G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Secretary of State
DIVISION:	Business Services
SUBJECT:	Tennessee Address Confidentiality Program General Provisions
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 40-38-611(c)
EFFECTIVE DATES:	October 30, 2018 through April 28, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules are intended to implement and control the operation other Safe At Home Address Confidentiality Program, as established by Public Chapter 1004 passed by the 110th General Assembly in 2018. The purpose of the program is to protect the confidentiality of a program participant's confidential address, which will most often by their residential address. Once a program participant has been approved to participate in the program, they will be provided with a 'substitute' address, which will most likely be a post office box. The program participant will then be able to use "substitute' address as their official mailing address for all state and local government purposes and for their children, including public school or public benefits enrollment, subject only to a few limited exceptions. By doing so, the participant's confidential address will not appear in public records relating to either themselves or their children. These rules govern and outline the application process, the responsibilities of both the program participant and the Office of the Secretary of State, and the process for government agencies to request disclosure of protected information in certain instances. NOTE: The redline copy of the rule provided in this packet contains no strikethroughs or underlining as the rule is a new rule.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rules will have minimal impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are intended to implement and control the operation of the Safe At Home Address Confidentiality Program, as established by Public Chapter 1004 passed by the 110th General Assembly in 2018. The purpose of the program is to protect the confidentiality of a program participant's confidential address, which will most often by their residential address. Once a program participant has been approved to participate in the program, they will be provided with a 'substitute' address, which will most likely be a post office box. The program participant will then be able to use 'substitute' address as their official mailing address for all state and local government purposes and for their children, including public school or public benefits enrollment, subject only to a few limited exceptions. By doing so, the participant's confidential address will not appear in public records relating to either themselves or their children. These rules govern and outline the application process, the responsibilities of both the program participant and the Office of the Secretary of State, and the process for government agencies to request disclosure of protected information in certain instances.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Secretary of State has been granted authority to promulgate rules relating to the Safe At Home Address Confidentiality Program by the General Assembly through Public Chapter 1004 (2018), as codified at Tennessee Code Annotated § 40-38-611(c).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will most directly relate only to the Office of the Secretary of State and program participants. To the extent that any other Federal or State agency, whether law enforcement or administrative agency, would request the disclosure of confidential information held by the Office of the Secretary of State relating to a program participant, these rules outline the process by which such requests may be made, addressed and appealed as applicable. Based upon knowledge and belief, no administrative or law enforcement agency has expressed opposition to the adoption of these rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

The Department of State does not anticipate that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Agency also believes that the fiscal impact on the agency itself will be minimal, as the anticipated fiscal cost of operating the program does not exceed two percent (2%) of the Agency's annual budget or five hundred thousand dollars ($500,000).

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lauren L. Topping
Assistant General Counsel
Office of the Secretary of State
(615) 532-0824

Lauren.L.Topping@tn.gov

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mary Beth Thomas
General Counsel
Office of the Secretary of State
(615) 741-2819
Mary.Beth.Thomas@tn.gov

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mary Beth Thomas
General Counsel
Office of Secretary of State
State Capitol, 1st Floor
Nashville, Tennessee 37243
(615) 741-2819
mary.beth.thomas@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-22-18
Rule ID(s): 7259
File Date: 10/30/18
Last Effective Day: 4/28/19

Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission:	Secretary of State
Division:	Division of Business Services
Contact Person:	Lauren L. Topping
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 8th Floor Nashville, TN
Zip:	37243
Phone:	615-532-0824
Email:	Lauren.L.Topping@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

Statement of Necessity:

Public Chapter 1004 of the 110th General Assembly created and established the Safe at Home Address Confidentiality Program. The purpose of this program is to maintain the confidentiality of records pertaining to program participants by which the participant may be located, by use of public records, by an abuser. Once a program participant is certified, the Office of the Secretary of State will establish a "substitute address" which will be used as the participant's official address for all governmental purposes, thereby creating an official address that will not allow the participant to be physically located at their residential address. All governmental entities with knowledge of the participant's confidential, residential address will be required to maintain the confidentiality of that address. Pursuant to the public chapter, this program will go into effect on March 1, 2019, but much of the implementation of the program was left to be developed by the Secretary of State. In order to have these procedures in place before the effective date, emergency rules are necessary as there is not sufficient time to promulgate non-emergency rules. The Office of the Secretary of State intends to promulgate (either by publication or by rulemaking) non-emergency rules as soon as is practicable to replace the emergency rules.

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1360-11-01	Tennessee Address Confidentiality Program General Provisions
Rule Number	**Rule Title**
1360-11-01-.01	Definitions
1360-11-01-.02	Eligibility and Application Procedures
1360-11-01-.03	Participant Responsibilities
1360-11-01-.04	Service of Process
1360-11-01-.05	Cancellation of Participation; Withdrawal
1360-11-01-.06	Appeal Procedures
1360-11-01-.07	Disclosures
1360-11-01-.08	Application Assistants

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

1360-11-01-.01 DEFINITIONS.

(a) The terms defined in Tennessee Code Annotated Title 40, Chapter 38, Part 6, T.C.A. § 40-38-601 *et seq.*, shall have the same meaning for the purpose of these rules and definitions in these rules shall apply to T.C.A. § 40-38-601 *et seq.*

(b) For purposes of these rules, "program participant" may also refer to the parent, guardian or fiduciary who filed the initial application for program participation on behalf of a minor or a person with a disability who has been certified as a program participant.

(c) "Applicant" means the individual submitting an application to participate in the address confidentiality program, or the parent or fiduciary acting on such individual's behalf.

(d) "Residential address" means the address at which the applicant currently resides.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.02 ELIGIBILITY AND APPLICATION PROCEDURES.

(a) To be eligible for participation in the Address Confidentiality Program, an individual must meet the following requirements:

(1) Be a victim of domestic abuse, stalking, human trafficking, or any sexual offense, including violent sexual offenses;

(2) Have moved to a new residential address, which is unknown to the victims' abuser, within the previous thirty (30) days, or presently intend to move to a new residential address unknown to the victims' abuser, within ninety (90) days from the date of application.

(b) A person who is required by law to be registered under any of the following is not eligible to participate in the address confidentiality program:

(1) Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, T.C.A. § 40-39-201 et seq.;

(2) Tennessee Animal Abuser Registration Act, T.C.A. § 40-39-101 et seq. ;

(3) Registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals, T.C.A. § 68-11-1001 et seq.; or

(4) Drug Offender Registry, T.C.A. § 39-17-436.

(c) A prospective applicant may submit an application for program participation to the Office of the Secretary of State, with the assistance of an application assistant. An application for program participation must be submitted on the designated form prescribed by the Office of the Secretary of State. The application must include all of the following:

(1) The mailing address and telephone number(s) at which the applicant may be contacted;

(2) The address or addresses of the applicant's residence address, school, institution of higher education, business and/or place of employment, and/or those of the applicant's minor children, which the applicant requests be treated as confidential;

(3) Documentary evidence that, either:

i. There exists an ongoing criminal case that may result in, or an ongoing criminal case that has resulted in, a conviction by a judge or jury or by a defendant's guilty plea, in which the applicant was a victim of domestic abuse, stalking, human trafficking, or any sexual offense; or,

ii. A court of competent jurisdiction has granted an order of protection to the applicant, which is in effect at the time of application;

(4) In the absence of an ongoing criminal case that may result, or an ongoing criminal case that has resulted, in a conviction or guilty plea, or an order of protection granted by a court of competent jurisdiction within this state which is in effect at the time of application, the applicant may submit a notarized statement by a licensed professional with knowledge of the circumstances, such as an attorney, social worker, or therapist, confirming that such individual believes that the applicant is in danger of further harm;

(5) Either of the following:

i. Documentary evidence that the applicant has moved to a new residential address, which is unknown to the applicant's abuser to the best of the applicant's knowledge and belief, within the previous thirty (30) days; or,

ii. A sworn statement by the applicant that the applicant has the present intent to move to a new address, which will be unknown to the applicant's abuser, within the ninety (90) days following the application date.

iii. The documentary evidence required by subdivision (i) above may consist of a rental agreement or utility service agreement bearing the name of the applicant as a party to the agreement, or any other documentary evidence which is determined to be acceptable by the Office of the Secretary of State,

(6) A sworn statement by the applicant that disclosure of the confidential address or addresses would endanger the safety of the applicant or the minor or the person with a disability on whose behalf the application is made;

(7) A sworn statement by the applicant confirming that the applicant understands all of the following:

i. That during the time the applicant chooses to have a confidential voter registration record, the applicant may vote only by absentee ballot;

ii. That the applicant may provide a program participation number instead of their residential address on an application for an absentee ballot or on an absentee voter's ballot identification envelope statement of voter with the voter's signature;

iii. That casting any ballot in person during program participation will reveal the applicant's precinct and residence address to precinct election officials and employees of the county election commission, and may reveal the applicant's precinct or residential address to members of the public; and,

iv. That if the applicant signs an election petition during program participation, the applicant's address will be made available to the public.

(8) A knowing and voluntary designation of the Secretary of State as the applicant's agent for the purposes of receiving service of process and the receipt of mail;

(9) A knowing and voluntary release and waiver of all future claims against the state for any claim that may arise from participation in the address confidentiality program, except for a claim based on the performance or nonperformance of a public duty that was manifestly outside the scope of the officer's or employee's office or employment or in which the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner;

(10) The notarized signature of the applicant, the name and notarized signature of the application assistant who assisted the applicant, and the date on which the applicant and application assistant signed the application;

(11) If, at the time of application, the applicant is subject to a court order or is involved in a court action related to the dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the applicant must also provide the name of the court, contact information for the court, and the case number(s) associated with those proceedings; and,

(12) A voter registration form, if the applicant is eligible to vote and wishes to register to vote or update a current voter registration.

(d) If an applicant submits an application based on the applicant's present intent to relocate to a new residential address within the ninety (90) days following the date of application, the applicant must submit documentation of the applicant's move to such residential address within ninety (90) days from the date of application. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement executed within ninety (90) days of the date of application.

(e) Following receipt and certification of a properly submitted application, the Secretary of State shall issue to the program participant a unique substitute address, a unique participant identification number, and documentary evidence of such participation that may be used as proof of program participation, if requested, when the applicant requests that a governmental entity or third party use the substitute address as the participant's official address of record. The Secretary of State shall also issue to the participant all other informational documentation required by law.

(f) Following certification of program participation, the Office of the Secretary of State will accept all first class mail and/or certified mail received at the substitute address and forward this material to the participant at the address designated by the participant on the participant's application within three (3) business days from the date of receipt. The Office of the Secretary of State will also accept all service of process received at the substitute address and shall immediately forward this material to the participant at the address designated by the program participant on the participant's application.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.03. PARTICIPANT RESPONSIBILITIES.

(a) Program participants must provide the substitute address to all governmental and private entities to ensure the confidentiality of the program participant's confidential address. Program participants must also provide the substitute address to all governmental and private entities in matters relating to the participant's minor children to ensure the confidentiality of the program participant's confidential address.

(b) Program participants are not permitted to use their substitute address for the following purposes, and must instead use their confidential address:

(1) For purposes of listing, appraising, or assessing property taxes and collecting property taxes; or

(2) On any document related to real property recorded with a county clerk and recorder.

(c) If a program participant obtains a legal name change, the participant must provide evidence of the legal name change to the Office of the Secretary of State within ten (10) days of the date of the legal name change.

(d) Program participants must notify the Office of the Secretary of State of any change in the participant's residential address and/or application information in writing within thirty (30) days after any change has occurred by submitting a Notice of Change Form to the Office of Secretary of State.

(1) Program participants will be required to provide documentation to verify any change in the program participant's residential address to the satisfaction of the Office of the Secretary of State. Such documentation may include, but is not limited to, a rental agreement or a utility service agreement, executed within thirty (30) days of the date of the reported change.

(2) In the event that the participant moves to a new residential address, or the participant's contact information otherwise changes, and the participant does not provide notification of such to the Office of the Secretary of State, any materials received at the participant's substitute address may not be received by the participant upon forwarding of the materials by the Office of the Secretary of State and the program participant may be prevented from voting in any precinct other than the precinct established by the program participant's application. Any materials which cannot be delivered to the program participant will be maintained by the Office of the Secretary of State for a period of forty-five (45) days and will then be destroyed if unclaimed.

(e) Program participants must request that any public record created within thirty (30) days prior to the date of the participant's application for participation and which contains the participant's confidential address be treated as confidential by the governmental entity holding the public record and/or that the confidential address be substituted with the substitute address, and must provide proof of program participation to the governmental entity.

(f) Program participants must abide by all applicable voter registration and absentee deadlines, as well as any procedures established by the coordinator of elections for the submission and processing of absentee ballots by program participants.

(g) Program participants must provide the substitute address and evidence of program participation to any public school for purposes of enrollment for themselves or their minor children in order to ensure the confidentiality of the program participant's confidential address. Public school officials must then contact the Office of the Secretary of State in order to obtain verification of eligibility for enrollment. The Office of the Secretary of State shall then provide confirmation or denial of enrollment eligibility based on the most recent information provided to the Office of the Secretary of State by the program participant.

(h) Program participants may be required to provide their confidential residential address to a utility service provider for the purposes of obtaining utility services. Program participants must also provide the utility service provider with evidence of program participation and request that the utility service provider treat their residential address as confidential. The program participant may also request that the utility service provider use the substitute address as the program participant's official mailing address.

(i) Program participation certification shall be valid for four (4) years following the date of filing of the application by the Office of the Secretary of State, unless participation is otherwise withdrawn or invalidated prior to the end of the four year term. A program participant who wishes to renew their participation beyond the current four (4) year term may do so by submitting a renewal application to the Office of the Secretary of State within the ninety (90) days prior to the termination of the current four (4) year term. The renewal application must contain all of the information required by Rule 1360-11-01-.02(c).

(j) Program participants are exempt from selection for state and municipal jury duty. In the event that the program participant receives a jury summons for either a state or municipal jury, it shall be the responsibility of the program participant to notify the summoning court of the participant's participation in the program and exempt status. Program participants may not fail to respond to a jury summons.

(k) If an individual ceases to be a program participant, by reason of either cancellation or withdrawal, it shall be the responsibility of such individual to notify persons and entities that use of the substitute address is no longer valid.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.04. SERVICE OF PROCESS.

(a) Upon request by a person who intends to serve process on an individual, the Office of the Secretary of State shall confirm whether the individual is a program participant but shall not disclose any other information concerning a program participant.

(b) Any person intending or attempting to serve process on a program participant may do so by serving Secretary of State as agent of a program participant at Department of State, Division of Business Services, W.R. Snodgrass Tower, 3rd Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243. Service of process may be delivered by mail to: Department of State, Division of Business Services, W.R.

Snodgrass Tower, 6th Floor, 312 Rosa L. Parks Avenue, Nashville, TN 37243.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.05. CANCELLATION OF PROGRAM PARTICIPATION; WITHDRAWAL.

(a) Program participation shall be cancelled if any of the following occurs:

(1) The Office of the Secretary of State finds or determines that the participant's application contained one or more false statements;

(2) The program participant fails to relocate to a new residential address, or fails to provide documentary evidence of the new residential address to the Office of the Secretary of State, within ninety (90) days from the date of application;

(3) The program participant obtains a name change, unless the program participant provides the Office of the Secretary of State with documentation of a legal name change within ten (10) business days of the name change;

(4) The program participant's certification has expired and the program participant has not submitted a renewal application prior to the expiration of the current four (4) year term;

(5) The Office of the Secretary of State finds or determines that the program participant is unreachable for a period of sixty (60) days or more;

(6) The Office of the Secretary of State finds or determines that circumstances have changed such that the participant no longer meets the criteria outlined by statute or by Rule 1360-11-01-.02 for program participation; or

(7) The program participant submits to the Office of the Secretary of State a request to withdraw from the program.

(b) A program participant will be found to be unreachable when the Office of the Secretary of State has determined that any materials forwarded to the program participant at the designated address have been returned to the Office of the Secretary of State by the United States Postal Service, or other mail carrier, as either undeliverable or refused and the Office of the Secretary of State has been unable to reach the program participant by phone or electronic mail for a period of at least sixty (60) days.

(c) A program participant may request to withdraw from program participation by submitting a written and notarized Withdrawal form to the Office of the Secretary of State. The Withdrawal form must include the following:

(1) The program participant's name, residential address and participant identification number;

(2) A statement that the participant wishes to cease being a program participant;

(3) An acknowledgement that the participant's address(es) will no longer be kept confidential, the Secretary of State will no longer accept or process mail received on their behalf, and participant's voter registration will no longer be kept confidential; and,

(4) A statement that the administrator of election should either treat the participant's voter registration in the same manner as other voter registration forms, or purge the participant's voter registration.

(d) Upon finding that a program participant's participation should be cancelled, either by means of cancellation or withdrawal, the Office of the Secretary of State shall mail a notice of cancellation to the program participant at the last known address by certified mail. This notice shall set out the reason(s) for cancellation, the program participant's right to appeal the cancellation, and the procedures for appealing the notice of cancellation before an administrative law judge.

(1) In the event that cancellation occurs because the Office of the Secretary of State has found the program participant to have been unreachable for a period of forty-five (45) days or more, and the notice of cancellation sent to the program participant by certified mail is returned to the Office of the Secretary of State as either undeliverable or refused, the program participant shall not have the right to appeal the cancellation of program participation.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.06. APPEAL PROCEDURES.

(a) A program participant has the right to appeal the cancellation of program participation within thirty (30) days from the date of the notice of cancellation, unless otherwise limited by law or these rules. A petition for appeal may be submitted to the Office of the Secretary of State.

(b) A program participant has the right to appeal the disclosure by the Office of the Secretary of State of the program participant's confidential address, or any other information pertaining to the program participant, disclosed to a state or federal agency within ten (10) business days of the Secretary's determination that such information should be disclosed.

(c) Upon receipt of a petition for appeal, the Office of the Secretary of State will transmit the petition to the Administrative Procedures Division for a contested case hearing before an administrative law judge in accordance with the Uniform Administrative Procedures Act.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.07. DISCLOSURES.

(a) Except as otherwise allowed by law, the Office of the Secretary of State shall not disclose the confidential address or any other information contained within a program participant's file, other than the substitute address designated by the Secretary of State.

