptly notify the THDA (within 30 days), in writing, that a household member no longer lives in the assisted unit;
 - (v) Failure to promptly notify the THDA in writing that the entire household will be away from the unit for more than 14 days, consecutively;
 - (vi) Failure to report a required change of any type;
 - (vii) Failure to request written approval to add any other occupant of the unit as a household member. A person is considered a household member if they stay overnight in the unit more than fourteen (14) days annually, not consecutively;
 - (viii) Failure to supply information timely, usually 14 calendar days unless otherwise specified, as requested by the THDA for use in a regularly scheduled reexamination or interim reexamination of household income or composition. This violation includes:
 - (I) The failure to attend appointments as per the THDA's appointment policy when the appointment is for the purpose of collecting required paperwork;
 - (II) The refusal to sign necessary forms and documents; and
 - (III) Other refusals to cooperate.

(Rule 0770-01-05-.27, continued)

- (ix) The failure to disclose, verify or sign and submit consent forms for obtaining social security numbers;
- (x) The failure to supply information requested to verify that the family is living in the assisted unit or information related to family absence from the unit;
- (xi) The refusal to reimburse the program in full for overpayment of subsidy for unreported income or change in family status or refusal to enter into a Repayment Agreement;
- (xii) The family defaults under a plan of repayment as defined by the Repayment Agreement;
- (xiii) The family received Housing Choice Voucher assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family where no member of the family is a person with disabilities;
- (xiv) The family subleases the assisted unit to another family;
- (xv) A household member owns or has a financial interest in the assisted unit (excluding Homeownership Voucher Program participants);
- (xvi) A household member received Housing Choice Voucher assistance while receiving another housing subsidy for the same unit or a different unit under any other Federal, State or local housing assistance program;
- (xvii) The failure of the family to use the assisted unit for residence by the household or as their only residence;
- (xviii) A family breach of HQS by failing to make any repairs that are the responsibility of the family in a timely manner;
- (xix) The failure of the family to allow the THDA or its agent to inspect the unit at reasonable times and after reasonable notice. This violation includes missed appointments as per the THDA appointment policy when the THDA or its agent schedules an appointment to inspect the assisted unit and the family fails to attend the appointment;
- (xx) The failure of the family to pay for any utilities or other amounts owed under the lease that the owner is not required to pay for, but which are to be paid by the tenant;
- (xxi) The failure of the family to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the family;
- (xxii) The failure of the family to provide the THDA with an owner eviction notice or notice to vacate/lease termination within 14 calendar days;
- (xxiii) The family seriously or repeatedly violates a lease;
 - (l) Serious and repeated lease violations may include, but are not limited to, the following:

(Rule 0770-01-05-.27, continued)

- I. Eviction of the family from housing by a court action for a serious lease violation;
 - II. The family is asked to vacate the unit by the owner for a lease violation;
 - III. The family moves without a proper written notice, either thirty (30) days or as required by the lease, to the landlord or housing agency;
 - IV. The family fails to make timely rent payments or any other amounts owed to an owner under a lease (utilities, etc.);
 - V. A member of the household or guest damages the dwelling unit or premises beyond ordinary wear and tear resulting in a cost to the owner that exceeds the security deposit; or
 - VI. Certain criminal activity by a household member or guest of the household.
- (II) When deciding if a serious or repeated violation of the lease will result in termination of assistance, the THDA will consider the following requirements.
- I. The owner must provide the participant and the THDA with proper notice of any serious or repeated lease violations in accordance with the lease terms, HAP terms, and HUD regulations. The notice must state the specific actions which resulted in the violations, the authority on which they are based (lease, HAP C, state law), and what remedy the owner is seeking;
 - II. The owner must also provide the THDA with available evidence, such as notices to the participant from the owner regarding the violations, police reports, neighborhood complaints or other third-party information; and
 - III. If the owner is seeking termination of the tenancy, the owner must evict the participant through court-ordered eviction and provide the THDA with verification of the court action. The participant is ineligible to relocate or port when an owner has given proper notice of serious or repeated lease violations.
 - IV. Court-Ordered Evictions.
 - A. Court-ordered eviction will be presumed to be for serious lease violations, unless the participant can prove by a preponderance of the evidence that it was not.
 - B. If a court action results in a court-ordered eviction for a serious lease violation as defined by this Plan, then the THDA will terminate the participant's assistance. If a judgment is entered by agreement of the parties for possession only, then the participant will be allowed to remain on the Program and a relocation voucher will be issued.

(Rule 0770-01-05-.27, continued)

- C. Judgments in favor of the owner for unpaid rent, other amounts owed under the lease, and damages support the finding of an eviction for a serious lease violation. However, if the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is stopped from terminating the rental agreement as to that breach.
 - D. The participant may appeal the THDA's finding of an eviction due to a serious lease violation, but must do so by requesting an informal hearing by the deadline, in which the participant will have the burden of proving by a preponderance of the evidence that the eviction was not due to a serious lease violation by the THDA's definition.
- (III) Relocation. See § 0770-01-05-.25.
- (IV) Repayment Agreements. The THDA will not arbitrate unpaid rent or damage claims between the participant and the owner. If the owner chooses to enter into a plan of repayment or accept repayment from the participant as a remedy for unpaid rent or damages, the THDA will consider any repayment as an appropriate remedy in lieu of termination, as long as the unit is in compliance with HQS. If the participant defaults on the repayment agreement, whether the participant has relocated or not, the owner must provide the THDA with a court order in the owner's favor for the THDA to terminate assistance at the new unit.
- (V) The THDA does not consider an accidental fire a serious or repeated lease violation, regardless of the terms of the lease. The owner of the property should carry suitable insurance to cover accidental losses.
- (VI) The Tennessee Code Annotated (66-28-517) allows a three (3)-day notice of termination of the lease when the tenant, or any other person on the premises with the tenant's consent, willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety, or welfare of the life or property of other tenants or persons on the premises.
- I. Some landlords also will terminate the lease with a 3-day notice for drug-related criminal activity by a household member, guest, or person under the tenant's control.
 - II. In the case of a three (3)-day termination, the THDA will follow the same protocol as the section on Termination of Tenancy for Lease Violations. The participant will not be eligible to relocate, the owner must evict by court order, and the THDA will continue to pay through the eviction proceedings, unless there is a separate cause for the THDA to terminate.
 - III. In some cases, the THDA will also initiate a termination of assistance for any violent criminal activity.

(Rule 0770-01-05-.27, continued)

IV. If the participant is evicted by court order, then the participant's assistance is terminated, they will be given the regular time period to appeal the termination, but the THDA will be unable to continue the HAP Contract or payment at the current unit due to the lease termination.

A. If the family appeals, they will be issued a voucher to relocate through the hearing period.

(xxiv) The family engages in or threatens any type of threatening, abusive, or violent behavior toward the THDA's personnel. Threatening, abusive, or violent behavior towards the THDA's personnel includes verbal as well as physical abuse, violence, or threat of violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, which is customarily used to insult or intimidate may be cause for denial of assistance;

(xxv) The family or guest participates in, is arrested, or is convicted of certain criminal activities. See next section on Termination for Criminal Activity; or

(xxvi) Failure to secure housing before the expiration of the search voucher.

(b) Termination for Criminal Activity. (24 C.F.R. 982.553). In order to preserve the integrity of the program and the welfare of the community where a family resides, a family will be terminated from the program if a household member or a guest of the family has engaged in certain criminal activities.

1. Mandatory Terminations. A family must be terminated when:

(i) A family includes a household member that is subject to a lifetime registration requirement under a state sex offender registration program since such individuals are always prohibited from receiving Section 8 rental assistance.

(ii) A family includes a household member who has ever been convicted of a drug-related criminal activity involving the manufacture or production of methamphetamine on the premises of federally assisted housing.

2. Other Terminations for Criminal Activity. HUD regulations allow the THDA local discretion in establishing additional grounds for termination when the THDA determines that any household member is currently engaged in certain criminal activities.

(i) Termination of assistance will result if the THDA receives information that shows there is a record of drug-related criminal activity, severe alcohol abuse, violent criminal activity or other criminal activity that is a threat to the health and safety of the neighborhood if:

(I) Any household member has been convicted of a felony drug-related, alcohol-related, violent criminal activity or other criminal activity;

(II) Any household member has been convicted of two (2) or more misdemeanor drug-related, alcohol-related, violent criminal activity, or other criminal activity;

(Rule 0770-01-05-.27, continued)

- (III) Any household member has one or more convictions for a felony sex offense in the past ten (10) years or any conviction for a felony or misdemeanor sex offense involving a minor;
 - (IV) Any household member, guest, or other person under the participant's control, with their knowledge, or within their supervision, participates in or is convicted of a drug-related or violent criminal activity that allegedly occurred in the immediate vicinity of the assisted unit at any time during the family's program participation. This would also be a serious lease violation; or
 - (V) Any household member participates in criminal activity that is considered by a preponderance of the evidence to present a threat to the health and safety of the THDA's employees, including but not limited to, illegal weapon possession, verbal threats, physical threats, or assault of a neighbor, owner, or a THDA employee; but
 - (VI) If an allegation of or an arrest for a criminal act, or any of the above acts, has not resulted in a conviction, then the allegation or arrest is not sufficient in and of itself to establish by a preponderance of the evidence that the act was committed, and therefore cannot support a termination. In such cases, there must be other corroborative proof, which establishes by a preponderance of the evidence that the criminal act occurred. Such other corroborative proof should be such proof that a reasonable person would rely on and may include, but is not limited to arrests, police reports, incident reports, convictions for a lesser offense, or any other evidence that a reasonable person would rely on.
- (ii) Termination of Assistance may be waived if one of the following conditions is met:
- (I) The criminal activity is drug-related and involves the use or possession for personal use of a controlled substance and the household member who engaged in the drug-related activity demonstrates successful completion of a supervised drug or alcohol rehabilitation program approved by the THDA;
 - I. A supervised drug or alcohol rehabilitation program does not include Alcoholics Anonymous, Narcotics Anonymous or other self-help treatment programs.
 - II. The family member must provide verification of the completion of a drug or alcohol rehabilitation program.
 - III. Termination of assistance may not be waived when the drug-related criminal activity involves the illegal manufacture, sale, distribution or the possession with intent to manufacture, sell, or distribute a controlled substance.
 - (II) The circumstances leading to eviction no longer exist (e.g. the criminal household member has died, is imprisoned, or is removed from the household).

3. Definitions.

(Rule 0770-01-05-.27, continued)

- (i) Criminal Conviction. A criminal conviction occurs when on the date of final judgment, for felony or misdemeanor offenses, a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere is entered and does not include a final judgment that has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.
 - (I) Pre-trial Diversion. A judgment of pre-trial diversion will be treated as a judgment that is rendered nugatory.
 - (II) Post-trial Diversion. Families that include a member with a criminal disposition of post-trial diversion following a criminal conviction are not eligible to receive assistance until the terms of diversion are met; record expunged; or the family becomes eligible otherwise.
 - (ii) Drug-Related Criminal Activity. The illegal manufacture, sale, distribution, use, or the possession with intent to manufacture, sell or distribute or use a controlled substance, as defined in the Controlled Substance Act.
 - (iii) Violent Criminal Activity. Any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.
 - (iv) Alcohol-Related Criminal Activity. Any pattern of abuse of alcohol by a household member that may interfere with the health, safety or right to peaceful enjoyment of persons residing in the immediate vicinity of the applicant household.
 - (v) Sex Offense. Any act defined in Tennessee Code Annotated § 40-39-202.
 - (vi) Other Criminal Activity. Any criminal activity that is determined by the THDA's staff to threaten the health, safety, or right to peaceful enjoyment of persons residing in the immediate vicinity of the household.
- 4. Screening for Criminal Activity after Admission. The head of household, spouse, or co-head completes a Personal Declaration each year that includes a certification regarding criminal activity of every adult household member.
 - (i) The THDA will screen the Personal Declaration each year for information regarding criminal activity.
 - (ii) Additionally, the THDA also may receive information from other sources regarding a participant's criminal history, such as newspaper or television reports, landlord lease violation notices or other information provided by the landlord, complaints from neighbors, etc.
 - (iii) If the THDA discovers that a criminal act has occurred through any source that the THDA determines legitimate, the family will be terminated for criminal activity in accordance with this Plan.
 - (iv) If the THDA receives information about criminal activity by a household member and needs additional information to verify the record, the THDA will use legitimate sources of information concerning a person's criminal record, such as police reports from local agencies or copies of police reports provided by the property owner/manager.

(Rule 0770-01-05-.27, continued)

- (v) The THDA will conduct a criminal background check after admission only when other legitimate sources or methods of verification are unavailable.
 - (vi) The THDA may require the family member to provide documents also. If the family member fails to cooperate, it may be grounds for an additional termination cause (e.g. failure to supply information requested by the THDA in a timely manner.)
- (c) Termination of Assistance for Non-program Violations-End Participation. Other causes of termination of assistance, which are not the result of a program violation, will not result in a three (3)-year penalty from program participation.
 - 1. Voluntary Withdrawal. A family that wishes to voluntarily withdraw and end their participation in the HCV program must do so in writing to the local THDA office.
 - (i) The family will not be removed from the program until the THDA receives the notice in writing.
 - (ii) Since the THDA must allow the owner a thirty-day (30) notice of termination of the HAP Contract, the THDA will not end the family's participation until at least 30 days from their written request.
 - (iii) If the family moves out of the assisted unit without written notice, they will be considered in violation of the Family Obligations and will then be subject to the three (3)-year prohibition on readmission to the program if the family reapplies.
 - (iv) If a family wants to voluntarily withdraw during an initial lease term and remain in good standing and not be subject to the 3-year prohibition on readmission to the program due to a violation of the family obligations, they must secure a mutual lease termination with the owner.
 - 2. There is no member of the household age eighteen (18) or older who can serve as head of household.
 - 3. Declaration of citizenship or eligible immigration status is not submitted by specified date, or evidence is submitted but Department of Homeland Security primary and secondary verification does not verify eligible immigrant status, and one of the following conditions apply:
 - (i) The family does not pursue Homeland Security appeal or informal hearing rights; or
 - (ii) Homeland Security appeal and hearing rights are pursued, but final appeal or decisions are decided against the family member.
 - 4. The family is under contract and one hundred eighty (180) days have elapsed since the last housing assistance payment was made ("zero HAP" period ends).
- (d) Termination of Assistance Requirements for the Written Notice and Notice Period.
 - 1. For all terminations of assistance, the participant family is given a written 30-day notice of intent to terminate the rental assistance, except in cases where the family has vacated the unit without notice to the THDA, death of the only remaining household member, and tenant caused HQS emergency repairs. At the same time the Notice of Termination of Assistance is mailed to the tenant, a

(Rule 0770-01-05-.27, continued)

Termination of HAP Contract notice is mailed to the owner to ensure proper notice is given.

- (i) The Termination of Assistance notice states the following:
 - (I) The specific reason(s) for the termination (the act or failure to act), including who did what, where, and when;
 - (II) The effective date of the termination;
 - (III) The authorities the termination is based on, including citations from the CFRs and this Plan;
 - (IV) The family's right to request an informal review or hearing when applicable; and
 - (V) The family's responsibility to pay the rent in full if they remain in the unit.
 - (ii) A copy of the notice is filed in the tenant's file.
 - (iii) The termination notice will be sent by regular United States Postal Service mail delivery to the last known address of the client. Delivery of the notice by mail is complete upon deposit in a mailbox or upon posting. If the participant requests proof of delivery, the delivery may be established prima facie by affidavit or certificate of service of mailing by the staff person who mailed the notice.
 - (I) Mail Policy. Notices are served by placing the notice in the U.S. mail via first class mail to the address the THDA has been provided by the participant.
 - (II) The participant shall bear the burden of proof where it is alleged that the address to which the THDA mailed the notice was not the proper address, or where the participant argues that the notice was not received due to circumstances beyond the participant's control.
 - (III) Sufficient proof shall include, but not be limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the participant's address that there have been problems with delivery that might have caused the notice to not be properly delivered.
2. Request for Hearing. If the THDA receives a timely request for hearing, the termination action is placed on hold until the appeals process is complete. In this case, the owner is sent a Termination of HAP Contract Hold Notice informing them that the termination action is on hold during the appeals process and payments will continue. At the conclusion of the appeals process, if the termination action is upheld, the owner will be sent a Termination of HAP Contract with a final contract and payment end date.
3. Death of the Only Remaining Household Member. In the case of the death of the only remaining household member, the HAP contract will terminate automatically upon the death of a single member household.

(Rule 0770-01-05-.27, continued)

- (i) The THDA is required to comply with the administrative processes related to termination of HAP payments to the landlord during the month in which the death occurred. For example, a single household member expires on June 5, and then the contract should terminate on June 30. This policy also applies to households with a live-in aide.
 - 4. Move without Notice or HQS Emergency Repairs. For move without notice and outstanding HQS emergency repairs, the termination is effective at the end of the current month.
 - (i) In the case of a move without notice, if the THDA has cause to believe the owner failed to properly notify the agency of the move in a timely manner, the THDA may retroactively terminate the assistance to the end of the month when the move-out occurred.
 - (ii) If the family moves without notice and requests a timely hearing, the family will be issued a voucher during the appeals period to ensure the assistance continues through the appeals process.
 - (iii) If the family is terminated for not completing HQS emergency repairs and a hearing is requested timely, the THDA will restart the payment if the family notifies the THDA that repairs are complete and the unit passes HQS during the appeals process.
- (3) Termination of HAP Contract. The Housing Assistance Payments (HAP) Contract may end automatically, the THDA may initiate the termination, or the owner may initiate the termination. Termination of the Housing Assistance Payment Contract means no further subsidy payments are made for a particular unit on the participant's behalf and no further payments are made to an owner. It does not necessarily mean the tenant's eligibility for rental assistance is terminated.
 - (a) Automatic Termination of HAP Contract. The following situations warrant the automatic termination of HAP Contract.
 - 1. Moves without notice. If a family moves without notice to the THDA or the owner, the contract is automatically terminated at the end of the current month. The family has violated both the lease and the family obligations.
 - (i) The owner may keep the HAP for the month in which the tenant moved out.
 - (I) However, if the THDA finds that the owner failed to properly notify the agency of the move in a timely manner, the HAP Contract may retroactively terminate to the end of the month when the move-out occurred. In this case, the THDA will deduct the overpayment if the owner has other HAP Contracts with the THDA or will request reimbursement from the owner if there are no other HAP Contracts.
 - (ii) The family may not be eligible for future assistance under the program due to the violation of the family obligations.
 - 2. Moves with notice. If a family gives a written notice to vacate to the THDA and the owner, and they are eligible to relocate at that time, a Termination of HAP Contract will be prepared and mailed to the tenant and owner.
 - (i) HAP will be paid to the owner through the effective date of the notice.

(Rule 0770-01-05-.27, continued)

- (ii) Tenants who plan to relocate with continued assistance are encouraged not to give notice until they have located new housing.
 - (iii) If the tenant changes their mind after the notice to vacate is given, and both parties agree to rescind the notice to vacate, the tenant must provide the THDA with documentation that both parties have rescinded the notice.
 - (I) If the lease termination, or vacate notice end date, has not passed and the client has not signed a lease for a new unit, the family must sign a Rescission of the Mutual Lease Termination with the landlord no later than the day before the lease termination is effective, and this notice must be sent to the THDA.
 - I. A retroactive payment will be made when the paperwork is received.
 - II. The THDA is not responsible for late fees associated with a late payment due to processing the rescission.
 - (II) If the lease termination, vacate notice end date, has passed, but the client has not signed a lease for a new unit, the THDA will work with the tenant to execute a new lease and HAP Contract for the current unit. The tenant is responsible for the full rent until all necessary paperwork is processed.
 - (III) If the family has signed a lease at a new unit or the THDA has executed a HAP Contract for a new unit, the family is not eligible to change their mind and stay in place, unless the new landlord is willing to terminate the lease agreement and HAP Contract without penalty.
- 3. Lease Termination at the End of a Period. When the lease automatically expires or the owner terminates the lease at the end of a period and the owner does not renew the lease or allow the lease to roll over to a month-to-month periodic tenancy, the HAP Contract automatically terminates.
 - (i) The HAP stops on the lease termination date unless the tenant decides to “holdover” past the vacate date and proceed to court for an eviction decision.
 - (ii) If the owner initiates a court action, the THDA will reinstate HAP and pay through the court eviction date.
- 4. Court-Ordered Eviction. The owner seeks to terminate and tenancy and evict the family from the unit for cause.
 - (i) The owner must provide the participant and the THDA with proper notice seeking termination of the tenancy for serious or repeated lease violations in accordance with the lease terms, HAP terms, and HUD regulations.
 - (I) The notice must state the specific actions which resulted in the violations and the authority on which they are based (lease, HAP C, state law);
 - (II) A copy of a detainer warrant is considered sufficient notification.

(Rule 0770-01-05-.27, continued)

- (ii) The owner must also provide the THDA with available evidence, such as notices to the participant from the owner regarding the violations, police reports, neighborhood complaints or other third-party information; and
 - (iii) The owner must evict the participant through court-ordered eviction and provide the THDA with verification of the court action. The participant is ineligible to relocate or port when an owner has alleged serious or repeated lease violations. The THDA will continue to pay the HAP during the eviction proceedings.
 - (iv) The owner may keep the HAP for the month in which the tenant was evicted from the unit by the court.
- 5. Mutual Lease Termination. Both the owner and tenant agree through mutual agreement to terminate the lease after the initial lease term. The HAP Contract terminates the same date as the lease termination date. The HAP payment continues only through the effective date of the mutual lease termination, the date agreed to by the family and the owner.
- 6. Death of Head of Household. The HAP Contract terminates automatically upon the death of a single member household.
 - (i) Termination of Housing Assistance Payments to the landlord/owner will take place during the month in which the death occurred.
 - (I) For example, if a single household member expires on June 5th, the HAP contract should terminate on June 30. This policy also applies to households with a live-in aide.
 - (II) If the THDA finds that the death occurred in a prior month and the owner was aware of the death and failed to properly notify the agency of the death in a timely manner, the HAP Contract may retroactively terminate to 30 days from the date of death. In this case, the THDA will deduct the overpayment if the owner has other HAP Contracts with the THDA or request reimbursement from the owner if there are no other HAP Contracts.
- 7. Burn-Out. When a unit burns to the degree that it is uninhabitable, the HAP Contract is terminated.
 - (i) Due to the HQS regulations, which prohibit a HAP payment for a unit that fails to meet HQS standards, the HAP Contract is terminated and HAP payments end the day following the fire, regardless of the date the fire is reported to the THDA.
- 8. Zero HAP for 180 Days. When a family's income increases so that their Total Tenant Payment is equal to or greater than the gross rent, and there is no Housing Assistance Payment, the situation is called "zero HAP."
 - (i) The family is notified of their right to remain on the Program at zero assistance for 180 days.
 - (I) Regular recertifications and inspections are conducted at the normal annual recertification time.

(Rule 0770-01-05-.27, continued)

- (II) If the household income changes, an interim recertification is conducted and notices sent to the family and the owner. If the change in income results in a Housing Assistance Payment again, the family is no longer “zero HAP.”
 - (III) If the family chooses to move to another unit during this period, a HAP Contract may be executed for a zero housing assistance payment. The unit must be the appropriate size and pass Housing Quality Standards.
 - (ii) During the “zero HAP” period, an owner may request a rent increase at the lease anniversary date. If the increased rent results in a HAP payment, the “zero HAP” period ends.
 - (iii) The family remains on the program for 180 days from the effective date of zero assistance. If the family remains at zero assistance for 180 days, a notice of termination of assistance is sent to the family 30 days prior to the end of the zero HAP period, or on day 150. The family must reapply if their circumstances change at a later date.
 - (I) The owner should be sent a Termination of HAP Contract 30 days prior to the end of the zero HAP period, or on day 150 of the zero HAP period.
9. Physical/Verbal Abuse of THDA Staff.
- (i) If a landlord/owner engages in threatening verbal or physical abusive behavior toward the THDA’s personnel, the HAP Contract may be terminated.
 - (ii) If an applicant or participant engages in threatening verbal or physical abusive behavior toward the THDA’s personnel, the family’s assistance, and thus the HAP Contract, may be terminated.
 - (iii) Abusive or violent behavior towards the THDA’s personnel includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, which is customarily used to insult or intimidate may be cause for termination or denial of assistance.
- (b) Owner Termination of HAP Contract. The owner may terminate the HAP Contract when he wishes to remove the unit from the program, except during the initial term of the Contract. Proper procedures must be followed.
- (c) The THDA Termination of HAP Contract.
1. A Contract may be terminated by the THDA for one of more of the following reasons:
 - (i) The owner refuses to bring the unit into compliance with Housing Quality Standards (HQS);
 - (ii) The owner is out of compliance with other terms of the Contract;
 - (iii) The owner has committed fraud;

(Rule 0770-01-05-.27, continued)

- (iv) The THDA bans the owner from participation in the HCV Program;
 - (v) The THDA terminates assistance to the family; or
 - (vi) The family is required to move from the unit because of overcrowding or under-occupied conditions.
- 2. In all cases, a 30-day notice must be given to the tenant and owner.
- (d) Notices Required for Termination of HAP Contract. A Notice of Termination of Housing Assistance Payment Contract is sent to the owner any time subsidy for a particular unit terminates.
 - 1. A minimum of 30 days' notice will be given when a HAP Contract is terminated even when the tenant notifies the THDA of their desire no longer to receive rental assistance except in the following cases:
 - (i) HQS abatement or burn-out (see HQS chapter);
 - (ii) The tenant moves without notice; and
 - (iii) Mutual lease termination.
 - 2. The THDA will mail a Notice of Termination of HAP Contract that states the following:
 - (i) The reason(s) for the termination;
 - (ii) The effective date of the termination; and
 - (iii) The family's responsibility to pay the full rent if they remain in the unit.
 - 3. If assistance is also terminated, the tenant is sent a termination letter. A copy of the letter is placed in the tenant file.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.28 COMPLAINTS, CONFERENCES, APPEALS (24 C.F.R. 982.54(d)(2), (13); 982.554; 982.555(a-f)).