(b) Public schools and other governmental entities that require verification of residency for purposes of public school enrollment or public benefits enrollment must submit to the Office of the Secretary of State a completed Request for Residency Verification form to verify a program participant's eligibility for enrollment and/or the eligibility for enrollment of the participant's minor children. The public school or other governmental entity seeking such verification must provide a written statement and a map outlining the applicable residential district eligible for enrollment.

(c) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request confirmation of program participation pertaining to a supposed program participant by submitting a Request for Program Participation Confirmation Form to the Office of the Secretary of State. The Office of the Secretary of State shall make a determination and respond to such requests within three (3) business days, unless emergency circumstances exist. The Office of the Secretary of State shall provide an after-hours emergency line that may be called outside of regular office hours in case of emergency.

(d) As authorized by law, properly designated law enforcement agency officials and administrative agency officials may request disclosure of information pertaining to a program participant by submitting a Request for Disclosure Form to the Office of the Secretary of State.

(1) Request for Disclosure Forms submitted by law enforcement officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. A program participant is not entitled to notice of the Secretary's determination prior to the disclosure of the requested information.

(2) Request for Disclosure Forms submitted by state or federal administrative agency officials will be reviewed and addressed by the Secretary of State, or the Secretary's designee, as soon as practicable. However, the program participant shall be notified of the nature of the request received and afforded an opportunity to respond to the request in writing stating any objections to the disclosure.

i. The program participant shall have ten (10) business days from the date of the notice issued to the program participant in which to respond to the notice. If no response from the program participant is received after ten (10) business days from the date of notice, then the information requested shall be disclosed to the requesting agency as soon as practicable.

ii. If the program participant responds to the notice provided, the Secretary or the Secretary's designee shall review the objections received and weigh those objections against the reasons cited by the requesting agency official for the disclosure. The Secretary or the Secretary's designee shall then issue a determination within three (3) business days.

iii. Any party may appeal the Secretary's decision within ten (10) business days from the notice of the Secretary's determination by submitting a petition for appeal to the Office of the Secretary of State. If no request for appeal is received within ten (10) business days, the Secretary's decision shall be implemented according to its terms.

(e) Disclosure of a participant's confidential address, or any other information contained within a program participant's file, shall be limited under the terms of the court's order or, in the absence of a court order, the secretary's determination, to ensure that the disclosure and dissemination of the confidential address will be no greater than necessary for the specific purpose for which it was requested.

(f) Individuals granted access to the program participant's confidential information, whether by court order or by virtue of the individual's position as an employee of a governmental entity, are prohibited from knowingly disclosing such information to unauthorized individuals, except as otherwise required by law.

(g) No person shall knowingly obtain a program participant's confidential address or telephone number from any governmental agency knowing that the person is not authorized to obtain the confidential information.

(h) The Secretary of State may grant a request for disclosure to a state or local government agency upon receipt of a program participant's written and notarized consent to do so. In the event that a program participant submits a written and notarized consent for disclosure relating to a specific request for disclosure, the requested information shall be disclosed as soon as practicable and the program participant shall have no further right to appeal the disclosure.

(i) In the event that the state, a county, a municipality, an agency of the state or county or municipality, or an employee of the state or county or municipality negligently or otherwise unlawfully discloses the program participant's confidential address, such entity must immediately upon learning of the disclosure notify the program participant of the disclosure and the full extent of the disclosure.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

1360-11-01-.08. APPLICATION ASSISTANTS.

(a) Individuals seeking certification as an application assistant must:

(1) Be an employee or a volunteer at an approved agency or organization that serves victims of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense;

(2) Submit an application for certification as an application assistant to the Office of the Secretary of State; and,

(3) Receive training and instruction from the Office of the Secretary of State relating to the address confidentiality program and these rules to help prospective applicants to complete applications for program participation.

(b) Application assistants may not offer legal advice to any prospective applicant for program participation or program participant, unless otherwise authorized to engage in the practice of law in this state.

Authority: Tennessee Code Annotated § 40-38-601 *et seq.*

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9/28/18

Signature: [signature]

Name of Officer: Tre Hargett

Title of Officer: Secretary of State

MARY ELIZABETH THOMAS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires September 6, 2022

Subscribed and sworn to before me on: 9/28/18

Notary Public Signature: [signature]

My commission expires on: 9/6/22

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[signature]
Herbert H. Slatery III
Attorney General and Reporter

10/27/2018
Date

Department of State Use Only

RECEIVED 2018 OCT 30 AM 11:16 SECRETARY OF STATE PUBLICATIONS

Filed with the Department of State on: 10/30/18

Effective for: 180 *days

Effective through: 4/28/19

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

[signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Wildlife Resources Agency
DIVISION:	Boating & Law Enforcement Division
SUBJECT:	Rules and Regulations Governing Operation of Vessels
STATUTORY AUTHORITY:	There are no state or federal laws mandating this rule repeal or amendment.
EFFECTIVE DATES:	December 30, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The rule repeal removes a prohibition of vessels entering a construction zone because construction has been completed. The rule amendment would prohibit vessels from entering an area directly above a water-regulating structure on Reelfoot Lake for safety reasons.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

[X] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

There are no businesses, small or otherwise, that would bear the cost of or directly benefit from the proposed rule.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Agency does not believe that the rule amendment/repeal will have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule repeal removes a prohibition of vessels entering a construction zone because construction has been completed. The rule amendment would prohibit vessels from entering an area directly above a water-regulating structure on Reelfoot Lake for safety reasons.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal or state laws mandating this rule repeal or amendment.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Recreational boaters and fishermen in the area will be directly affected.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

No Attorney General Opinion or judicial ruling directly relating to the rule has been identified.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

The fiscal impact to state and local government is minimal.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

W. Glenn Moates, LT Col., Boating & Law Enforcement Division, TWRA, 615-781-6684, Glenn.Moates@tn.gov

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Chris Richardson, Asst. Director, TWRA, will explain the rule at the scheduled meeting of the Government Operations Committee

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Richardson, TWRA, PO Box 40747, Nashville, TN 37204; 615-308-0477; Chris.Richardson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-02-18
Rule ID(s): 7247
File Date: 10/1/18
Effective Date: 12/30/18

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Boating & Law Enforcement Division
Contact Person:	Chris Richardson
Address:	P.O. Box 40747, Nashville, Tennessee
Zip:	37204
Phone:	615-308-0477
Email:	Chris.Richardson@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1660-02-07	Rules and Regulations Governing Operation of Vessels
Rule Number	**Rule Title**
1660-02-07-.04	Old Hickory Lake
1660-02-07-.11	Special Areas

Rulemaking Hearing Rules of the
Tennessee Wildlife Resources Agency

Rule Chapter 1660-02-07
Rules and Regulations Governing Operations of Vessels

Amendment

Rule 1660-02-07-.04(21) Old Hickory Lake is amended by deleting (21) in its entirety.

1660-02-07-.04 OLD HICKORY LAKE.

(1) Vessels are prohibited in the Old Hickory Beach Swimming Area located on the southwest side of Old Hickory lake in cove nearest the dam and delineated by a line of informational buoys.

(2) Vessels being operated in the cove adjacent to and south of the area(1) shall be operated as follows:

(a) Motorboats shall operate at a "Slow—No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(3) Vessels being operated in the cove adjacent to the Rockland Day Use Area which is located near Old Hickory Dam and Lock in Sumner County and delineated by a line of informational buoys shall be operated as follows:

(a) Motorboats shall operate at a "Slow—No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(4) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to Walton's Ferry Access in Sumner county near River Mile 220.8, shall be operated as follows:

(a) Motorboats shall operate at a "Slow—No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(5) Vessels being operated on Old Hickory Lake in the portion of Shutes Branch known as Langfords Cove, south of the highway bridge and the area adjacent to Shutes Branch Recreation Area, both as delineated by informational buoys, in Wilson County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow—No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(6) Unauthorized vessels are prohibited from entering that designated area adjacent to the DuPont Loading dock located at River Mile 218.

(7) Vessels being operated on Old Hickory Lake within the Laguardo Recreation Area in Spencer Creek (River Mile 236) shall be operated as follows:

(a) Motorboats shall operate at a " Slow – No Wake speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(c) Vessels are prohibited in the swimming area

(8) Vessels being operated on Old Hickory Lake in the area known as Fetherling Cove located at River Mile 218.5 in Sumner County and delineated by informational buoys shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(9) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Lock 3 Access in Sumner County near River Mile 218, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(c) Vessels are prohibited in the swimming area

(10) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Sanders Ferry Park Access in Sumner County near River Mile 222, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(11) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Mallard Point Access located in Drakes Creek in Sumner County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(12) Vessels being operated on Old Hickory Lake within the area, as delineated by an informational buoy, adjacent to the Stark Knob Access in Sumner County near River Mile 225.5, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(13) Vessels being operated on Old Hickory Lake within the area, as delineated by an informational buoy, adjacent to the Saundersville Access in Sumner County near River Mile 228.2, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(14) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Avondale Access in Sumner County near River Mile 229.4, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(15) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Cages Bend Campground Access in Sumner County near River Mile 234, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(16) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Station Camp Access located in West Fork Station Camp Creek in Sumner County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(17) Vessels being operated on Old Hickory Lake within the area, as delineated by a line of informational buoys, adjacent to the Bull Creek Access in Sumner County near River Mile 239.6, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(18) Vessels being operated on Old Hickory Lake within the area, as delineated by an informational buoy, adjacent to the Lone Branch Access located in Cedar Creek in Wilson County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(19) Vessels being operated on Old Hickory Lake within the area, as delineated by an informational buoy, adjacent to the Cedar Creek Campground Access located in Cedar Creek in Wilson County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, innertube or similar devices.

(c) Vessels are prohibited in the swimming area

(20) Vessels being operated on Old Hickory Lake within the area, as delineated by an informational buoy, adjacent to the Burton Road Access located in Spencer Creek in Wilson County, shall be operated as follows:

(a) Motorboats shall operate at a "Slow-No Wake" speed.

(b) Motorboats shall not tow a person on water skis, surfboard, inner tube or similar devices.

~~(21) Vessels are prohibited from entering the discharge channel at the TVA Fossil Plant near Cumberland River (CRM) 243 as marked by informational buoys and barrier floats~~

***Authority**: T.C.A. §69-9-209. Administrative History: Original rule certified May 8, 1974. Amendment filed May 28, 1975; effective June 28, 1997. Amendment filed February 6, 1978; effective March 8, 1978. Amendment filed July 2, 1979; effective August 16, 1979. Amendment filed August 1, 1990; effective September 15, 1990. Amendment filed April 26, 2013; effective July 25, 2013. Amendment filed _____; effective _____.*

Amendment

Rule 1660-02-07-.11, Special Areas, is amended by adding a new paragraph (8) which shall read as follows:

1660-02-07-.11 SPECIAL AREAS

(1) All motorboats being operated within 300 feet of a commercial dock or marina shall be operated at a "slow, no-wake speed" unless otherwise marked and approved under 1660-2-6-.01, or a specific rule and regulation.

(a) The measurement shall be made from the last structure associated with the dock or marina except as noted above.

(b) For this rule, a commercial marina is defined as any permanent facility accessible by boat which:

1. offers goods or services to the general public in exchange for currency or other consideration

2. has a valid business license, if required, and a Tennessee Tax Identification number

3. is permitted by the U.S. Corps of Engineers, and the Tennessee Valley Authority if applicable, as a commercial boat dock or marina.

(2) No person shall operate or use any vessel, within the area designated and appropriately marked as a hazardous area, below any dam and/or lock unless each person aboard is wearing a U. S. Coast Guard approved flotation device, Type I, Type II, Type III or Type V.

(a) This regulation is not intended to affect regulations promulgated by other governmental agencies, federal or state, related to activities that may or may not be conducted within said hazardous area.

(3) Vessels being operated within 300 yards of the Tennessee Wildlife Resources Agency access ramp on Indian Creek will be operated at a "Slow—No Wake" speed.

(4) Vessels being operated on Deer Creek located at River Mile 125 on Kentucky Lake shall operate at a "Slow—No Wake" speed within the embayment area.

(5) Motorboats being operated on Great Falls Reservoir in the Rocky River Embayment from its mouth upstream shall not tow a person on water skis, surfboard, innertube or similar device.

(6) Vessels being operated on Crooked Creek located at River Mile 121.5 on Kentucky Lake shall operate at a "Slow—No Wake" speed from the mouth of the Tennessee River to the Crooked Creek embayment.

(7) Vessels being operated within the buoyed area in Eagle Creek located at river mile 1 on the big Sandy River, from a point east of Big Eagle picnic area, west to the west boundary of Buchanan's boat dock, shall operate at a "slow—No Wake" speed.

(8) Vessels on Reelfoot Lake are prohibited from the Highway 21 Bridge, in Lake County, south to the new Reelfoot Lake spillway, as marked by signs.

***Authority**: T.C.A. §§ 69-9-209 and 70-1-206. Administrative History: Original rule certified May 8, 1974. Amendment filed November 20, 1975; effective December 20, 1975. Amendment filed November 4, 1976; effective December 4, 1976. Amendment filed June 8, 1977; effective July 8, 1977. Amendment filed February 6, 1978; effective March 8, 1978. Amendment filed April 20, 1988; effective June 4, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed October 4, 1989; effective November 18, 1989. Amendment filed January 28, 2002; effective April 13, 2002. Amendment filed April 26, 2004; effective July 10, 2004. Amendment filed April 26, 2013; effective July 25, 2013. Amendment filed March 16, 2017; effective June 14, 2017. Amendment filed _____; effective _____.*

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker				✓	
Angie Box	✓				
Jeff Cook	✓				
Bill Cox	✓				
Dennis Gardner				✓	
Kurt Holbert	✓				
Connie King	✓				
Brian McLerran	✓				
Tony Sanders	✓				
James Stroud	✓				
Bill Swan				✓	
Kent Woods	✓				
Jamie Woodson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish and Wildlife Commission on 08/24/18 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *(mm/dd/yy)* 08/24/18

Rulemaking Hearing(s) Conducted on: (add more dates). *(mm/dd/yy)* 08/24/18

Date: 08/28/18

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: August 28, 2018

Notary Public Signature: Kate T. Hamm

My commission expires on: 12-22-18

KATE T. HAMM STATE OF TENNESSEE NOTARY PUBLIC SHEATHAM COUNTY My Commission Expires December 22, 2018

Agency/Board/Commission: Tennessee Wildlife Resources Agency

Rule Chapter Number(s): 1660-02-07-.04 and 1660-02-07-.11

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/21/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/1/18

Effective on: 12/30/18

Tre Hargett
Secretary of State

RECEIVED
2018 OCT -1 AM 11:27
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Labor and Workforce Development
DIVISION:	Occupational Safety and Health
SUBJECT:	Occupational Safety and Health Standards for General Industry
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-3-201
EFFECTIVE DATES:	January 6, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

Regulatory Flexibility Addendum
Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

An economic impact statement regarding the amendments in this rule proposal is not required under the provisions of the Regulatory Flexibility Act of 2007. As stated in Section 6 of Public Chapter 464, "This part shall not apply to rules that are adopted on an emergency or pubic necessity basis under Title 4, Chapter 5, Part 2, that are federally mandated, or that substantially codify existing state or federal law." Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the Tennessee Occupational Safety and Health State Plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. The plan specifies that the state of Tennessee will adopt the federal standards or an equivalent state requirement within six (6) months of the standard's promulgation by federal OSHA. In addition, T.C.A. §50-3-201 authorizes the Commissioner of Labor and Workforce Development to adopt either state or federal occupational safety and health standards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rules 0800-01-01-.06, 0800-01-06-.02, 0800-01-07-.01 and 0800-01-07-.02 are amended in order to adopt and reference the latest occupational safety and health standards and exceptions, if any, in the applicable parts of Title 29, Code of Federal Regulations when published in the Federal Register. Since the last amendments to the rules there have been no substantive changes to the Occupational Safety and Health Standards.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Under the statutory authority of 29 U.S.C. § 667, Tennessee has an approved state plan that provides for the development and enforcement of occupational safety and health standards. In accordance with the plan, when a federal occupational safety and health standard is promulgated under 29 U.S.C. § 655 Tennessee generally adopts the federal standard relating to the same issue. When a federal standard is not adopted, it is referenced as an exception in the rules. The statutory authority for promulgation of the rules by the Commissioner of Labor and Workforce Development is T.C.A. § 50-3-201.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons subject to T.C.A. §§ 50-3-101 et seq. are directly affected by the rules in Chapters 0800-01-01, 0800-01-06 and 0800-01-07. These rules provide for the effective administration and enforcement of the occupational safety and health standards required by the state plan. Employees and employers including governmental entities in the state must comply with the rules promulgated pursuant to federal and state law. It appears that there are no objections to the proposed amendments to the rules since no inquiries have been made.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the proposed rules and amendments to the existing rules.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Larry Hunt, Manager, Standards & Procedures, Division of Occupational Safety and Health, is the agency representative most knowledgeable about these rules.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health 220 French Landing Drive Nashville, TN 37243-1002 (615) 741-7036 email: larry.hunt@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 10-13-18
Rule ID(s): 7252-7254
File Date: 10/8/18
Effective Date: 1/6/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Division of Occupational Safety and Health
Contact Person:	Larry Hunt
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	(615) 741-7036
Email:	Larry.Hunt@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0800-01-01	Occupational Safety and Health Standards for General Industry
Rule Number	**Rule Title**
0800-01-01-.06	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-06	Occupational Safety and Health Standards for Construction
Rule Number	**Rule Title**
0800-01-06-.02	Adoption and Citation of Federal Standards

Chapter Number	**Chapter Title**
0800-01-07	Occupational Safety and Health Standards for Agriculture
Rule Number	**Rule Title**
0800-01-07-.01	Adoption and Citation of Federal Standards
0800-01-07-.02	Exceptions to Adoption of Federal Standards

Chapter 0800-01-01
Occupational Safety and Health Standards for General Industry

Amendments

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019" so as amended the paragraph shall read:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2019 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06
Occupational Safety and Health Standards for Construction

Amendments

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019" so as amended the paragraph shall read:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2019 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07
Occupational Safety and Health Standards for Agriculture

Amendments

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019" so as amended the paragraph shall read:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2019 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "July 1, 2018" to "January 1, 2019" so as amended the paragraph shall read:

(1) As of January 1, 2019, there are no exceptions.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201

Proposed Amendments with Changes Red-Lined

Chapter 0800-01-01

Rule 0800-01-01-.06 Amended

Paragraph (2) of Rule 0800-01-01-.06 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of ~~July 1, 2018~~ except as provided in Rule 0800-01-01-.07 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of January 1, 2019 except as provided in Rule 0800-01-01-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Chapter 0800-01-06

Rule 0800-01-06-.02 Amended

Paragraph (2) of Rule 0800-01-06-.02 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of ~~July 1, 2018~~ except as provided in Rule 0800-01-06-.03 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of January 1, 2019 except as provided in Rule 0800-01-06-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Chapter 0800-01-07

Rule 0800-01-07-.01 Amended

Paragraph (2) of Rule 0800-01-07-.01 Adoption and Citation of Federal Standards is amended by changing the date from "July 1, 2018" to "January 1, 2019".

Existing Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of ~~July 1, 2018~~ except as provided in Rule 0800-01-07-.02 of this chapter.

Proposed Amended Rule:

(2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of January 1, 2019 except as provided in Rule 0800-01-07-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Rule 0800-01-07-.02 Amended

Paragraph (1) of Rule 0800-01-07-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from "July 1, 2018" to "January 1, 2019".

Existing Rule:

(1) As of ~~July 1, 2018~~, there are no exceptions.

Proposed Amended Rule:

(1) As of January 1, 2019, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 08/10/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 8/10/18

Signature: Burns P. Phillips

Name of Officer: Burns Phillips

Title of Officer: Commissioner of Labor and Workforce Development

DESIREE W FELTS STATE OF TENNESSEE NOTARY PUBLIC CHEATHAM COUNTY

Subscribed and sworn to before me on: August 10, 2018

Notary Public Signature: Desiree W. Felts

My commission expires on: March 17, 2021

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/8/18

Effective on: 1/6/19

Tre Hargett
Secretary of State

RECEIVED 2018 OCT -9 AM 11:10 SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Department of Revenue
DIVISION:	
SUBJECT:	Administration / Fees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 10-7-503(g)
EFFECTIVE DATES:	January 27, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	T.C.A § 10-7-503(9) requires state government entities to promulgate rules regarding public records requests by January 1, 2019. Under the statute, the rule shall include: the process for making requests to inspect public records or receive copies of public records and a copy of any required form; the process for responding to requests, including redaction practices; a statement of any fees charged for copies of public records and the procedures for billing and payment; and the name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator. On June 30, 2017, the Department established a written public records policy, which is substantively similar to this rule. The rule provides in pertinent part as follows: The definitions of terms used in the rule; A statement of records presumed to be open unless otherwise provided by law; An explanation of statutory confidentiality laws for tax information, tax administration information, and motor vehicle records that prohibit disclosure under the public records law; The process for requesting access to public records, including the permanent, designated email address for the Public Record Request Coordinator and mailing address; The process for responding to public records; The process for reviewing records; A statement that the Public Record Request Coordinator will redact

confidential information or information not open for public inspection, but in the cases of returns, tax information, taxpayer identity or tax administration information, redacted copies will only be made if legal counsel for the department determines it is not in violation of T.C.A. § 67-1-1702. The list of fees and charges for copies; The provision of a potential fee waiver for when copies and labor do not exceed $25; and the provision of a potential. fee waiver when the waiver is in the best interest of the Department and for the public good; An explanation of the form of payment; An explanation of aggregation of frequent and multiple requests; and, The provision of template forms when and if forms are used.

NOTE: The redline copy of the rule provided in this packet contains no strikethroughs or underlining as the rule is a new rule.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

The Department received public comment regarding the clarity of the rule language with respect to the rule not incorporating the same language as found in the relevant statute. The Department as a general practice avoids simply repeating the applicable statute in a rule. The Department generally limits the content of rules to topics requiring some sort of explanation in addition to the language already contained in the statute. Accordingly, when specific statutory details are not included in the rule, it is because the Department determined that the statute is already sufficiently clear and does not require further explanation in a rule. A rule can neither expand nor narrow the scope of a statute; the language of the statute governs even when the rule does not repeat the statutory language.

The Department also received public comment regarding certain state agencies requiring that a requestor submit proof of Tennessee residency (generally, by presenting a copy of a valid Tennessee driver's license). The public confirmed that none of the examples involved the Tennessee Department of Revenue. The Department strives to provide excellent customer service by accommodating all public records requests quickly and efficiently. The law provides that public records are generally open to citizens of this state, and the law further provides that agencies may require any person requesting to view or copy public records to present acceptable identification. See T.C.A. 10-7-503(a)(2)(A) and T.C.A. 10-7-503(a)(7)(A)(vi).

Finally, the Department received positive public feedback, such as the possible waiver of fees for copies and labor that do not exceed $25. In addition to this waiver, the Department strives to work with requestors to tailor public records requests in a way that still provides the desired information yet reduces the cost to the requestor.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule will not impact small businesses. Specific supporting details are below:

(1) **Types of small businesses directly affected:**
The amendment of Rule 1320-01-01-.30 has no impact on small business. To the extent a small business does request public records, the Department has provided a fee waiver for copies and labor that do not exceed $25. Additionally, there is a possible fee waiver for costs above $25 when the waiver is in the best interest of the Department of Revenue and for the public good.

(2) **Projected reporting, recordkeeping, and other administrative costs:**
The amendment of Rule 1320-01-01-.30 creates no added reporting, recordkeeping, and other administrative costs. The rule is similar to the current practices of the Department such that no additional costs are incurred.

(3) **Probable effect on small businesses:**
These rules do not have a negative effect on small businesses.

(4) **Less burdensome, intrusive, or costly alternative methods:**
There is no less burdensome, intrusive, or costly alternative method available outside of these rules. T.C.A. 10-7-503(g)(2) requires the promulgation of rules that meet the requirements under T.C.A. 10-7-503(g)(1)(A)-(D).

(5) **Comparison with federal and state counterparts:**
T.C.A. 10-7-503(g)(2) requires the promulgation of this rule for state governmental entities within this state. The Department's rule appears substantively similar to that of other departmental agencies that have filings currently available on the Secretary of State's website.

(6) **Effect of possible exemption of small businesses:**
Small businesses are effectively exempted from New Rule 1320-01-01-.30 through application of the automatic waiver of fees when copy costs and labor do not exceed $25.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule does not impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

T.C.A § 10-7-503(g) requires state government entities to promulgate rules regarding public records requests by January 1, 2019.Under the statute, the rule shall include: the process for making requests to inspect public records or receive copies of public records and a copy of any required form; the process for responding to requests, including redaction practices; a statement of any fees charged for copies of public records and the procedures for billing and payment; and the name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

On June 30, 2017, the Department established a written public records policy, which is substantively similar to this rule.

The rule provides in pertinent part as follows:

- The definitions of terms used in the rule;
- A statement of records presumed to be open unless otherwise provided by law;
- An explanation of statutory confidentiality laws for tax information, tax administration information, and motor vehicle records that prohibit disclosure under the public records law;
- The process for requesting access to public records, including the permanent, designated email address for the Public Record Request Coordinator and mailing address;
- The process for responding to public records;
- The process for reviewing records;
- A statement that the Public Record Request Coordinator will redact confidential information or information not open for public inspection, but in the cases of returns, tax information, taxpayer identity or tax administration information, redacted copies will only be made if legal counsel for the department determines it is not in violation of T.C.A. § 67-1-1702.
- The list of fees and charges for copies;
- The provision of a potential fee waiver for when copies and labor do not exceed $25; and the provision of a potential fee waiver when the waiver is in the best interest of the Department and for the public good;
- An explanation of the form of payment;
- An explanation of aggregation of frequent and multiple requests; and,
- The provision of template forms when and if forms are used.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 10-7-503(g) requires state government entities to promulgate rules setting forth processes, procedures and fees for public records requests by January 1, 2019.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule affects any persons, organizations, corporations requesting public records pursuant to T.C.A. 10-7-503. However, the promulgation of this rule will not significantly change how the Department administers public records requests. Tennessee Coalition for Open Government is a known organization tracking this rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known opinions or rulings directly relating to this rule.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There is no expected increase or decrease in state and local government revenues and expenditures resulting from promulgations of this rule. This rule is representative of how the Department currently administers public records requests.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kristin Husat, Assistant Commissioner & General Counsel

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kristin Husat, Assistant Commissioner & General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Kristin Husat, Assistant Commissioner & General Counsel
500 Deaderick Street
11th Floor, Legal Office
Nashville, TN 37242
(615) 741-2348
Kristin.Husat@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-20-18
Rule ID(s): 7258
File Date: 10/29/18
Effective Date: 1/27/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Revenue
Division:	
Contact Person:	Lauren Fields, Associate General Counsel and Assistant Director– Legal
Address:	Andrew Jackson Building, 500 Deaderick Street, 11th Floor Nashville, TN
Zip:	37242
Phone:	(615) 741-2348
Email:	Lauren.Fields@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1320-01-01	Administration
Rule Number	**Rule Title**
1320-01-01-.30	Public Records Requests

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to
http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 1320-01-01
Administration
New

Rule 1320-01-01-.30 is added as follows:
1320-01-01-.30 Public Records Requests
(1) Definitions as used in this rule:

A. Office of Open Records Counsel ("OORC"): The office established pursuant to T.C.A. §§ 8-4- 601 et seq., or any successor office or entity.

B. Personal Information: The term "personal information" shall have the same meaning as defined under T.C.A. § 55-25-103 of the Tennessee Uniform Motor Vehicle Records Disclosure Act.

C. Public Records: The term "public record" shall have the same meaning as defined under T.C.A. § 10-7-503(a)(1)(A) of the Tennessee Public Records Act.

D. Public Records Request Coordinator ("PRRC"): The individual, or individuals, designated in Section (3) of this rule who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act ("TPRA"). The PRRC may also be a records custodian.

E. Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

F. Requestor: A person seeking access to a public record, whether it is for inspection or duplication.

G. Return: The term "return" shall have the same meaning as defined under T.C.A. § 67-1-1701.

H. Tax administration information: The term "tax administration information" shall have the same meaning as defined under T.C.A. § 67-1-1701.

I. Tax information: The term "tax information" shall have the same meaning as defined under T.C.A. § 67-1-1701.

J. Taxpayer identity: The term "taxpayer identity" shall have the same meaning as defined under T.C.A. § 67-1-1701.

K. Tennessee Public Records Act ("TPRA"): The Tennessee Public Records Act as codified in Title 10, Chapter 7, of the T.C.A.

(2) Records Presumed to be Open for Inspection Unless Otherwise Provided by Law

A. The public records of the Tennessee Department of Revenue are presumed to be open for inspection unless otherwise provided by law. In accordance with the TRPA, nothing in this rule shall be construed as requiring the Department to sort through files to compile information or to create or recreate a record that does not exist.

B. This rule shall not be construed to broaden or narrow the scope of exceptions to the TPRA, including confidentiality laws codified in Title 10, Title 55, Title 67, or elsewhere.

C. A taxpayer's returns, taxpayer identity, and tax information are confidential and are not available to the general public through a public records request. Requests for copies of returns, tax information, a taxpayer's identity, or tax administration information will be denied unless an exception to Tennessee's confidentiality laws applies.

D. A person's personal information associated with motor vehicle records is confidential and is not available to the general public through a public records request. Requests for personal information contained in motor vehicle records will be denied unless an exception to Tennessee's confidentiality laws applies.

(3) Requesting Access to Public Records

A. Public record requests shall be made to the PRRC or the PRRC's designee. The PRRC shall be the department's acting Public Information Officer or designee.

B. In order to ensure that requests are routed to the appropriate records custodian and fulfilled in a timely manner, requests may be made via online submission, if that option is available, by email to TNRevenue.PublicRecords@tn.gov, or by mail to:

Attn: Public Records Request Coordinator
Tennessee Department of Revenue
Andrew Jackson Building, 11th Floor
500 Deaderick Street
Nashville Tennessee 37242.

C. Requests for inspection of records are not required to be made in writing. However, the PRRC may request a mailing or email address from the requestor in order to provide any written communications required under the TPRA.

D. Requests for copies of records shall be made in writing to the PRRC, and may be made using the attached Public Records Request Form. The Department of Revenue may modify or update the request form as needed.

E. A taxpayer is not required to submit a public record request to obtain copies of the taxpayer's own returns or tax information.

(4) Process for Responding to Public Records Requests

A. Public Record Request Coordinator

1. Upon receipt of a public record request, the PRRC shall acknowledge receipt of the request. The PRRC shall promptly forward the request to the Department's General Counsel and/or designated staff attorney, who shall make an initial determination of the following:

a. Whether the requested records are described with sufficient specificity to identify it;

b. Whether the requested records come within the scope of an exception to the TPRA; and

c. Whether the Tennessee Department of Revenue is the custodian of the requested records.

2. Following review of the public record request by legal counsel, the PRRC may take any of the following action(s), as appropriate:

a. If the requested record is not described with sufficient specificity to identify it, contact the requestor to see if the request can be amended;

b. Contact the requestor to obtain proof of Tennessee citizenship;

c. Contact the requestor to obtain proof that the requestor is authorized to access requested records that come within the scope of an exception to the TPRA;

d. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC for that entity if known;

e. Inform the requestor of any form(s) required to request copies of records;

f. Inform the requestor of any applicable fees, including labor thresholds and waivers; and

g. Inform the requestor that the Department intends to aggregate multiple or frequent requests, as set out further in this rule.

3. If appropriate, after the review of records pursuant to Section (4)B of this rule, the PRRC shall deny the public record request in writing and provide a brief explanation of the grounds for denial, such as one of the following:

   a. The requestor is not, or has not presented evidence of being, a Tennessee citizen.

   b. With respect to requests for records that are within the scope of an exception to the TPRA, the requestor has not presented sufficient proof that the requestor is authorized to access the records.

   c. The request lacks specificity.

   d. The Tennessee Department of Revenue is not the custodian of the requested records.

   e. The records do not exist.

4. If appropriate, after the review of records pursuant to Section (4)B of this rule, the PRRC shall promptly provide to the requestor all records to which an exception to the TPRA does not apply.

B. Review of Records

1. The PRRC will promptly forward the records request to the appropriate records custodian(s) in the Tennessee Department of Revenue. Upon receiving a public records request, the records custodian shall promptly gather the records and provide them to the PRRC for review. The PRRC will review the records in consultation with the Department's legal counsel to make a final determination as to whether the requested records come within the scope of an exception to the TPRA.

2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records come within the scope of an exception to the TPRA; to redact records; or for other similar reasons, then the PRRC shall, promptly and within seven (7) business days from the receipt of the request, send the requestor a written response as to why it is not practicable to promptly provide the requested records and provide the time reasonably necessary to produce the record or information.

3. If the PRRC denies a public record request, the PRRC shall deny the request in writing as provided in this rule and provide the basis for denial.

4. If the PRRC reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the PRRC shall notify in writing the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC should contact the requestor to see if the request can be narrowed.

5. If a records custodian later discovers records responsive to a records request that were omitted from the response, the PRRC should contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the PRRC shall prepare a redacted copy prior to providing access. However, if a record constitutes a return, tax information, taxpayer identity, or tax administration information, the PRRC shall prepare a redacted copy only if legal counsel for the Tennessee Department of Revenue determines that providing a redacted record would not be in violation of T.C.A. § 67-1-1702. If questions arise concerning redaction, the records custodian should coordinate with the Department's legal counsel or other appropriate parties regarding review and redaction of records. The PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

2. Whenever a redacted record is provided, the PRRC should provide the requestor with the basis for redaction. The basis given for redaction shall be general in nature and not disclose confidential information.

(5) Inspection of Records

A. The location for inspection of records within the offices of the Tennessee Department of Revenue shall be determined by the PRRC in consultation with the appropriate records custodian.

B. Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

(6) Copies of Records

A. The PRRC shall promptly respond to a public record request for copies in the most economic and efficient manner practicable.

B. Copies will be available for pickup at a location specified by the PRRC.

C. Upon payment for postage, copies will be delivered to the requestor's primary address by the United States Postal Service.

D. Scanned copies (e.g., PDFs) of the requested records are available upon request and will be delivered to the requestor's email address, as specified in the written request.

(7) Fees and Charges and Procedures for Billing and Payment

A. Fees and charges for copies of public records shall not be used to hinder access to public records.

B. There shall be no charge for mere inspection of public records. Any charges for producing copies of records shall be in conformity to this rule.

C. The PRRC shall provide requestors with an itemized estimate of any charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

D. When fees for copies and labor do not exceed $25.00, the fees may be waived by the PRRC. Requests for waivers for fees above $25.00 must be presented to the Commissioner of Revenue or his delegate, who is authorized to determine if such waiver is in the best interest of the Tennessee Department of Revenue and for the public good.

E. Fees and charges for copies are as follows:

1. $2.00 per tax return

2. $1.00 per motor vehicle record

3. $1.50 per certified motor vehicle record

4. $0.15 per page for letter- and legal-size black and white copies.

5. $0.50 per page for letter- and legal-size color copies.

6. Labor when time exceeds 25 hours.

7. If an outside vendor is used, the actual costs assessed by the vendor.

F. Payment may be made in cash, by personal check, cashier's check or by credit card. Checks must be payable to the Tennessee Department of Revenue.

G. Payment in advance may be required in all situations.

H. Aggregation of Frequent and Multiple Requests

1. The Tennessee Department of Revenue may aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than four requests are received within a calendar month (either from a single individual or a group of individuals deemed working in concert).

2. If aggregating:

a. The level at which records requests will be aggregated is by agency.

b. The PRRC in consultation with legal counsel is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

(8) Forms for Requesting Inspection/Copies of Records and Responding to Requests

A. Forms are not required in all instances for requesting inspection or copies of public records; provided that, the PRRC may require forms to provide timely and efficient access and assistance to requestors for copies of records.

B. If the PRRC determines a form is necessary to timely and efficiently process a request for copies of public records, the form shall be as provided in this rule.

C. If the PRRC determines a form is necessary to timely and efficiently provide a response to a request for copies or inspection of public records, the PRRC will use the form developed by the office of open records counsel, as updated and amended.