- (1) Complaint Intake and Response. The THDA strives to offer excellent service and response to applicants and participants of the HCV Program, but inevitably complaints will arise periodically. The THDA must balance the funding available to provide adequate staffing and resources when managing complaints against the needs of applicants and participants. Therefore, due to the potential administrative burden, the THDA does not respond individually to complaints about a general policy change or class grievance which applies to all families uniformly, such as a change to the payment standard. In responding to other complaints lodged against a person, policy, or process related to the administration of the HCV program, the THDA will follow the following process:
 - (a) Initially, a complaint may be filed verbally with the assigned Rental Assistance Specialist (RAS) at the field office level. Details of the complaint and the RAS verbal

(Rule 0770-01-05-.28, continued)

response to the complaint will be entered into the HCV software system, along with the date and approximate time of the call.

1. If the complaint involves an activity that is eligible for an informal review or informal hearing, the initial response will be to explain the informal review or informal hearing procedures to the applicant or participant. If the applicant or participant chooses not to file a request for an informal review or informal hearing, the complaint will not be heard.
 2. If an applicant or participant has a pending appeal, a complaint will not be heard that is regarding the issue that is pending appeal.
- (b) If the applicant or participant expresses dissatisfaction with the RAS response to their complaint, the RAS will refer the call to the Rental Assistance Manager (RAM) at the field office level.
1. The RAM will respond to all complaints within no more than fourteen (14) calendar days.
 2. Dependent upon the nature of the complaint, the RAM may choose to respond by phone, schedule an in-person case conference at the field office location, or send a THDA Complaint Intake form to the participant.
 3. If the RAM responds verbally, the response will be entered into the HCV software system.
 4. If the RAM responds verbally or holds a case conference and the applicant or participant is dissatisfied with the outcome, the RAM will send the applicant or participant a THDA Complaint Intake form to file a written complaint.
- (c) When an applicant or a participant files a written complaint, the THDA or executive management will review it and a written response will be made on the THDA Complaint Response Form within thirty (30) days.
- (d) The THDA does not accept complaints outside of this process. Once a complaint has been submitted and reviewed by the central or executive management team, the complaint is closed and no further THDA response on that specific complaint will be offered, either verbally or in writing. Informal reviews and informal hearings are only offered in the instances offered in this Plan and are not necessarily a part of the complaint process.
- (2) Case Conferences. A case conference is an informal, documented meeting with a THDA Rental Assistance Coordinator, Manager, or designee. The case conference appointment will be conducted via teleconference. The THDA will document the significant element of the discussion in a case conference report and require the participant to sign the report, which will be placed in the tenant file to verify the discussion occurred.
- (a) Case Conferences Resulting from a Complaint. Staff may schedule a case conference as a response to a complaint made by an applicant or participant.
 - (b) Case Conference to Educate on Policies or Procedures. A case conference may be held when an applicant or participant expresses a lack of understanding of a particular policy or procedure.
 - (c) Case Conference for Suspected Program Violations. A case conference may also be held when the THDA suspects a program violation has occurred. The conference will

(Rule 0770-01-05-.28, continued)

be held to gather additional information or to explain program requirements to the family before proceeding with a termination action. If a conference is held for a documented or suspected program violation, and the violation continues after the case conference is held, the THDA's regular termination processes will be followed.

- (d) **Case Conference to Clarify Rental Calculation.** A case conference may be held when an applicant or participant expresses a lack of understanding of the Housing Assistance Payment (HAP) calculation. See the Informal Hearing section, Rule 0770-01-05-.28(4), for additional information.
 - (e) **Case Conference to Supply Documentation.** A case conference may be scheduled to allow the participant to submit required documents before and/or after a proposed termination is issued. If all documents are received, the THDA will process the certification for continued assistance. However, if the proposed termination letter has been issued or a hearing date has been scheduled, the THDA will rescind the proposed termination and cancel the informal hearing.
- (3) **Informal Reviews for Applicants (24 C.F.R. 982.54(d)(2), 982.554, and 982.555).** Under the federal regulations for the HCV Program, an applicant may request an informal review only for certain adverse decisions made by the THDA towards the applicant. Full informal hearings are not afforded to applicants, unless it is a denial regarding the noncitizen rule.
- (a) **Opportunities for Informal Review.** An applicant may only request an informal review for the following the THDA denials of assistance:
 - 1. Denial of the listing of an applicant on a waiting list;
 - 2. Denial of a wait-list preference;
 - 3. Denial of participation in the HCV Program of an applicant who has applied for assistance but for whom no HAP contract has been executed between the THDA and a landlord;
 - 4. Denial or withdrawal of a voucher;
 - 5. Refusal to enter into a HAP contract;
 - 6. Refusal to approve a lease;
 - 7. Refusal to process or provide assistance under portability procedures; or
 - 8. Refusal of VAWA protections.
 - 9. No opportunity for review is required for discretionary administrative decisions, general policy issues, class grievances, expiration of the voucher, denials of extensions of the voucher term, or determinations of the appropriate number of bedrooms (family unit size/subsidy standard) to be entered on the voucher when the decision is made in compliance with the THDA's occupancy/subsidy standards.
 - (b) **Requests for an Informal Review.** All requests for an informal review must be submitted in writing to the THDA postmarked no later than fourteen (14) days from the date of the denial letter and must be in compliance with the instructions for requesting an informal review as outlined in the denial letter, otherwise the request will be denied.

(Rule 0770-01-05-.28, continued)

1. The THDA will also accept informal review requests by email, fax, or hand delivery as long as the THDA receives such requests no later than 14 days from the date of the denial letter.
 2. If the applicant household claims that they did not receive the denial letter due to circumstances beyond their control, the applicant must submit such proof to the THDA in accordance with the Mail Policy. However, the THDA cannot be responsible for third-party errors or any negative consequences that may impact the applicant resulting from the third-party error. Therefore, if the applicant submits adequate proof and the applicant is granted an informal review in which the hearing officer rules in the applicant's favor, the applicant understands that the applicant household may have to be returned to the top of the waiting list to await adequate funding.
- (c) Notification of an Informal Review Appointment. When an informal review is properly requested, the THDA will notify the applicant of the date and time of the informal review by a letter sent by United States Postal Service (USPS).
1. Appointment Letter.
 - (i) Delivery. The appointment letter will be sent by regular mail delivery to the last known address reflected in the applicant file, unless a different mailing address is clearly noted on the review request letter.
 - (I) Delivery is complete upon deposit in a mailbox.
 - (II) If the client requests proof of delivery, the delivery may be established prima facie by affidavit or certificate of service of mailing by the staff person who mailed the notice.
 - (III) See Mail Policy.
 - (ii) The appointment letter will specify:
 - (I) Delivery is complete upon deposit in a mailbox;
 - (II) Sufficient detail regarding the evidence or events that occurred to require the denial of assistance to afford the applicant the opportunity to fully prepare a defense prior to the review;
 - (III) That the appointment may be conducted via teleconference or in person. The applicant will have an opportunity to present written or oral objections to the THDA's decision. When the informal review is conducted via teleconference, written objections must reach the THDA at least three (3) business days before the appointment; and
 - (IV) Any documentation the THDA determines will aid in reviewing the case so that the documentation may be acquired prior to the date of the review.
 - I. An informal review appointment will not be delayed for document collection unless the applicant or the applicant's representative contacts the THDA and verifies that necessary documentation cannot be accessed prior to the date of the review for reasons outside of the applicant's control. The failure to begin collecting or requesting documents in a timely

(Rule 0770-01-05-.28, continued)

manner before the review date is not considered an adequate reason to delay a review.

- (d) Date of Informal Review Appointment. The date of the informal review appointment will be on or before thirty (30) days from the date the THDA receives the written request for the informal review that allows proper notice to the applicant.
- (e) Rescheduling the Informal Review. The Informal Review appointment may only be rescheduled when the applicant can document that a medical emergency or death in the immediate family occurred on or near the date of the appointment and prevented the applicant from attending the appointment as scheduled.
 - 1. The applicant household should contact the THDA at least twenty-four (24) hours in advance of a missed appointment, whenever possible.
 - 2. Regular medical appointments are not considered a medical emergency.
 - 3. The appointment may only be rescheduled one time; a second missed appointment will result in denial of the applicant household to the HCV Program, without the possibility of any informal review.
- (f) Informal Review Process.
 - 1. Purpose. The purpose of the informal review is to determine whether the THDA staff's adverse decision in determining an applicant's eligibility for an admission preference or the HCV program was in accordance with this Administrative Plan and HUD regulations.
 - 2. The review may be conducted by any staff member designated by the THDA, as long as the staff member is not the person or a subordinate of the person who made or approved the decision under review.
 - 3. Prior to the date and time of the informal review the designated THDA staff member will:
 - (i) Review the file and any other documentation assembled or prepared by the THDA staff members regarding the adverse decision under review;
 - (ii) Interview the THDA staff member responsible for the adverse decision, if necessary; and
 - (iii) Collect any additional documentation necessary to render a decision under the informal review.
 - 4. During the informal review, the applicant will be given the opportunity to present objections regarding the circumstances leading to the denial.
 - 5. The THDA may establish time limits for the presentation of objections.
 - 6. All testimony and documentation must be collected and presented prior to or at the informal review. No additional documentation or testimony will be entered into the record after the review proceeding is closed.
 - 7. The informal review may be recorded, but it is not required.
 - 8. A formal transcript is not required.

(Rule 0770-01-05-.28, continued)

- (g) Preponderance of the Evidence. Decisions in an informal review will be based on a preponderance of the evidence collected prior to or presented at the informal review. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, or in other words, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the amount of evidence, but by the greater weight of all evidence.
 - (h) Notification of Informal Review Decision. Within fourteen (14) days of the informal review, the THDA will issue a written determination that upholds, modifies, or overrules the original adverse decision. The decision letter will include specific reasoning used to make the determination. The letter will be sent to the applicant by USPS regular delivery mail and/or electronic notification (email/fax) to the last known address [(residence/email)] reflected in the THDA's file for the applicant, unless otherwise indicated by the applicant.
 - 1. Delivery of the notice by mail is complete upon deposit in a mailbox or upon posting. If the applicant requests proof of delivery, the delivery may be established prima facie by affidavit or certificate of service of mailing by the staff person who mailed the notice.
 - (i) Opportunity for Appeal of Informal Review Decision. The Informal Review Decision is final and no other opportunity for review of a denial of admission is required under state or federal regulation.
- (4) Informal Hearing for Participants (24 C.F.R. 982.54(d)(2), 982.554, 982.555). When the THDA makes certain adverse decisions towards a HCV Program participant, HUD regulations outline when those adverse decisions give rise to the right for the participant to request the opportunity for an informal hearing.
- (a) Opportunities for an Informal Hearing. A program participant may appeal the decision and request an informal hearing for the following actions by the THDA. However, for determinations 1, 2, and 3 below, if the participant objects to the determination, the participant may ask for an explanation of the basis of the THDA's determination and the THDA will first hold a case conference with the participant to explain the determination. If after the case conference the participant still does not agree with the determination, the participant may request an informal hearing on the decision.
 - 1. A determination of the family's annual or adjusted income, and the use of such income to compute the Total Tenant Payment (TTP) or Subsidy Standard Calculation and the Housing Assistance Payment.
 - (i) An informal hearing will not be offered when the TTP or subsidy standard change under consideration is the result of a general THDA policy change. General policy changes are considered class grievances, and thus, not subject to individual review.
 - 2. A determination of the appropriate utility allowance, if any, for tenant-paid utilities from the THDA utility allowance schedule.
 - 3. A determination of the family unit size under the THDA subsidy standards.
 - 4. Denial or Termination of Assistance to Noncitizens.

(Rule 0770-01-05-.28, continued)

5. Termination of assistance for a participant family due to the family's action or failure to act;
 6. Termination of assistance due to the absence of the participant family from the assisted unit for a period longer than what is permitted by the THDA's policy and HUD rules.
- (b) Discretionary Administrative Decisions. No opportunity for a hearing is required for discretionary administrative decisions by the THDA, general policy issues, class grievances, establishment of the THDA schedule of utility allowances for families in the program, determination not to approve an extension or suspension of a voucher term, determination not to approve a unit or tenancy, determination that the unit is not in accordance with Housing Quality Standards (HQS) because of family size, determination by the THDA to exercise or not to exercise any right or remedy against an owner under a Housing Assistance Payment (HAP) contract, or determination that assisted unit is not in compliance with HQS. However, the THDA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.
- (c) Requests for Informal Hearings. Instructions for requesting an informal hearing are included in correspondence to the participant regarding the adverse decision.
1. All requests for an informal hearing must:
 - (i) Be submitted in writing to the THDA as outlined on the Notice of Termination; and
 - (ii) Be timely.
 - (I) If request is by mail, the request must be postmarked no later than fourteen calendar (14) days from the date of the termination letter.
 - (II) If request is by email, fax, or hand delivery, the THDA must receive the request within 14 calendar days of the date of the termination letter.
 - (III) If the date of delivery is unclear, the THDA will not bear the responsibility for determining timeliness. In the case that the THDA receives the request past the deadline and it cannot be clearly determined to be delivered timely, it will be considered untimely.
- (d) Notification of Informal Hearing Appointment. When an informal hearing is properly requested, the THDA will notify the participant of the date, time, and location for the informal hearing by a letter sent via the United States Postal Service (USPS) and/or electronic notification (email/fax).
1. Appointment Letter.
 - (i) Delivery. The appointment letter will be sent via electronic or regular mail delivery to the last known address (mailing/email) reflected in the participant file, unless the participant notifies the THDA of a different mailing/email address.
 - (I) Delivery is complete upon deposit in a mailbox.

(Rule 0770-01-05-.28, continued)

- (II) If the client requests proof of delivery, the delivery may be established prima facie by affidavit or certificate of service of mailing by the staff person who mailed the notice.
 - (ii) The appointment letter will specify:
 - (I) That, prior to the hearing, the participant and the THDA may examine or copy, at each party's own expense, any documents of the other party that are directly relevant to the hearing;
 - (II) That if either party fails to make a document available for examination on request of the other party, then such document may not be relied on at the hearing;
 - (III) That the participant will have an opportunity to present written or oral objections to the THDA's decision;
 - (IV) That the participant household may, at their own cost, elect to have an attorney or other representation at the informal hearing; and
 - (V) Any documentation the Hearing Officer determines will aid in reviewing the case so that the documentation may be acquired prior to the date of the hearing; and
 - I. A hearing will not be delayed for document collection unless the participant or the participant's representative contacts the Hearing Officer and verifies that necessary documentation cannot be accessed prior to the date of the hearing for reasons outside of the participant's control. The failure to begin collecting or requesting documents in a timely manner before the hearing date is not considered an adequate reason to delay a hearing.
 - (VI) If any other household members, in addition to the head of household, are necessary for the hearing.
 - 2. Date of Informal Hearing. Since the THDA's Housing Choice Voucher Program is multijurisdictional, informal hearings may be conducted in person, or via teleconference. When the THDA receives the written request for the informal hearing, the informal hearing will be scheduled within 30 days or for the next hearing date that allows proper notice to the participant. At the THDA's discretion, the review may be held at the THDA's main office in Nashville.
 - 3. Informal Hearings regarding Repayment Agreements may be conducted via telephone at the participant's discretion.
- (e) Rescheduling the Hearing.
- 1. The hearing may only be rescheduled when the participant can document that a medical emergency or death in the immediate family occurred on or near the date of the appointment and prevented the participant from attending the hearing as scheduled.
 - 2. The household should contact the THDA at least twenty-four (24) hours in advance of a missed appointment, whenever possible.

(Rule 0770-01-05-.28, continued)

3. Regular medical appointments are not considered a medical emergency.
 4. The hearing may only be rescheduled one time; a second missed hearing will result in the decision of the THDA being upheld, without the possibility of an informal hearing.
 5. The THDA may also only reschedule the hearing once for a medical emergency or death in the immediate family, otherwise, if the THDA fails to be present at the hearing, the decision of the THDA will be overturned, with the exception of informal hearings for Repayment Agreements where the presence of the THDA's staff is not necessary.
- (f) Informal Hearing Process.
1. Purpose. The purpose of the informal hearing is to resolve participant disputes with the THDA without legal action and to address and/or correct any THDA alleged errors and/or discrepancies that may have occurred in the decision-making process.
 2. For Determination of Calculations. The purpose of an informal hearing for Total Tenant Payment, subsidy standards, and utility calculations is to ensure that the THDA has not made an error in calculation, income and household composition is correct, and to review the calculation with the participant or their representative.
 - (i) The Hearing Officer will explain the verification documents that were used in determining the calculations, the HUD and the THDA rules and regulations that govern the calculations, and the forms used.
 3. Hearing Officer. Any staff member designated by the THDA, as long as the staff member is not the person or a subordinate of the person who made or approved the decision under review, may serve as the Hearing Officer for an Informal Hearing.
 4. Ex Parte Communication. The Hearing Officer must avoid even the appearance of an ex parte communication before, during, and even after the hearing, and therefore may not contact or respond directly to a member of the THDA's staff, a participant, or other party to an informal hearing while the appeal is pending.
 - (i) Definition. Contact between the Hearing Officer and a party to the informal hearing, or a representative of a party, regarding the merits of a matter under review, without notice and opportunity for all parties to participate.
 - (ii) Purpose. The purpose of the prohibition is to ensure that:
 - (I) No person has influence over or the opportunity to persuade the Hearing Officer;
 - (II) All parties have the opportunity to rebut any facts considered by the Hearing Officer; and
 - (III) All facts considered by the Hearing Officer are on the record.
 5. During the Informal Hearing.

(Rule 0770-01-05-.28, continued)

- (i) During the informal hearing, the Hearing Officer will give the THDA and the participant the opportunity to present evidence, objections, either written or oral, to call witnesses, including the THDA's staff members, landlords, other household members, and others knowledgeable about the circumstances leading to the adverse decision, and to present other evidence.
 - (ii) The THDA may establish time limits for the presentation of evidence and the calling of witnesses.
 - (iii) Evidence.
 - (I) The Hearing Officer will base the finding of fact on the kind of evidence on which a reasonable and prudent person would rely.
 - (II) Evidence does not need to rise to the level of that which would be admissible in a judicial hearing, but the Hearing Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
 - (III) Hearsay Evidence. Hearsay evidence is allowed as long as:
 - I. It is the type of evidence a reasonable and prudent person would rely;
 - II. It does not violate a participant's right to rebut or confront witnesses; and
 - III. It is supported, since hearsay evidence alone is insufficient to support a finding of fact.
 - (IV) All testimony and documentation must be presented at the hearing, however, the record may be held open for a short period of time, not to exceed 14 calendar days, after the hearing for the limited purpose of accepting additional evidence, requested by the Hearing Officer at the hearing. Further evidence will not be considered or entered into the record after the record is closed.
 - (iv) The informal hearing may be recorded, but it is not required.
 - (v) A formal transcript is not required.
6. Additional Termination Cause Found During Informal Hearing Process.
- (i) If any additional termination causes are discovered between the time the termination notice is mailed and the hearing appointment, another termination notice will be sent to the participant, the participant will be provided the same opportunity for discovery prior to the hearing, and any new causes will be considered by the THDA's Hearing Officer at the same hearing as the original to reduce administrative burden and cost.
 - (I) If there is not time for an updated termination letter to be mailed before the hearing, the hearing officer may notify the participant of any additional termination causes at the hearing and the participant may choose to proceed without any prior notification or opportunity for discovery or the participant may request an additional hearing with notice at another time for any additional termination causes.

(Rule 0770-01-05-.28, continued)

7. Hearing Officer Decision.

- (i) Disputes of fact in rendering a decision at an informal hearing are based on a preponderance of the evidence.
- (ii) Preponderance of the Evidence. Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, or in other words, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses or amount of evidence, but by the greater weight of all evidence.
- (iii) The decision must be based solely on the evidence presented during the hearing or matters officially noted, with the exception of specific evidence requested and defined at the hearing for which the Hearing Officer keeps the record open for a limited time, not to exceed fourteen (14) calendar days. However, the record cannot be left open for a participant to complete or provide documentation or verifications, which should have already been provided and are subject to the hearing, unless it is the THDA that is requesting it.

(g) Effect of Decision.

1. The THDA is not bound by a hearing decision that:

- (i) Concerns a matter that the THDA is not required to provide an opportunity for an informal hearing.
- (ii) Concerns a matter that exceeds the authority of the Hearing Officer.
- (iii) Is contrary to local, state, or federal law or HUD rules and regulations.

2. If the THDA determines that the agency is not bound by a hearing decision, the THDA will promptly notify the family of the determination and the reasons for the determination.

3. The THDA may appeal the hearing officer's decision by requesting a contested case hearing before an Administrative Law Judge.

(h) Notification of Informal Hearing Decision. Within fourteen (14) days of the informal hearing, after the informal hearing is closed, the THDA will issue a written determination that upholds, modifies, or overrules the original adverse decision. The decision letter will include specific reasoning used to make the determination. The letter will be sent to the participant by USPS regular delivery mail and/or electronic notification (email/fax) to the last known address (residence/email) reflected in the THDA's file for the participant, unless otherwise indicated by the family.

- 1. Delivery of the notice by mail is complete upon deposit in a mailbox or upon posting. If the participant requests proof of delivery, the delivery may be established prima facie by affidavit or certificate of service of mailing by the staff person who mailed the notice.
- 2. Opportunity for Appeal of Informal Hearing Decision. The notification will also state that the participant may further appeal the THDA's decision by requesting a contested case hearing before an Administrative Law Judge under the

(Rule 0770-01-05-.28, continued)

Tennessee Uniform Administration Procedures Act, except for calculation determinations.

- (i) A contested case hearing is not offered and no other opportunity for review is required under state or federal regulation for total tenant payment, subsidy standard, and utility allowance calculations. The decision by the THDA's Hearing Officer is final.
 - (ii) Instructions for requesting a contested case hearing are included in the correspondence to the participant regarding the informal hearing decision including the name, address, and telephone number of the person to contact to request a contested case hearing.
 - (iii) All requests for a contested case hearing must:
 - (I) Be submitted in writing; and
 - (II) Be timely.
 - I. If request is by mail, the request must be postmarked no later than fourteen (14) days from the date of the Informal Hearing Decision.
 - II. If request is by email, fax, or hand delivery, the THDA must receive the request within fourteen (14) days of the date of the Informal Hearing Decision.
 - III. If the date of delivery is unclear, the THDA will not bear the responsibility for determining timeliness. In the case that the THDA receives the request past the deadline and it cannot be clearly determined to be delivered timely, it will be considered untimely.
 - (iv) The notification also states that the participant may, at the participant's own cost, elect to have a lawyer or other representative represent him in connection with the contested case hearing.
- (5) Commencement of Contested Case Proceedings under the Administrative Procedures Act (T.C.A. §§ 4-5-301 et. seq.). All proceedings concerning contested case hearings shall be conducted before an administrative judge in accordance with the Secretary of State's rules governing Contested Case Hearings, Chapter 1360-04-01, except where state or federal law requires or the THDA's rules provide specific guidance.
- (a) Commencement of Action. A contested case proceeding is commenced when an affected person submits a request for appeal of the decision issued by the THDA's hearing officer. The request for appeal must be filed in accordance with the instructions provided in the decision letter provided by the hearing officer and be postmarked or received by the THDA no later than fourteen (14) days from the date of the decision letter.
 - (b) Notice of Hearing. A Notice of Hearing, complying with the requirements of T.C.A. §§ 4-5-307(b), will be served no less than fourteen (14) days prior to the date of the hearing.
 - 1. Should the notice provided be found insufficient for any reason, the participant's sole remedy is the right to a continuance of the proceedings and a notice that addresses any insufficiency.