(9) With the assistance of General Counsel, the PRRC shall report to the Tennessee Department of Revenue's Internal Audit and Consulting Services Division, on an annual basis, regarding the Tennessee Department of Revenue's compliance with the TPRA for the preceding fiscal year and shall make recommendations, if any, for improvement or changes to this rule.

Authority: T.C.A. §§ 10-7-501, 10-7-503, 67-1-102, 67-1-1701 et seq., 55-25-101 et seq.

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

This form is not necessary to obtain a taxpayer's own tax information, which may be obtained by submitting a written request to the Records Custodian of the Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, Nashville, Tennessee, 37242

This form is not necessary to obtain motor vehicle records, which, subject to Tennessee's confidentiality laws, may be obtained by submitting a Vehicle Information Request form available at https://www.tn.gov/assets/entities/revenue/attachments/f1313801Fill-in.pdf.

To: Tennessee Department of Revenue, Public Records Request Coordinator

From: _____

Is the requestor a Tennessee citizen? ☐ Yes ☐ No

Request: ☐ Inspection
☐ Copy/Duplicate (*Note*: Fees may apply)

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $_____? If so, initial here: ____.

Delivery preference: ☐ On-Site Pick-Up
☐ USPS First-Class Mail
☐ Electronic

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

_____
_____
_____
_____
_____
_____
_____

_____		_____	
Signature of Requestor	Date Submitted	Signature of Coordinator	Date Received

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the _____ (board/commission/ other authority) on _____ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *07/31/18*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/24/18*

Date: 9/28/18

Signature: David Gerregano

Name of Officer: David Gerregano

Title of Officer: Commissioner

Subscribed and sworn to before me on: 9-28-18

Notary Public Signature: Tammy Crook

My commission expires on: 9-20-2021

TAMMY CROOK STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/19/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/29/18

Effective on: 1/27/19

Tre Hargett
Secretary of State

2018 OCT 29 AM 9:38
SECRETARY OF STATE
PUBLIC ACTIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Technological University
DIVISION:	
SUBJECT:	Access to Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)(2) requires state government entities to promulgate rules regarding public records that meet the requirements of Tennessee Code Annotated Section 10-7-503(g)(1).
EFFECTIVE DATES:	January 6, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Previously, Tennessee Tech University adopted and followed the Comptroller's Office of the Open Records model policy related to responding to requests for public records. The proposed rule does not materially change Tennessee Tech University's previous policy or processes for responding to such requests.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule is not anticipated to have an impact on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Previously, Tennessee Tech adopted and followed the Comptroller's Office of the Open Records model policy related to responding to requests for public records. The proposed rule does not materially change Tennessee Tech's previous policy or processes for responding to such requests.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 10-7-503(g)(2) requires state government entities to promulgate rules regarding public records that meet the requirements of T.C.A. § 10-7-503(g)(1).

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Tennessee Tech Board of Trustees urges adoption. Individuals/entities that wish to review public records of the State of Tennessee are directly affected by this rule. Tennessee Tech believes the rule is consistent with the intent of the law, namely to create transparency in its operations, but does not know whether interested individuals/entities would urge adoption or rejection of this rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None known

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Karen Lykins, Chief Communication Officer

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Karen Lykins, Chief Communication Officer

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Karen Lykins, Chief Communication Officer
1 William L. Jones Dr.
Cookeville, TN 38505
931-372-3084
KLykins@tntech.edu

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-15-18
Rule ID(s): 7256
File Date: 10/8/18
Effective Date: 1/6/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Technological University
Division:	
Contact Person:	Karen Lykins
Address:	1 William L. Jones Dr. Cookeville, TN
Zip:	38505
Phone:	931-372-3084
Email:	KLykins@tntech.edu

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0240-09-05	Access to Public Records
Rule Number	**Rule Title**
0240-09-05-.01	Scope
0240-09-05-.02	Definitions
0240-09-05-.03	General Policy Statement
0240-09-05-.04	Requesting Access to Public Record
0240-09-05-.05	Responding to Public Records Request
0240-09-05-.06	Redaction
0240-09-05-.07	Inspection of Records
0240-09-05-.08	Request for Copies of Records

Rules
Of
Tennessee Technological University, Cookeville
Chapter 0240-09-05
Access to Public Records

New

Table of Contents is added to Chapter 0240-09-05 Access to Public Records and shall read as the follows:

0240-09-05.01 Scope
0240-09-05.02 Definitions
0240-09-05.03 General Provision
0240-09-05.04 Requesting Access to Public Records
0240-09-05.05 Responding to Public Records Request
0240-09-05.06 Redaction
0240-09-05.07 Inspection of Records
0240-09-05.08 Request for Copies of Records

0240-09-05-.01 Scope is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.01 Scope

(1) This rule does not apply to a student's request to see his/her own education records or to an employee's or former employee's reasonable requests to review or copy his/her own personnel file.

Authority: T.C.A. § 10-7-503(g)(2).

0240-09-05-.02 Definitions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.02 Definitions

(1) Public Records: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and ouput, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(2) Public Records Request Coordinator ("Coordinator"): The designated individual who has the responsibility to ensure Public Record requests are routed to the appropriate records custodian and are fulfilled in accordance with the Tennessee Public Records Act.

(3) Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a Public Record.

(4) Requestor: A person seeking access to a Public Record, whether it is for inspection or duplication.

Authority: T.C.A. § 10-7-503.

0240-09-05-.03 General Policy Statement is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.03 General Policy Statement

(1) Tennessee Tech shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of Public Records as required by law.

Authority: T.C.A. § 10-7-503.

0240-09-05-.04 Requesting Access to Public Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.04 Requesting Access to Public Records

(1) Public Record requests should be directed to the Coordinator or his/her designee in order to ensure Public Record requests are routed to the appropriate Records Custodian and fulfilled in a timely manner.

(2) Requestor may contact the Coordinator in person, by telephone, by email, or by mail.

(3) Tennessee Tech will publish the name, telephone number, email address, and office location of the Coordinator on its website or similar publication.

(4) Tennessee Tech will not require a Requestor to submit a request for inspection in writing, absent good cause.

(5) Tennessee Tech will require proof of Tennessee citizenship by either a valid Tennessee driver's license or alternative acceptable form of identification as a condition to inspect or receive copies of Public Records.

(6) No request is necessary for bid tabulations for Request for Proposals and Request for Quotes, which are posted regularly on Tennessee Tech's Purchasing and Contracts webpage. Similarly, meeting notices and materials for Tennessee Tech's Board of Trustees are posted on Tennessee Tech's Board webpage.

Authority: T.C.A. § 10-7-503.

0240-09-05-.05 Responding to Public Records Requests is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.05 Responding to Public Records Requests

(1) The Coordinator shall, as necessary or appropriate:

(a) Request proof of Tennessee citizenship;

(b) Clarify the scope of the request;

(c) Advise the Requestor that Tennessee Tech may charge for copies if the request exceeds the costs threshold allowed by its rule;

(d) Advise the Requestor that Tennessee Tech is not the custodian of the record;

(e) Provide the records;

(f) Deny the request in writing, providing the appropriate basis, such as one of the following:

1. The Requestor is not a Tennessee citizen or has not presented evidence of Tennessee citizenship;

2. The request lacks specificity;

3. An exemption makes the record not subject to disclosure under the Tennessee Public Records Act;

4. The records do not exist.

(2) The Coordinator may deny the request provided the Coordinator has identified in writing the specific legal basis for the denial of the request.

(3) The Coordinator may, if appropriate, contact the Requestor to see if the request can be narrowed.

(4) If requested records are in the custody of a different governmental entity and the Coordinator knows the correct governmental entity, the Coordinator may direct the Requestor to the correct governmental entity.

(5) A Records Custodian must promptly forward a request to the Coordinator and assist the Coordinator in making the records available to the Requestor in a timely manner.

(6) If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to seach for, retrieve, or otherwise gain access to records; to determine whether the records are open, to redact records; or for other similar reasons, then the Coordinator shall, within seven (7) business days from the receipt of the request, send the Requestor a completed Public Records Response Form.

(7) If the Coordinator reasonably determines production of records should be segmented because the Public Records Request is for a large volume of records, or additional time is necessary to prepare the records for access, the Coordinator shall notify the Requestor in writing that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Coordinator may contact the Requestor to see if the request can be narrowed.

(8) If the Coordinator discovers records responsive to a records request were omitted, the Coordinator will notify the Requestor and produce the records as quickly as practicable.

Authority: T.C.A. § 10-7-503.

0240-09-05-.06 Redactions is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.06 Redaction

(1) If a record contains confidential information that is not open for public inspection, the Coordinator, with assistance from the Records Custodian, shall redact the record prior to providing access.

(2) Whenever the Custodian provides a redacted record, the Custodian will advise the Requestor of the general basis or bases for the redaction(s).

Authority: T.C.A. § 10-7-503.

0240-09-05-.07 Inspections of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

240-09-05.08 Inspection of Records

(1) Tennessee Tech will not charge for inspection of Public Records.

(2) Tennessee Tech will advise the Requestor of the location where the records may be inspected.

(3) The Coordinator may require an appointment for the inspection.

Authority: T.C.A. § 10-7-503.

0240-09-05-.08 Request for Copies of Records is added to Chapter 0240-09-05 Access to Public Records and shall read as follows:

0240-09-05-.08 Request for Copies of Records

(1) The Coordinator will respond to a Public Record request for copies in the most economic and efficient manner practicable.

(2) Copies will be available for pickup at a location specified by the Coordinator.

(3) Tennessee Tech will not use fees and charges for copies of Public Records to hinder access to Public Records.

(4) The Coordinator will provide Requestors with an estimate of the charges prior to producing copies of records and may require prepayment of such charges before producing requested records.

(5) If fees for copies and labor do not exceed $25, Tennessee Tech may waive those fees. Requests for waivers for costs that exceed $25 must be presented to the Coordinator, who is authorized to determine if such waiver is in the best interest of Tennessee Tech or for the public good.

(6) Tennessee Tech will not waive fees associated with aggregated records requests.

(7) A Requestor must pay by cash, credit card, or personal check made payable to Tennessee Tech and presented to the Coordinator or to the Tennessee Tech Business Office.

(8) Tennessee Tech will aggregate record requests in accordance with the current office of Open Records Schedule for Reasonable Charges for Frequent and Multiple Requests when more than (4) requests are received within a calendar month either from a single individual or a group of individuals deemed working in concert.

(9) If Tennessee Tech aggregates requests, the Coordinator will advise Requestors of the basis for the aggregation.

Authority: T.C.A. § 10-7-503.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Barbara Fleming	X				
Melissa Geist	X				
Trudy Harper	X				
Rhedona Rose	X				
Purna Saggurti				X	
Johnny Stites	X				
Teresa Vanhooser	X				
Barry Wilmore	X				
Tom Jones	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Tech Board of Trustees on 09/18/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9-18-18

Signature: Karen Lykins

Name of Officer: Karen Lykins

Title of Officer: Chief Communication Officer

Subscribed and sworn to before me on: 9/18/18

Notary Public Signature: Deborah Kay Combs

My commission expires on: 6/29/2020

DEBORAH KAY COMBS STATE OF TENNESSEE NOTARY PUBLIC PUTNAM COUNTY

Agency/Board/Commission: Tennessee Technological University

Rule Chapter Number(s): 0240-09-05 Access to Public Records

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/8/18

Effective on: 1/6/19

Tre Hargett
Secretary of State

RECEIVED
2018 OCT -8 AM 11:33
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Technological University
DIVISION:	
SUBJECT:	Student Immunization Requirements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-7-124(g) and 49-7-125(c)
EFFECTIVE DATES:	January 6, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Immunization Requirements policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas. This rule describes the requirements for immunizations for certain diseases or exemptions from said requirements and was developed in consultation with the Department of Health.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The rule is not anticipated to have an impact on small business.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule is not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

In 2016, Tennessee Tech University (TTU) initiated a comprehensive review of the Student Immunization Requirements policy. This review was initiated due to the separation of TTU from the Tennessee Board of Regents system. TTU is in the process of establishing rules for necessary key areas.

This rule describes the requirements for immunizations for certain diseases or exemptions from said requirements and was developed in consultation with the Department of Health.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 49-7-124(g) and 125(c)

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of TTU are most directly affected by this rule. A policy that mirrors the proposed rule was reviewed and approved by the Administrative Council at TTU. The Council includes student, staff, and faculty representatives. The TTU Board urges adoption of this rule. TTU believes the State of Tennessee Department of Health would urge adoption of this rule as it tracks closely the Department's rule related to immunizations. TTU is not aware of any persons, organizations, corporations, or governmental entities that urge rejection of the rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Marc Burnett, TTU Vice President for Student Affairs/Leigh Ann Ray, TTU Director of Health Services

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Marc Burnett, TTU Vice President for Student Affairs/Leigh Ann Ray, TTU Director of Health Services

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Marc Burnett, TTU Vice President for Student Affairs 1000 N. Dixie Avenue	Leigh Ann Ray, TTU Director Health Services 10 West 7th Street

Cookeville, TN 38505 931-372-3411 mburnett@tntech.edu	Cookeville, TN 38505 931-372-3320 lray@tntech.edu

(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-14-18
Rule ID(s): 7255
File Date: 10/8/18
Effective Date: 1/6/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Technological University
Division:	
Contact Person:	Marc Burnett, Vice President for Student Affairs
Address:	1000 N. Dixie Avenue, Cookeville, TN
Zip:	38505
Phone:	(931) 372-3411
Email:	mburnett@tntech.edu

Revision Type (check all that apply):
___ Amendment
_X_ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0240-09-04	Student Immunization Requirements
Rule Number	**Rule Title**
0240-09-04-.01	Immunization Requirements
0240-09-04-.02	Documentation Related to Specific Illnesses
0240-09-04-.03	Exemptions
0240-09-04-.04	Other Requirements
0240-09-04-.05	Information Provided to Students

Rules
Of
Tennessee Technological University, Cookeville

Chapter 0240-09-04
Student Immunization Requirements

New Chapter

Table of Contents is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04.01 Immunization Requirements
0240-09-04.02 Documentation Related to Specific Illnesses
0240-09-04.03 Exemptions
0240-09-04.04 Other Requirements
0240-09-04.05 Information Provided to Students

0240-09-04.01 Immunization Requirements is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04-.01 Immunization Requirements

(1) Unless otherwise exempted by this rule or by other law, all full-time students admitted to Tennessee Technological University ("Tennessee Tech") must provide health information to Tennessee Tech that establishes the student's compliance with the recommended immunization schedule for measles, mumps, rubella, and varicella for adults, issued by the Centers for Disease Control and Prevention.

(2) Unless otherwise exempted by this rule or by other law, all students under the age of Twenty-Two (22) who reside in Tennessee Tech residential facilities must provide proof of adequate immunization against meningococcal disease as recommended for adults by the Centers for Disease Control and Prevention.

(3) Unless otherwise exempted by this rule or by other law, no new incoming student will be allowed to move into campus housing without providing proof of adequate immunization as required by statute.

(4) Acceptable forms or proof of immunization

(a) General proof of immunization

1. Proof of prior or current military service shall be considered proof of the recommended immunizations.

2. If allowed by law or Department of Health rule or guideline, students with proof of graduation from a Tennessee high school after a certain date shall not be required to submit evidence of the recommended immunizations, except as required by law.

3. Any other proof deemed acceptable by regulation or statute.

Authority: T.C.A. § 49-7-124(g).

0240-09-04.02 Documentation Related to Specific Illnesses is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04-.02 Documentation Related to Specific Illnesses

(1) Varicella

(a) Documentation of two (2) doses of varicella-containing vaccine administered at least twenty-eight (28) days apart; or

(b) Laboratory evidence of immunity; or

(c) A history verified by a physician, advanced practice nurse, physician's assistant, or health department of varicella disease; or

(d) Any other regulatory or statutory requirement.

(2) Measles, Mumps, and Rubella

(a) Documentation of two (2) doses of vaccine against measles, mumps, and rubella administered at least twenty-eight (28) days apart and no earlier than four (4) days before the first birthday; or

(b) Laboratory evidence of immunity; or

(c) Any other regulatory or statutory requirement.

Authority: T.C.A. § 49-7-124(g).

0240-09-04.03 Exemptions is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04-.03 Exemptions

(1) Students enrolling in a course of study that is exclusively online and does not involve any experiential component shall not be asked to provide immunization information.

(2) Varicella - Students born before January 1, 1980 are not required to present proof of adequate immunization against varicella.

(3) MMR – Students born before January 1, 1957 are not required to present proof of adequate immunization against measles, mumps, and rubella.

(4) Students may be exempted

(a) Where a physician licensed by the board of medical examiners, the board of osteopathic examiners, or a health department certifies in writing that a particular vaccine is contraindicated for one of the following reasons:

1. The student meets the criteria for contraindication set forth in the manufacturer's vaccine package insert; or

2. The student meets the criteria for contraindication published by the Centers for Disease Control and Prevention; or

3. In the best professional judgment of the physician, based upon the student's medical condition and history, the risk of harm from the vaccine outweighs the potential benefit.

(b) Where a parent or guardian, or, in the case of an adult student, the student, provides the school with a written statement, affirmed under the penalties of perjury, that the vaccination conflicts with the religious tenets and practices of the parent or guardian or, in the case of an adult student, the student.

(5) Any other regulatory, statutory, or legal exemption.

Authority: T.C.A. § 49-7-124(g).

0240-09-04.04 Other Requirements is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04-.04 Other Requirements

(1) Notwithstanding the foregoing, any applicant enrolling in a school of nursing, laboratory technology, or any other allied health profession must present proof of compliance with the immunization schedule for healthcare personnel issued by the Centers for Disease Control and Prevention.

Authority: T.C.A. § 49-7-124(g).

0240-09-04-.05 Information Provided to Students is added to Chapter 0240-09-04 Student Immunization Requirements and shall read as follows:

0240-09-04-.05 Information Provided to Students

(1) Tennessee Tech will provide each new incoming student with detailed information concerning the risk factors for hepatitis B infection and meningococcal meningitis and the availability and effectiveness of vaccine for persons who are at risk of the disease.

(2) Each new incoming student must return a completed waiver form indicating that Tennessee Tech has provided the information required in this section.