(Rule 0770-01-05-.28, continued)

2. Notice is served by placing the notice in the U.S. mail via first class mail or secured electronic mail to the address the THDA has been provided by the participant.
 - (i) The participant shall bear the burden of proof where it is alleged that the address (mailing or email) to which the THDA mailed the notice was not the proper address, or where the participant argues that the notice was not received due to circumstances beyond the participant's control.
 - (ii) Sufficient proof shall include, but not be limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the participant's address that there have been problems with delivery that might have caused the notice to not be properly delivered. In cases of electronic communication (email/fax), where the participant denies receipt, the THDA may review internal records for proof of delivery.
- (c) Interlocutory Review Prior to Hearing. Any party wishing to seek interlocutory review of an administrative judge's decision on a preliminary matter shall make application to the administrative judge for permission to seek such review.
 1. Interlocutory review should not be granted except where the issue is one for which the THDA's determination of the issue is particularly important.
 2. Interlocutory reviews must be conducted within fourteen (14) days of the date granted or they will be deemed denied, unless the Executive Director extends the time within which to consider the review.
- (d) Discovery. Given the informal nature of these proceedings the following tools of discovery will be the only tools available.
 1. The participant shall provide, upon written request, copies of any and all documents that the participant expects to rely upon or that may be entered as exhibits in the hearing.
 2. The THDA shall make available to the participant, or the participant's legal representative, the participant's entire file, any other documents not otherwise in the file that the THDA expects to use in the hearing, or any other documents that the THDA may possess that reasonably relate to the determination of the matter, upon request of the participant.
 3. Neither party will be permitted to depose any witness, except evidentiary depositions for those witnesses who are entitled to avoid testifying in the proceeding by law or who will be unavailable on the date of the hearing.
 4. An administrative judge may provide for additional discovery tools, but only upon clear and convincing evidence from the motioning party that limiting discovery to the tools provided herein will result in manifest prejudice to the moving party's case.
 - (i) Manifest prejudice does not include uncertainty as to what specifically the individual witness may testify to in the hearing.

(Rule 0770-01-05-.28, continued)

- (ii) Where possible, the administrative judge shall provide a method of discovery that avoids the lengthy delay of depositions, such as a statement of expected testimony.
- (e) Evidence. As provided in 24 C.F.R. 982.555(e)(5), all evidence will be subject to admission based upon whether such evidence is reasonable. The test will be whether the evidence would be relied upon by the reasonable person. The fact that evidence might be hearsay, might contain hearsay, or might otherwise be inadmissible under the Rules of Evidence is irrelevant to this determination as long as it does not violate a participant's right to rebut or confront witnesses and it is supported, since hearsay evidence alone is insufficient to support a finding of fact.
- (f) Default Judgment. Where a party fails to appear at the hearing, the other party may move for a default judgment. If the petitioner fails to appear the respondent will be granted a dismissal. If the respondent fails to appear, the petitioner will be granted judgment upon proof sufficient to show by a preponderance of the evidence, that the allegations in the Notice of Hearing are substantiated.
- (g) Filing of Orders. All orders at any stage of the appeals process must be filed within thirty (30) days of the date that the proof is closed, which is generally the date of the hearing.
 - 1. If the proof is left open for late filed exhibits, the time for such exhibits must be within fourteen (14) days or at the earliest time such proof will be available, but not longer than thirty (30) days absent an agreement of the parties.
- (6) Eligibility for Payment While Appeal Is Pending. While an appeal is pending, the THDA will continue to make housing assistance payments and utility assistance payments on behalf of the participant, where possible. However, Program regulations prohibit the THDA from making payments through the appeals process for certain violations that have not been rectified. However, if the participant appeals the termination, the THDA will give the participant one final opportunity to come into compliance in order to receive payments through the appeals process, as outlined in the sections below.
 - (a) Housing Quality Standards (HQS) Repairs. Where the participant has caused HQS violations that qualify as an emergency repair item, the THDA is prohibited from making payments while the unit continues to be uninhabitable. If emergency repairs are made, the participant may notify the THDA and the THDA will give the participant one opportunity for an inspection to verify the emergency repair has been completed. If the inspector certifies the repair is complete, the THDA will resume payments from the date of such certification through the appeal process. The THDA is also prohibited from making payments on a unit where the deadline for the inspection has passed. Here again, the THDA will give the participant one opportunity for an inspection in order for payments to resume. The one opportunity for an inspection may not be rescheduled, unless the participant provides the THDA with evidence of an emergency.
 - (b) Recertification. If the participant fails to cooperate during the recertification process, which prevents the THDA from completing the recertification by the deadline, the THDA is prohibited from continuing to make payments after such deadline. If the participant requests an informal hearing, the THDA will make one final request for the necessary information in order to complete the recertification. If the participant subsequently comes into compliance, the THDA will recommence payments from the date of the completion of the requirements for recertification through the appeal process. Retroactive payments may only be made if the participant proves that the THDA possessed all documentation required under these rules for recertification.

(Rule 0770-01-05-.28, continued)

- (c) Participant Moves without Notice. If the participant moves without following the proper procedures set forth in these rules, the THDA is prohibited from continuing to make payments on the unit the participant has vacated. In order for payments to continue, the participant must either appeal claiming that the participant has not moved or the participant must follow the procedures to have a new unit approved. If the THDA continues payments based upon the assertion that the participant has not moved, but the THDA prevails in the hearing, the participant will owe the THDA a debt equal to the improper payments made by the THDA.
- (d) Termination of Tenancy by Landlord.
 - 1. If the landlord has legally terminated the tenancy of a participant, either by obtaining a court-ordered eviction or by properly notifying the tenant of non-renewal of the lease under the terms and conditions of the lease, the THDA is prohibited from continuing to make payments on that particular unit.
 - 2. If a participant's assistance is terminated due to a landlord legally terminating tenancy by court-ordered eviction or legally terminating the lease at the end of a lease term and the participant appeals, the THDA will relocate the participant to a new unit through the appeal process, provided the participant follows the procedures to have a new unit approved.
- (e) Payment Calculation or Subsidy Standard Appeals. Where the participant appeals the THDA's determination of the total tenant payment or the subsidy standard, the THDA shall continue payment under the standard most favorable to the participant.
 - 1. Should the THDA prevail in the appeal of the payment calculation or subsidy standard, the participant will owe the THDA a debt equal to the overpayment of assistance.
- (f) Payment of Assistance Continuing after Termination. In all cases, the THDA may require a participant to repay the THDA for a debt incurred as a result of continuing payment pending adjudication of the participant's appeal.
 - 1. THDA will hold a participant responsible for a debt that is adjudicated as owed to the THDA in the hearing process.
 - 2. If the THDA is found to have improperly terminated the payments, the THDA will make retroactive repayments sufficient to make the participant whole.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.29 NOTICE AND MAILINGS RULES.

- (1) Service by USPS or Electronic Communication. All notices, letters or other mailings sent by the THDA to applicants, participants, and owners will be sent by regular United States Postal Service (USPS), or via electronic communication (email/fax) to the address the THDA has been provided by the household.
 - (a) Definition of Mail. Any communication that is sent via United States Postal Service (USPS) mail or other electronic means.

(Rule 0770-01-05-.29, continued)

- (2) **Deadline for Response.** The THDA requires that an applicant, participant, or owner comply with any THDA notice of a request within fourteen (14) calendar days from the date the THDA notice is postmarked, unless otherwise stated within this Administrative Plan.
- (3) **Mail and Electronic Communication Policy.**
 - (a) **Proof of Service.** Service by mail is complete upon deposit in a mailbox or upon posting. If proof of service is put into question, proof is established by prima facie evidence of an affidavit from the THDA employee who mailed the document or certificate of service of mailing. In cases of electronic communication (email/fax) where the participant denies receipt, the THDA may review internal records for proof of delivery.
 - (b) If an applicant, participant, or owner claim that a notice for information or an appointment was not received, the THDA will determine whether the notice was returned to the office.
 1. If the notice was not returned, it is assumed the notice was received unless the receiving party can prove otherwise.
 2. If the notice was returned to the THDA, but the receiving party provides evidence that they were living at the address the notice was sent to at the time that it was sent, then the party will be given another chance to comply within the requisite timeline for compliance.
 3. The receiving party shall bear the burden of proof where it is alleged that the address (mail/email) to which the THDA mailed the notice was not the proper address (mail/email), or where the receiving party argues that the notice was not received due to circumstances beyond their control.
 - (i) Sufficient proof includes, but is not limited to, an affidavit, sworn and notarized, from the postmaster for the local post office responsible for delivering the mail to the receiving party's address indicating that there has been a problem with mail delivery. In cases of electronic communication (email/fax) where the participant denies receipt, the THDA may review internal records for proof of delivery.
- (4) **Address Used.** The THDA sends notices to the last known address (mail/email) or the assisted unit address unless the party requests that all notices be sent to a second party address. For applicants and participants this request must come from the head of the household. Additionally, for applicants and participants the THDA notices are addressed only to the head of household, unless a court has appointed a legal guardian. Due to the administrative burden and cost associated with mailing documents to two different persons, the THDA will not mail regular notices, letters and other mailings to two parties.
- (5) **Copies to Attorneys.** If an applicant or participant is represented by an attorney in an informal review, hearing, complaint or activities covered by the Administrative Procedures Act, the applicant or participant must notify the THDA, and their attorney or other legal representative will be copied on all correspondence that relates specifically to the informal review, hearing, complaint or activities covered by the Administrative Procedures Act. Once the informal review, hearing, complaint or activities covered under the Administrative Procedures Act is closed, the attorney or other legal representative will not continue to be copied on regular notices, letters or other mailings.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed

(Rule 0770-01-05-.29, continued)

September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.30 FAIR HOUSING COMPLIANCE, DISABILITY ACCOMMODATION, AND THE VIOLENCE AGAINST WOMEN ACT (VAWA).

- (1) Fair Housing (24 C.F.R. 982.54 (d)(6)). It is the policy of the THDA to comply fully with all Federal, State, and local nondiscrimination laws and rules and regulations governing Fair Housing and Equal Opportunity in housing.
 - (a) Pursuant to the State of Tennessee's policy of non-discrimination and federal housing policy, the THDA does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, family or marital status, disability, handicap, military status, sexual orientation or gender identity in its policies, or in the admission to or access to, or treatment or employment in, its programs, or services or activities.
 - (b) To further its commitment to full compliance with applicable Civil Rights laws, the THDA provides information to HCV Program applicants and participants regarding "discrimination" and any recourse available should they feel they have been victims of discrimination. Such information is made available during the eligibility briefing and the annual recertification appointment. Applicable fair housing information and the HUD Discrimination Complaint Form is included in the THDA applicant briefing packet and annual packet.
 - (c) Except as otherwise provided in 24 C.F.R. 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with disabilities shall, because the THDA's facilities are inaccessible to or unusable by persons with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. The THDA's central office and all field offices are handicap accessible. The TDD telephone number provides program accessibility for the hearing impaired: (615) 532-2894.
 - (d) To ensure "greater mobility and housing choice" for extremely low income households served by the THDA, the THDA has created a statewide online rental housing search database available for any interested renter, TNHousingSearch.org. Information about the housing search engine will be provided to applicants at initial eligibility.
- (2) Interpreters. The THDA will, as needed, make available an interpreter to assist non-English speaking families or a person of limited English proficiency. The THDA also works with organizations who assist hearing- and sight-impaired persons to provide assistance where needed.
- (3) Verification of Existence of a Disability. The THDA must verify the existence of a disability in order to allow certain income disallowances and deductions from income.
 - (a) Household Members Receiving SSA/SSI Benefits.
 1. Verification of receipt of SSA benefits or SSI based upon disability is sufficient for verification of disability for the purpose of qualification for waiting list preferences or income disallowances and deductions based on disability. If SSA documents indicate that the household member has a permanent disability, no further verification in the future is necessary.

(Rule 0770-01-05-.30, continued)

2. Individuals who receive SSI benefits for a permanent disability and then lose their SSI benefits, most likely due to employment, do not need to provide new verification of disability once SSI payments cease.
 3. If an individual loses his or her SSI benefits because the SSA has determined that the person is no longer disabled, the THDA will require third-party verification from a knowledgeable physician (form THDA HM-350) to continue considering the individual as disabled.
 4. Receipt of veteran's disability benefits, worker's compensation or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 C.F.R. 5.603, necessary to qualify for waiting-list preferences or certain income disallowances and deductions.
- (b) Household Members Not Receiving SSA Disability Benefits. The household must provide third-party verification for household members claiming disability who do not receive SSI or other disability payments from the SSA. The THDA will mail a Verification of Disability form to a knowledgeable physician identified by the household member to verify that the household member meets the HUD definition of disability. See § 0770-01-05-.30(4) for the HUD definition of disability.
- (c) No staff member of the THDA is permitted to inquire about the nature or extent of a person's disability (24 C.F.R. 100.202(c)), a person's diagnosis, or details of treatment for a disability or medical condition.
1. If the THDA receives a verification document that provides such information, staff members will not place this information in the tenant file. Any such document will be returned to the household or destroyed.
 2. Under no circumstances will the THDA request a participant's medical records.
 3. The following inquiries are not prohibited, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:
 - (i) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
 - (ii) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
 - (iii) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
 - (iv) Inquiry into whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; or
 - (v) Inquiry into whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- (4) Disability Accommodations Policy (24 C.F.R. 700.245(c)(3); Joint Statement of HUD and DOJ, Reasonable Accommodations under the Fair Housing Act, May 17, 2004). The THDA's policies and practices are designed to provide assurances that all persons with disabilities will be provided reasonable accommodation so that they may fully access and utilize the

(Rule 0770-01-05-.30, continued)

housing program and related services. The availability of specific accommodations will be made known by including notices on the THDA forms to all families.

(a) Persons with Disabilities (24 C.F.R. 982.153(b)(6)).

1. According to the Federal Americans with Disabilities Act of 1990, with respect to an individual, the term “disability” means:
 - (i) A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
 - (ii) A record of such impairment; or
 - (iii) Being regarded as having such an impairment.
 - (I) Those “regarded as having such an impairment” may include those with conditions such as obesity or cosmetic disfigurement, and individuals perceived to be at high risk of incurring a work-related injury.
2. Individuals with contagious diseases who do not pose a direct threat to others are covered by the Act. AIDS victims and those who test positive for the HIV virus are considered to have a disability.
3. An individual who has an infectious or communicable disease that is transmitted to others through the handling of food, the risk of which cannot be eliminated by reasonable accommodation, may be refused an assignment or a continued assignment to a job involving food handling. The Secretary of Health and Human Services annually will publish a list of those diseases that are transmitted through food handling.
4. Rehabilitated alcohol and drug users are considered to be persons with disabilities for purposes of the Act. However, current alcohol and drug users can be held to the same qualification standards for job performance as other employees.

(b) Qualification for Accommodation.

1. Substantially Limit Major Life Activity. To qualify for an accommodation, the Act requires that the disability substantially limit, or to a significantly large degree limit, major life activity. This is defined as those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, and performing manual tasks, caring for one’s self, learning, or speaking.
2. Undue Hardship, Financial or Administrative. Requests for a reasonable accommodation from persons with disabilities will be granted upon verification that they meet the need presented by the disability and they do not create an “undue financial and administrative burden,” meaning an action requiring “significant difficulty or expense.” This standard is not specifically defined in the Act. In determining whether an accommodation would create an undue hardship, the following guidelines are considered:
 - (i) The nature and cost of the accommodation needed;
 - (ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; and

(Rule 0770-01-05-.30, continued)

- (iii) The number of persons employed as part of the organization, the number of families likely to need such an accommodation, the effect on expenses and resources, or the likely impact on the operation of the program as a result of the accommodation.
- (c) Request for Disability Accommodation. Individuals seeking an accommodation due to a disability must submit the THDA's Request for Reasonable Accommodation form to the THDA. A family member or other person familiar with the individual household member's disability may also make the request on behalf of the disabled member. The form helps the THDA staff understand the nature and scope of the request, identify which household member is affected, and explains the relationship between the requested accommodation and the individual's disability.
 - 1. Once the THDA receives the accommodation request from the household, a Medical Certification of Reasonable Accommodation form will be sent to a medical professional identified to verify the request. Any medical professional familiar with the individual's disabling condition and the relationship between the requested accommodation and the individual's disability may complete and sign the form, including a physician, physician assistant, nurse practitioner, licensed therapist, licensed clinical social worker, psychologist, etc. In some cases, a service agency or other third party familiar with the individual's disability and related housing need may also complete the medical certification.
 - 2. The following forms are used for verification:
 - (i) Medical Certification for Larger Unit Size. Used when the requested accommodation is for an increased subsidy standard/bedroom allocation.
 - (ii) Live-In Aide Medical Certification. Used when the requested accommodation is for a live-in care attendant.
 - (iii) Medical Certification for Reasonable Accommodation. Used for all other accommodation requests.
 - 3. Once the appropriate medical certification form is received, if additional information is needed, it may be requested from the family or medical professional.
- (d) Specific Accommodations.
 - 1. Consideration for Requests for a Higher Subsidy Standard (Bedroom Allocation) or Payment Standard. When an accommodation request is submitted for an increased subsidy standard or bedroom allocation or an exception payment standard, which increases the cost of the subsidy, the THDA must weigh the financial and administrative burden granting the larger unit size or exception payment standard will have on the overall program and its applicants and participants against the individual's need for a larger unit size.
 - 2. Subsidy Size Increases for Medical Equipment Use/Storage; Live-In Aide
 - (i) If an applicant or participant requests a reasonable accommodation for an increased subsidy size to store or access medical equipment, the THDA must determine that the size, amount, or nature of the equipment requires that an additional bedroom be granted for this purpose or if a less costly accommodation is available. The family may be asked to store the

(Rule 0770-01-05-.30, continued)

equipment in another room within the unit if so doing will not place a burden on the family, if the equipment may be suitably stored or used within another room within the unit. If an additional bedroom is granted for medical equipment, the primary purpose of the room must be medical equipment storage and use, and the client must need the room for medical equipment storage or access at all times (HUD PIH Notice 2009-22).

- (ii) If a subsidy size increase is granted for medical equipment or a live-in aide, the THDA will verify before approval and at the annual HQS inspection that the additional room is being used for the stated purpose (equipment or live-in aide). If it is not being used for the stated purpose, the family will be considered “over-subsidized,” and the subsidy size (payment standard) will be reduced. If the THDA has cause to believe that the bedroom is not being used for its’ stated purpose at a time other than annual, the THDA may schedule an appointment to verify that the additional room is being used for the purpose stated in the accommodation request. It is considered a violation of the family obligations, failure to supply true and complete information, when a family member states that they need an additional bedroom for medical equipment and storage or a live-in aide, and the family does not use the additional bedroom for this stated purpose. Therefore, if it is found that the family fraudulently requested the additional bedroom and is using it for another purpose at a time other than annual, the subsidy size may be decreased with a thirty (30)-day notification and the family will be responsible for any overpayment.
 - (iii) A person may not be designated as a live-in aide if the medical certification verifies that full-time live-in care is required, and the person submitted as the aide works full time outside of the home, unless the family verifies that a service agency provides care during the day for the disabled member. The person submitted as the live-in aide may be added as an “other adult” if desired and eligibility criteria are met.
- 3. Payment Standard Exception. If an applicant or participant requests that a higher payment standard be used as a reasonable accommodation to enable the applicant or participant to obtain a unit that meets their special needs, the applicant or participant must complete the THDA Request for Reasonable Accommodation form, and the THDA will mail a medical certification form to a knowledgeable medical professional to verify the need for the accommodation. If approved, the increase in the payment standard cannot exceed 120% of FMR.
 - (i) HUD has issued guidance, which allows the THDA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a household that includes a person with disabilities. This provision allows the THDA to establish a payment standard within limits, which were formerly permitted but designated for approval only by a HUD Field Office (24 C.F.R. 982.503(c)(2)(B)(ii)).
 - (ii) THDA must perform a rent reasonableness determination in accordance with the section 8(o)(10) of the U.S. Housing Act of 1937 and the HCV program regulations.
 - (iii) THDA must maintain documentation that the THDA performed the required rent reasonableness analysis.

(Rule 0770-01-05-.30, continued)

- (iv) In addition, the THDA must maintain documentation that the unit has the feature(s) required to meet the needs of the person with disabilities.
- 4. HUD Approval of Exception Payment Standard Amount. HUD may approve a Payment Standard amount that is higher than the basic range (90–110%) for a designated part of the FMR area if the field office determines that such approval is justified by either the median rent method or 40th percentile rent.
- (e) Verification of a Request for Accommodation.
 - 1. Individuals seeking an accommodation due to a disability must submit the THDA's Request for Reasonable Accommodation form to the THDA's 504 Coordinator. A family member or other person familiar with the individual household member's disability may also make the request on behalf of the disabled member. The form assists the THDA in understanding the nature and scope of the request, identifying which household member is affected, and explains the relationship between the requested accommodation and the individual's disability.
 - 2. Once the THDA receives the accommodation request from the household, a Medical Certification of Reasonable Accommodation form will be sent to a medical professional identified to verify the request. Any medical professional familiar with the individual's disabling condition and the relationship between the requested accommodation and the individual's disability may complete and sign the form, including a physician, physician assistant, nurse practitioner, licensed therapist, licensed clinical social worker, psychologist, etc. In some cases, a service agency or other third party familiar with the individual's disability and related housing need may also complete the medical certification.
 - 3. The need for a reasonable accommodation must be verified annually, particularly when the accommodation is an increase in subsidy size (HUD notice PIH 2009-22).
- (f) Denial or Approval of an Accommodation Request. The accommodation approval or denial will be communicated within thirty (30) days of the date of request. Approvals may be verbally communicated to the family, but all denials will be stated in writing with an explanation for the denial reason.
- (5) Guardianship/Conservatorship. When the head of household or sole household member has a physical or mental impairment that prevents them from taking care of their own basic needs and as a result is in danger of harm, a court may appoint a legal guardianship or conservator.
 - (a) Guardianship. A guardianship is a legal right given to a person to be responsible for the food, health care, housing, and other necessities of a person deemed fully or partially incapable of providing these necessities for him or herself. In cases where a guardian has been appointed, the THDA will conduct all necessary communication and appointments with the guardian on the family's behalf. The guardian must sign all required forms on behalf of the impaired person.
 - (b) Conservatorship. In some cases, the head of household or sole household member may also have a conservator. A conservatorship is a legal right given to a person to be responsible for the assets and finances of a person deemed fully or partially incapable of providing these necessities for him or herself. In cases where a guardian or conservator is assigned by a court, said person(s) must appear at any required appointments on behalf of the household and respond promptly to requests for information from the THDA. The guardian or conservator is acting on behalf of the head

(Rule 0770-01-05-.30, continued)

of household or sole household member, and thus, assumes the responsibility of cooperating with the family responsibilities for the household.

- (c) Verification. The THDA requires proof of guardianship or conservatorship. Acceptable documentation is the "letter of authority" from a court or other acceptable court documentation.
- (d) Group Facilities/Special Needs.
 - 1. If an individual is residing in a group facility or special needs housing, the guardian who signs required housing assistance forms/paperwork on behalf of the family may not be the HAP payee because such a relationship may present a conflict of interest.
 - 2. Where a legal guardian is appointed for an individual by a court, the guardian must appear on behalf of the family at required appointments, and/or complete all required paperwork. It is not appropriate for another individual working in the facility where the individual resides to complete or sign paperwork on an applicant or participant's behalf without the involvement of the legal guardian assigned by the courts.
 - 3. If an individual resides in a group setting but does not have an incapacitating disabling condition or an appointed guardian or conservator, the individual should sign documents on their own behalf, as well as attend required appointments. A group home administrator or other representative may attend the appointment with the individual if they desire, but the group home administrator or representative must not sign required documents on the individual's behalf, unless the court has appointed that person the legal guardian or conservatorship.
- (6) Violence Against Women Act (24 C.F.R. 5.2003; 5.2005; 5.2007; 5.2009). The law protects all victims (not just women) of domestic violence, dating violence or stalking, as well as their immediate family members, from being evicted or being denied housing assistance if an incident of violence is reported and confirmed. The VAWA also provides that an incident of actual or threatened domestic violence, dating violence or stalking does not qualify as a serious or repeated violation of the lease nor does it constitute good cause for terminating the assistance, tenancy, or occupancy rights of the victim. Furthermore, criminal activity directly relating to domestic violence, dating violence, or stalking is not grounds for terminating the victim's tenancy.
 - (a) Definitions for Purposes of VAWA.
 - 1. Immediate Family Member. A spouse, parent, brother or sister, or child of the person, or an individual to whom that person stands in loco parentis (in place of a parent); or any other person living in the household of that person and related to that person by blood or marriage.
 - 2. Domestic Violence. Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(Rule 0770-01-05-.30, continued)

3. Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 4. Stalking. To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate or to place under surveillance with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to, that person; a member of the immediate family of that person; or the spouse or intimate partner of that person.
- (b) General THDA Policy. The THDA strives to help child and adult victims of domestic violence, dating violence, sexual assault or stalking preserve their rental assistance. All persons who receive a housing choice voucher are notified of their rights under the Violence Against Women Act (VAWA) at the initial briefing. A copy of the HUD form 5066 is included in the Applicant Booklet and the Annual Packet distributed to participants at annual reexamination each year. Families are encouraged to notify the THDA when they need protection under this law. The THDA also works with owners to understand the Act and their obligations under it and the HAP Contract.
- (c) Verification. HCV families who claim VAWA protection are required to provide the THDA with written documentation. HUD allows families to complete a written self-certification and has also expanded the scope of evidence that the victim may produce in order to support their claim. The evidence of violence may include, but is not limited to, a written statement from an eyewitness, police records, employee/employer, agent or volunteer of victims service provider, attorney, medical professional, etc.
1. All requests for certification of VAWA protections from the owner to the family should also be made in writing.
 2. The THDA will not consider it to be a program violation when VAWA families vacate the assisted unit without prior notice when they are fleeing documented violence. The THDA relocation policy considers documented domestic violence issues under the good cause policy for relocation.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.31 REQUESTS FOR INFORMATION RULES.

- (1) Privacy Rights and Guidelines for Processing EIV.
 - (a) Generally. Pursuant to the Tennessee Public Records Act, Tennessee Code Annotated Title 10 Chapter 7 (the "Public Records Act"), records maintained by the Tennessee Housing Development Agency are generally a matter of public record. However, federal statutes protect certain components of the HCV, Homeownership option, and FSS files, including social security numbers, Enterprise Income Verification (EIV) records, medical or disability information, information on minor household members, and criminal background records.

(Rule 0770-01-05-.31, continued)

- (b) Authorization for Release. Applicants and participants, including all adults in the household, are required to sign the THDA Authorization for Release of Information form and the HUD Authorization for Release of Information and Privacy Act Statement (Form-9886), which allow the THDA to collect certain information about the client's income, family composition, and other factors that affect eligibility and states under what conditions tenant and owner information will be released. The THDA policy regarding release of information is in accordance with these documents, the individual authorized verification forms, federal and state law, and agency policy.
 - (c) EIV. The THDA may only release EIV information to the participant that the information pertains to. EIV information of minors may be provided to the minor's parent, guardian, or payee only. The THDA may release EIV information to persons, other than the person the information pertains to, only upon receipt of a court subpoena. A copy of any such subpoena must immediately be furnished to the local HUD office. EIV information may be released to a third party (attorney, etc.) if the participant has signed an authorization for release of information to a third party.
 - (d) Disability and Criminal Records. Any information that would lead one to determine the nature or severity of a person's disability or criminal record is protected. Elements of files or records protected under federal statutes will not be available for public review. These elements will be redacted before the full record is made available.
- (2) Processing Requests for Inspection/Duplication of Information from Applicants, Participants, or their Authorized Representatives.
 - (a) Authorized Representatives. Anyone claiming to be an authorized representative must provide a release of information signed by the applicant or participant head of household in order to view or copy the record.
 - (b) Process.
 - 1. All requests for the inspection or copying of any record by an applicant, participant, or their authorized representative will be managed by the appropriate Rental Assistance Manager at the local THDA field office where the record is maintained.
 - 2. The appropriate Rental Assistance Manager shall complete sections 1–5 and 8 of the Inspection/Duplication of Records Request form provided by the Office of Open Records Counsel for each request for inspection of the THDA's records.
 - 3. Once a request has been received, an appointment will be scheduled within seven (7) business days of the request date. If for any reason an appointment cannot be scheduled within 7 business days, the request will be referred to the THDA's Records Custodian at the THDA's central office.
 - 4. A copy of the Inspection/Duplication of Records Request form will be sent to the Records Custodian after the request is fulfilled.
 - (c) EIV. EIV information may only be viewed or copied by the applicant or participant the information pertains to. The head of household or other member may not view or copy the EIV information of another adult household member. EIV information of minors may be viewed or copied only by the minor's parent, guardian or payee. EIV information may be released to a participant's authorized representative if the participant has signed an authorization of release of information for the representative.
- (3) Processing Requests for Information from Other Citizens of the State of Tennessee.

(Rule 0770-01-05-.31, continued)

- (a) Citizenship Required. All persons making a request for information must be a citizen of the State of Tennessee. Identification sufficient to prove citizenship must be provided prior to review or copying of any request.
- (b) Process.
 - 1. All requests for the inspection or copying of any record by a citizen of the State of Tennessee who is not a participating applicant, participant, or their authorized representative will be referred to the THDA's Records Custodian. The Records Custodian is the person appointed by the Executive Director to serve as liaison to the requestor, act as a resource to the THDA's staff to provide guidance on issues related to compliance with the Public Records Act, and assist each division in processing requests for inspection and/or copying of Public Records.
 - 2. The THDA cannot require that a request to review information be put in writing, but can require that a request to copy be put in writing.
 - 3. The Records Custodian will complete sections 1–5 and 8 of the Inspection/Duplication of Records Request form provided by the Office of Open Records Counsel for each request for inspection of the THDA's records.
 - 4. Whenever possible the Records Custodian will permit the requestor to inspect the Public Record immediately. Where the Public Record cannot be inspected immediately the Records Custodian shall provide the requestor with a date and time when the Public Record shall be available.
 - 5. Public Records will be made available within seven (7) business days of the request. If it is not possible to provide the Public Record for inspection within 7 business days, the Records Custodian will inform the Requestor using the Records Production Letter provided by the Office of Open Records Counsel.
 - 6. The Records Custodian will assure that:
 - (i) The requestor is a citizen of the State of Tennessee;
 - (ii) The request identifies with sufficient specificity the records that are the subject of the request;
 - (iii) The items requested are Public Records;
 - (iv) Notice is provided to the person whose file is the subject of the request that a request for inspection has been made;
 - (v) The Public Records are reviewed and redacted of confidential information as appropriate before being made available for review; and
 - (vi) The inspection of the Public Record is supervised by appropriate THDA staff.
- (4) Copies.
 - (a) Copies cost fifteen (\$0.15) cents per copy for black and white copies and fifty (\$0.50) cents per color copy. The Records Custodian will communicate with the requestor as to the cost of colored copies and whether the record loses meaning or becomes less understandable if copied in black and white. The requestor will choose whether to have

(Rule 0770-01-05-.31, continued)

- the copies provided in color or black and white. If color copies are requested, the request must be processed at the THDA's central office.
- (b) The request must be made in writing and must identify with sufficient specificity the records that are the subject of the request.
 - (c) For Public Records, the requestor must complete the Inspection/Duplication of Records Request form provided by the Office of Open Records Counsel sections 1-4 for each request to copy Public Records.
 - (d) If the requestor prefers that the THDA mail the copies, the requestor is responsible for any postage costs related to providing the copies requested. The copies of the Public Records shall be sent by U.S. Postal Service first class unless the requestor indicates otherwise in writing.
 - (e) The Records Custodian will assist the THDA staff in determining whether the requested items are Public Records, redacting the Public Record as appropriate, and determining the charges related to providing the requested copies.
 - (f) The Record Custodian shall provide the Requestor with an estimate of charges.
 - (g) Charges for labor will only be required when copies are requested. Staff for each division shall be responsible for copying records. All time spent locating, retrieving, reviewing, redacting, and reproducing records will be recorded by staff and reported to the THDA Records Custodian. The Records Custodian will determine the appropriate labor charges based upon the base hourly salary of staff involved in providing the copies. Labor costs will exclude the first hour spent fulfilling the request. Should the time required to fulfill the request exceed one hour, the hour excluded will be the hour that represents the highest base salary.
 - (h) Any additional costs in excess of the charges identified in this policy which are directly related to the copying of records will be charged to the Requestor to the fullest extent permitted by law.
 - (i) All costs associated with requests to copy records must be paid using a check or money order made out to the THDA. Cash payments for photocopies will not be accepted. All costs associated with requests to copy records must be paid before copies will be provided.
- (5) Denial of Requests. Where the Records Custodian determines that a request must be denied, the Records Custodian will provide the requestor with the THDA Records Request Denial Letter, which will provide a specific reason for denial of the request.
- (6) Information Made Available by THDA to Prospective Landlords. The only information the THDA will give to prospective landlords regarding a participant is the contact information for prior landlords. Landlords themselves are responsible for determining a participant's suitability for tenancy. The THDA is not permitted to discuss a participant's program file or history with a prospective landlord.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.

Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.

0770-01-05-.32 RESIDENT ADVISORY BOARD (24 C.F.R. 964).

- (1) Resident Advisory Board. The THDA will maintain a Resident Advisory Board for the Housing Choice Voucher Program.
 - (a) Resident Participation (24 C.F.R. 964.11). HCV Program participants have a right to serve on a Resident Advisory Board to represent their interests. The THDA's Resident Advisory Board is composed of active HCV participants who provide supportive assistance to HCV personnel.
 - (b) Resident Organization Partnership (24 C.F.R. 964.14). The THDA is in partnership with the members of the Resident Advisory Board (RAB), formalized by a written Memorandum of Agreement that identifies the mission of the RAB, the goals of the RAB and the board procedures for meeting. All board members must sign the Memorandum of Agreement.
 - (c) The THDA Role in Working with the Resident Advisory Board (24 C.F.R. 964.18; 964.150). The THDA officially recognizes the voluntary Resident Advisory Board (RAB) as the sole representative of the HCV participants it represents and supports its resident participation activities. The THDA assists the RAB in setting up annual meetings, providing assistance with mail-outs and data availability, providing reimbursement of travel, meals and lodging expenses when necessary, and organizing the annual selection of voluntary members to the Board. The THDA will provide the office space necessary for meetings. However, the THDA does not provide any monetary stipends to the members of the Resident Advisory Board for these volunteer services.
 - (d) Goals and Activities of the Resident Advisory Board. The goal of the Resident Advisory Board is that, through the direct participation of HCV residents, the overall quality of life for all HCV participants may be positively affected and the delivery of HCV services enhanced.
 - (e) RAB Activities. The Board activities include the following:
 1. Review and develop recommendations for the THDA Annual Plan;
 2. Generate ideas for the development of the THDA Five-Year Plan;
 3. Provide ideas and information for the THDA efforts in converting Section 8 Project- Based Developments to Housing Choice Voucher assistance;
 4. Review and make recommendations on HCV public awareness efforts including owner and applicant recruitment;
 5. Review HCV Administrative Procedures Manual for consumer feedback;
 6. Provide information via newsletter to the HCV program participants; and
 7. Elect Resident Board of Directors Members.
 - (f) Membership Recruitment and Selection. The Resident Advisory Board consists of a maximum of fifteen (15) members. Membership is generated by a mass mailing to all HCV program participants on an annual basis. Program participants may volunteer for the RAB if they are currently in good standing with the THDA, which means the participant does not have any termination proceedings pending or a history of program family obligation violations. If more than fifteen (15) persons volunteer for the Board,

(Rule 0770-01-05-.32, continued)

the THDA will utilize a random selection process that proportionately represents the East, West, and Middle divisions of the state.

- (g) Term. Each Board Member serves for a one-year period and may volunteer for additional consecutive or non-consecutive terms of service. In the event that a current Board Member discontinues the HCV rental assistance or is terminated from the HCV program, the participant immediately forfeits the right to serve on the Board in any capacity.
 - (h) RAB Chairperson. It is the sole decision of the RAB as to the selection of the Board Chairperson. The Chairperson's role, if utilized by the Board, is to conduct meetings, solicit member input and record minutes of each meeting.
- (2) Resident Board Member (24 C.F.R. Part 964, Subpart E). To the extent required in Section 2(b) of the United States Housing Act of 1937, as amended by Section 505 of the Quality Housing and Work Responsibility Act of 1998 (collectively, the "Act") and regulations promulgated by HUD at 24 C.F.R. Part 964, Subpart E (the "Regulations") and as specified in the Public Housing Authority Plan, the THDA Board of Directors (the "THDA Board") will include one eligible resident board member (the "Resident Board Member"). A Resident Board Member may serve on the THDA Board only in strict compliance with the THDA Administrative Plan.
- (a) Eligibility. To be eligible as the THDA's Resident Board Member under this Administrative Plan, a person must be an eligible resident as defined in 24 C.F.R. Section 964.410, a citizen of Tennessee, and must not hold public office. A person who meets these requirements must then be selected by the THDA Resident Advisory Board and screened by the THDA. Finally, the person must be selected by the Governor and must meet the eligibility requirements throughout the Resident Board Member term.
 - (b) Resident Board Member Attendance. The Resident Board Member shall attend all meetings of the THDA Board at which matters related to the administration, operation and management of the THDA's HCV tenant-based rental assistance programs appear on the THDA Board's agenda. The Resident Board Member may attend any other meetings of the THDA Board.
 - (c) Resident Board Member Term. A Resident Board Member may serve no more than one (1) term of four (4) years, which term will commence on the date of selection, subject to the requirements herein. A term expires earlier upon the occurrence of any one of the following events:
 - 1. The Resident Board Member resigns;
 - 2. The Resident Board Member is no longer an eligible resident as defined in 24 C.F.R. Section 964.410;
 - 3. The Resident Board Member no longer meets other eligibility requirements;
 - 4. The Resident Board Member is removed for misfeasance, malfeasance, or willful neglect of duty;
 - 5. The Resident Board Member is removed due to absence from any meeting of the THDA Board during any twelve (12) month period at which a matter related to the administration, operation, and management of the THDA's HCV program is on the THDA Board's agenda, upon certification of such fact to the Governor by the Secretary of the THDA; or

(Rule 0770-01-05-.32, continued)

6. The Resident Board Member fails to meet any requirement for continued participation in the THDA's HCV Program; and
 7. If the THDA terminates HCV rental assistance to the Resident Board Member, the Resident Board Member's term will expire on the earliest effective date of such termination and no subsequent appeals of the termination determination will continue or extend the Resident Board Member's term.
 8. If the term of a Resident Board Member ends or expires for any reason, the position will remain vacant until it is filled in accordance with the procedures described below.
- (d) Oath. The Resident Board Member shall take an oath of office to administer the duties of the Resident Board Member's office faithfully and impartially, and a record of such oath will be filed with the office of the Secretary of State.
- (e) Membership Status. The Resident Board Member is a full member of the THDA Board with all of the rights, duties, obligations, responsibilities and liabilities appurtenant thereto, except as described in "Resident Board Member Participation" below.
- (f) Resident Board Member Participation. The Resident Board Member shall take part and vote in the decisions of the THDA Board related to the administration, operation and management of the THDA's HCV tenant-based rental assistance programs. The Resident Board Member shall not take part or vote in any other matters of the THDA Board.
- (g) Compensation. The Resident Board Member shall receive no compensation for services or for missed work, but shall receive reimbursement for travel expenses in the performance of official duties as a member of the THDA Board, in accordance with comprehensive travel regulations as promulgated by the State of Tennessee.
- (h) Conflict of Interest. As required in 24 C.F.R. Section 964.430(c), the status of a Resident Board Member as a participant in the THDA administered HCV tenant-based rental assistance program does not constitute a conflict of interest, except when the matter under consideration is clearly and uniquely applicable to the Resident Board Member in their personal capacity and is not generally applicable to all or a sub-group of participants in the THDA administered HCV tenant-based rental assistance program. The Resident Board Member shall disclose all conflicts of interest in the same manner and based on the same standard (as described in T.C.A. § 13-23-128 and the THDA Board Policy) as applicable to other THDA Board members.
- (i) Resident Board Member Selection. The THDA Resident Advisory Board, shall, at a regularly scheduled meeting, elect up to five eligible persons, one of whom will become the Resident Board Member. The persons elected by the THDA Resident Advisory Board will be screened by the THDA to determine whether they are eligible residents as defined in 24 C.F.R. Section 964.410. The name of each eligible person elected by the THDA Resident Advisory Board and whether they meet the other specific requirements specified will be forwarded by the THDA to the Governor. The Governor shall select a Resident Board Member from the persons so identified by the THDA Resident Advisory Board election and the THDA screening. If none of the persons elected by the THDA Resident Advisory Board meet all eligibility requirements, none of the names will be forwarded to the Governor. At the next regularly scheduled meeting of the THDA Resident Advisory Board, the process described will be repeated until a Resident Board Member is duly selected. If the THDA Resident Advisory Board fails to

(Rule 0770-01-05-.32, continued)

elect any eligible person, then the requirements of 24 C.F.R. Section 964.425(a) and 24 C.F.R. Section 964.425(b) shall be deemed to be met.

- (j) Quorum. The appointment of a Resident Board Member does not modify, or affect in any way, quorum or voting requirements specified in T.C.A. § 13-23-110 or in the THDA by-laws, as adopted or amended from time to time.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019.

0770-01-05-.33 SPECIAL HOUSING AND HOUSING CONVERSION ACTIONS.

(1) Special Housing Requirements.

- (a) Group Homes, Independent Group Residences, and Assisted Living Facilities may be approved for elderly and individuals with disabling conditions.
- (b) Rent to Owner - Reasonable Rent Limit. The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home. 24 C.F.R. 982.613.
- (c) Cost of Meals. The cost of meals and supportive services may not be included in the cost of the rent to owner. These items must be paid through other sources. Nonpayment of the fees for meals and services is not grounds for termination of Housing Choice Voucher assistance or for eviction from the housing.
- (d) Separate Lease for Each Person. A separate lease and HAP Contract must be executed for each assisted person living in a group home, IGR, or assisted living facility.

(2) Types of Group Housing.

- (a) Group Home. A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. The group home consists of residents' bedrooms, which can be shared by no more than two people, a living or common room, kitchen, dining area, typically a shared bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

1. Requirements.

- (i) Maximum Number of Residents Allowed. No more than 12 persons may reside in a group home. This includes assisted and unassisted residents and any live-in aides.
- (ii) Live-In Aide. A live-in aide must reside in the unit solely to provide care for the assisted individual and must live in the home full-time to be approved. The live-in aide must be counted when determining unit size for the assisted individual. Rotating caregivers do not qualify to be counted when determining unit size.
- (iii) Must be Elderly or Disabled. Except for the live-in aide, all residents of the unit must be elderly or disabled.

(Rule 0770-01-05-.33, continued)

- (iv) A group home may be approved if the bedrooms (sleeping quarters) are shared, if the rent is appropriately prorated.
- (v) Persons living in a group home must not require continual medical or nursing care (e.g. the home may not be a nursing home or convalescent facility).

2. Payment Standard and HAP Calculation.

- (i) Determining the Payment Standard for a Group Home Unit. Unless there is a live-in aide, the family voucher size for an assisted occupant of a group home is 0-bedroom. If there is a live-in aide, the aide must be counted in determining the household's voucher size, and the family voucher size is a 2-bedroom. The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro-rata share of the payment standard for the group home size. The pro-rata share is calculated by dividing the number of persons in the assisted household (1 person if no live-in aide or 2 persons if a live in aide is approved) by the number of people in the group home. With payment standard calculations you always round down.

(l) Examples.

Example 1:

Household: Person with Disabilities.

Family Composition: 1

Family Voucher Size: 0 BR

Group Home Size: 8 Bedrooms

People in Group Home: 8 People

0 BR payment standard: \$275

8 BR payment standard: \$1,500

1 in assisted household ÷ 8 people in group home = .125 pro-rata share

$\$1,500 \times .125 = \188 pro-rata share of payment standard for group home

Compare the pro-rata share of the payment standard (\$188) to the zero bedroom standard of \$275. Since \$188 is lowest, the \$188 is the payment standard used to calculate the HAP payment.

Example 2:

Household: Person with Disabilities, plus a Live-In Aide.

Family Composition: 2

Family Voucher Size: 2 BR

Group Home Size: 8 Bedrooms

People in Group Home: 8 People

2 BR payment standard: \$400

8 BR payment standard: \$1,500

2 in assisted household ÷ 8 persons in group home = .25 pro-rata share

$\$1,500 \times .25 = \375 pro-rata share of payment standard for group home

Compare the pro-rata share of the payment standard (\$375) to the two-bedroom payment standard of \$400. Since \$375 is the lowest, the \$375 is the payment standard used to calculate the HAP payment.

(Rule 0770-01-05-.33, continued)

Example 3:

Household: Person with Disabilities, Group Home with Shared Bedrooms

Family Composition: 1

Family Voucher Size: 0 BR

Group Home Size: 8 Bedrooms, which are shared

Persons in the group home: 12, not 16, no more than 12 may reside in GH

0 BR payment standard: \$275

8 BR payment standard: \$1,500

1 in assisted household ÷ 12 persons in group home = .08 pro-rata share

\$1500 x .08 = \$120 pro-rata share of payment standard for group home

Compare the pro-rata share of the payment standard (\$120) to the zero-bedroom payment standard of \$275. Since \$120 is the lowest, the \$90 is the payment standard used to calculate the HAP payment.

- (ii) Calculating the HAP. The HAP for an assisted occupant in a group home is the lower of the payment standard minus the Total Tenant Payment (TTP) or the gross rent minus the TTP. The utility allowance for an assisted occupant in a group home is the pro-rata share of the utility allowance for the group home.
 - (iii) Utility Allowance. Due to complications with creating utility allowances for bedroom sizes larger than 5 bedrooms, the group home should include the cost of utilities in the gross rent (shelter cost), which will result in a \$0 utility allowance.
 - (iv) Rent. Housing Choice Voucher Program assistance should be calculated on the shelter portion of the resident's monthly housing expense only. The residents' costs for food service or other services must not be included in the rent for a group housing unit.
- (b) Congregate Housing/Single Person Placement in Independent Group Residence (IGR) Facilities. Congregate Housing/Single Person Placement contains a private, not shared, bedroom, living area, private bathroom, with a shared kitchen, dining area, and some shared living space.
- 1. Number of Residents. Typically, congregate facilities will have four (4) or fewer residents. However, in some cases the facility may house more than four (4) residents, such as in the case of an Assisted Living Facility, which falls under the congregate housing definition.
 - 2. Must be Elderly or Disabled. All residents of the unit must be elderly or disabled.
 - 3. No Live-In Aides Allowed. A live-in aide may not be approved in congregate housing situations because of the HUD requirements for the rent calculation. Rotating caregivers may be present and do not affect the unit size (payment standard) assignment.
 - 4. Payment Standard and HAP Calculation.
 - (i) Determining the Payment Standard in a Congregate Housing Facility. The payment standard for an individual unit in a congregate housing facility is

(Rule 0770-01-05-.33, continued)

based on the number of rooms in the private living area. If there is only one room in the private living area, not including the bathroom, such as a sleeping area, the 0-bedroom payment standard is used. If the unit has two or more room, other than the bathroom and any shared spaces, such as a sleeping room and a separate living room, the 1-bedroom payment standard will be used. For a family residing in congregate housing in an exception area, the payment standard is the HUD-approved zero-bedroom exception payment standard amount. 24 C.F.R. 982.608(a)(1)

(I) Examples.

Example 1:

Disabled household member lives in private room with private sanitary facility (bathroom) and at least one additional private living area (such as a private living room).

1 bedroom payment standard is used.

1 bedroom utility allowance is used unless utilities are included in the rent (shelter portion of the resident's costs).

Example 2:

Disabled household member lives in a private room (only 1 non-shared room) with private sanitary facilities (bathroom) and other shared rooms.

0 bedroom payment standard is used.

0 bedroom utility allowance is used unless utilities are included in the rent (shelter portion of the resident's costs).

- (ii) Calculating the HAP. The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.
 - (iii) Utility Allowance. The Congregate/IGR facility should include the cost of utilities in the gross rent (shelter cost), which will result in a \$0 utility allowance. If the utilities are not included in the rental amount provided to the THDA, the \$0 bedroom utility allowance will be applied.
 - (iv) Rent. Housing Choice Voucher Program assistance should be calculated on the shelter portion of the resident's monthly housing expense only. The residents' costs for food service or other services must not be included in the rent for a group housing unit.
- (c) Single Room Occupancy/Single Person Placement in Independent Group Residence Facilities. A single room occupancy (SRO) placement provides private, not shared, sleeping quarters for the exclusive use of the occupant, but requires the occupant to share sanitary (bathroom), food preparation (kitchen), and most other living spaces.
- 1. Maximum Number of Units. There is no federal or program limitation on the number of SRO units in an SRO facility, although the size of a facility may be limited by local laws.
 - 2. Live-In Aide. A live-in aide may live in the SRO/IGR if the live-in aide resides in the unit solely to provide care for the assisted individual. To qualify as a live-in aide, the person must reside in the unit full-time. The live-in aide must be counted when determining unit size for the assisted individual. Rotating caregivers do not qualify to be counted when determining unit size.