Authority: T.C.A. § 49-7-124(g).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Tom Jones	X				
Trudy Harper	X				
Barbara Fleming	X				
Melissa Geist	X				
Rhedona Rose	X				
Purna Saggurti				X	
Johnny Stites	X				
Teresa Vanhooser	X				
Capt. Barry Wilmore	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Technological University Board of Trustees on 09/18/2018, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9/18/2018

Signature: [signature]

Name of Officer: Marc Burnett

Title of Officer: Vice President for Student Affairs

Subscribed and sworn to before me on: 9/18/18

Notary Public Signature: Deborah Kay Combs

My commission expires on: 6/29/2020

DEBORAH KAY COMBS
STATE OF TENNESSEE
NOTARY PUBLIC
PUTNAM COUNTY

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/8/18

Effective on: 1/6/19

Tre Hargett
Secretary of State

RECEIVED
2018 OCT -8 AM 11:32
SECRETARY OF STATE
PUBLIC DOCUMENTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Individual Education Accounts (IEA)
STATUTORY AUTHORITY:	Tennessee Public Chapter Nos. 305 (2017), 431 (2015), 620 (2015), and 793 (2015). Tennessee Code Annotated Section 49-10-140 et seq. establishes the IEA program and its guidelines as well as mandates the promulgation of rules for the program.
EFFECTIVE DATES:	January 23, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving the child direct access to state and local public education funds. This amendment removes the requirement that participating private schools submit enrollment reports to the department because this information is captured in other reports. This amendment also makes grammatical corrections and formatting changes for consistency within the rule.

(Rule 0520-01-11-.08, continued)

Public Hearing Comments

There were no oral comments received at the public hearing. The State Board of Education and the Department of Education did received written feedback which is attached to this form along with the response.

(Rule 0520-01-11-.08, continued)

Written Public Comments and Responses
The State Board of Education and the Department of Education received written feedback. A summary of the feedback and responses are below.

1. Ms. Shenia Pellum and Ms. Rachel Wolfram stated that finding online learning programs provided by Category 3 nonpublic online learning program limited options for their students who would learn best in an online environment.

Response:
Rebecca Wright, Director of the Individualized Education Account Program at the state Department of Education, stated that:
"Regarding the definitions of online learning programs/courses and curriculum, the proposed revisions do broaden the definitions and provide more flexibility for account holders. The department has posted an addendum to the 2017-18 IEA Parent Handbook that explains these revisions; the addendum is posted on the IEA webpage: http://www.tn.gov/education/topic/iea-resources. To determine whether curriculum materials, including books and other instructional materials, meet the revised definition, please submit the Curriculum Pre-Approval Form. To determine whether online learning programs/courses meet the revised definition, please email IEA.Questions@tn.gov."

2. Ms. Pellum also requested the option to pay for additional student expenses with the IEA account.

Response:
Rebecca Wright, Director of the Individualized Education Account Program at the state Department of Education, stated that:
"Regarding your proposal to use of IEA funds to pay for consumable education supplies, internet access, and co-op classes, these expenses are not listed as approved expenses in the state law so the state law would need to be revised to include these expenses in order for IEA funds to be able to be used to pay for them. Neither the department nor the State Board of Education has the authority to change the state law. You can contact your state legislators to share your feedback regarding this matter. Regarding the use of funds for out of state field trips, the department will consider your feedback, and will contact account holders if this is changed in future years."

3. Ms. Paula Harnack raised a concern about the application deadline occurring once per year without options for flexibility if parents find out about the program after the deadline.

Response:
Elizabeth Taylor, General Counsel for the State Board of Education, provided this feedback to the Board members and to the Department of Education. The deadline is set annually in Department of Education procedures, not in the rule.

(Rule 0520-01-11-.08, continued)

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Not applicable

(Rule 0520-01-11-.08, continued)

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule does not have a projected impact on local governments.

(Rule 0520-01-11-.08, continued)

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds. This amendment removes the requirement that participating private schools submit enrollment reports to the department because this information is captured in other reports. This amendment also makes grammatical corrections and formatting changes for consistency within the rule.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Public Chapters Nos. 305 (2017), 431 (2015), 620 (2015), and 793 (2015). T.C.A. §§ 49-10-140 *et seq.* establish the IEA program and its guidelines as well at mandates the promulgation of rules for the program.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Parents of students with disabilities and local school districts are most directly affected by this rule who have neither urge nor rejected adoption of this rule. The State Board of Education and the Tennessee Department of Education urge adoption of this rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

These revisions will not affect state or local expenditures

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(Rule 0520-01-11-.08, continued)

Rebecca Wright Rebecca.E.Wright@tn.gov

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor Elizabeth.Taylor@tn.gov Nathan James Nathan.James@tn.gov Elizabeth Fiveash Elizabeth.Fiveash@tn.gov Rebecca Wright Rebecca.E.Wright@tn.gov

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor Elizabeth.Taylor@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-253-5707 Nathan James Nathan.James@tn.gov 1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615)-532-3528 Elizabeth Fiveash Elizabeth.Fiveash@tn.gov 9th Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 615-253-1960 Rebecca Wright Rebecca.E.Wright@tn.gov 9th Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243 (615) 741-4558

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

(Rule 0520-01-11-.08, continued)

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-19-18
Rule ID(s): 7257
File Date: 10/25/18
Effective Date: 1/23/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy
Zip:	1st Floor
Phone:	Nashville, TN
Email:	37243

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0520-01-11	Individual Education Accounts
Rule Number	**Rule Title**
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools
0520-01-11-.09	Return to Local Education Agency

RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS

TABLE OF CONTENTS

0520-01-11-.01	Purpose	0520-01-11-.07	Monitoring and Compliance
0520-01-11-.02	Definitions	0520-01-11-.08	Participating Schools and Providers
0520-01-11-.03	Application	0520-01-11-.09	Return to Local Education Agency
0520-01-11-.04	Term of the IEA	0520-01-11-.10	Appeal Procedures
0520-01-11-.05	Agreement and Funds Transfer	0520-01-11-.11	Conflict of Interest
0520-01-11-.06	Use of Funds	0520-01-11-.12	Reserved

0520-01-11-.01 PURPOSE

The purpose of these rules is to effectuate the Individualized Education Act as required by ~~T.C.A~~by T.C.A. § 49-10-1401, *et sq.*

Authority: *T.C.A. §§ ~~49~~§ 49-1-302, 49-10-1401, et sq.*

0520-01-11-.02 DEFINITIONS

(1) "Account ~~holder~~Holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.

(2) "Act" means the Individualized Education Act.

(3) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.

(4) "Standard Application Form" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).

(5) "Computer hardware or other technological devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices must meet one (1) of the following criteria:

(a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or

(b) Allows a student to access instruction or instructional content.

(6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of

providers must maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.

(7) "Department" means the Tennessee Department of Education.

(8) "Educational purposes" means tuition, fees, and/or required textbooks at a participating school. Fees do not include: room and board or meals, meal plans, food, or consumable materials.

(9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements set by the Department and the State Board of Education.

(10) "Eligible postsecondary institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).

(11) "Eligible student" means:

(a) A resident of this state with an active Individualized Education Program (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the following disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program:

1. Autism;

2. Deaf-blindness;

3. Developmental delay;

4. Hearing impairments;

5. Intellectual disability;

6. Multiple disabilities;

7. Orthopedic impairments;

8. Traumatic brain injury; or

9. Visual impairments; and

(b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an ~~individualized education account~~Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;

2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state~~.~~; Students meeting this eligibility requirement ~~-~~shall inform_ the LEA in which they reside of the student's intent to enroll in the program prior to August 1 of the year in which they are enrolled in the IEA program;~~ or~~

3. Has not previously attended a school in Tennessee during the one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program~~.~~; or

~~4.~~

~~5.~~4. Received an IEA in the previous school year.

(12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.

(13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.

(14) "IEA" means a Tennessee individualized education account.

(15) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.

(16) "Local Education Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

(Rule 0520-01-11-.02, continued)

(17) "Nonpublic online learning program or course" means online programs or courses that meet the requirements set by the Department.

(18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child~~;~~.

(19) "Participating school" means a nonpublic school that meets the requirements established in T.C.A. § 49-10-1401, et seq. And seeks to enroll eligible students.

(20) "Participating student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.

(21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.

(22) "Program" means the ~~individualized education account~~Individualized Education Account (IEA) ~~program~~Program created in T.C.A. § 49-10-1401, et seq.

(23) "Provider" means an individual or business that meets the requirements ~~for accreditation or licensure established~~set by the State Board of Education and the Tennessee Department of ~~Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of~~ Education ~~and Health for providers.~~.

(24) "Tutoring services" means services provided by a tutor that meets the requirements set by the Department.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1401 et seq.*

0520-01-11-.03 APPLICATION

(1) To apply to receive an IEA the parent of an eligible student, or an eligible student who has attained the age of majority, must fully complete ~~a~~the Standard Application Form available through the Department's website or through the Department's office by the deadline set by the Department.

(a) A school district, a nonpublic school, or the Department may assist a parent of an eligible student or ~~and~~an eligible student who has attained the age of majority in filing the Standard Application Form.

(b) The Standard Application Form must include all information requested by the Department and must be approved by the Department.

~~(2)~~ The Department shall make a determination of eligibility to participate in the Program and notify the parent of an eligible student~~,~~ or ~~and~~an eligible student who has reached the age of majority.

(2)

(Rule 0520-01-11-.05, continued)

(3) Once a completed Standard Application Form has been approved the parent of an eligible student~~,~~ or an eligible student who has ~~reached~~attained the age of majority shall complete the enrollment procedures set by the Department to become enrolled in the Program, including execution of an Agreement to participate in the Program.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1405.*

0520-01-11-.04 TERM OF THE IEA

(1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the participating student meets one (1) of the following, whichever occurs first:

(a) Enrolls full-time in a public school;

(b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or

(c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.

(2) The Account Holder may remove the participating student from the nonpublic school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.

(3) The Account Holder may move the student from one (1) nonpublic school to another nonpublic school in accordance with procedures set by the Department.

(4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.

(5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has aged out of the Program, provided the student attends or takes courses from an eligible postsecondary institution and the expenditures are determined to be qualifying expenses.

(6) Account Holders are not required to spend the entire sum each year; however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA Program and overall spending must equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.

(a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws

from the IEA Program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER

(1) Upon notification by the Department that an IEA may be established, a parent of an eligible student~~,~~ or an eligible student who has attained the age of majority shall sign an agreement to:

(a) Provide an education for the participating student in at least the subjects of English language arts, mathematics, social studies, and science;

(b) Not enroll the participating student in a public school during the time the student is enrolled in the IEA Program; and

(c) Release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program.

(2) The Department shall provide the Agreement template to parents of an eligible student or eligible students who have attained the age of majority. Parents of an eligible student or eligible students who have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.

(3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.

(4) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective. The Agreement shall specify the acceptable uses of IEA funds and the responsibilities of the parent of an eligible student or ~~an~~ eligible student who has attained the age of majority.

(5) After receipt of the completely signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.

(6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

(7) After the initial payment to the IEA, the Account Holder shall submit expense reports and receipts for all IEA funds expended in accordance with the procedures set by the Department before the next IEA payment is disbursed.

(Rule 0520-01-11-.05, continued)

(8) In accordance with the procedures of the Department, the Department may remove any Account Holder from eligibility for an IEA if the Account Holder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(9) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.06 USE OF FUNDS

(1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:

(a) Tuition or fees at a participating school;

(b) Textbooks required by a participating school;

(c) Tutoring services provided by an individual tutor that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);

(d) Payment for purchase of curriculum, defined as instructional educational materials for an academic course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;

(e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to schools and providers (including tutors and therapists);

(f) Tuition or fees for a nonpublic online learning program or course that meets the requirements set by the Department;

(Rule 0520-01-11-.05, continued)

~~(g)~~ Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;

(g)

(h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;

(i) Educational therapies or services for participating students provided by a therapist who meets the qualifications set by the Department and the State Board of Education;

(j) Services provided under a contract with a public school, including individual classes and extracurricular programs;

(k) Tuition or fees at an eligible postsecondary institution.

(l) Textbooks required for courses at an eligible postsecondary institution;

(m) Fees for the management of the IEA by private financial management firms;

(n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Before purchasing computer hardware or technological devices using IEA funds, Account Holders must receive notification of pre-approval from the Department. An Account Holder may request pre-approval for computer hardware and technological devices by:

1. Completing and submitting the Department's pre-approval form; or

2. Submitting the Physician's pre-approval form completed by a licensed treating physician.

(o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.

(2) Account Holders shall obtain pre-approval for educational therapies, tutoring services, and any other expenses identified by the Department. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form.

Authority: *T.C.A. § 49-1-302.*

(Rule 0520-01-11-.06, continued)

0520-01-11-.07 MONITORING AND COMPLIANCE

(1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose.

(2) The Department shall conduct an annual review of all IEAs.

(3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an ~~account holder~~Account Holder, nonpublic school, school district, or participating school(s) of state laws, rules, or procedures relating to the Program. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.

Authority: *T.C.A. § 49-1-302.*

0520-01-11-.08 PARTICIPATING SCHOOLS

(1) For the purposes of the IEA Program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:

(a) Students with disabilities are educated with non-disabled children; and

(b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.

(2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.

(a) The Department shall determine the application process for nonpublic schools to participate in the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.

(b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.

~~(c)~~ If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.

(c)

(3) Participating schools shall include in their application to participate in the IEA Program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.

(Rule 0520-01-11-.08, continued)

(a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department with the application financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.

(b) Participating schools shall provide to the Department all required documentation, including the school calendar and the nonpublic school's student fee schedules.

(4) Participating schools shall:

(a) Be academically accountable to the Account Holder for meeting the educational needs of the student by:

1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and

2. Cooperating with the parent of a student enrolled in the IEA Program, or a student enrolled in the IEA Program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.

(b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the ~~participating~~ provider;

(c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;

(d) Conduct criminal background checks on employees;

(e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a ~~participating~~ provider; and

(f) Exclude from employment any person who might reasonably pose a threat to the safety of students.

(5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and providers that enroll participating students shall provide Account Holders with a receipt for all qualifying expenses.

~~(6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website. The Department may suspend or remove a school from participating in the IEA Program if the school fails to verify a student's continued enrollment and attendance. A participating school may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.~~

~~(7)~~(6) Participating schools shall annually submit to the Department the graduation and completion information of participating students in accordance with procedures set by the Department.

(Rule 0520-01-11-.08, continued)

~~(8)~~(7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the Program by following the procedures developed by the Department.

~~(9)~~(8) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.

~~(10)~~(9) The Department may suspend or terminate a participating school from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.

(a) If the Department suspends or terminates a school's participation, the Department shall notify the Account Holder of the decision. If a participating school is suspended or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.

(b) A participating school may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.

~~(11)~~(10) If a student withdraws from a participating school and transfers to another nonpublic school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the ~~basic education program~~Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.

~~(12)~~(11) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: *T.C.A. §§ 49-1-302 and 49-10-1405.*

0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY

~~(1)~~ A participating student may return to the LEA upon termination of the student's participation in the Program.

(1)

~~(2)~~ If the student transfers from a nonpublic school and enrolls in the LEA, the parent ~~or student~~of a participating student or the participating student who has attained the age of majority shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.

(2)

(Rule 0520-01-11-.11, continued)

(3) Upon termination of a student's participation in the Program, the Department shall close the participating student's IEA. Upon a student's withdrawal from the nonpublic school, participating schools shall send all educational records of the participating student to the LEA or other nonpublic school identified by the parent.

(4) The LEA shall enroll the student and provide instruction in the general education curriculum.

(5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: *T.C.A. §§ 49§ 49-1-302 and 49-10-1403.*

(Rule 0520-01-11-.08, continued)

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bawcum	X				
Chancey	X				
Cobbins	X				
Edwards	X				
Ferguson	X				
Hartgrove	X				
Kim	X				
Wiseman	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education on 10/20/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *07/28/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *09/28/2017*

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Date: 8/29/2018

Signature:

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: 8/29/18

Notary Public Signature:

My commission expires on: 3-8-21

(Rule 0520-01-11-.08, continued)

Agency/Board/Commission: Tennessee State Board of Education

Rule Chapter Number(s): 0520-01-11 Individual Education Accounts

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/15/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/25/18

Effective on: 1/23/19

Tre Hargett
Secretary of State

RECEIVED
2018 OCT 25 PM 2:15
SECRETARY OF STATE
PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Tennessee Promise Scholarship Program
STATUTORY AUTHORITY:	Tennessee Code Annotated Section 49-4-708 establishes the Tennessee Promise Scholarship Program and Tennessee Code Annotated Sections 49-4-708(c)(11) and 49-4-204 authorize TSAC to promulgate relevant rules and regulations.
EFFECTIVE DATES:	January 29, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	2014 Tennessee Public Acts Chapter 900 implemented the Tennessee Promise Scholarship Act of 2014, which offers an opportunity for all graduating high school seniors to obtain a TCAT certificate, diploma, or associate's degree, free of tuition and mandatory fees, by 1) providing a last-dollar scholarship after all other financial aid is applied; 2) providing individual guidance to each student through a statewide network of mentors; and 3) requiring the student to perform eight hours of community service for each semester the scholarship is received. These proposed rules include housekeeping items and updates based on feedback from postsecondary financial aid offices as well as TSAC staff. Specific changes include adding legal guardians and grandparents to the immediate family member definition; allowing less than full-time enrollment if required by the program of study; changes to the fall community service deadline and deadline extensions where a deadline falls on a weekend or holiday; clarifying language for community service; and eliminating one of two mandatory student meetings.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

   The proposed rules were written to ensure clarity and conciseness and to eliminate possible ambiguity in their interpretation.

3. Flexible compliance and/or reporting requirements for small businesses:

   N/A. Small businesses will not be impacted by this program or its rules.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, Tennessee Board of Regents, Tennessee Colleges of Applied Technology, and partnering organizations that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be easily applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   N/A. Small businesses will not be impacted by this program or its rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

   The proposed rules do not contain any foreseeable inhibitors to entrepreneurial activities.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules for the Tennessee Promise Scholarship Program Chapter 1640-01-26, as proposed, have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

2014 Tenn. Pub. Acts Ch. 900 implemented the Tennessee Promise Scholarship Act of 2014, which offers an opportunity for all graduating high school seniors to obtain a TCAT certificate, diploma, or associate's degree, free of tuition and mandatory fees, by 1) providing a last-dollar scholarship after all other financial aid is applied; 2) providing individual guidance to each student through a statewide network of mentors; and 3) requiring the student to perform eight hours of community service for each semester the scholarship is received.