(Rule 0770-01-05-.33, continued)

3. Must Be Elderly or Disabled. Except for the live-in aide, all residents of the unit must be elderly or disabled.
4. Payment Standard and HAP Calculation.
 - (i) Determining the Payment Standard. The payment standard for SRO housing is 75 percent of the HUD-approved zero-bedroom exception payment standard amount. 24 C.F.R. 982.604(a). If a live-in aide resides in the unit for the care of the assisted individual, the payment standard is 75% of the 2-bedroom payment standard.
 - (ii) Calculating the HAP. The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.
 - (iii) Utility Allowance. The utility allowance is 75 percent of the 0-bedroom utility allowance. Preferably, the SRO/IGR facility should include the cost of utilities in the gross rent (shelter cost), which will result in a \$0 utility allowance.
 - (iv) Rent. Housing Choice Voucher program assistance should be calculated on the shelter portion of the resident's monthly housing expense only. The residents' costs for food service or other services must not be included in the rent for a SRO housing unit.
- (3) Data Entry Requirements. The special housing type (group home, congregate/IGR, SRO/IGR, assisted living) will be entered into the notes to ensure that an auditor can review the rent calculation method. If the housing type is a group home, the total number of residents and the total number of bedrooms at the time of inspection should also be entered into the notes system or as an entity alert. For 50058 data recording, under housing type, group home should be selected when the person lives in a group home (2–12 persons in a single unit) facility. When a person lives in an IGR/SRO, SRO should be selected. For IGR/Congregate units, no special group housing designation is required.
- (4) Guardian & Conservators. See § 0770-01-05-.30(4).
- (5) Housing Conversion Actions (PIH Notice 2000-09). Several different types of owner or HUD actions, collectively described as “housing conversion actions”, may affect residents of Section 8 Multi-family developments. As a result of these housing conversion actions, HUD may allocate funding to the THDA for the provision of vouchers to be issued to eligible families residing in properties affected by a housing conversion action. The following type of housing conversion actions typically involve voucher issuance:
 - (a) Preservation Prepayment or Voluntary Termination Actions. The owner prepays the mortgage or voluntarily terminates the mortgage insurance.
 - (b) Project-Based Opt-Outs. The owner chooses to opt out of certain programs by not renewing an expiring Section 8 or Section 23 project-based contract.
 - (c) HUD Enforcement Actions. HUD either terminates the Section 8 project-based HAP contract or does not offer the owner the option to renew an expiring HAP contract due to an owner's failure to comply with the terms of the HAP Contract, including suspensions and debarments. HUD enforcement actions may also result from material adverse financial or managerial actions or omissions that lead to either owner default or a documented material violation of one or more of the obligations under the project's Regulatory Agreement.

(Rule 0770-01-05-.33, continued)

- (d) Conversion Actions and Type of Voucher Assistance (Regular or Enhanced). When the THDA issues a special admissions voucher to families affected by HUD conversion actions, the type of housing conversion action determines whether a regular Housing Choice Voucher or an enhanced Housing Choice Voucher is issued to affected families.

1. Regular Housing Choice Vouchers.

- (i) These vouchers are typically issued when the housing conversion action is a result of HUD enforcement actions. Families who are issued regular vouchers as the result of an HUD enforcement action are subject to all of the same program rules and regulations as other regular Housing Choice Voucher families.
- (ii) If the housing conversion action is due to a HUD enforcement action and the families are able to remain at the property after the contract termination and receive tenant-based assistance, it may be possible for the eligible families to receive enhanced vouchers. Typically, the property will need to be in good physical condition for the families to qualify for enhanced vouchers. The HUD field office makes the final determination as to whether the vouchers issued to families due to an HUD enforcement action are regular or enhanced.

2. Enhanced Housing Choice Vouchers. These vouchers typically are issued when the housing conversion action is due to a project-based opt-out or a preservation prepayment. Enhanced vouchers have several special requirements but in all other aspects the vouchers are subject to normal program rules. The special conditions related to enhanced voucher assistance are:

- (i) Income Limits. The low-income limit, rather than the very low income limit, is the threshold for families admitted into the Section 8 program with an enhanced voucher. If the property is a preservation-eligible property, as determined by HUD, on the effective date of prepayment, the family may be one of the following:
 - (I) A low-income family, including a very low income family;
 - (II) A moderate-income, above 80 percent of area median but below 95 percent, elderly or disabled family; or
 - (III) A moderate-income family residing in a low vacancy area, as determined by HUD.
- (ii) Special Payment Standard When the Family Chooses to Stay in the Same Unit.
 - (I) For a family that stays in the same unit and receives enhanced voucher assistance, the payment standard used to calculate the voucher housing assistance payment is the gross rent, if the gross rent exceeds the payment standard, provided the proposed gross rent is rent reasonable. This condition applies until the family relocates from the property.
 - (II) If the gross rent is less than or equal to the normally applicable payment standard, the regular payment standard rules apply.

(Rule 0770-01-05-.33, continued)

- (III) If the family moves from the project for any reason, including when the proposed new rent for the project is not reasonable or the unit fails HQS, the normal payment standard regulations apply.
- (iii) Rent Reasonableness Documentation and Lease Requirements. All regular program requirements concerning the reasonableness of the rent and the term and conditions of the approved lease apply to enhanced vouchers. The current condition of the unit must be considered for rent comparable purposes. Under no circumstances may the future condition (i.e. post repairs or renovation) be considered. Copies of three rent comparables must be kept in the tenant file when the family receives enhanced voucher assistance.
- (iv) Effect of Family Unit Size Limitation.
 - (I) The family is issued a voucher for the unit size for which they qualify under regular Housing Choice Voucher unit size guidelines. The voucher size is based on subsidy standards, not on the actual size of the unit the family is presently occupying. If a family wishes to stay in the project, but
 - I. Qualifies for a smaller unit than the actual size of their current unit and
 - II. The gross rent exceeds the applicable payment standard for the bedroom size on the family voucher, the family must move to an available unit within the project that is the appropriate size according to regular Housing Choice Voucher unit size guidelines.
 - (II) If the appropriate size unit is not available in the project, the family must then make a good faith effort to find a unit outside of the project that is the correct unit size. The family may be asked to submit documentation of their good faith effort to locate a unit, such as a list of the properties visited.
 - (III) If the family has not located an eligible unit at the end of the term of the voucher, including any extensions granted, despite making a good faith effort, the family may reside in their current oversized unit in the project. The payment standard is the gross rent of the oversized unit.
- (v) Minimum Rent Requirement for Stayers.
 - (I) Families assisted with enhanced tenant-based assistance have a special statutory minimum rent requirement. The family must pay for rent no less than the rent the family was paying on the date of the "eligibility event" as determined by HUD, unless the family's income decreases to a significant extent, 15 percent or more, from the family's gross income on the effective date of the prepayment.
 - (II) The family must pay at least the gross rent they were paying on the date of the prepayment or contract termination. The THDA's utility allowance is used to calculate the gross rent at prepayment if all utilities were not included in the rent the family paid to the owner.

(Rule 0770-01-05-.33, continued)

- (III) If the family's income decreases at least 15 percent from the gross family income on the date of the eligibility event, the minimum family contribution will be reduced so that the percentage of income for rent does not exceed the greater of 30 percent or the percentage of monthly adjusted income actually paid by the family on the effective date of the prepayment.
- (vi) HAP Contract Execution. The effective date of the Housing Assistance Payments Contract for special admissions due to housing conversion actions is based on whether the family stays in the property, assuming the units are eligible for assistance, or relocates. For families that stay in the property ("stayers"), the HAP Contract may not be effective prior to the target date of the Housing Conversion Action. HUD determines the target date. For families that choose to relocate, the HAP Contract may be effective prior to the target date, if the ACC funding increment is established. In this case, the HAP Contract date may be effective on the date the ACC funding increment is effective.
- (vii) Calculating HAP. HAP is calculated in the manner outlined below depending on the situation.
 - (I) Stayers. Regardless of whether the owner's new gross rent after the eligibility event exceeds or is less than the THDA's payment standard, the housing assistance payment for a family who stays in their present unit, or moves to an appropriate size unit within the project, will equal the gross rent for the unit minus the greater of the following:
 - I. 30 percent of the adjusted family income;
 - II. 10 percent of the family monthly income (gross monthly income);
 - III. The applicable "rent" that the family was paying on the date of the prepayment or voluntary termination; or
 - IV. THDA minimum rent.
 - (II) Movers. If a resident decides to move from the unit with voucher assistance, the payment standard is not enhanced and the enhanced voucher minimum rent does not apply, except in cases where a family is moving to an appropriate size unit within the project. The housing assistance payment and the family contribution at the new unit are calculated in accordance with the regular rules of the Housing Choice Voucher Program.
 - (III) Turnover of Special Admissions Vouchers. Once a voucher issued to a family as the result of a housing conversion action turns over for any reason, the voucher is absorbed into the THDA's regular Housing Choice Voucher Program. If the voucher is an enhanced voucher, it loses its special enhanced characteristics and is subject to normal program rules.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982.
Administrative History: Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed

(Rule 0770-01-05-.33, continued)

September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.34 HOMEOWNERSHIP VOUCHER OPTION (24 C.F.R. 982.625). Under 24 C.F.R. 982.625, the THDA may elect to provide Housing Choice Voucher assistance to an eligible family who purchases, rather than rents, a dwelling unit that will be occupied by the family. The homeownership option does not require, and HUD does not provide, additional or separate funding. The THDA uses the voucher program funding previously established under existing Annual Contributions Contracts (ACC) for the Housing Choice Voucher program to fund the Homeownership Voucher program option. The program provides additional affordable homeownership opportunities for low-income families and encourages self-sufficiency among Housing Choice Voucher Program participants.

- (1) Initial Eligibility Requirements. A Housing Choice Voucher Program family wishing to utilize the voucher subsidy to purchase, rather than rent a home, must meet the following initial eligibility requirements to be issued a Certificate of Eligibility:
 - (a) Must be a current participant in the THDA's HCV Program, all adults that would be listed on the mortgage must be participants in good standing for at least twelve (12) months, and meet the general requirements for continued participation in the THDA Housing Choice Voucher Program. If the family is from the THDA's waiting list or a port-in, this requirement may be waived if the family has had a Housing Choice Voucher for 12 months, is in good standing, and can provide a pre-qualification letter for a mortgage and meets the requirements outlined in this chapter. Although, no homeownership activities may take place until all port paperwork has been processed under the regular porting policies (24 C.F.R. 982.625(b); 982.626(b)).
 - (b) All adult household members may not have previously lived as an adult in a home that defaulted on a mortgage in the Homeownership Voucher Program (24 C.F.R. 982.627(a)(5); (e)).
 - (c) All household members must be in compliance with the Housing Choice Voucher family rules and obligations (24 C.F.R. 982.626(b)).
 - (d) Must be a "first-time homeowner", meaning that a family member must not have owned title to a principal residence in the last three (3) years before commencement of homeownership assistance for the family.
 1. The term "first-time homeowner" also includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse (24 C.F.R. 982.4).
 2. Residents of limited equity cooperatives are eligible for the homeownership program. An exception to this requirement may be granted to residents of limited equity cooperatives and families with a disabled household member who requires a reasonable accommodation. The Housing Choice Voucher program is readily accessible to and usable by such person, and single parents or displaced homemakers (as those terms are defined in 12 U.S.C. § 12713) who, while married, owned a home with a spouse, or resided in a home owned by a spouse. Mobile homes on rented lots are considered personal property; therefore, those families are not considered an owner of real estate for the purposes of this program.
 3. The first-time homeowner requirement does not apply after the initial purchase with Homeownership Voucher (24 C.F.R. 982.4(b)).

(Rule 0770-01-05-.34, continued)

- (e) The THDA requires that families receive a minimum of 8 hours of pre-purchase homebuyer education from an approved THDA Homebuyer Education counselor (24 C.F.R. 982.626(a)(3); 982.630).
- (f) The family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership is employed full-time averaging a minimum of 30 hours per week and who have been continuously employed within the same career field during the past twelve (12) months before commencement of homeownership assistance. Federal Work Study income is not eligible to meet work history requirement. Families whose head of household or spouse is disabled or elderly are exempted from the employment requirement. In addition, the employment requirement does not apply to an elderly family or a disabled family. Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the THDA will grant an exemption from the employment requirement if the THDA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities (24 C.F.R. 982.627(d)).
- (g) Must Have at Least \$15,000 Annual Income.
 - 1. Exceptions.
 - (i) If a family verifies that they have pre-qualified for a mortgage loan that sufficiently covers the purchase price of a suitable home in their regional area and meets the THDA's financing standards prior to being admitted to the Homeownership Voucher Program, then the family may be determined eligible if their income is at least the Federal minimum wage (currently \$7.25) multiplied by 2,000 hours (currently \$14,500).
 - (ii) The Federal Social Security Income Disability standard for families whose head or spouse is disabled for an individual is (\$674) multiplied by twelve (12) months (currently \$8,088).
 - (iii) Exceptions may be made due to extreme circumstances such as, global recession.
 - (iv) Elderly and disabled families may use public assistance as income to meet the annual income requirement.
 - (v) Employment Requirement for Disabled Family. The employment requirement does not apply to a disabled family, which would include a family whose head (which includes co-head), spouse, or sole member is a person with a disability and receives SSA Disability Benefits.
 - (vi) Household Members Not Receiving SSA Disability Benefits. The household must provide third-party verification for household members claiming disability who do not receive SSI or other disability payments from the SSA. The THDA will mail a Verification of Disability form to a knowledgeable healthcare provider identified by the household member to verify that the household member meets the HUD definition of disability.
 - 2. Public assistance includes federal housing assistance or the housing component of a welfare-to-work grant, TANF assistance (Families First), SSI that is subject to an income eligibility test, food stamps, general or other assistance provided under a federal, state or local program that provides assistance available to meet family living or housing expenses (24 C.F.R. 982.627(c)).

(Rule 0770-01-05-.34, continued)

3. In the event of a loss of employment that results in employment income of less than \$15,000 annually, the household will be offered six (6) months to secure new employment earning at least \$15,000 annually. If at least one household member does not secure new employment income of at least \$15,000 annually within the six (6)-month time period, the assistance will be terminated. During this time, the family must recertify income every ninety (90) calendar days.
 - (i) Exceptions. An exception to the six (6) month timeframe for securing new employment may be considered when a household member loses his job due to no fault of his or her own, such as a factory closing or lay-off.
 - (ii) An exception may also be considered for long-term medical incapacitation.
 - (iii) In this case, the household must send a letter requesting an exception to the THDA and provide documentation of the job loss or medical necessity.
 4. Seasonal employees, such as teachers, must be certified annually instead of on an interim basis when income decreases for a short period of time (i.e. summer vacation).
- (h) Must not owe money to the THDA or any other housing authority (24 C.F.R. 982.626(b)).
 - (i) Homeownership Voucher applicants must wait three (3) years from the discharge date of a Chapter 7 bankruptcy and one (1) year from the discharge date of a Chapter 13 bankruptcy before applying for the program (24 C.F.R. 982.626(b)).
 - (j) Married Head of Household.
 1. Income. A head of household who is married, but physically separated, not sharing residence with the spouse in the assisted unit, and not legally divorced from the spouse, must either divorce or include the spouse's income in the household for the eligibility determination (24 C.F.R. 982.626(b)).
 2. Promissory Note and Deed of Trust. The THDA will not require both spouses to sign the promissory note when both spouses are residing in the assisted unit as their primary residence. However, the lender may require both spouses to sign the deed of trust in order to encumber the interest of the spouse who is not on the promissory note.
 - (k) At least 1 percent of the purchase price or \$1,000, whichever is greater, must come from the family's personal resources, as evidenced by bank statements. The family may use grants or other funds to cover the remainder of the down payment and closing costs when available. In the event that other funding is unavailable, and closing costs cannot be arranged with the seller, the program participant may be required to provide the full down payment (24 C.F.R. 982.625(g)(1); 982.626(b)).
 - (l) The adult member of the household that will be listed on the mortgage and has the income must have a minimum credit score of 640. If the applicant has no credit score, a nontraditional credit history must be established by providing documentation of payment history, such as but not limited to rent, utility and phone payment records (24 C.F.R. 982.626(b)).
 - (m) The family must cooperate by attending required meetings and providing requested documentation within the required timeframe (24 C.F.R. 982.626(b)).

(Rule 0770-01-05-.34, continued)

- (n) The family will be issued a Certificate of Eligibility with a time limit of 180 days to locate a home from the date of issuance. The Director of Rental Assistance, may approve additional 30-day extensions not to exceed 270 days. If the time limit is exceeded they will be denied and may be required to wait one year (24 C.F.R. 982.629(a)).
- (o) At any time, if the family no longer meets the eligibility requirements, they will be denied acceptance into the homeownership program and may reapply to the program when eligible (24 C.F.R. 982.626(b); 982.629(c)).
- (p) The Head of Household may also enroll and participate in the Family Self-Sufficiency Program.
- (q) Definition of a Disabled Household. 24 C.F.R. 5.403 outlines the definitions of terms to be used for the Homeownership option. Under the Eligibility Requirements for Families at 24 C.F.R. 982.627, certain sections offer variances of the requirements to families based on whether they are a disabled family or a family that includes a person with disabilities.
 - 1. Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.
 - 2. Person with a disability means a person who:
 - (i) Has a disability, as defined in 42 U.S.C. 423;
 - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (I) Is expected to be of long-continued and indefinite duration;
 - (II) Substantially impedes his or her ability to live independently, and
 - (III) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - (iii) Has a developmental disability as defined in 42 U.S.C. 15002.
 - 3. Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
 - 4. For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and means "individual with handicaps," as defined in 24 C.F.R. § 8.3 , for purposes of reasonable accommodation and program accessibility for persons with disabilities.
- (r) Reasonable Accommodation Exception. THDA may offer an exemption from the Employment Requirement as a reasonable accommodation to a family that includes a person with disabilities, but only if the PHA administering the Program determines that an exemption is needed as a reasonable accommodation so that the Homeownership Program is readily accessible to and usable by the person with disabilities.

(Rule 0770-01-05-.34, continued)

- (2) Partner Agencies. The THDA has partnered with several agencies throughout Tennessee that offer homebuyer education classes or mortgage loan products. In particular, the THDA has partnered with all of the Neighborworks® Organizations in its jurisdiction. The Neighborworks® Organizations (NWOs) offer homebuyer education based on the Full Cycle Lending, Neighborhood Reinvestment Corporation, and the Neighborworks® network. The trainers are certified by Neighborhood Reinvestment. The NWOs may also offer a low-interest second mortgage loan product for qualified buyers. The THDA has also partnered with Tennessee Network for Community and Economic Development (TNCED) and Rural Legal Services for homebuyer education. Rural Development has partnered with the THDA to offer a low-interest first mortgage loan product for buyers in qualifying communities. The THDA will partner with other government and nonprofit agencies as requested and if possible to enable voucher families to purchase a home.
- (3) Pre-Purchase Homebuyer Education (24 C.F.R. 982.630). The THDA requires families to receive an 8 hour minimum of pre-purchase homebuyer education from an approved THDA Homebuyer Education counselor. The family will not be considered eligible to use their voucher to purchase a home until they have completed the homebuyer education requirements and secured appropriate financing to purchase a home. All eligible applicants will be given information on a THDA partner agency that offers homebuyer education in close proximity to their residence. In addition, the THDA may conduct additional education and counseling for families.
 - (a) At a minimum, the homebuyer education will include the following:
 1. Budgeting and money maintenance;
 2. Credit counseling;
 3. Knowing the players and their roles in the home buying process;
 4. How to negotiate purchase price;
 5. Preparation for loan qualification and application;
 6. How to obtain homeownership financing;
 7. How to find a home;
 8. Advantages of purchasing and how to locate a home in an area that does not have a high concentration of low-income families;
 9. Maintaining a home; and
 10. Avoiding delinquencies, defaults and foreclosures.
 - (b) Upon completion of the pre-purchase homebuyer education, the THDA voucher participants should have an understanding of how to do the following:
 1. Determine if homeownership is right for them;
 2. Budget and manage their credit;
 3. Determine what they can afford to spend on a home;
 4. Identify what they want and need in a home;

(Rule 0770-01-05-.34, continued)

5. Shop for a home that meets their needs;
 6. Decide how much to offer for a house;
 7. Obtain and use a home inspection;
 8. Shop for an affordable mortgage;
 9. Know what to expect at closing and settlement;
 10. Understand language and terms associated with mortgages and lending;
 11. Meet the ongoing financial obligations of homeownership and avoid default;
 12. Care for the home after purchase; and
 13. Take advantage of financial opportunities that come with homeownership.
- (4) Post-Purchase Homebuyer Education. The THDA requires post-purchase homebuyer education, 6 hours preferred, with all Homeownership Voucher participants once they have secured a mortgage and have moved into their home in order to remain in compliance with the program regulations. The homeowner is required to demonstrate proof of post-purchase homebuyer education prior to completion of the first year homeownership anniversary. The THDA will work with the family to schedule the post-purchase education.
- (5) Pre-Qualifying Application and Mortgage Readiness (24 C.F.R. 982.626(b)). The Homeownership Voucher program will be reviewed with all eligible voucher participants through an oral briefing or written, mailed materials. All interested participants will be forwarded a Homeownership Voucher Program Pre-Qualifying Application. Once the THDA receives the Pre-Qualifying Application, it will be reviewed to determine whether the applicant meets the initial eligibility criteria. If the applicant meets the initial eligibility criteria, they will be required to provide verifying documents. The Homeownership Voucher Specialist will schedule an appointment for an orientation. The applicant will be required to sign forms which may include, but not limited to, the Certification of Eligibility, Rules and Regulations, and Homeownership Obligations forms.
- (6) Denial. If the Pre-Qualifying Application is denied, the applicant will be sent a denial letter that includes the reason the applicant did not qualify at this time.
- (7) Financing (24 C.F.R. 982.632). Participating families are responsible for securing financing for the purchase of a home that is insured or guaranteed by the State or Federal government, complies with secondary mortgage market underwriting requirements or complies with generally accepted private sector underwriting standards. Although the THDA will not direct families to any particular lender, Neighborworks® Organizations, Rural Development, Fannie Mae, other lenders, and other non-profit entities currently offer affordable first and/or second mortgages to low-income families participating in the Homeownership Voucher Program.
- (a) The proposed financing terms (Loan Disclosure) must be submitted to and approved by the THDA prior to the close of escrow, at least 48 hours prior to the closing and then at least 24 hours in advance of closing if there is a change. The THDA will review the terms of the financing for each family to protect the family from predatory or abusive lending practices.
- (b) The following terms are not acceptable:
1. Loans with financing costs that are a high percentage of the total loan amount;

(Rule 0770-01-05-.34, continued)

2. Loans that include high credit insurance premiums;
 3. Loans with balloon payments or adjustable rate mortgages (ARMS) that will not be paid off by the subsidy before maturity;
 4. Loans with above-market interest rates or discount points;
 5. Loans with pre-payment penalties;
 6. Loans with excessive fees or fees that have not been adequately explained to the borrower; or
 7. Seller financing that is not an approved institution. For example, foreclosed homes are owned by a bank are acceptable. However, individual seller financing or lease to own are not acceptable.
- (c) The THDA may review lender qualifications and the loan terms before authorizing homeownership assistance. The THDA may disapprove proposed financing, refinancing, or other debt if the THDA determines that the debt is unaffordable or the lender or the loan terms do not meet qualifications. In making the determination, the THDA will take into account other family expenses such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses. Determinations of these factors will be reviewed case by case.
- (d) Financing Models. Participating families may use one of two financing models in the Homeownership Voucher Program.
1. One-Mortgage Model. The one-mortgage model allows the Homeownership Voucher Program participant borrower to secure a first mortgage that covers the entire purchase price of the home. HUD's September 7, 2001 Mortgagee Letter (2001-20) advises lenders to assume the Housing Assistance Payment will continue for at least three years and also advises lenders on acceptable underwriting methods when working with Homeownership Voucher participants.
 - (i) The following are acceptable underwriting methods for loans made to Homeownership Voucher Program participants:
 - (I) Add the subsidy payment (HAP) to borrower's income as an "other" source of income. In this model, the subsidy payment may be "grossed up" 25 percent.
 - (II) Deduct the subsidy payment (HAP) from the principal, interest, taxes and insurance (PITI). Housing debt to income ratio is based upon the "net housing obligation" of the borrower.
 - (ii) In the one-mortgage model, the participant makes a payment for his portion of the monthly mortgage payment, approximately 30% of the monthly adjusted income, directly to the lender and the THDA pays the remainder of the mortgage payment directly to the lender or loan servicing company. At the end of the maximum term, the Housing Choice Voucher mortgage assistance payment ends, and the family is responsible for the full mortgage payment. For disabled families, the assistance payment continues as long as they are eligible for HAP. If the mortgage is paid before the term limit ends and HAP is due, it will be paid directly to the participant.