These proposed rules include housekeeping items and updates based on feedback from postsecondary financial aid offices as well as TSAC staff. Specific changes include adding legal guardians and grandparents to the immediate family member definition; allowing less than full-time enrollment if required by the program of study; changes to the fall community service deadline and deadline extensions where a deadline falls on a weekend or holiday; clarifying language for community service; and eliminating one of two mandatory student meetings.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 49-4-708 establishes the Tennessee Promise Scholarship Program, and Tenn. Code Ann. §§ 49-4-708 (c)(11) and 49-4-204 authorize TSAC to promulgate relevant rules and regulations.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These proposed rules were adopted by the TSAC board of directors, which includes members from the Tennessee Board of Regents, the University of Tennessee, the Tennessee Independent Colleges and Universities Association, and the Tennessee Association of State Financial Aid Administrators. These entities are directly impacted by and approve adoption of these rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

These rules have no impact on state and local government revenues and expenditures.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Peter Abernathy, TSAC Chief of Student Aid and Compliance; Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Peter Abernathy, TSAC Chief of Student Aid and Compliance; Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Peter Abernathy
Chief of Student Aid and Compliance
Tennessee Student Assistance Corporation
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
615.532.6065
Peter.Abernathy@tn.gov

Tim Phelps
Associate Executive Director for Grants and Scholarships
Tennessee Student Assistance Corporation
Suite 1510, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
615.253.7441
Tim.Phelps@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There have been no requests for additional information.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-24-18
Rule ID(s): 7261
File Date: 10/31/18
Effective Date: 1/29/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy
Address:	Suite 1900, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1640-01-26	Tennessee Promise Scholarship Program
Rule Number	**Rule Title**
1640-01-26-.01	Definitions
1640-01-26-.02	Scholarship Award Amounts and Classifications
1640-01-26-.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26-.05	Eligibility - Early High School Graduation
1640-01-26-.07	Community Service Program Requirements
1640-01-26-.09	Partnering Organization Requirements
1640-01-26-.10	Partnering Organizations – Service in Counties

RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-26
TENNESSEE PROMISE SCHOLARSHIP PROGRAM

TABLE OF CONTENTS

1640-01-26-.01	Definitions
1640-01-26-.02	Scholarship Award Amounts and Classifications
1640-01-26-.03	Application Process
1640-01-26-.04	Eligibility – Tennessee Promise Scholarship Program
1640-01-26-.05	Eligibility – Early High School Graduation
1640-01-26-.06	Personal or Medical Leave of Absence
1640-01-26-.07	Community Service Program Requirements
1640-01-26-.08	Selection of Partnering Organizations
1640-01-26-.09	Partnering Organization Requirements
1640-01-26-.10	Partnering Organizations – Service in Counties
1640-01-26-.11	Terminating Events
1640-01-26-.12	Tennessee Promise Scholarship Reforms
1640-01-26-.13	Certification of Eligibility
1640-01-26-.14	Evaluation of the Tennessee Promise Scholarship
1640-01-26-.15	Award Made in Error
1640-01-26-.16	Refund Policy
1640-01-26-.17	Transfer Students
1640-01-26-.18	Appeal and Exception Process

1640-01-26-.01 DEFINITIONS.

(1) Academic Requirement: A requirement of a specified grade point average or satisfactory academic progress that determines the continuing eligibility for postsecondary financial assistance from the Tennessee Promise Scholarship.

(2) Academic Year: Three (3) consecutive semesters beginning with a fall semester and including the immediately following spring and summer semesters.

(3) Board of Directors: The board of directors of the Tennessee Student Assistance Corporation.

(4) Board of Regents: The board of regents of the state university and community college system of Tennessee.

(5) Certificate or Diploma: A credential, other than a degree, the receipt of which indicates satisfactory completion of training in a program of study offered by an eligible postsecondary institution.

(6) Continuous Enrollment: The term is defined in T.C.A. 49-4-708.

(7) Cumulative Grade Point Average: The grade point average as calculated by the eligible postsecondary institution.

(8) Degree: A two-year associate degree conferred on students by an eligible postsecondary institution.

(9) Eligible High School: The term is defined in T.C.A. § 49-4-902.

(10) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-708.

(11) Eligible Postsecondary Program: The term is defined in T.C.A. § 49-4-708.

(12) Entering Freshman: A student who enrolls in an eligible postsecondary institution as a participant in the Tennessee Promise Scholarship program in the fall term immediately following high school graduation, completion of a home school program, or attainment of a GED or HiSET diploma. Exceptions to this enrollment requirement may be made for students

(Rule 1640-01-26-.01, continued)

enrolled in a TCAT, for students enrolled in a four-year postsecondary institution but not immediately admitted into an eligible postsecondary program, or for personal or medical leaves of absence as outlined in these rules.

(13) Expected Family Contribution (EFC): A measure of parental and/or student ability to contribute toward payment of educational expenses as determined by the FAFSA.

(14) FAFSA: The term is defined in T.C.A. § 49-4-902.

(15) FAFSA Verification: The process used by a postsecondary institution to verify the accuracy of information submitted on a student's FAFSA. For purposes of these rules, such process shall apply to verification documents required by the U.S. Department of Education regardless of how the student is selected.

(16) Full-Time Student: The term is defined in T.C.A. § 49-4-708.

(17) GED: The term is defined in T.C.A. § 49-4-902.

(18) Gift Aid: The term is defined in T.C.A. § 49-4-708.

(19) HiSET: The term is defined in T.C.A. § 49-4-902.

(20) Home School Student: The term is defined in T.C.A. § 49-4-708.

(21) Immediate Family Member: Spouse, parents, grandparents, legal guardians, children, or siblings.

(22) Mentor: An individual who is assigned by a Partnering Organization to assist Tennessee Promise Scholarship program participants in the college application and financial aid process. Mentors may serve in a volunteer or employed capacity at the discretion of the Partnering Organization. Volunteer mentors shall be at least twenty-one (21) years of age.

(23) Parent: The parent or legal guardian of a student.

(24) Partnering Organization: A not-for-profit organization selected by TSAC to administer the Tennessee Promise Scholarship program.

(25) Resident: A resident of Tennessee as defined by regulations promulgated by the Tennessee Board of Regents.

(26) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the TCAT at which the student is currently enrolled.

(27) Semester: The term is defined in T.C.A. § 49-4-902.

(28) Semester Hour: The credit hour used by a postsecondary institution, if the institution is on a semester system, or its equivalent, if the institution is on a system other than a semester system. "Semester hour" includes each semester hour attempted, whether remedial or for credit toward a degree, but shall not include any semester hour attempted before graduating from high school or earning a GED® or HiSET.

(29) TCAT: Tennessee College of Applied Technology.

(Rule 1640-01-26-.01, continued)

(30) Tennessee Promise Scholarship: A last-dollar scholarship to be applied to a participating student's tuition and mandatory fees after other gift aid for which a student is eligible is applied first to tuition and mandatory fees.

(31) Tennessee Promise Scholarship Program: A scholarship program which provides last-dollar financial aid, mentoring, and community service opportunities for Tennessee students upon graduation from high school or home school, or attainment of a GED or HiSET.

(32) Tennessee Promise Scholarship Student: The term is defined in T.C.A. § 49-4-708.

(33) Terminating Event: The occurrence of an event described in T.C.A. § 49-4-708(c)(8).

(34) Title IV: The term is defined in T.C.A. § 49-4-902.

(35) TSAC: Tennessee Student Assistance Corporation.

(36) Tuition and Mandatory Fees: Tuition and mandatory fees required for the enrollment or attendance of a student at an eligible postsecondary institution that are charged to all students, and shall not include fees charged for ~~the Regents Online Degree Program~~ TN eCampus, online courses, specific programs of study, books, or supplies even if such fees are considered necessary for enrollment.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-902.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Amendments filed December 19, 2014; effective March 19, 2015. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016. Amendments filed February 22, 2016; effective May 22, 2016.*

1640-01-26-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

(1) The Tennessee Promise Scholarship program is intended to provide financial assistance to offset tuition and mandatory fees associated with pursuing postsecondary education after other gift aid has been credited to tuition and mandatory fees.

(2) Award amounts for the program shall be determined in accordance with T.C.A. § 49-4-708 and shall be set in the General Appropriations Act.

(3) In the event that funds are insufficient to fully fund the Tennessee Promise Scholarship award program, TSAC may reduce the award amount in accordance with these rules.

(4) Recipients of a Tennessee Promise Scholarship award as provided by these rules must be enrolled and attending fulltime in an eligible postsecondary institution. A student may enroll less than full time in the semester of graduation if full-time enrollment is not required to complete the program of study, ~~and~~ for semesters in which the student receives an approved leave of absence~~.~~, ~~and~~ or if the program of study requires less than full-time enrollment for a semester.

(5) Except for approved medical or personal leaves of absence, award recipients must be continuously enrolled and maintain the required grade point average or satisfactory academic progress at an eligible postsecondary institution as provided in Tenn. Comp. R. & Regs. 1640-01-26-.04.

(6) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(Rule 1640-01-26-.02, continued)

(7) Gift aid from sources other than the Tennessee Promise Scholarship shall be credited first to tuition and mandatory fees to reduce the student's Tennessee Promise Scholarship award. If other gift aid exceeds tuition and mandatory fees then the student shall not be eligible for the Tennessee Promise Scholarship award, but shall remain eligible for all other services available through the Tennessee Promise Scholarship program, provided the student maintains all academic and non-academic requirements.

(8) The receipt of a Tennessee Promise Scholarship is contingent upon admission to and enrollment in an eligible postsecondary institution. Qualifying for the Tennessee Promise Scholarship does not guarantee admission to an eligible postsecondary institution.

Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History: *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Amendment filed December 19, 2014; effective March 19, 2015. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.03 APPLICATION PROCESS.

(1) Students participating in the Tennessee Promise Scholarship program shall file a FAFSA, or renewal FAFSA, in each year of program participation. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions.

(2) Students enrolled in a community college, public four-year postsecondary institution, or private institution shall file the FAFSA or renewal FAFSA according to a date determined by TSAC for fall enrollment, or no later than November 1 for spring and summer enrollment.

(3) Students enrolled in a TCAT shall file the FAFSA or renewal FAFSA according to a date determined by TSAC for summer and fall enrollment, or no later than November 1 for spring enrollment.

(4) Students are required to complete the Tennessee Promise Scholarship award application for the initial year of enrollment no later than November 1 of their senior year of high school. If the deadline occurs on a weekend or holiday, then the application deadline will be the next business day.

Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History: *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.04 ELIGIBILITY – TENNESSEE PROMISE SCHOLARSHIP PROGRAM.

(1) To be eligible to receive a Tennessee Promise Scholarship a student shall:

(a) Be a Tennessee resident;

(b) Graduate from an eligible high school, graduate high school as a dependent child of a military parent as outlined in T.C.A. § 49-4-926, complete high school as a home school student, or obtain a GED or HiSET diploma, provided that the student obtains a GED or HiSET diploma prior to the student reaching nineteen (19) years of age;

(c) Attend full time in an eligible postsecondary institution in the fall term immediately following graduation from an eligible high school or home school, or attainment of the

(Rule 1640-01-26-.04, continued)

GED or HiSET diploma; except that a student enrolling in a certificate or diploma program at a TCAT may enroll in the summer prior to the fall term;

(d) Maintain continuous enrollment as a full-time student at an eligible postsecondary institution unless granted a medical or personal leave of absence;

(e) Maintain a minimum cumulative grade point average of 2.0, as determined by the eligible postsecondary institution, at the end of each academic year if enrolled in an associate degree program, or maintain satisfactory academic progress as determined by the TCAT;

(f) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student;

(g) Be in compliance with federal drug-free rules and laws for receiving financial assistance;

(h) Not be in default on a federal Title IV educational loan or Tennessee educational loan;

(i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program;

(j) Not be incarcerated;

(k) Not have earned an associate degree prior to enrolling in the initial academic term following graduation from a high school or home school program;

(l) Prior to initial fall enrollment in a postsecondary institution, attend one (1) meeting related to financial aid, ~~and~~ FAFSA completion, ~~and~~ the college application process~~;~~ and ~~a second mandatory meeting related to~~ college orientation. Participants may, but are not required to, attend additional meetings as offered by a Partnering Organization;

(m) Complete and report eight (8) hours of community service for each semester while participating in the Tennessee Promise Scholarship program;

(n) Submit all necessary documentation to allow the postsecondary institution to complete FAFSA verification; FAFSA verification shall be completed regardless of eligibility for federal or state grants; and

(o) Complete the FAFSA and have been assigned an EFC by the U.S. Department of Education.

Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History: *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016. Amendments filed February 22, 2016; effective May 22, 2016.*

1640-01-26-.05 ELIGIBILITY - EARLY HIGH SCHOOL GRADUATION.

(1) A student who graduates early from an eligible high school, or completes an eligible home school program or obtains a GED or HiSET diploma prior to the spring semester preceding the initial fall enrollment may immediately enroll in an eligible postsecondary institution. Such student shall not be eligible for the Tennessee Promise Scholarship until the subsequent fall semester, but shall otherwise meet all initial eligibility requirements, and upon receipt of a

(Rule 1640-01-26-.05, continued)

Tennessee Promise Scholarship meet all continuing eligibility requirements as outlined in these rules.

(2) Notwithstanding the provisions of this section, a student may be eligible for a Tennessee Promise Scholarship at a TCAT prior to the subsequent fall term if eligible for an exception as provided in these rules.

(3) During all academic terms in which a student is enrolled in a postsecondary institution prior to the fall term following graduation from an eligible high school, the student shall:

(a) Enroll in an eligible postsecondary institution or a regionally accredited postsecondary institution located outside this state;

(b) Attend all mandatory meetings provided by the Partnering Organization;

(c) Not be required to participate in community service, except that the student must complete and report the amount of community service required by Tenn. Comp. R. & Regs. 1640-01-26-.07(1) before the subsequent fall semester; and

(d) Have no minimum requirement for credit hours or academic performance.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.06 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

(1) A student may be granted a medical or personal leave of absence from timely enrollment in the initial semester, full-time attendance, or continuous enrollment at an eligible postsecondary institution as long as all other applicable eligibility criteria are met. Allowable medical or personal reasons may include illness of the student; illness or death of an immediate family member; extreme financial hardship of the student or student's immediate family; fulfillment of a religious commitment encouraged of members of that faith; fulfillment of required initial active duty for training as a National Guard or Reserve member or for National Guard or Reserve mobilization; attendance in a program of study at a TCAT which only begins in the spring or summer academic term or when openings are unavailable for the fall academic term; full-time attendance at an eligible four-year postsecondary institution while waiting for admission to an eligible postsecondary program; or other extraordinary circumstances beyond the student's control where attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with these rules.

(2) A student granted a medical or personal leave of absence shall enroll full time in an eligible postsecondary institution in the first semester following the end of the leave of absence and shall retain the Tennessee Promise Scholarship until a terminating event occurs. A leave of absence of six (6) months or less shall not count against the five semester limit at an eligible postsecondary institution, and a leave of absence may extend beyond six (6) months for military, religious, or other extraordinary circumstances as described in this rule.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.07 COMMUNITY SERVICE PROGRAM REQUIREMENTS.

(1) A student participating in the Tennessee Promise Scholarship program shall perform and report eight (8) hours of community service for each semester the scholarship is received. Service shall be performed prior to the beginning of each academic semester, including the initial fall semester, in which the Promise Scholarship is received according to the following deadlines:

(a) ~~August~~ July 1 for students attending the fall academic term.~~; except that beginning in the 2017-18 academic year and thereafter, all students shall perform and report community service hours by July 1 for the fall academic term. If the deadline occurs on a weekend or holiday, then the deadline will be the next business day.~~

(b) December 1 for students attending the spring academic term.

(c) April 1 for students attending the summer academic term.

(d) Deadlines falling on a weekend or holiday shall be moved to the next business day.

(2) A student who is granted a leave of absence may complete the community service during the leave of absence or in the first academic term following the period for which the leave of absence was granted. Community service performed in the first academic term following the leave of absence shall be in addition to any other community service required in the same academic term.

(3) Upon completion of the community service, each student shall verify to the Partnering Organization a description of service performed, the date(s) the service was performed, the total hours of service provided, and the name, phone number, and email address of the organization for which the service was provided.

(4) Community Service generally benefits the community at-large or its institutions but shall not include:

(a) Service performed prior to the Tennessee Promise Scholarship application deadline preceding the initial academic term;

(b) Service resulting in payment or remuneration of any kind; or

(c) Service ~~that directly benefits~~performed for family members or individual citizens.

(5) Community service may be performed with or under the direction of a faith-based organization, but shall not include religious teaching, ~~persuasion or~~ proselytizing, or participation in religious services.

(6) Community service in excess of eight (8) hours performed in any semester shall not be carried over into subsequent semesters. Unless the student is on an approved leave of absence, failure to complete and report the eight (8) hours of community service prior to an academic semester will result in the immediate termination of eligibility for the Tennessee Promise Scholarship. Community service performed during an approved leave of absence shall count towards fulfillment of the community service requirement in the first semester following the leave of absence.

(7) A student who knowingly provides false verification of community service shall be ineligible to receive additional benefits under the Tennessee Promise Scholarship program.

(Rule 1640-01-26-.07, continued)

Authority**: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History: *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016. Amendments filed February 22, 2016; effective May 22, 2016.*

1640-01-26-.08 SELECTION OF PARTNERING ORGANIZATIONS.

(1) To participate in the Tennessee Promise Scholarship program, a Partnering Organization shall be recommended by the mayor or executive of each county in which the Partnering Organization participates and approved by the Board of Directors.

(2) An approved Partnering Organization may continue to serve in such capacity unless it is no longer recommended by a county mayor or executive or approved by the Board of Directors. Final approval to serve as a Partnering Organization shall be given at the discretion of the Board of Directors and based on the Partnering Organization's satisfactory performance and compliance with these rules.