(Rule 0770-01-05-.34, continued)

2. Two-Mortgage Model. The two-mortgage model allows a Homeownership Voucher Program participant borrower, which cannot secure a first mortgage that will be sufficient to cover the full purchase price of a home in their area, the alternative of combining a first and second mortgage to purchase a home. The family secures a conventional first mortgage loan based on their family income. The family is responsible for making monthly payments for the full amount of the first mortgage directly to the lender. A THDA partner, typically a nonprofit entity, provides the second mortgage. The second mortgage is typically a low-interest loan for the maximum term allowed. The family's Housing Choice Voucher subsidy is applied to the principal and interest of the second mortgage and is paid directly to the second mortgage lender or loan servicing company. At the end of the subsidy term, the second mortgage is paid in full.
 - (i) If the family's subsidy payment exceeds the monthly second mortgage loan payment then the excess monthly payment will be made toward the second mortgage principal.
 - (ii) If there is a remaining term limit, second mortgage is paid, then the HAP may be paid to the first mortgage lender.
 - (iii) If the other lender(s) are unwilling to accept a HAP payment, then it will be the same procedure as if all mortgages are paid.
 - (iv) In the event that all mortgages are paid, HAP is due to the participant, and there is a remaining time on the term limit; the HAP will be paid to the participant.
- (e) THDA Financing. Should the borrower choose to pursue THDA-funded financing for the first mortgage, the following steps will be required:
 1. Complete an executed sales contract on a prospective property. This is optional. Given the nature of the transaction, borrowers may wish to wait for program approval or loan pre-approval, subject to section (11) below.
 2. Contact a THDA approved lender, Originating Agent, and begin the first mortgage pre-qualification process to establish preliminary approval for a loan and a reasonable loan amount that the lender would be willing to make.
 3. Establish the availability and need for any second mortgage assistance to provide the purchase price amount. If a sales contract is already executed, need, or lack thereof, will be evident based on difference between the pre-approved amount of the first mortgage and the actual sale price.
 4. If need exists, borrowers must then pursue secondary financing from a provider.
 5. All requirements of the selected THDA mortgage program must be met.
- (8) Final Eligibility Determination (24 C.F.R. 982.632). A family who chooses to use their voucher for homeownership may have their income recertified several times between their initial eligibility determination and the final eligibility determination and voucher issuance. Once the family completes the homebuyer education process and is determined mortgage ready, their income eligibility will be recertified. To ensure an accurate HAP figure for the lender, the family's income will be recertified again when the THDA is notified of the loan closing date.

(Rule 0770-01-05-.34, continued)

- (9) Voucher Issuance and Timeframe for Utilization (24 C.F.R. 982.629(a)). Actually, no voucher will be issued. Once the family is approved for a mortgage, they will have a maximum of 180 days to find a home and enter into a "Contract for Sale." If a participant is unable to enter into a "Contract for Sale" before the end of the 180-day deadline, the applicant may be provided an additional 60 days to either enter into a "Contract for Sale" or the applicant will be denied from the homeownership program and will be required to wait one year to reapply.
- (10) Subsidy Standards (24 C.F.R. 982.635(b)(ii)(4)). Subsidy standards will be the same as those set by the Housing Choice Voucher Program.
- (11) Contract for Sale, Inspection Requirements, and Appraisals (24 C.F.R. 982.631).
 - (a) Contract for Sale. Participants in the Homeownership Voucher program must complete a "Contract for Sale" or Residential Purchase Agreement (herein "Agreement") with the owner of the property to be purchased. The Agreement must include the THDA Addendum to the Sales Contract or Residential Purchase Agreement and must be approved by the THDA. The Agreement should include at least the home's price and terms of sale, the purchaser's pre-purchase inspection requirements, notice that the sale is conditional on the purchaser's acceptance of the inspection report, an agreement that the seller is obligated to pay for necessary repairs and seller certification that the seller has not been debarred, suspended, or subject to a Limited Denial of Participation (LDP) under 2 C.F.R. 180.
 - (b) Independent Inspection. The participant must obtain an independent professional home inspection of the unit's major systems at the participant's expense. The inspection must cover major building systems and components, including foundation and structure, housing interior and exterior and the roofing, plumbing, electrical and heating systems. The report should include a written list of times that are likely to need replacement or repair within the next one to three years. The THDA will review the report with the family, and will determine whether to approve the home for purchase by the family. Even if the unit otherwise complies with the HQS, and may qualify for assistance under the rental voucher program, the THDA has the discretion to disapprove the unit for homeownership assistance based on the information in the inspection report. Reasons for the disapproval of a unit that would otherwise be in compliance with HQS may include:
 - 1. Conditions that were required to be, but were not, disclosed to the buyer by the seller.
 - 2. Conditions that normally require disclosure, of which the owner may not have been aware.
 - 3. Conditions that threaten the health and/or safety of the family.
 - 4. Conditions that will require expenditures for repairs or replacement that exceed the family's resources.
 - 5. Conditions that can be expected to interfere with the family's use and enjoyment of the property.
 - (c) Housing Quality Standards Inspection. The THDA will conduct a Housing Quality Standards (HQS) inspection according to the HUD guidelines and will review the independent professional inspection of the unit's major systems to determine if the unit may be approved for program participation. The unit must pass the HQS inspection before commencement of the Housing Assistance Payment.

(Rule 0770-01-05-.34, continued)

- (d) Environmental Review. Additionally, according to 24 C.F.R. 58.6, the THDA will conduct an environmental review to determine whether the unit is located in:
 - 1. A special flood hazard area identified by the Federal Emergency Management Agency (FEMA). If the unit is located in such an area, the THDA cannot approve the purchase of the unit unless the family can demonstrate, prior to settlement, that it has obtained flood insurance for the property. If a unit is purchased in a special flood hazard area, maintaining flood insurance is a required condition for continuing assistance to the family.
 - 2. Though the THDA does not have any coastal resource, PHA's cannot approve the purchase of a unit located in the coastal barriers resource system with voucher homeownership assistance.
 - 3. A civil airport runway clear zone or a military airfield clear zone. The THDA may approve such a purchase, but must provide written notification to the buyer that the unit is located in an airport runway clear zone or an airfield clear zone. The notification must advise the buyer of what the implications of such locations are and that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information, as described under 24 C.F.R. 58.6.
 - (e) The THDA retains the right to disqualify the unit for inclusion in the homeownership program based on either the HQS inspection or the professional inspection report findings.
 - (f) Appraisals. The Uniform Residential Appraisal Report is required for review. The review will include determining that the sale price is reasonable and assist with the environmental review (24 C.F.R. 982.628(d)(3)(iv); 982.626(c)).
- (12) Portability (24 C.F.R. 982.636).
- (a) Port-Out. Families deemed eligible for homeownership assistance may exercise their right to relocate outside of the THDA's jurisdiction if the receiving public housing authority is administering a Homeownership Voucher Program and is accepting new families into its Homeownership Voucher Program. In the event that a family ports to any county in the state of Tennessee where the Homeownership Voucher Program is not administered, then the THDA will continue to administer the Homeownership Voucher.
 - (b) Port-In. The THDA may administer the Homeownership Voucher Program to Housing Choice Voucher participants under the jurisdiction of another public housing authority within the state of Tennessee. These families must be determined eligible for homeownership assistance and are subject to regular homeownership program guidelines.
 - (c) Whether the THDA will allow porting in or out of the THDA's jurisdiction is dependent upon whether adequate funding exists and will be denied when funding limitations exists.
- (13) Permitted Unit Types (24 C.F.R. 982.628). The unit must be an existing dwelling, the foundation must be poured or the unit must be under construction, before the Contract of Sale is executed. Most single family unit types are eligible, such as single family homes, condominiums or townhomes, manufactured homes (must have permanent foundation), or modular or pre-fabricated homes. All of the unit must be owner-occupied, thus eliminating double-sided duplexes from eligibility. If the family does not own fee title to the real property

(Rule 0770-01-05-.34, continued)

on which the home is located (e.g. manufactured housing on a land lease property), the family must have the right to occupy the site for a period of at least forty years to qualify for participation. The home must be located on a permanent foundation. The unit should be either owner-occupied or vacant at the time of the contract of sale is executed. The THDA does not allow families to enter contracts on such units which any tenant is renting. Per the Uniform Relocation Act, if an existing tenant is renting the home the THDA must be willing to assume relocation expenses, unless the family is purchasing the home they are already renting.

- (14) Permitted Ownership Arrangements (24 C.F.R. 982.628). To be approved for the program, a home must be either under construction or already existing at the time the THDA makes the final eligibility decision. The homeownership option may be utilized in the following two types of housing:
 - (a) A unit owned by the family, where one or more family members hold title to the home, including homes previously occupied under a lease-purchase agreement; or
 - (b) A cooperative unit, where one or more family members hold membership shares in the cooperative, which applies only to elderly and disabled persons as a reasonable accommodation.
- (15) Homeownership Assistance Payment (24 C.F.R. 982.635). The participant's total monthly assistance payments will equal the lower of the following:
 - (a) The voucher payment standard minus the Total Tenant Payment (the greater of 30% of monthly adjusted income or 10% of monthly income or minimum rent); or
 - (b) The monthly homeownership expenses minus the TTP.
 - 1. Homeownership Expenses. Homeownership expenses include principal and interest on the mortgage debt, mortgage insurance premium, real estate taxes and hazard insurance, homeownership association fees for cooperatives, maintenance fees for condominiums, the THDA's allowance for utilities, the THDA's allowance for Maintenance and Repairs, and other costs as the THDA determines necessary, including the cost of making the home accessible for a family member with disabilities, if necessary, as a reasonable accommodation. The THDA's allowance for maintenance and repairs costs are based on the number of bedrooms of the unit, not allocation. The THDA's allowance for utilities is the lesser of the unit size actually selected and the size authorized on the voucher.
 - (c) Mortgage assistance payments will be made by the THDA directly to the approved first or second mortgage lender or loan servicing company. If the assistance payment exceeds the amount due to the lender, the THDA must pay the excess directly to the family. (24 C.F.R. 982.635(d)).
 - (d) When using the two-mortgage model, the household is responsible for the first mortgage payment in full at all times.
 - (e) The THDA may choose to perform an interim reexamination and increase the mortgage assistance payments.
- (16) Payment Standard (24 C.F.R. 982.635(b)(ii)(4)). At initial move-in to the Homeownership Voucher Program, the payment standard schedule and amount will coincide with those set by the HCV program. The payment standard for subsequent years, after the initial year, will be based on the higher of the following:

(Rule 0770-01-05-.34, continued)

- (a) The payment standard in effect at commencement of the homeownership assistance; or
 - (b) The payment standard in effect at the most recent regular recertification of the family's income and size.
 - (c) The payment standard is the lesser of the bedroom size allocated or home selected. Nevertheless, it will never be below the amount used at closing regardless of the bedroom allocation.
- (17) Allowance for Routine and Long-Term Maintenance and Repairs (24 C.F.R. 982.635(c)). As required by HUD regulations, the THDA has established reasonable allowances for routine and long-term maintenance and repairs. The allowances are determined by taking into consideration reasonable and ongoing costs to the family for home maintenance, major repairs and replacements. The family is responsible to make and pay for all homeownership related costs such as, repairs, replacements, routine and long-term maintenance.
- (18) Utility Allowance (24 C.F.R. 982.635(b)(ii)(4)). The regular Housing Choice Voucher Program utility allowance will be utilized for the Homeownership Voucher Program.
- (19) Maximum Subsidy Term (24 C.F.R. 982.634). Homeownership assistance will only be provided for the time period the family is in residence in the home. Housing Choice Voucher assistance may be provided for a maximum of fifteen (15) years if the initial mortgage secured to finance the purchase of the home has a term that is twenty (20) years or longer. Mortgages shorter than 20 years have a ten (10)-year term limit. Elderly and disabled families are exempt from a term limit. The participant will be recertified on an annual basis to determine income eligibility. In the event that the participant's income increases to the point that they are no longer eligible to receive a mortgage subsidy (i.e. zero mortgage assistance payment), the THDA will notify the lenders or loan servicing company of the family's increased financial responsibility for the payment. The family, however, remains eligible for the program, in the event that their income decreases, for 180 days from the date of the change (zero HAP periods).
 - (a) In the event that the family no longer qualifies as a disabled or elderly family, the maximum HAP term rule goes into effect from the date homeownership assistance commenced. The family will be provided at least six (6) months of continued assistance after the maximum term expires, as long as the family continues to be otherwise eligible for assistance. For example, a family who is no longer considered disabled after receiving twenty (20) years of HAP will receive six (6) additional months of HAP beyond the cessation of disabled status. At the end of the six-month period, HAP will cease since the maximum term of fifteen (15) years has been exceeded.
 - (b) The subsidy term begins on the date the first Homeownership Housing Assistance Payment is paid, regardless of which PHA paid the HAP.
- (20) Annual Recertification (24 C.F.R. 982.633). At least one hundred twenty (120) days prior to the family's annual recertification date, the THDA will contact the family and request updated income and other verification information and, when necessary, schedule an HQS inspection. Additionally, at every annual recertification the family will be required to provide documentation of homeownership expenses such as, mortgage statement(s). The family must cooperate with the recertification process in order to remain eligible to receive assistance through the Homeownership Voucher Program.
- (21) Re-inspections. The THDA will randomly perform a Housing Quality Standards (HQS) inspection at any time after the home purchase. The THDA may elect to conduct other HQS

(Rule 0770-01-05-.34, continued)

inspections at the request of a partner agency or lender. Based on the inspection, the family will be sent a list of required repairs. The THDA will conduct another inspection within thirty (30) days to determine if the repairs have been completed. The family will be considered non-compliant with the program if they fail to make repairs within the required timeframe. The HQS report may be shared with the lender at the lender's request to allow the lender to work with the family on securing financing for any major repairs necessary to maintain the quality of the home. The unit may be inspected every year if an extra room was allocated for live-in aide or reasonable accommodation to verify the room is being used for its intended purpose. At any time, for auditing purposes or if a complaint is received, homes may be selected for HQS inspection. The home must always pass HQS. Homeowners must repair emergency HQS violations within 24 hours.

- (22) Asset Income (24 C.F.R. 5.603(b)(4)). The value of the home will be excluded in the "net family assets" for the first 10 years. After 10 years of assistance, the equity of the home will be verified and counted as an asset income.
- (23) Home Sale (24 C.F.R. 982.637). The family must sell their current home before they may purchase another home with Housing Choice Voucher assistance. If the family requests to purchase another home with Housing Choice Voucher assistance after they have sold their first home, they must meet the eligibility requirements for participation in the Homeownership Program (e.g. must be employed full-time). The maximum term of homeownership assistance applies to the cumulative time the family receives homeownership assistance. The time limit begins from the initial home purchase in any PHA's Homeownership Voucher program. The family may not move more than once in any twelve (12)-month period. The THDA may deny permission to move with continued assistance due to lack of funding to provide continued assistance (24 C.F.R. 982.637(c)(1)).
- (24) Default. If the family defaults on the home, they will not be issued a rental assistance voucher and will never be allowed to participate in the homeownership program (24 C.F.R. 982.627(e); 982.638(d)).
- (25) Recapture (24 C.F.R. 982.640). The THDA will not recapture the Homeownership Voucher payments unless there was an act of fraud or misrepresentation of a material fact in order to obtain a benefit. Other program funds that were used to purchase the home may require a recapture. Depending on the loan product used, the IRS may have a recapture tax (IRS form 8828).
- (26) Taxes, Insurance, Payments, and Maintenance. The family is responsible to ensure that all real estate taxes, insurance, and mortgages are paid by the due date. Additional responsibilities include paying for any maintenance or repairs that are needed or required for the home. The family is responsible for seeking advice of a tax attorney to determine how much of the mortgage interest and real estate taxes may be deducted (Internal Revenue Code of 1986 IRS letter dated 28th of August 2001).
- (27) Termination of Assistance (24 C.F.R. 982.638; 982.552(b); 982.553). The family must comply with all Family Obligations. Failure to comply with the Family Obligations of the Homeownership Voucher program will result in termination of the family's assistance. Before commencement of homeownership assistance, the participant must execute a "Statement of Family Obligations for the Homeownership Program." If a family is terminated from the Homeownership Voucher Program, they must reapply for the Housing Choice Voucher Program in order to receive rental assistance. To continue to receive homeownership assistance, a participant must comply with the following family obligations:
 - (a) The participant must comply with the terms of any mortgage securing the debt incurred to purchase the home and any refinancing of such debt.

(Rule 0770-01-05-.34, continued)

- (b) The family may not sell, convey, or transfer any interest in the home to any entity or person other than a member of the assisted family residing in the home.
- (c) The family may not take out a home equity loan without the written consent of the THDA and any second mortgage lender.
- (d) The family must supply required information regarding income and family composition in a timely manner in order to calculate correctly total tenant payment and homeownership assistance.
- (e) The family must provide information on any mortgage or other debt incurred to purchase the home, any refinancing of such debt, and any sale or other transfer of interest in the home.
- (f) The family must notify the THDA if the family defaults on a mortgage securing any debt incurred to purchase the home.
- (g) The family must notify the THDA before the family moves out of the home.
- (h) At annual recertification, the participant must document that the mortgage, insurance, and utility payments are current.
- (i) Non-elderly and nondisabled households must include at least one employed adult family member at all times during participation in the Homeownership Voucher Program. The member must earn at least \$15,000 annually. In the event of loss of employment that results in annual income of less than \$15,000, the household will be offered four months to secure new employment or increase paid salary. See 0770-01-05-.34(1)(g).
- (j) A participant defaults on his or her mortgage loan (i.e. fails to fulfill a monthly payment obligation as required by the Deed of Trust note on a timely basis), as determined by the lender.
- (k) The family has been ejected from the home due to a judgment or order of foreclosure.
- (l) The family transfers or conveys the ownership of the home.
- (m) The family has been unemployed for more than four (4) months.
- (n) A family member has ownership interest in another residential property.
- (o) The assisted home must be the family's only residence.
- (p) The family must not sublet or lease the unit to someone else.
- (q) The head of household must live in the assisted home.
- (r) The family must comply with any requirement to attend and must complete ongoing homeownership education, such as post-purchase counseling.
- (s) Must comply with all regulations relating to crime or alcohol abuse by family members.
- (t) Must comply with the recertification process, report changes, and complete HQS repairs.

(Rule 0770-01-05-.34, continued)

- (28) Informal Hearing Process (24 C.F.R. 982.555). When the THDA makes certain adverse decisions towards a HCV applicant or participant, there are times when an informal review or an informal hearing is available. See 0770-01-05-.28.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Part 982. **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015. Amendments filed October 5, 2018; effective January 3, 2019. Amendments filed June 11, 2024; effective September 9, 2024.

0770-01-05-.35 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.36 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.37 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.38 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.39 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.40 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.41 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.42 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.43 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.44 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.45 REPEALED.

Authority: T.C.A. § 13-23-115(18). **Administrative History:** Original rule filed May 16, 1980; effective June 30, 1980. Repeal filed September 28, 2004; effective December 12, 2004. Repeal filed June 11, 2024; effective September 9, 2024.

0770-01-05-.46 PROJECT-BASED VOUCHER PROGRAM (24 C.F.R. 983). THDA has chosen to take a percentage of its authorized units under its Consolidated Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD) and attach the funding to specific units (project-base the units) instead of using it for tenant-based vouchers under its Housing Choice Voucher (HCV) Program. This is known as the Project-Based Voucher (PBV) Program and its rule is codified at 24 C.F.R. 983.

- (1) When the PBV Rule Applies. Many parts of the PBV Program follow the Tenant-Based Voucher Rule codified at 24 C.F.R. 982 and, therefore, much of this Administrative Plan will also apply to the PBV Program, except as outlined under 24 C.F.R. 983.2 and this section.
- (2) Provisions Under 24 C.F.R. 982 and This Administrative Plan That Do Not Apply to the PBV Program.
 - (a) Provisions on the issuance or use of a voucher;
 - (b) Provisions on portability;
 - (c) Provision on the following special housing types: Shared housing, manufactured home space rental, and the homeownership option;
 - (d) Subpart D of part 982: paragraph (e)(2) of 24 C.F.R. 982.158;
 - (e) Subpart E of part 982: paragraph (e) of 24 C.F.R. 982.201, paragraph (b)(2) of 24 C.F.R. 982.202, and paragraph (d) of 24 C.F.R. 982.204;
 - (f) Subpart G of part 982, with the following exceptions:
 1. Section 982.310 (owner termination of tenancy) applies to the PBV Program, but to the extent that those provisions differ from 983.257, the provisions of 983.257 govern; and

(Rule 0770-01-05-.46, continued)

2. Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from 983.256(g), the provisions of 983.256(g) govern; and
 3. Section 982.316 (live-in aide) applies to the PBV Program;
- (g) Subpart H of part 982;
- (h) In subpart I of part 982: 24 C.F.R. 982.401; paragraphs (a)(3), (c), and (d) of 24 C.F.R. 982.402; 24 C.F.R. 982.403; 24 C.F.R. 982.404; paragraphs (a), (b), (d), (i) and (j) of 24 C.F.R. 982.405; paragraphs (a), (e), and (f) of 24 C.F.R. 982.406; and 24 C.F.R. 982.407;
- (i) In subpart J of part 982: paragraphs (a), (b)(3), (b)(4) and (c) of Section 982.451 and Section 982.455;
- (j) Subpart K of Part 982, except the following provisions apply to the PBV Program:
1. Section 982.503, paragraphs (a)(10) and (d)(1)–(4) do apply (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);
 2. Section 982.516 (family income and composition; regular and interim examinations); and
 3. Section 982.517 (utility allowance schedule); except that 24 C.F.R. 982.517(d) does not apply; and
- (k) In subpart M of part 982: Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and provisions concerning shared housing (Sections 982.615 through 982.618), manufactured home space rental (Sections 982.622 through 982.624), and the homeownership option (Sections 982.625 through 982.641).
- (3) Maximum Number of PBV Units Allowed Under THDA's PBV Program and Exceptions.
- (a) THDA may select owner proposals to provide project-based assistance for up to twenty (20) percent of its authorized voucher units. THDA is not required to reduce its number of PBV units selected under an Agreement or Housing Assistance Payment (HAP) contract if its amount of authorized units is subsequently reduced.
 - (b) The following types of units are not subject to the Twenty (20) Percent PBV Program Cap.
 1. RAD. Units committed to RAD PBV are excluded from the numerator and denominator when calculating the number of voucher units that can be project-based. This exception applies regardless of the effective date of the HAP contract.
 2. HUD-VASH PBV. HUD has awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding. These PBV units supported by HUD-VASH vouchers do not count against the PBV program cap as long as the vouchers remain under the PBV HAP contract at the designated

(Rule 0770-01-05-.46, continued)

project and they, therefore, are excluded from the numerator and denominator when calculating the number of voucher units that can be project-based. However, all other HUD-VASH vouchers, including non-set-aside HUD-VASH vouchers are subject to the project-based cap limit; and

3. Units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy, including LIHTC. Units must be covered under a PBV HAP contract, effective on or after April 18, 2017.
- (c) THDA may project-base an additional ten (10) percent of its authorized units if the additional units meet one of the exceptions below. THDA does not need to meet the 20 percent maximum units before it designates eligible units for the ten (10) percent exception.

1. Homeless. The units are specifically made available to house individuals and families who meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) included in 24 C.F.R. 578.3.