(3) A negative recommendation by one county mayor or executive shall not automatically disqualify the Partnering Organization from participating in other counties but will be considered in the Board of Directors' evaluation of the Partnering Organization's continued participation in the Program.

Authority:** T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History: *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.09 PARTNERING ORGANIZATION REQUIREMENTS.

(1) Partnering Organizations that participate in the Tennessee Promise Scholarship program shall meet the following requirements:

(a) Be established as a not-for-profit organization, except that a postsecondary institution that receives funding under the Tennessee Promise Scholarship program shall not be permitted to participate as a partnering organization.

(b) Operate as a college access and success program serving Tennessee residents at an eligible postsecondary institution.

~~(c) Demonstrate annually to TSAC that funding exists within the Partnering Organization's budget to provide all services under the Tennessee Promise Scholarship program for a minimum of one (1) year. No funds under this program shall be provided for the direct or indirect benefit of a Partnering Organization.~~

(~~d~~c) Adhere to rules promulgated by TSAC for the administration of this program.

(~~e~~d) Provide a mentoring program with ~~a~~ an appropriate ~~ratio of one (1) volunteer~~ mentor to ~~no more than ten (10)~~ eligible student ~~applications~~ applicant ratio. This ratio ~~shall apply to eligible student applications and~~ may be ~~reduced~~ modified in proportion to the number of students who remain eligible for ~~drop from participation in~~ the program.

The minimum age and ratio requirements shall not apply to full- or part-time paid mentors or counselors that work directly with students.

(Rule 1640-01-26-.09, continued)

(~~f~~e) For Partnering Organizations utilizing volunteer mentors, ~~Select~~ select volunteer mentors ~~prior to December 1~~ for the following academic year and provide one (1) mandatory training meeting prior to assigning mentors to program participants~~for all paid and volunteer mentors prior to January 31~~. This meeting may be offered on multiple dates ~~prior to the January 31 deadline. This meeting~~ and shall cover at least the following topics:

1. Program overview,
2. Appropriate mentor-student relationships,
3. Financial aid,
4. FAFSA completion,
5. College applications and admissions, and
6. Community service requirements.

(~~g~~f) Provide one (1) meeting for all Tennessee Promise Scholarship program participants prior to ~~March 1~~ May 31 preceding the initial enrollment in an eligible postsecondary institution. This meeting may be offered on multiple dates prior to the ~~March 1~~ May 31 deadline, and shall provide training on the following topics:

1. An overview of the Tennessee Promise Scholarship program,
2. Appropriate relationships with mentors, if applicable
3. Financial aid ~~opportunities~~,
4. FAFSA completion and verificaition, ~~and~~
5. The college application process,~~.~~
6. Transitioning from high school to college, and
7. Community service requirements, including deadlines and examples of eligible and ineligible community service.

~~(h) Provide one (1) mandatory meeting for all Tennessee Promise Scholarship program participants after March 1 and prior to May 31 preceding the initial enrollment in an eligible postsecondary institution. This meeting may be offered on multiple dates prior to the May 31 deadline and shall provide training on topics related to college orientation, making the transition from high school to college, and community service requirements.~~

(~~i~~g) Where a student cannot attend ~~either~~ a mandatory meeting due to ~~required attendance at a school-sponsored activity, required attendance at a religious-based activity, documented illness of the student, or other~~ extenuating circumstances, the Partnering Organization shall provide opportunities for the student to receive the training prior to the ~~March 1 or~~ May 31 deadline, or as soon thereafter as practicable.

(~~j~~h) Provide a minimum of one (1) ~~mentor~~ contact monthly with each assigned Tennessee Promise Scholarship program participant beginning ~~February 1 of the senior year of~~

(Rule 1640-01-26-.09, continued)

~~high school~~in the month of the application deadline. Contact shall be maintained throughout the student's participation in the Program. Contacts may include meetings, phone calls, emails, or text messages.

(~~k~~i) Organize a local advisory council to serve as an advocate for the Program. The advisory council shall be comprised of a minimum of five (5) members, with at least one (1) member representative from each the local education agency, the county mayor's or executive's office, and a local postsecondary institution. Organizations that have been in existence for a minimum of three (3) years may use existing boards or boards of trustees as the local advisory council if the board or board of trustees is substantially similar to the requirements of this subsection.

(~~l~~j) Obtain a certified background check on all mentors prior to service as a mentor. A mentor shall not be eligible to participate in the Tennessee Promise Scholarship program if convicted of any felony or offense listed at T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, and 40-35-501(i)(2). For purposes of this section, "conviction" includes entry of a plea of guilty or nolo contendere or entry of an order granting pre-trial or judicial diversion.

(~~m~~k) Submit to audits on a periodic basis as determined by TSAC.

(~~n~~l) Enter into an Agreement ~~memorandum of understanding~~ with TSAC regarding program requirements and Partnering Organization obligations and provide requested information to TSAC as required in the ~~memorandum of understanding~~ Agreement.

(~~o~~m) Provide electronic notification to TSAC when Tennessee Promise participants have completed their mandatory meetings and community service requirements. Reporting of community service performed in the previous academic term shall be provided to TSAC for each student. ~~no later than:~~

~~1. August July 15 for students attending the fall academic term.~~

~~2. December 15 for students attending the spring academic term.~~

~~3. May 15 for students attending the summer academic term.~~

(~~p~~n) Provide performance metrics as outlined in the ~~memorandum of understanding~~ Agreement entered into with TSAC.

(~~q~~o) Obtain an insurance policy that, at a minimum, limits liability of the Partnering Organization against physical and sexual abuse or misconduct directed toward participants of the Program by its officers, directors, employees, and volunteers.

Authority: *T.C.A. §§ 39-13-527, 39-13-532, 39-17-417, 40-35-501, 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.10 PARTNERING ORGANIZATIONS – SERVICE IN COUNTIES.

(1) A Partnering Organization that agrees to provide Tennessee Promise Scholarship program services in a county shall make the program available to all eligible high school, home school, and GED/HiSET students in that county. The Partnering Organization shall continue

(Rule 1640-01-26-.10, continued)

to work with each students from that county until a loss of eligibility occurs or through a terminating event, regardless of which eligible postsecondary institution the student attends. Partnering Organizations may work with students from high schools or counties outside their assigned counties as agreed upon between the Partnering Organizations.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.11 TERMINATING EVENTS

(1) A student shall receive the Tennessee Promise Scholarship until reaching a terminating event as outlined in T.C.A. § 49-4-708.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.12 TENNESSEE PROMISE SCHOLARSHIP REFORMS.

(1) In the event funds are insufficient to fully fund the cost of Tennessee Promise scholarships, TSAC is authorized to take one or more of the following actions:

(a) Establish a maximum award amount,

(b) Establish additional eligibility criteria for new applicants entering the program,

(c) Administer the program on a first-come, first-served basis.

(2) Any action taken by TSAC as described in subsection (1) shall require approval by TSAC's board of directors and notification shall be provided to the chairs of the Senate and House Education Committees of the Tennessee General Assembly.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.13 CERTIFICATION OF ELIGIBILITY.

(1) Each Partnering Organization shall determine student eligibility based on attendance at mandatory meetings and fulfillment of community service requirements as required in these rules, and shall certify such eligibility to TSAC.

(2) TSAC will create a master certification roster of students for each institution. The master list will contain students who have met all requirements for the Tennessee Promise Scholarship.

(3) The eligible postsecondary institution shall certify each student's eligibility for a financial award from the Tennessee Promise Scholarship based on continuing eligibility requirements established in these rules. The award amount reported to TSAC shall be the amount of tuition and mandatory fees remaining after other gift aid has first been applied to the student's tuition and mandatory fees. All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(Rule 1640-01-26-.13, continued)

(4) Once the eligible postsecondary institution has certified the student's eligibility for a financial award, the certification information shall be electronically transmitted to TSAC.

(5) TSAC shall process a payment request directly to the eligible postsecondary institution on behalf of all Tennessee Promise Scholarship recipients who are eligible for a financial award. No funds shall be disbursed directly to the Partnering Organizations or to the students.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014. Emergency rule filed August 4, 2015; effective through January 31, 2016. Amendments filed February 9, 2016; effective May 9, 2016.*

1640-01-26-.14 EVALUATION OF THE TENNESSEE PROMISE SCHOLARSHIP.

(1) TSAC, along with the Tennessee Higher Education Commission, shall review the Tennessee Promise Scholarship program annually. The review shall include, at a minimum, the number of recipients, total cost of the program, student persistence, hours of community service completed, and scholarship retention. These findings shall be reported to the education committee members of the Senate and House of Representatives of the Tennessee General Assembly.

(2) TSAC shall convene a meeting of its Special Advisory Committee at least annually to review the effectiveness and best practices of the Tennessee Promise Scholarship program.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.15 AWARD MADE IN ERROR.

(1) Repayment from the student shall not be required if TSAC determines that the error was through no fault of the student.

(2) Repayment from the student shall be required if TSAC determines that fraud was committed or the error was due to the fault of the student. When repayment is required, the student may not receive additional student aid from TSAC until repayment is made.

(3) Repayment from the postsecondary institution will be required if TSAC determines that the error was due to the fault of the postsecondary institution.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.16 REFUND POLICY.

(1) If a recipient of a Tennessee Promise Scholarship award fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and funds returned to TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to TSAC. Additionally, the eligible postsecondary institution shall notify TSAC of the refund, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from TSAC until the refund is paid.

(Rule 1640-01-26-.16, continued)

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.17 TRANSFER STUDENTS.

(1) A student who meets all academic and non-academic requirements of the Tennessee Promise Scholarship may transfer from one eligible postsecondary institution to another eligible postsecondary institution and maintain the scholarship until reaching a terminating event as outlined in T.C.A. § 49-4-708.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-708.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

1640-01-26-.18 APPEAL AND EXCEPTION PROCESS.

(1) Each eligible postsecondary institution shall use their existing Institutional Review Panel (IRP) for purposes of reviewing and rendering decisions regarding appeals for the Tennessee Promise Scholarship program. The IRP shall use the same procedures and timelines as those that currently exist for the review of Tennessee Education Lottery Scholarship (TELS) appeals as outlined in Tenn. Comp. R. & Reg. 1640-01-19.

(2) TSAC shall use the existing TELS Appeals Panel to consider appeals and render decisions for those students who appeal a decision made by the IRP. The same guidelines shall exist for appeals of the Tennessee Promise Scholarship program as those that are currently in place for TELS as outlined in Tenn. Comp. R & Reg.1640-01-19.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, and 49-4-924.* ***Administrative History:*** *Emergency rule filed August 14, 2014; effective through February 10, 2015. Original rule filed August 14, 2014; effective November 12, 2014.*

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Ms. Jayme Simmons	X				
Mr. David H. Lillard, Jr., by Ms. Ashley Nabors	X				
Comptroller Justin P. Wilson,	X				
Dr. Claude Pressnell	X				
Commissioner Larry Martin, by Mr. Greg Turner	X				
Commissioner Candice McQueen, by Ms. Laura Encalade	X				
Chancellor Flora Tydings By Dr. Heidi Leming	X				
Dr. Joe Dipietro, by Dr. Linda Martin	X				
Mr. Cyrus Vatandoost	X				
Ms. Tiffany Summers	X				
Ms. Keri McInnis	X				
Mr. Tom Hughes	X				
Mr. John Smarrelli	X				
Ms. Sharon Hayes	X				
Mr. Charles Layne				X	
Ms. Sabrina Washington	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 08/17/2018 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9-14-18

Signature:

Name of Officer: Mike Krause

Title of Officer: Executive Director

CORSINA [illegible]SON - WILEY
STATE OF TENNESSEE
08/04/2020
DAVIDSON COUNTY

Subscribed and sworn to before me on: 09-14-18

Notary Public Signature: Corsina Davidson-Wiley

My commission expires on: 08-04-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

10/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/31/18

Effective on: 1/29/19

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2018 OCT 31 PM 2:55
SECRETARY OF STATE
PUBLIC ACTIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation
DIVISION:	Higher Education
SUBJECT:	Tennessee Education Lottery Scholarship (TELS) Program
STATUTORY AUTHORITY:	Tennessee Code Annotated Section 49-4-903 authorizes the Tennessee Student Assistance Corporation (TSAC) to administer the TELS Program and Tennessee Code Annotated Section 49-4-924 authorizes TSAC to promulgate rules and regulations relative to such program.
EFFECTIVE DATES:	January 29, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Programs under the TELS are lottery-funded scholarships for qualified Tennessee students attending postsecondary institutions in Tennessee. These proposed rules include housekeeping items and updates based on feedback from postsecondary financial aid offices as well as TSAC staff. Specific changes include adding legal guardians and grandparents to the immediate family member definition, removing the Dual Enrollment Grant award amount schedule and referencing instead the annual general appropriations act, removing the residency requirement already cited in statute, removing non-traditional eligibility criteria already cited in statute, adding language to allow students to drop from part-time enrollment to less than part-time enrollment if approved under a medical or personal leave of absence.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rules:

   The proposed rules were written to ensure clarity and conciseness and to eliminate possible ambiguity in their interpretation.

3. Flexible compliance and/or reporting requirements for small businesses:

   N/A. Small businesses will not be impacted by this program or its rules.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

   TSAC worked diligently with the postsecondary financial aid community, the Tennessee Higher Education Commission, Tennessee Board of Regents, Tennessee Colleges of Applied Technology, and partnering organizations that are most directly affected by these proposed rules to ensure that proposed compliance and reporting requirements can be easily applied by eligible institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   N/A. Small businesses will not be impacted by this program or its rules.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

   The proposed rules do not contain any foreseeable inhibitors to entrepreneurial activities.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules for the Tennessee Education Lottery Scholarship Program Chapter 1640-01-19, as proposed, have no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Programs under the Tennessee Education Lottery Scholarship (TELS) are lottery-funded scholarships for qualified Tennessee students attending postsecondary institutions in Tennessee.

These proposed rules include housekeeping items and updates based on feedback from postsecondary financial aid offices as well as TSAC staff. Specific changes include adding legal guardians and grandparents to the immediate family member definition, removing the Dual Enrollment Grant award amount schedule and referencing instead in the annual general appropriations act, removing the residency requirement already cited in statute, removing non-traditional eligibility criteria already cited in statute, adding language to allow students to drop from part-time enrollment to less than part-time enrollment if approved under a medical or personal leave of absence.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 49-4-903 authorizes the Tennessee Student Assistance Corporation (TSAC) to administer the TELS Program and Tenn. Code Ann. § 49-4-924 authorizes TSAC to promulgate rules and regulations relative to such program.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

TSAC, the Tennessee Higher Education Commission (THEC), the University of Tennessee System, the Board of Regents System, the Tennessee Independent Colleges and Universities Association, and the Tennessee Association of Student Financial Aid Administrators institutions are directly affected by and support the changes reflected in these proposed rules.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no opinions of the attorney general and reporter or any judicial ruling that directly relates to these proposed rules.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There is no impact to state or local government revenues and expenditures under the proposed changes in these rules.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Peter Abernathy, TSAC Senior Associate Executive Director and Staff Attorney, and Tim Phelps, TSAC Associate Executive Director for Grants and Scholarships.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Peter Abernathy, TSAC Senior Associate Executive Director and Staff Attorney, and Tim Phelps, TSAC

Associate Executive Director for Grants and Scholarships.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Peter Abernathy
Senior Associate Executive Director and Staff Attorney
Tennessee Student Assistance Corporation
Suite 1510, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
615.532.6065
Peter.Abernathy@tn.gov

Tim Phelps
Associate Executive Director for Grants and Scholarships
Tennessee Student Assistance Corporation
Suite 1510, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
615.253.7441
Tim.Phelps@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There have been no requests for additional information.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-23-18
Rule ID(s): 7260
File Date: 10/31/18
Effective Date: 1/29/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Tennessee Student Assistance Corporation
Division: Higher Education
Contact Person: Peter Abernathy
Address: Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip: 37243
Phone: 615.532.6065
Email: Peter.Abernathy@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1640-01-19	Tennessee Education Lottery Scholarship Program
Rule Number	**Rule Title**
1640-01-19-.01	Definitions
1640-01-19-.02	Scholarship Award Amounts and Classifications
1640-01-19-.03	Application Process
1640-01-19-.04	General Eligibility
1640-01-19-.05	Eligibility – Tennessee Hope Scholarship
1640-01-19-.06	Eligibility – Tennessee ASPIRE Award
1640-01-19-.11	Eligibility – Dual Enrollment Grant
1640-01-19-.19	Converting from Full-time to Part-time Enrollment
1640-01-19-.20	Personal or Medical Leave of Absence
1640-01-19-.22	Calculation of Postsecondary Cumulative Grade Point Average
1640-01-19-.23	Transfer Students

RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-19
TENNESSEE EDUCATION LOTTERY SCHOLARSHIP PROGRAM

TABLE OF CONTENTS

1640-01-19-.01	Definitions
1640-01-19-.02	Scholarship Award Amounts and Classifications
1640-01-19-.03	Application Process
1640-01-19-.04	General Eligibility
1640-01-19-.05	Eligibility – Tennessee HOPE Scholarship
1640-01-19-.06	Eligibility – Tennessee ASPIRE Award
1640-01-19-.07	Eligibility – General Assembly Merit Scholarship
1640-01-19-.08	Eligibility – Tennessee HOPE Access Grant
1640-01-19-.09	Eligibility – Tennessee HOPE Foster Child Grant
1640-01-19-.10	Eligibility – Wilder-Naifeh Technical Skills Grant
1640-01-19-.11	Eligibility – Dual Enrollment Grant
1640-01-19-.12	Retention of Awards – General Requirements
1640-01-19-.13	Retention of Awards – Tennessee HOPE Access Grant
1640-01-19-.14	Retention of Awards – Dual Enrollment Grant
1640-01-19-.15	Tennessee Education Lottery Scholarship Award Process
1640-01-19-.16	Continuation of Tennessee Education Lottery Scholarship Award
1640-01-19-.17	Award Made in Error
1640-01-19-.18	Refund Policy
1640-01-19-.19	Converting from Full-time to Part-time Enrollment
1640-01-19-.20	Personal or Medical Leave of Absence
1640-01-19-.21	Military Mobilization of Eligible Students
1640-01-19-.22	Calculation of Postsecondary Cumulative Grade Point Average
1640-01-19-.23	Transfer Students
1640-01-19-.24	Transient Students
1640-01-19-.25	Denial of Initial Eligibility – Failure to Timely Enroll
1640-01-19-.26	Extension of Five-Year Terminating Event Due to Medical Disability
1640-01-19-.27	Wilder-Naifeh Reconnect
1640-01-19-.28	Appeal and Exception Process

1640-01-19-.01 DEFINITIONS.