This definition includes unaccompanied youth under twenty-five (25) years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (1) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 1437e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a); (2) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the sixty (60) days immediately preceding the date of application for homeless assistance; (3) Have experienced persistent instability as measured by two moves or more during the sixty (60)-day period immediately preceding the date of applying for homeless assistance; and (4) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment;

2. Veteran. The units are specifically made available to house families that are comprised of or include a veteran. A veteran is a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. 38 U.S.C. 101(2). HUD-awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding are already excluded from the program cap and are not to be included under this ten (10) percent exception category.
3. Supportive Housing to Persons with Disabilities or to Elderly Persons. The units provide supportive housing to persons with disabilities or to elderly persons, as defined in 24 C.F.R. 5.403. Supportive housing means the project makes a range of services reasonably available to all of the families in the project that are receiving PBV assistance and the services are (i) tailored to the needs of the residents occupying such housing; (ii) voluntary; and (iii) are continuous for as long as the family is in need of the service. Such services may include (but are

(Rule 0770-01-05-.46, continued)

- not limited to): meal service adequate to meet nutritional need; housekeeping aid; personal assistance; transportation services; health-related services; case management; child care; educational and employment services; job training; counseling; peer support; life skills training; or other services that meet the above criteria. Such services need not be provided by the owner or on-site, as long as they can be made reasonably available through a service provider. Such services must be made available to a household within one hundred twenty (120) days of the household's request for services. The disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit, but the member of the family may choose not to participate in the service.
4. Area Where Vouchers Are Difficult to Use. The units are located in an area where vouchers are difficult to use as defined by 24 C.F.R. 983.3.
 5. Replacement Units. The units replace, on a different site, the units listed in 24 C.F.R. 983.59(b)(1) and (2) for which THDA had authority under 24 C.F.R. 983.59 to commit PBV assistance on the original site without the units counting toward the program cap or project cap. The units are eligible under this category only if THDA has not committed and will not commit PBV assistance to the original site pursuant to the normally applicable exclusions of those units under 24 C.F.R. 983.59. If THDA subsequently plans to commit PBV assistance to units on the original site, those proposed units count toward and must comply with the twenty (20) percent maximum or increased cap of this section, as applicable, and the project cap requirements of 24 C.F.R. 983.54.
 6. Units Exclusively for Certain Eligible Youth. The units are exclusively made available to eligible youth as described in Section 8(x)(2) of the U.S. Housing Act and if the units exclusively made available to eligible youth use Family Unification Program ("FUP") assistance that is normally available for eligible families and youth described in Section 8 (x)(2) of the U.S. Housing Act, THDA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth).
- (d) Higher Project Cap. THDA may provide PBV assistance to the greater of twenty-five (25) units or forty (40) percent of the number of units in the project if the project is located in an area where vouchers are difficult to use, defined as: i) a census tract with a poverty rate of twenty (20) percent or less as determined by HUD; ii) a zip code area where the rental vacancy rate is less than four (4) percent as determined by HUD; iii) a zip code area where 90 percent of the Small Area FMR is more than one hundred ten (110) percent of the metropolitan area or county FMR.
 - (e) Exceptions to the Project Cap. A project is not limited to a single exception category but may include any of the categories below.
 1. Units exclusively for elderly families, as defined in 24 CFR 5.403 do not count against the Project Cap.
 - (i) Elderly family, thereunder, means a family whose head (including co-head), spouse, or sole member is a person who is at least sixty-two (62) years of age. It may include two or more persons who are at least sixty-two (62) years of age living together, or one or more persons who are at least sixty-two (62) years of age living with one or more live-in aides.
 - (ii) It is not necessary that the entire project or buildings within the project be designated as elderly in order for the exception to apply. Under the PBV

(Rule 0770-01-05-.46, continued)

Program, projects are not “designated” as elderly as is the case in other programs, such as the Public Housing or Section 202 Elderly Programs.

- (iii) The owner must identify under the HAP contract, however, the particular number of units that are exclusively made available for elderly families.
 - (iv) As each unit turns over, THDA may amend the HAP contract to transfer the exception status from one unit to another, provided it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 24 CFR 983.207(a).
 - (v) As provided under 24 CFR 983.262(e), THDA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death or long-term or permanent hospitalization or nursing care of the elderly family member), the elderly family member no longer resides in the unit. See Section 0770-01-05-.26(2)(d) of this Administrative Plan for rules regarding Absences from Unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family, unless it is possible to transfer the exception status to another unit as described in the paragraph above.
2. Units Exclusively for Certain Eligible Youth. The units are exclusively made available to eligible youth as described in Section 8(x)(2) of the U.S. Housing Act and if the units exclusively made available to eligible youth use Family Unification Program (“FUP”) assistance that is normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act, THDA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth).
 3. Supportive Services. Units are made exclusively available to households eligible for supportive services. Supportive services must be made reasonably available to all of the families in the project that are receiving PBV assistance, but the family does not need to participate in the services as a condition of living in the excepted unit. The services should be designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. Such services may include (but are not limited to): meal service adequate to meet nutritional need; housekeeping aid; personal assistance; transportation services; health-related services; case management; child care; educational and employment services; job training; counseling; peer support; life skills training; or other services that meet the above criteria THDA’s Family Self Sufficiency Program also qualifies as a supportive service. Such services need not be provided by the owner or on-site, as long as they can be made reasonably available through a service provider. Such services must be made available to a household within one hundred twenty (120) days of the household’s request for services.
- (4) Units Excluded from the Program Cap and the Project Cap.
 - (a) Exclusion of Existing or Rehabilitated Units. Excluded units must, in the five (5) years prior to the request for proposals (RFP) or the proposal or project selection date in the case of selection without RFP, fall into one of the following categories provided that the units are removed from all categories prior to the effective date of the HAP contract.

(Rule 0770-01-05-.46, continued)

1. The unit received one of the following forms of HUD assistance: (i) Public Housing Capital or Operating Funds (section 9 of the Act); (ii) Project-Based Rental Assistance (section 8 of the Act), including units assisted under the section 8 moderate rehabilitation (Mod. Rehab.) program and Mod. Rehab. single-room occupancy (SRO) program; (iii) Housing for the Elderly (section 202 of the Housing Act of 1959); (iv) Housing for Persons with Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act); (v) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965); (vi) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act); or (vii) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978); or
 2. The unit was subject to a federally required rent restriction under one of the following programs: (i) the Low-Income Housing Tax Credit Program (26 U.S.C. 42); (ii) Section 515 Rural Rental Housing Loans (42 U.S.C. 1485) or (iii) the following HUD Programs: (a) Section 236; (b) Section 221(d)(3) Below Market Interest Rate; (c) Housing For the Elderly (Section 202 of the Housing Act of 1959); (d) Housing for Persons With Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act); or (e) Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978) or (f) any other program identified by HUD through Federal Register Notice.
- (b) Exclusion of Replacement Units. Newly constructed units developed under the PBV program may be excluded from the Program Cap and Project Cap provided the primary purpose of the newly constructed unit was to replace units that meet the criteria of 0770-01-05-.37(5)(a)1. and 2. The newly constructed unit must be located on the same site as the unit it is replacing, however, an expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. One of the following must also be true: (i) former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV new construction project when it is ready for occupancy; or (ii) prior to the demolition of the original project, the PBV newly constructed project must be identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.
- (c) Unit size configuration and number of units for newly constructed and rehabilitated projects. The unit size configuration of the PBV newly constructed or rehabilitated project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV-assisted units may differ from the number of units in the original project. However, only the total number of units in the original project are excluded from the program cap and the project cap. Units that exceed the total number of covered units in the original project are subject to the program cap and the project cap.
- (d) Inapplicability of Other Program Cap and Project Cap Exceptions. The ten (10) percent exception under 24 C.F.R. 983.6 and the project cap exception under 24 C.F.R. 983.54(c)(2) are inapplicable to excluded units under this section
- (5) Selection of Units for the PBV Program. Units are selected for the PBV Program by THDA selecting projects for PBV assistance based on a previous competition or by THDA requesting PBV proposals via public notice. Selection will be based on a previous

(Rule 0770-01-05-.46, continued)

competition unless such process does not yield enough eligible units for PBV assistance, in which case THDA will resort to issuing a Request for Proposals.

- (a) **Analysis of Units and Budget.** THDA must calculate the number of authorized voucher units that it is permitted to project base and determine the amount of budget authority that it has available for project basing before it issues a request for proposals, makes a selection based on a previous competition, amends an existing HAP contract to add units, or noncompetitively selects a project.
- (b) **Analysis of Impact.** Prior to selection, THDA must perform an analysis of the impact if project-basing fifty (50) percent or more of THDA's authorized voucher units. The analysis should consider the ability of THDA to meet the needs of the community across its tenant-based and project-based voucher portfolio, including the impact on, among others; families on the waiting list and eligible PBV families that wish to move. The analysis performed by THDA must be available as part of the public record.
- (c) **Selection Based on Previous Competition.** THDA will utilize its other state and federal housing assistance, community development, and supportive service programs, including, but not limited to, its Tennessee Housing Trust Fund programs, Housing Trust Fund Program, HOME Program, and the Low-Income Housing Tax Credit Program (THDA Programs) to select projects for PBV assistance that (i) assist families in Tennessee's rural and distressed counties (as defined under the THDA Program it was initially awarded under), (ii) provide permanent supportive housing within THDA's HCV service area, or (iii) otherwise serve THDA's priorities outlined in its Annual Plan. THDA may either contact specific owners directly, whose projects fit the criteria THDA is seeking, to inform them of available PBV assistance, or it may send an email blast to owners under the programs above, notifying them of an offering of PBV assistance, in order for the owners to submit applications for such assistance. Before any round of selection based on a previous competition, THDA will also post its current selection criteria and the number of units it is seeking to project base to www.THDA.org. To be eligible for selection, a project must have been selected:
 - 1. By THDA;
 - 2. Competitively under one of its housing assistance programs;
 - 3. Within the last three (3) years of the PBV selection date; and
 - 4. Without any consideration as to whether the project would receive PBV assistance.
- (d) **Selection Based on Requests for PBV Proposals via Public Notice.**
 - 1. THDA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
 - 2. Public notice will be given per publication in a local newspaper of general circulation, on THDA's website and phone system, or other suitable means and will specify the deadline for submission. The Request for Proposal will specify the details of the selection criteria.
 - 3. THDA will draft detailed application and selection information before any request and will provide such at the request of any interested parties.

(Rule 0770-01-05-.46, continued)

- (e) Before THDA makes a selection based on a previous competition or issues a Request for PBV Proposals, it will provide the following to its HUD field office for review:
 - 1. The total amount of authorized units:
 - 2. The percentage of authorized units available to be project-based; and
 - 3. The total amount of authorized units THDA is planning to project-base pursuant to the selection or request.
 - (f) All PBV proposals must comply with HUD program regulations and requirements, including a determination that the property is eligible housing (24 C.F.R. 983.53 and 983.54), complies with the cap on the number of PBV units per project (24 C.F.R. 983.56), and meets the site selection standards (24 C.F.R. 983.57).
 - (g) THDA will provide written notice to the party that submitted a selected proposal and public notice of such selection within fourteen (14) calendar days of such selection.
 - (h) THDA will make documentation available for public inspection regarding the basis for the selection of a PBV proposal.
- (6) Eligible Housing Types. THDA may attach PBV assistance to units in existing housing or in newly constructed or rehabilitated housing developed under in accordance with an Agreement, as defined under 24 C.F.R. 983.3.
- (a) Existing Housing. A housing unit is considered an existing unit for purposes of the PBV Program if, at the time of notice of selection, the units substantially comply with housing quality standards (HQS) subject to the National Standards for the Physical Inspection of Real Estate (NSPIRE), which THDA defines as units with no life-threatening violations that will pass HQS within twelve (12) months of the HAP contract execution date.
 - 1. Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the Agreement to Enter into a Housing Assistance Payment Contract (AHAP) do not subsequently qualify as existing housing.
 - 2. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.
- (7) Ineligible Units. THDA may not attach or pay PBV assistance for units in the following types of housing:
- (a) Shared Housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family;
 - (b) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
 - (c) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, THDA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(Rule 0770-01-05-.46, continued)

- (d) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- (e) Manufactured Homes. Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located;
- (f) Transitional Housing. Housing where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within twenty-four (24) months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in twenty-four (24) months and cannot be extended;
- (g) Owner-Occupied Units. THDA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program;
- (h) Ineligible Families. Before THDA selects a specific unit to which assistance is to be attached, it must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. THDA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program;
- (i) Units For Which Commencement of Construction or Rehabilitation Occurred Prior to Agreement to Enter into a Housing Assistance Payment Contract (AHAP). THDA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced, as defined in 24 C.F.R. 983.152, after proposal submission and prior to execution of an AHAP; and
- (j) Units in Subsidized Housing. THDA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:
 - 1. A public housing dwelling unit;
 - 2. A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
 - 3. A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
 - 4. A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
 - 5. A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
 - 6. A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(Rule 0770-01-05-.46, continued)

7. A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
8. Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
9. Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
10. A Section 101 rent supplement project (12 U.S.C. 1701s);
11. A unit subsidized with any form of tenant-based rental assistance (as defined at 24 C.F.R. 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);
12. A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by THDA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

(8) Site Selection Standards.

- (a) THDA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless it has determined that project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.
- (b) In determining whether a proposed PBV development will be selected, THDA must consider the following:
 1. Whether the census tract in which the proposed PBV development will be located is in a HUD-Designated Enterprise Zone, Economic Community, or Renewal Community;
 2. Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
 3. Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
 4. Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
 5. Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
 6. If the poverty rate in the area where the proposed PBV development will be located is greater than twenty (20) percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

(Rule 0770-01-05-.46, continued)

7. Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located;
 8. Whether the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD’s implementing regulations at 24 C.F.R. part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629); and HUD’s implementing regulations at 24 C.F.R. parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 C.F.R., 1959–1963 Comp., p. 652) and HUD’s implementing regulations at 24 C.F.R. part 107. The site must meet the section 504 site selection requirements described in 24 C.F.R. 8.4(b)(5); and
 9. Whether the site meets HQS site standards at 24 C.F.R. 982.401(l).
- (c) Existing and Rehabilitated Housing Site and Neighborhood Standards. A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:
1. Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)
 2. Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
 3. Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
 4. Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.
 5. Be free of disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.
 6. The site and neighborhood may not be subject to serious adverse environmental conditions natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.
- (d) New Construction Site and Neighborhood Standards. A site for newly constructed housing must meet the following site and neighborhood standards:
1. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(Rule 0770-01-05-.46, continued)

2. The site must not be located in an area of minority concentration, except as otherwise permitted below, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
3. A project may be located in an area of minority concentration only if:
 - (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
 - (ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see below for further guidance on this criterion).
 - (iii) “Sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Instead, application of this standard should produce a reasonable distribution of assisted units each year, which, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality’s population.
 - (iv) Units may be considered “comparable opportunities” if they have the same household type (elderly, disabled, family, large family); tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
 - (v) Application of the sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:
 - (I) A significant number of assisted housing units are available outside areas of minority concentration.
 - (II) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten (10) years, relative to the racial mix of the eligible population.
 - (III) There are racially integrated neighborhoods in the locality.
 - (IV) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
 - (V) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(Rule 0770-01-05-.46, continued)

- (VI) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
 - (VII) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
 - (vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- 4. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
 - 5. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
 - 6. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
 - 7. Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.
- (9) Environmental Review.
- (a) HUD Environmental Regulations. Activities under the PBV Program are subject to HUD environmental regulations at 24 C.F.R. 50 and 58.
 - (b) Existing Housing. No Environmental Review is required to be undertaken before THDA enters into a HAP contract for existing housing, unless: 1) an Environmental Review is required by law or regulation relating to funding other than PBV HAP; 2) the project or proposal was selected in accordance with the site selection standards at 24 C.F.R. 983.55 in effect before June 6, 2024.
 - (c) New Construction/Rehabilitation. An Environmental Review is required for new construction or rehabilitated projects. THDA may not enter into an Agreement or HAP contract with an owner, and the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or

(Rule 0770-01-05-.46, continued)

commit or expend program or local funds for PBV activities, until one of the following occurs:

1. THDA has completed the environmental review and HUD has approved the environmental certification and HUD has given a release of funds, as defined in 24 C.F.R. 983.3(b);
2. THDA has determined that the project to be assisted is exempt under 24 C.F.R. 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 C.F.R. 58.35(b); or
3. HUD has performed an environmental review under 24 C.F.R. part 50 and has notified the PHA in writing of environmental approval of the site.
4. HUD will not approve the release of funds for PBV assistance if the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before THDA submits and HUD approves its request for release of funds (where such submission is required).

- (d) Mitigating Measures. THDA must require the owner to carry out mitigating measures required by HUD as a result of the environmental review.

(10) Relocation Requirements.

- (a) Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [42 U.S.C. 4201–4655] and implementing regulations at 49 C.F.R. part 24.
- (b) The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. THDA may not use voucher program funds to cover relocation costs, except that THDA may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law.
 1. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 C.F.R. 982.155 and other official HUD issuances.
- (c) The acquisition of real property for a PBV project is subject to the URA and 49 C.F.R. part 24, subpart B. It is the responsibility of THDA to ensure the owner complies with these requirements.

(11) Housing Quality Standards (HQS). On May 11, 2023, HUD published the “Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE). These requirements are outlined in Chapter 0770-01-05-.23 of this Administrative Plan and any differences between the HCV Program and the PBV Program are outlined here.

- (a) Lead-Based Paint Requirements. The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 C.F.R. part 35, subparts A, B, H, and R, apply to the PBV program.

(Rule 0770-01-05-.46, continued)

- (b) Enforcement. 24 C.F.R. 982 and 983 do not create any right of the family or any party, other than HUD or THDA, to require enforcement of HQS requirements or to assert any claim against HUD or THDA for damages, injunction, or other relief for alleged failure to enforce HQS.
- (c) Additional THDA Quality and Design Requirements. This section establishes the minimum federal housing quality standards for PBV housing. However, THDA also requires adherence to its Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units for PBV units, which must be specified in the Agreement.
- (d) Housing Accessibility for Persons with Disabilities.
 - 1. Program Accessibility. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. part 8. THDA will ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 C.F.R. part 8, subpart C.
 - 2. Design and Construction. Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 C.F.R. 100.205, as applicable.
- (e) Inspections.
 - 1. Pre-Selection Inspection.
 - (i) Inspection of Site. THDA must examine the proposed site before the proposal selection date.
 - 2. Turnover Inspections. THDA will approve assisted tenancy of a unit prior to the HQS inspection if the property has passed an alternative inspection (inspections of housing assisted under HOME, LIHTC, or other inspections performed by HUD) within the past 24 months. THDA must conduct an initial inspection of the unit, within fifteen (15) days of receiving the Request for Tenancy Approval (RTA). THDA may not provide HAP until the unit fully complies with the HQS.
 - (i) If the unit passes the initial HQS inspection, THDA will pay HAP retroactively to the effective date of the lease.
 - (ii) If the unit fails the initial HQS inspection, life-threatening deficiencies must be corrected within 24 hours of receiving the inspection results. Non-life-threatening deficiencies must be corrected within 30 calendar days.
 - (I) If the deficiencies are corrected, THDA will pay HAP retroactively to the effective date of the lease.
 - (II) If the deficiencies are not corrected, within timeframe established, THDA must abate the HAP, in accordance with this Administrative Plan.
 - 3. Periodic Inspections.

(Rule 0770-01-05-.46, continued)

- (i) At least biennially, during the term of the HAP contract, THDA must inspect a random sample, consisting of at least twenty (20) percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this inspection requirement.
- (ii) If more than twenty (20) percent of the sample of inspected contract units in a building fail the initial inspection, then THDA must reinspect one hundred (100) percent of the contract units in the building.

4. Other Inspections.

- (i) THDA must inspect contract units whenever needed to determine that the contract units comply with HQS, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. THDA must take into account complaints and any other information coming to its attention in scheduling inspections.
- (ii) THDA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS. (Family HQS obligations are specified in 24 C.F.R. 982.404(b).)
- (iii) In conducting quality control of HQS inspections, THDA must include a representative sample of both tenant-based and project-based units.

(12) Requirements for Rehabilitated and Newly Constructed Units.

- (a) Agreement to Enter Into HAP Contract ("Agreement"). THDA must enter into an Agreement with the owner at such time as the subsidy layering review is complete, the environmental review is complete and THDA has received approval, and if construction or rehabilitation has not commenced after proposal submission. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing. Additional Agreement requirements include the following:
 - 1. The Agreement must be in the form required by HUD headquarters (see 24 C.F.R. 982.162).
 - 2. In the Agreement the owner agrees to develop the contract units to comply with HQS, and THDA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, THDA will enter into a HAP contract with the owner for the contract units.
 - 3. The Agreement Must Describe the Housing. At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:
 - (i) Site;
 - (ii) Location of contract units on site;
 - (iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(Rule 0770-01-05-.46, continued)

- (iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
 - (v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
 - (vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 C.F.R. 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
 - (vii) Estimated initial rents to owner for the contract units;
 - (viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by THDA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications;
 - (ix) HQS; and
 - (x) THDA Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units.
4. Conduct of Development Work.
- (i) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing. The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.
 - (ii) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 C.F.R. part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.
 - (iii) Equal Employment Opportunity. The owner must comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 C.F.R., 1964–1965 Comp., p. 339), 11625 (3 C.F.R., 1971–1975 Comp., p. 616), 12432 (3 C.F.R., 1983 Comp., p. 198) and 12138 (3 C.F.R., 1977 Comp., p. 393).
 - (iv) Eligibility to Participate in Federal Programs and Activities. The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(Rule 0770-01-05-.46, continued)

- (v) Disclosure of Conflict of Interest. The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.
 - (vi) Completion of Housing Deadline. The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the following required evidence of completion.
 - (I) Minimum Submission. At a minimum, the owner must submit the following evidence of completion to THDA in the form and manner required by the THDA: (i) Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and (ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.
 - (II) Additional Documentation. Owners must submit a certificate of occupancy or certificate of completion, as applicable.
 - (b) Broadband Infrastructure. Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 C.F.R. 5.100, of a building with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 C.F.R. 5.100, except where the owner determines and documents the determination that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.
 - (c) THDA Determination of Completion and Acceptance of Completed Units. When THDA has received owner notice that the housing is completed, THDA must:
 - 1. Inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and THDA's Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units.
 - 2. Determine if the owner has submitted all required evidence of completion.
 - 3. If the work has not been completed in accordance with the Agreement, THDA must not enter into the HAP contract.
- (13) HAP Contract.
- (a) Execution of HAP Contract.
 - 1. Newly Constructed or Rehabilitated Housing. If THDA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, THDA must submit the HAP contract for execution by the owner and must then execute the HAP contract prior to the effective date.

(Rule 0770-01-05-.46, continued)

2. Existing Housing. In the case of existing housing, the HAP contract must be executed once all contract units have passed inspection and prior to the effective date of the PBV HAP-C.

(b) The HAP contract must specify:

1. The total number of contract units by number of bedrooms;
2. Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
3. Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
4. Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. part 8;
7. The HAP contract term;
8. The number of units in any project that will exceed the twenty-five (25) percent per-project cap (as described in § 983.56), which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
9. The initial rent to owner (for the first twelve (12) months of the HAP contract term).

(c) Term of the HAP Contract.

1. Twenty (20)-year Initial Term. THDA may enter into a HAP contract with an owner for an initial term of up to 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than twenty (20) years.
2. Extension of Term. THDA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to twenty (20) years if THDA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed twenty (20) years. THDA may provide for multiple extensions; however, in no circumstance may such extensions exceed twenty (20) years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than twenty-four (24) months prior to the expiration of the previous extension contract, THDA

(Rule 0770-01-05-.46, continued)

agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term will not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

3. Termination by THDA - Insufficient Funding.

(i) The HAP contract must provide that the term of the THDA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by THDA in accordance with HUD instructions. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

(ii) If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, THDA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by THDA shall be implemented in accordance with HUD instructions.

4. Termination by Owner - Reduction Below Initial Rent. The owner may terminate the HAP contract, upon notice to THDA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 C.F.R. 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance under THDA's HCV Program.

(d) Statutory Notice Requirements for Contract Termination or Expiration. Notices required hereunder must be provided in the form prescribed by HUD.

1. Not less than one (1) year before termination of a PBV HAP contract, the owner must notify THDA and assisted tenants of the termination.

2. For purposes of this section, the term "termination" means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

3. If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

4. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

(e) Amendment to HAP Contract to Add or Substitute Contract Units.

1. Amendment to Substitute Contract Units. At the discretion of THDA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, THDA must inspect

(Rule 0770-01-05-.46, continued)

the proposed substitute unit and must determine the reasonable rent for such unit.

2. Amendment to Add Contract Units. At the discretion of THDA and provided that the total number of units in a project that will receive PBV assistance will not exceed the greater of twenty-five (25) units or twenty-five (25) percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.
3. Staged Completion of Contract Units. Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

(f) Removal of Unit from HAP Contract.

1. Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract one hundred eighty (180) days following the last housing assistance payment on behalf of the family.
2. If the project is fully assisted, THDA may reinstate the unit removed to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, THDA may substitute a different unit for the unit removed to the HAP contract when the first eligible substitute becomes available. A reinstatement or substitution of units under the HAP contract, in accordance with this section, must be permissible under 24 C.F.R. 983.207. The anniversary and expiration dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. THDA must refer eligible families to the owner in accordance with the THDA's selection policies

(14) Owner Responsibilities. The owner is responsible for performing all of the owner responsibilities under the Agreement, the HAP contract, Owner Responsibilities under 24 C.F.R. 982.452, and Chapter 0770-01-05.24 of this Administrative Plan.

- (a) Owner Certification. By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract, the following statements are true:
1. All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
 2. The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

(Rule 0770-01-05-.46, continued)

3. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by THDA, and the lease is in accordance with the HAP contract and HUD requirements.
 4. To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
 5. The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
 6. The amount of the housing assistance payment is the correct amount due under the HAP contract.
 7. The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
 8. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
 9. The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
 10. Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.
- (b) Continuing Condition of Contract Units.
1. Owner Maintenance and Operation.
 - (i) The owner must maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. These requirements are outlined in Chapter 0770-01-05-.23 of this Administrative Plan and any differences between the HCV Program and the PBV Program are outlined herein.
 - (ii) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with THDA and in the lease with each assisted family.
 2. Remedies for HQS Violation.
 - (i) THDA must vigorously enforce the owner's obligation to maintain contract units in accordance with HQS. THDA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.
 - (ii) If THDA determines that a contract unit is not in accordance with HQS (or other HAP contract requirement), the PHA may exercise any of its

(Rule 0770-01-05-.46, continued)

remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

3. Maintenance and Replacement - Owner's Standard Practice. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

(15) Selection of Tenants.

(a) Who May Receive PBV Assistance?

1. THDA may select families who are participants in THDA's HCV Program and families who have applied for admission to such Program.
2. Except for HCV Program participants (determined eligible at original admission to the voucher program), THDA may only select families determined eligible for admission at commencement of PBV assistance.
3. The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 C.F.R. part 5, subpart L, apply to admission to the project-based program.
4. THDA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

(b) Protection of In-Place Families.

1. The term "in-place family" means a family residing in a proposed contract unit on the proposal or project selection date.
2. To minimize displacement of in-place families, if an in-place family is determined to be eligible prior to the placement of the family's unit on the HAP Contract, the in-place family must be placed on the PBV waiting list (if the family is not already on the list) and given an absolute selection preference. If the PHA's waiting list for PBV assistance is not a project-specific waiting list, THDA must refer the family to the applicable project owner for an appropriate-sized PBV unit in the specific project.
3. If the in-place family is a tenant-based voucher participant, program eligibility is not redetermined. However, THDA must determine that the total tenant payment for the family is less than the gross rent for the unit, such that the unit will be eligible for a monthly HAP and THDA may deny or terminate assistance for the grounds specified in 24 C.F.R. 982.552 and 982.553.

(c) Selection from the Waiting List.

1. THDA will allow owner-maintained PBV waiting lists for PBV projects. The owner may maintain a single waiting list across multiple projects owned by the owner.

(Rule 0770-01-05-.46, continued)

2. For any newly established owner-maintained waiting lists, THDA must first offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.
3. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list.
4. THDA will identify in the Administrative Plan the names of the projects that have owner-maintained waiting lists once awarded. [To be determined]
5. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list.
6. THDA will monitor owner-maintained waiting lists in accordance with the Section Eight Management Assessment Program (SEMAP) – Selection from the Waiting List. THDA will ensure the owner's waiting list policies are in compliance with fair housing requirements and the THDA Administrative Plan.
7. At least biennially, THDA will pull a quality control sample for each owner-maintained waiting list, based on the SEMAP guidelines in 24 C.F.R. 985.3, drawn separately for applicants reaching the top of the owner-maintained waiting list and for admissions, documentation shows that at least ninety-eight (98) percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection.
 - (i) The owner must develop and submit a written owner waiting list policy to the THDA for approval. The owner's waiting list policy must include policies and procedures concerning waiting list management and selection of applicants from the projects waiting list including any admission preferences, procedures for removing applicant names from the waiting list and procedures for closing and reopening the waiting list. The owner must receive approval from THDA of its owner waiting list policy in accordance with the process established in THDA's Administrative Plan. The owners' waiting list policy must be incorporated in THDA's Administrative Plan.
 - (ii) The owner must receive approval from THDA for any preferences that will be applicable to the project. THDA will approve such preferences as part of its approval of the owner's waiting list policy. Each project may have a different set of preferences. Preferences must be consistent with THDA Plan and listed in the owners waiting list policy.
 - (iii) The owner is responsible for opening and closing the waiting list, including providing public notice when the owner opens the waiting list in accordance with 24 C.F.R. 982.205. If the owner-maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 C.F.R. 982.206 and the owner waiting list policy.
 - (iv) The applicant may apply directly at the project, or the applicant may request that THDA refer the applicant to the owner for placement on the

(Rule 0770-01-05-.46, continued)

- project's waiting list. THDA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.
- (v) Applicants already on THDA's waiting list must be permitted to place their names on the project's waiting lists.
 - (vi) At the discretion of THDA, the owner may make preliminary eligibility determinations for purposes of placing the family on the waiting list, and preference eligibility determinations. THDA may choose to make this determination rather than delegating it to the owner.
 - (vii) If THDA delegated the preliminary eligibility and preference determination to the owner, the owner is responsible for notifying the family of the owner's determination not to place the applicant on the waiting list and a determination that the family is not eligible for a preference. THDA is then responsible for conducting the informal review.
 - (viii) Once an owner selects the family from the waiting lists, the owner refers the family to THDA who then determines the family's final program eligibility. The owner may not offer a unit to the family until THDA determines that the family is eligible for the program.
 - (ix) All HCV waiting list administration requirements that apply to the PBV program apply to owner-maintained waiting lists.
 - (x) THDA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with the program requirements, including but not limited to non-discrimination and equal opportunity requirements under the authorities cited at 24 C.F.R. 5.105(a). The owner is responsible for maintaining complete and accurate records as described in 24 C.F.R. 982.158. The owner must give THDA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management as described in 24 C.F.R. 982.158(c). HUD may undertake an investigation to determine whether the PHA or owner is in violation of authorities and, if unable to reach a voluntary resolution to correct the violation, take enforcement action against either the owner or THDA or both.
8. No less than seventy-five (75) percent of the families admitted to THDA's HCV and PBV Programs during THDA's fiscal year from THDA's waiting list shall be extremely low-income families based on area median income. The income-targeting requirements at 24 C.F.R. 982.201(b)(2) apply to the total of admissions to THDA's HCV and PBV Programs during THDA's fiscal year from THDA's waiting list (including owner-maintained PBV waiting lists) for such programs.
9. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, THDA must first refer families who require such accessibility features to the owner (see 24 C.F.R. 8.26 and 100.202).
- (d) Preference for Services Offered. In selecting families, THDA may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 C.F.R. 982.207(b)(3) continues to apply.

(Rule 0770-01-05-.46, continued)

1. Preference Limits.
 - (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
 - (ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
 - (iii) For whom such services cannot be provided in a non-segregated setting.
 2. Disabled residents must not be required to accept the particular services offered at the project.
 3. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.
- (e) Offer of PBV Assistance.
1. If a family refuses THDA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the THDA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by THDA.
 2. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:
 - (i) If a central PBV waiting list is used, the family may be rejected after one offer of assistance without good cause before the family is removed from the PBV waiting list. If the owner rejects the family, the family will be allowed one more referral to a different project before being removed from the list.
 - (ii) If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.
 - (iii) Good cause is defined as:
 - (I) The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
 - (II) The unit has HQS deficiencies;
 - (III) The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and
 - (IV) The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(Rule 0770-01-05-.46, continued)

3. THDA may not take any of the following actions against an applicant solely because they applied for, received, or refused an offer of PBV assistance:
 - (i) Refuse to list the applicant on THDA's waiting list for tenant-based assistance or any other available PBV waiting list. However, the THDA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.
 - (ii) Deny any admission preference for which the applicant is currently qualified;
 - (iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under THDA's selection policy;
 - (iv) Remove the applicant from the waiting list for the tenant-based voucher assistance.
- (f) Information THDA Is Required to Provide a Family Accepted for the PBV Program.
 1. Oral Briefing. When a family accepts an offer of PBV assistance, THDA must give the family an oral briefing. The briefing must include a description of how the program works and family and owner responsibilities and family right to move. Briefings are conducted virtually.
 2. THDA will take appropriate steps to ensure effective communication with limited English proficient speakers and must provide information on the reasonable accommodation process.
 3. Information Packet. THDA must give the family a packet that includes information on the following subjects:
 - (i) How the PHA determines the total tenant payment for a family;
 - (ii) Family obligations under the program; and
 - (iii) Information on Federal, State and local equal opportunity laws, the contract information for the Section 504 coordinator, a copy of the housing discrimination complaint form and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;
 - (iv) THDA subsidy standards, including when THDA will consider granting exceptions to the standards as allowed and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act or the Americans with Disabilities Act; and
 - (v) Family right to move
 4. Statement of Family Responsibility - THDA and family must sign the statement of family responsibility form.
 5. Providing Information for Persons with Limited English Proficiency. THDA will take reasonable steps to ensure meaningful access by persons with limited

(Rule 0770-01-05-.46, continued)

English proficiency in accordance with obligations and procedures contained in Title VI of the Civil Rights Act of 1964, and HUD's implementing regulation at 24 C.F.R. part 1, Executive Order 13166 and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority. See Section 0770-01-05-.30(2) of this Administrative Plan.

(g) Owner Selection of Tenants.

1. During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by THDA from THDA's waiting list.
2. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.
3. An owner must notify, within thirty (30) days, in writing any rejected applicant of the grounds for any rejection.
4. The owner must comply with 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). This applies to tenant screening as well.
5. Size of Unit. The contract unit leased to each family must be appropriate for the size of the family under THDA's subsidy standards. See Section 0770-01-05-.21(3) of this Administrative Plan.
6. Tenant Screenings.
 - (i) THDA Responsibility. THDA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy.
 - (ii) Owner Responsibility. The owner is responsible for screening and selection of the family on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:
 - (I) Payment of rent and utility bills;
 - (II) Caring for a unit and premises;
 - (III) Respecting the rights of other residents to the peaceful enjoyment of their housing;
 - (IV) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others (Refer to HUD's Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction, dated April 4, 2016.); and
 - (V) Compliance with other essential conditions of tenancy;
 - (iii) Providing Tenant Information to Owner. THDA must give the family a description of THDA's policy on providing information to owners and such

(Rule 0770-01-05-.46, continued)

policy must give the same type of information to all owners regarding families.

- (l) THDA must give the owner the family's current and prior address (as shown in THDA records) and the name and address (if known to THDA) of the landlord at the family's current and any prior address.

7. Vacancies.

(i) Filling Vacant Units.

- (l) THDA and the owner must make reasonable good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy in accordance with 24 C.F.R. 983.157(e) (5) are not subject to this requirement.

I. If an owner-maintained waiting list is used, the owner must promptly notify THDA of any vacancy or expected vacancy in a contract unit and refer the family to THDA for final eligibility determination. THDA must make every reasonable effort to make such final eligibility determination within thirty (30) calendar days. THDA will not pay a vacancy payment for contract unit subject to an owner-maintained waiting list.

II. If a THDA-maintained waiting list is used, the owner must promptly notify THDA of any vacancy or expected vacancy in a contract unit and THDA must, after receiving the owner notice, make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within thirty (30) calendar days. THDA will pay a vacancy payment for contract unit subject to a THDA-maintained waiting list. See Section 0770-01-05-.37(19) of this Administrative Plan for rules regarding Vacancy Payments.

III. The owner must lease vacant contract units only to families determined eligible by THDA .

- (ii) Reducing the Number of Contract Units. If any contract units have been vacant for a period of one hundred twenty (120) or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of THDA to fill such vacancies), THDA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

(16) Lease.

- (a) Tenant's Legal Capacity. The tenant must have legal capacity to enter a lease under state and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

- (b) Form of the Lease.

(Rule 0770-01-05-.46, continued)

1. The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.
 2. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a THDA model lease.
 3. In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD. The terms of the tenancy addendum shall prevail over other provisions of the lease.
 4. THDA may review the owner's lease form to determine if the lease complies with state and local law. THDA may decline to approve the tenancy if THDA determines that the lease does not comply with state or local law.
- (c) Required Information. The lease must specify all of the following:
1. The names of the owner and the tenant;
 2. The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
 3. The term of the lease (initial term and any provision for renewal);
 4. The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
 5. A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
 6. The amount of any charges for food, furniture, or supportive services.
- (d) Tenancy Addendum. The tenancy addendum in the lease shall state the program tenancy requirements and the composition of the household as approved by THDA (names of family members and any THDA-approved live-in aide).
- (e) Amendment/Change to the Lease.
1. If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give THDA a copy of all such changes.
 2. The owner must notify THDA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by THDA and in accordance with the terms of the lease relating to its amendment. THDA must redetermine reasonable rent, in accordance with § 983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent must be used in calculation of rent to owner from the effective date of the change.
- (f) Term of Lease.
1. The initial lease term must be for at least one year.

(Rule 0770-01-05-.46, continued)

2. The lease must provide for automatic renewal after the initial term of the lease. The lease may provide for automatic renewal for successive definite terms (e.g., month-to-month or year-to-year) or for automatic indefinite extension of the lease term.
3. The term of the lease terminates if any of the following occurs:
 - (i) The owner terminates the lease for good cause;
 - (ii) The tenant terminates the lease;
 - (iii) The owner and the tenant agree to terminate the lease;
 - (iv) THDA terminates the HAP contract; or
 - (v) THDA terminates assistance for the family.
- (g) Lease Provisions Governing Absence from the Unit. The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by THDA policy. See Section 0770-01-05-.26(2)(d) of this Administrative Plan for rules regarding Absences from Unit.
- (h) Security Deposits.
 1. The owner may collect a security deposit from the tenant.
 2. THDA prohibits the owner from charging assisted tenants security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.
 3. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease.
 4. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant, in accordance with state law.
 5. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, THDA has no liability or responsibility for payment of any amount owed by the family to the owner.
- (17) Owner Termination of Tenancy and Eviction.
 - (a) In General. 24 C.F.R. 982.310 applies with the exception that 982.310(d)(1)(iii) and (iv) do not apply to the PBV Program. In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose. 24 C.F.R. 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(Rule 0770-01-05-.46, continued)

- (b) If a family resides in a project-based unit excepted from the twenty-five (25) percent per-project cap on project-basing because of participation in a Family Self-Sufficiency ("FSS") or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

(18) Family Right to Move.

- (a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate, with a copy to THDA, in accordance with the lease. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.
- (b) If the family has elected to terminate the lease in this manner, THDA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the HCV Program or other comparable tenant-based rental assistance.
- (c) Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact THDA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If HCV or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, THDA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.
- (d) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 C.F.R. part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. THDA may not terminate assistance if the family, with or without prior notification to THDA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.
- (e) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 C.F.R. part 5, subpart L, THDA will offer the victim the opportunity for continued tenant-based rental assistance.

(19) Continuation of Housing Assistance Payment ("HAP").

- (a) Zero HAP. Housing assistance payments will continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within one hundred eighty (180) days following the date of the last housing assistance payment by THDA. After the one hundred eighty (180)-day period, the unit shall be removed from the HAP contract pursuant to 24 C.F.R. 983.211.

(Rule 0770-01-05-.46, continued)

- (b) Overcrowded, Under-Occupied, Accessible Units. If THDA determines, according to its subsidy standards, that a family is occupying a wrong-size unit or a unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, THDA, within thirty (30) days, must notify the family and the owner of this determination, and within sixty (60) days from the PHA determination, offer the family continued housing assistance. THDA's offer of continued assistance in another unit under:
 - 1. Project-based voucher assistance in an appropriate-size unit (in the same project or in another project); or
 - 2. Tenant-based rental assistance under the HCV program.
 - 3. If no continued housing assistance is available, THDA must remove the wrong size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher. THDA may reinstate a unit removed to the HAP contract after the family vacates the property.
- (20) Amount of Rent to Owner. The amount of the initial and redetermined rent to owner is determined hereunder and in accordance with 24 C.F.R. 983.302. THDA will utilize Small Area Fair Market Rents for the PBV program.
 - (a) Initial Rents. The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.
 - (b) Amount of Rent to Owner. Except for certain tax credit units, the rent to owner must not exceed the lowest of:
 - 1. An amount determined by THDA, not to exceed one hundred ten (110) percent of the applicable fair market rent or Small Area FMR's (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;
 - 2. The reasonable rent; or
 - 3. The rent requested by the owner.
 - (c) Rent to Owner for Certain Tax Credit Units. This paragraph (c) applies if a contract unit receives a low-income housing tax credit ("LIHTC") under the Internal Revenue Code of 1986 (see 26 U.S.C. 42); the contract unit is not located in a qualified census tract; in the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and the tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section. For LIHTC units, the rent to owner must not exceed the lowest of:
 - 1. The tax credit rent minus any utility allowance;
 - 2. The reasonable rent; or
 - 3. The rent requested by the owner.

(Rule 0770-01-05-.46, continued)

4. The “tax credit rent” is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., additional assistance such as tenant-based voucher assistance).
 5. A “qualified census tract” is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least fifty (50) percent of households have an income of less than sixty (60) percent of Area Median Gross Income (“AMGI”) or where the poverty rate is at least twenty-five (25) percent and where the census tract is designated as a qualified census tract by HUD.
- (d) Rent to Owner for Other Tax Credit Units. Except in the case of a tax-credit unit above, the rent to owner for all other tax credit units may be determined by THDA pursuant to paragraph (b) of this section.
- (e) Reasonable Rent. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. THDA has elected to not reduce rents below the initial rent to owner.
1. How to Determine Reasonable Rent.
 - (i) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.
 - (ii) In determining the reasonable rent, THDA must consider factors that affect market rent, such as:
 - (I) The location, quality, size, unit type, and age of the contract unit; and
 - (II) Amenities, housing services, maintenance, and utilities to be provided by the owner.
 - (iii) Comparable Analysis.
 - (I) For each unit, THDA’s comparability analysis must use at least three (3) comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.
 - (II) THDA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.
 - (III) The comparability analysis may be performed by THDA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any THDA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.
 2. Redetermination. THDA must redetermine the reasonable rent:
 - (i) Whenever there is a ten (10) percent decrease in the published FMR in effect sixty (60) days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one (1) year before the contract anniversary;

(Rule 0770-01-05-.46, continued)

- (ii) Whenever THDA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
 - (iii) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and
 - (iv) Whenever there is any other change that may substantially affect the reasonable rent.
 - 3. Owner Certification of Comparability. By accepting each monthly housing assistance payment from THDA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give THDA information it requests on rents charged by the owner for other units in the premises or elsewhere.
- (f) Use of Fair Market Rents ("FMRs") and Utility Allowance Schedule in Determining the Amount of Rent to Owner.
- 1. Amounts Used.
 - (i) Determination of Initial Rent (at beginning of HAP contract term). When determining the initial rent to owner, THDA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, THDA may use the amounts in effect at any time during the thirty (30)-day period immediately before the beginning date of the HAP contract.
 - (ii) Redetermination of Rent to Owner. When redetermining the rent to owner, THDA shall use the most recently published FMR and THDA utility allowance schedule in effect at the time of redetermination. At its discretion, THDA may use the amounts in effect at any time during the thirty (30)-day period immediately before the redetermination date.
 - 2. Exception Payment Standard and THDA Utility Allowance Schedule.
 - (i) Any HUD-approved exception payment standard amount under 24 C.F.R. 982.503(c) applies to both the HCV and PBV Programs. HUD will not approve a different exception payment standard amount for use in the PBV program.
 - (ii) THDA may not establish or apply different utility allowance amounts for the PBV Program. The same utility allowance schedule applies to both Programs.
 - (iii) Utility reimbursement payments will be paid directly to the tenant.
- (g) Redetermination of Rent to Owner.
- 1. THDA must redetermine the rent to owner:
 - (i) Upon the owner's request; or
 - (ii) When there is a ten (10) percent decrease in the published FMR.
 - 2. Rent Increase.

(Rule 0770-01-05-.46, continued)

- (i) THDA may not make any rent increase other than an increase in the rent to owner as determined pursuant to 24 C.F.R. 983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)
 - (ii) The owner must request an increase in the rent to owner, in writing along with documentation of justification for the increase, sixty (60) calendar days prior to the annual anniversary of the HAP contract.
 - (iii) THDA may not approve, and the owner may not receive, any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.
- 3. Rent Decrease.
 - (i) If there is a decrease in the rent to owner, as established in accordance with 24 C.F.R. 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.
 - (ii) Rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:
 - (I) To correct errors in calculations in accordance with HUD requirements;
 - (II) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 C.F.R. 983.55; or
 - (III) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.
- 4. Notice of Rent Redetermination. Rent to owner is redetermined by written notice by the THDA to the owner specifying the amount of the redetermined rent (as determined in accordance with 24 C.F.R. 983.301 and 983.302). The THDA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.
- 5. Contract Year and Annual Anniversary of the HAP Contract.
 - (i) The contract year is the period of twelve (12) calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.
 - (ii) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of twelve (12) calendar months from the annual anniversary of the HAP contract.
 - (iii) If contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units

(Rule 0770-01-05-.46, continued)

under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

(h) How Other Subsidy Affects Rent to Owner.

1. General. In addition to the rent limits established in accordance with 24 C.F.R. 983.301 and 24 C.F.R. 982.302, the following restrictions apply to certain units.
2. HOME. For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 C.F.R. 92.252).
3. Subsidized Projects.
 - (i) This paragraph applies to any contract units in any of the following types of federally subsidized project:
 - (I) An insured or non-insured Section 236 project;
 - (II) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
 - (III) A Section 221(d)(3) below market interest rate (BMIR) project;
 - (IV) A Section 515 project of the Rural Housing Service;
 - (V) Any other type of federally subsidized project specified by HUD.
 - (ii) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program.
4. Combining Subsidy - Subsidy Layering Review. Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See 24 C.F.R. 983.55.
 - (i) Subsidy Layering Requirements. THDA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 C.F.R. 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.
 - (ii) When Subsidy Layering Review Is Conducted. THDA may not enter into an Agreement or HAP contract until HUD or THDA, as applicable, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(Rule 0770-01-05-.46, continued)

- (iii) Owner Certification. The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.
- 5. Other Subsidy: Rent Reduction. To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, THDA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.
- 6. Prohibition of Other Subsidy. For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see 24 C.F.R. 983.54.
 - (i) Effect of Rent Control and other Rent Limits. In addition to the limitation to one hundred ten (110) percent of the FMR in 983.301(b)(1), the rent reasonableness limit under 24 C.F.R. 983.301(b)(2) and 983.303, the rental determination provisions of 24 C.F.R. 983.301(f), the special limitations for tax credit units under 24 C.F.R. 983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

(21) Payment to Owner.

(a) When Payments Are Made.

- 1. During the term of the HAP contract, THDA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.
- 2. Except for discretionary vacancy payments in accordance with 24 C.F.R. 983.352, THDA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

- (b) Monthly Payment. Each month, THDA shall make a housing assistance payment to the owner for each contract unit that complies with HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.
- (c) Calculating Amount of Payment. The monthly housing assistance payment by THDA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).
- (d) Prompt Payment. The housing assistance payment by THDA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and THDA agree on a later date.
- (e) Owner Compliance with Contract. To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

(22) Vacancy Payments.

(Rule 0770-01-05-.46, continued)

- (a) Payment For Move-Out Month. If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if THDA determines that the vacancy is the owner's fault.
 - (b) THDA will provide vacancy payments to the owner of a contract unit subject to an owner-maintained waiting list for a period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.
 - 1. The vacancy payment to the owner for each month of the maximum two-month period will be half of the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.
 - (c) THDA will make vacancy payments to the owner only if:
 - 1. The owner gives THDA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);
 - 2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
 - 3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy;
 - 4. The owner provides any additional information required and requested by THDA to verify that the owner is entitled to the vacancy payment; and
 - 5. The owner submits a request for vacancy payments in the form and manner required by THDA and provides any information or substantiation required by THDA to determine the amount of any vacancy payment.
- (23) Tenant Paid Rent.
- (a) THDA Determination.
 - 1. The tenant rent is the portion of the rent to owner paid by the family. THDA determines the tenant rent in accordance with HUD requirements.
 - 2. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.
 - (b) Tenant Payment to Owner.
 - 1. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).
 - 2. The amount of the tenant rent as determined by THDA and is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.

(Rule 0770-01-05-.46, continued)

3. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by THDA. The owner must immediately return any excess payment to the tenant.
4. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of THDA's housing assistance payment.

(c) Limit of THDA Responsibility.

1. THDA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. THDA is not responsible for paying the tenant rent, or for paying any other claim by the owner.
2. THDA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. THDA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) Utility Reimbursement.

1. If the amount of the utility allowance exceeds the total tenant payment, THDA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero (0).
2. THDA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.
3. If THDA chooses to pay the utility supplier directly, THDA must notify the family of the amount paid to the utility supplier.

(24) Other Fees and Charges by Owner.

(a) Meals and Supportive Services.

1. Except as provided below, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.
2. In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

- (b) Other Charges by Owner. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R. 982 and 983.
Administrative History: New rule filed May 2, 2025; effective July 31, 2025.