(1) Academic requirement: The term is defined in T.C.A. § 49-4-902.

(2) Academic Year: The term is defined in T.C.A. § 49-4-902.

(3) ACT: The ACT Assessment administered by ACT, Inc., exclusive of the essay and optional subject area battery tests.

(4) Adjusted gross income attributable to the student: The term is defined in T.C.A. § 49-4-902.

(5) Alternative Study program: Program of study including, but not limited to student exchange programs, practicum, co-op programs and internships that includes travel outside the State of Tennessee that is sponsored or offered by:

(a) an eligible postsecondary institution; or

(b) an eligible postsecondary institution in conjunction with either another eligible postsecondary or a postsecondary institution that is accredited by a regional accrediting association.

(6) ASPIRE Award: An award to a student for study in pursuit of an associate or baccalaureate degree at an eligible postsecondary institution who qualifies for a Tennessee HOPE Scholarship and whose adjusted gross income attributable to the student does not exceed the amount as described in T.C.A. § 49-4-915(a)(2).

(7) Award Year: A period of time, typically nine (9) months, in which a full-time student is expected to complete the equivalent of a minimum of two (2) semesters of academic study.

(Rule 1640-01-19-.01, continued)

(8) Board of Regents: The board of regents of the state university and community college system of Tennessee.

(9) Certificate or Diploma: The term is defined in T.C.A. § 49-4-902.

(10) Continuing Education: Courses and programs that do not lead to a certificate, diploma or degree that are designed for personal development and are an extension of the traditional on-campus learning process.

(11) Continuous Enrollment: The term is defined in T.C.A. § 49-4-902.

(12) Cost of Attendance: The term is defined in T.C.A. § 49-4-902.

(13) Credit Hours Attempted: The number of semester hours for which a degree-seeking or diploma / certificate-seeking student attending a postsecondary institution is enrolled as of the institutionally defined census date shall be considered credit hours attempted, regardless of whether a grade has been assigned. This standard shall apply to any change to a non-credit status, notwithstanding anything in Rule 1640-01-19-.22.

(14) Degree: A two-year associate degree or four-year baccalaureate degree conferred on students by an eligible postsecondary institution.

(15) Dependent Child of a Military Parent: A natural or adopted child or stepchild whom a military parent claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another state or nation only while the military parent is engaged in active military service, on full-time national guard duty, or actively employed by the U.S. Department of Defense.

(16) Dependent Child of a Full-time Religious Worker: A natural or adopted child or stepchild whom the parent, who is a religious worker, claims as a dependent for federal income tax purposes; who is under twenty-one (21) years of age; and who resides in another nation only while the parent is actively engaged in full-time religious work.

(17) Distance Education: An educational process that is characterized by the separation, in time or place, between instructor and student. It may include credit hours offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, or satellite transmission; audio or computer conferencing; video cassettes or discs, or correspondence.

(18) Dual Enrollment Grant: The term is defined in T.C.A. § 49-4-902.

(19) Eligible High School: The term is defined in T.C.A. § 49-4-902.

(20) Eligible Independent Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.

(21) Eligible Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.

(22) Eligible Public Postsecondary Institution: The term is defined in T.C.A. § 49-4-902.

(23) Entering Freshman: The term is defined in T.C.A. § 49-4-902.

(24) FAFSA: The term is defined in T.C.A. § 49-4-902.

(25) Foster Child: A child who was in the custody of the Tennessee Department of Children's Services as described in T.C.A. § 49-4-933(b).

(Rule 1640-01-19-.01, continued)

(26) Full-Time Student: The term is defined in T.C.A. § 49-4-902.

(27) GED: The term is defined in T.C.A. § 49-4-902.

(28) General Assembly Merit Scholarship: The term is defined in T.C.A. § 49-4-902.

(29) Gift Aid: The term is defined in T.C.A. § 49-4-902.

(30) Grade Point Average (GPA): The numbered grade average calculated using a 4.0 scale, calculated to the hundredth decimal.

(31) HiSET: The term is defined in T.C.A. § 49-4-902.

(32) Home School Student: The term is defined in T.C.A. § 49-4-902.

(33~~2~~) Home Institution: The eligible postsecondary institution in which the student is enrolled and is in a matriculating status working toward a degree, diploma, or certificate.

(34~~3~~) Host Institution: The eligible postsecondary institution the student is temporarily attending as a transient student.

(35~~4~~) Immediate Family Member: Spouse, parents, grandparents, legal guardians, children or siblings.

(36~~5~~) Incarcerated: Currently confined to a local, state, or federal correctional institution, as well as work release or educational release facilities.

(37~~6~~) Joint Enrollment: An arrangement between a high school and a postsecondary institution wherein a student enrolls in postsecondary classes while attending high school, but for which the student will receive credit from only one of the two institutions.

(38~~7~~) Matriculated Status: The student is a recognized candidate for an appropriate degree, diploma, or certificate at an eligible postsecondary educational institution.

(39~~8~~) Medical Disability: A documented condition, as certified by a licensed physician, which requires a HOPE Scholarship recipient to attend part time at an eligibility postsecondary institution.

(40~~39~~) Military Parent: The term is defined in T.C.A. § 49-4-926(b)(2).

(41~~0~~) Nonacademic requirement: The term is defined in T.C.A. § 49-4-902.

(42~~1~~) Non-Traditional student: The term is defined in T.C.A. § 49-4-902.

(43~~2~~) Parent: The term is defined in T.C.A. § 49-4-902.

(44~~3~~) Part-time Student: The term is defined in T.C.A. § 49-4-902.

(45~~4~~) Regional Accrediting Association: The term is defined in T.C.A. § 49-4-902.

(46~~5~~) Religious Worker: The term is defined in T.C.A. § 49-4-934(b)(2).

(47~~6~~) Resident: A student meeting the definition of "in-state" in Tenn. Comp. R. & Regs. 0240-02-02-.03.

(Rule 1640-01-19-.01, continued)

(48~~7~~) SAT: The SAT administered by the College Board, exclusive of the essay and optional subject area battery tests.

(49~~8~~) Satisfactory Academic Progress: Progress in a course of study in accordance with the standards and practices used for Title IV programs by the eligible postsecondary institution at which the student is currently enrolled.

(50~~49~~) Semester: The term is defined in T.C.A. § 49-4-902.

(51~~0~~) Semester grade point average: The grade point average for the semester as calculated by the postsecondary institution utilizing its institutional grading policy.

(52~~1~~) Semester Hour: The term is defined in T.C.A. § 49-4-902.

(53~~2~~) Study Abroad Program: Programs of study for which college credit is earned that include travel outside the United States.

(54~~3~~) TCAT: Tennessee College of Applied Technology.

(55~~4~~) TELS (Tennessee Education Lottery Scholarship) Award: Any scholarship and/or grant provided for by these rules that a student is eligible to receive, excluding the Dual Enrollment Grant.

(56~~5~~) Tennessee HOPE Access Grant: The term is defined in T.C.A. § 49-4-902.

(57~~6~~) Tennessee HOPE Foster Child Tuition Grant: A grant in addition to the Tennessee HOPE Scholarship to a foster child to only be used towards the costs of tuition, maintenance fees, student activity fees and required registration or matriculation fees at the eligible postsecondary institution the student attends.

(58~~7~~) Tennessee HOPE Scholarship: The term is defined in T.C.A. § 49-4-902.

(59~~8~~) Tennessee National Guard: The term is defined in T.C.A. § 49-4-926(b)(3).

(60~~59~~) Test Date: The date designated for the ACT test administered by ACT, Inc., or the date designated for the SAT test administered by the College Board at national and state test centers. This shall also include the administration of either test on other dates as approved by the respective testing entities to accommodate an individual student's documented disability or other hardship, as well as a statewide test date established by the State Department of Education that is sanctioned by the respective test entities.

(61~~0~~) Title IV: The term is defined in T.C.A. § 49-4-902.

(62~~1~~) Transient Student: A visiting student enrolled in another institution who is granted temporary admission for the purpose of completing work to transfer back to the home institution and who expects to return to the institution in which the student was previously enrolled.

(63~~2~~) TSAC: Tennessee Student Assistance Corporation.

(64~~3~~) Undergraduate Student: A student attending an eligible postsecondary institution and enrolled in a program leading to a diploma/certificate, an associate degree, or a bachelor's degree.

(65~~4~~) Unweighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.

(Rule 1640-01-19-.01, continued)

(~~6~~65) Weighted Grade Point Average: The term is defined in T.C.A. § 49-4-902.

(~~6~~76) Wilder-Naifeh Technical Skills Grant: The term is defined in T.C.A. § 49-4-902.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-912, 49-4-913, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-926, 49-4-930, 49,4,931, 49-4-933, 49-4-934, and 49-4-935.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendment filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed August 27, 2014; effective November 25, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.02 SCHOLARSHIP AWARD AMOUNTS AND CLASSIFICATIONS.

(1) The Tennessee Education Lottery Scholarship program is intended to provide financial awards to offset costs associated with pursuing postsecondary education.

(2) Award amounts for the following programs shall be determined in accordance with T.C.A. § 4-51-111 and shall be set in the General Appropriations Act:

(a) Tennessee HOPE Scholarship Award pursuant to T.C.A. § 49-4-914 (a) and (b);

(b) Tennessee ASPIRE supplemental award pursuant to T.C.A. § 49-4-915;

(c) General Assembly Merit Scholarship supplemental award pursuant to T.C.A. § 49-4-916;

(d) Tennessee HOPE Access Grant award pursuant to T.C.A. § 49-4-920; and

(e) Wilder-Naifeh Technical Skills Grant pursuant to T.C.A. § 49-4-921.

(3) The Dual Enrollment Grant award amounts shall be determined by TSAC, in accordance with T.C.A. § 49-4-930, and submitted to the Department of Finance and Administration annually for publication in the general appropriations act. ~~shall be as follows:~~

~~(a) One hundred dollars ($100) per semester hour (or equivalent clock hours at technology centers) for a maximum award of six hundred dollars ($600) per semester and one thousand two hundred dollars ($1,200) per academic year.~~

~~(4) Effective for the 2015-2016 academic year, the Dual Enrollment Grant award amounts shall be as follows:~~

~~(a) For students attending an eligible two-year or four-year postsecondary institution, the award amount will be up to five hundred dollars ($500) per course for the first and second courses attempted and two hundred dollars ($200) for the third course attempted. Students shall receive no funding from the Dual Enrollment Grant program for the fourth course attempted.~~

(Rule 1640-01-19-.02, continued)

~~(b) For students attending a TCAT, the award amount will be one hundred dollars ($100) per clock hour for all courses attempted.~~

~~(c) The maximum award for the Dual Enrollment Grant shall be one thousand two hundred dollars ($1,200) per academic year.~~

~~(d) All students who attempt a fifth, sixth, seventh, or eighth course will receive one hundred dollars ($100) per semester hour.~~

(~~5~~4) Tennessee HOPE Foster Child Tuition Grant amounts shall be pursuant to T.C.A. § 49-4-933.

(~~6~~5) Recipients of any TELS award as provided by these rules, except for the Dual Enrollment Grant and the Wilder-Naifeh Technical Skills Grant may enroll as a full-time or part-time student at any eligible postsecondary institution. The amount of the award for part-time students shall be based on the hours attempted. Students enrolled in six, seven or eight hours will receive half of the award of full-time students. Students enrolled in nine, ten or eleven hours will receive three quarters of the award of a full-time student.

(~~7~~6) Except for approved medical or personal leaves of absence as provided in Rule 1640-01-19-.20 or emergency military duty as provided in Rule 1640-01-19-.21, award recipients must be continuously enrolled and maintain satisfactory academic progress at an eligible postsecondary institution.

(~~8~~7) In the event that net lottery proceeds are insufficient to fully fund the TELS award program, TSAC shall determine the appropriate manner in which the various awards shall be reduced.

(~~9~~8) Receipt of student financial aid from sources other than TELS that are applied to educational expenses will not operate to reduce the student's TELS award as long as the student's total aid does not exceed the total cost of attendance. In the event that a student's total aid exceeds the cost of attendance, the eligible postsecondary institution shall, to the extent it does not violate applicable federal regulations, use its institutional policy in reducing the student's total aid package.

(~~10~~9) The receipt of a Tennessee HOPE Scholarship, Tennessee HOPE Access Grant, Tennessee ASPIRE Award, Tennessee HOPE Foster Child Grant, General Assembly Merit Scholarship or Dual Enrollment Grant is contingent upon admission and enrollment at an eligible postsecondary institution. Academically qualifying for any of these awards programs does not guarantee admission to an eligible postsecondary institution.

Authority**: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-912, 49-4-914, 49-4-915, 49-4-916, 49-4-919, 49-4-920, 49-4-921, 49-4-922, 49-4-924, 49-4-930, and 49-4-933.* ***Administrative History: *Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed January 30, 2009; effective May 29, 2009. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.03 APPLICATION PROCESS.

(Rule 1640-01-19-.03, continued)

(1) The FAFSA shall be the application for all first year TELS awards and the FAFSA, or Renewal FAFSA, shall be the means by which eligible students reapply for TELS awards after their initial year of eligibility. The FAFSA must be submitted by mail or electronically as directed in the FAFSA instructions. Regardless of the adjusted gross income attributable to the student, ~~he or she~~ the student is required to complete the FAFSA for each academic year in order to apply for and receive a TELS award.

(2) Students must have a FAFSA received by the U.S. Department of Education on or before September 1 for fall enrollment and February 1 for spring and summer enrollment in determining awards for that academic year. Students enrolling in a ~~Tennessee Technology Center~~ TCAT shall have a FAFSA received by the U. S. Department of Education on or before July 1 for the summer trimester, November 1 for the fall trimester and March 1 for the spring trimester. It shall be the responsibility of the student to ensure that the FAFSA is timely submitted to ensure it is received by the above deadlines.

(3) Students shall apply for the Dual Enrollment Grant during their junior and senior high school years by completing the Dual Enrollment Grant Application online. The student must renew the Dual Enrollment Grant application each postsecondary academic ~~term~~ year.

(a) The application deadlines for eligible two-year and four-year institutions are September 15 for the fall semester, February 1 for the spring semester, and May 15 for the summer semester. The application deadlines for the TCATs are November 1 for the fall term, March 1 for the spring term, and May 15 for the summer term.

Authority**: T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930.* ***Administrative History: *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.04 GENERAL ELIGIBILITY.

(1) To be eligible for a TELS award a student shall:

(a) Be a Tennessee citizen; and

(b) Be a Tennessee resident as required by T.C.A. § 49-4-905(a)(1)~~, as defined by Chapter 0240-02-02, Classifying Students In-State and Out-of-State, as promulgated by the Board of Regents, for one year as of the date of enrollment in an eligible postsecondary institution; students enrolling in a Tennessee Technology Center must be a Tennessee resident one year prior to date of term enrollment~~; and

(c) Make application for a TELS award by submitting the FAFSA or Renewal FAFSA as required by Rule 1640-01-19-.03; and

(d) Be admitted to an eligible postsecondary institution; and

(e) Comply with United States Selective Service System requirements for registration, if such requirements are applicable to the student; and

(f) Be in compliance with federal drug-free rules and laws for receiving financial assistance; and

(Rule 1640-01-19-.04, continued)

(g) Meet each qualification relating to the relevant TELS award and applicable to the student; and

(h) Not be in default on a federal Title IV educational loan or Tennessee educational loan; and

(i) Not owe a refund on a federal Title IV student financial aid program or a Tennessee student financial aid program; and

(j) Not be incarcerated.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-904, 49-4-905, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Amendment filed January 30, 2009; effective May 29, 2009.*

1640-01-19-.05 ELIGIBILITY – TENNESSEE HOPE SCHOLARSHIP.

(1) This paragraph applies to student eligibility requirements as amended effective July 1, 2007. To be eligible for a Tennessee HOPE Scholarship as an entering freshman, a student, who graduated from an eligible high school after December 1, 2003, upon having completed curriculum requirements of the high school for graduation, shall meet the requirements of T.C.A. § 49-4-907.

(2) To be eligible for a Tennessee HOPE scholarship as an entering freshmen, a student who completes high school in a Tennessee home school program after December 1, 2003, who obtains a GED or HiSET after December 1, 2003, or who graduates from a high school located in Tennessee that is not an eligible high school after December 1, 2003, shall meet the requirements of T.C.A. § 49-4-908.

(3) To be eligible for a TELS award, students entering active duty in the United States Armed Services within two (2) years after graduating from an eligible high school, graduating from a high school located in Tennessee that is not an eligible high school, completing high school in a Tennessee home school program or obtaining a GED or HiSET, shall meet the requirements of T.C.A. § 49-4-918.

(4) A student who is a Tennessee citizen and a dependent child of a full-time military parent may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.

(a) Such students may be eligible if they meet all eligibility requirements for a HOPE Scholarship except that:

1. While the parent is a military parent, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and

2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED or HiSET.

(Rule 1640-01-19-.05, continued)

(b) Students who graduated from a high school outside of Tennessee may nevertheless be eligible if the high school was:

1. Operated by the United States; or

2. Accredited by the appropriate regional accrediting association for the state in which the school is located; or

3. Accredited by an accrediting association recognized by the foreign nation in which the school is located.

(c) Students graduating from high schools outside Tennessee who do not meet the requirements of part 2. of subparagraph (b) may still be eligible for the HOPE Scholarship if they completed high school in a home school program or obtained a GED or HiSET.

(d) Paragraph (4) shall only apply to:

1. Dependent children of members of the armed forces or Tennessee National Guard whose home of record, at the time of entry into military service, is Tennessee; and

2. Dependent children of full-time civilian employees of the U.S. Department of Defense, who are Tennessee residents.

(5) A student who is a Tennessee citizen and a dependent child of a full-time religious worker may be eligible for a Tennessee HOPE Scholarship as an entering freshman as provided in this paragraph.

(a) Such student must meet all Tennessee HOPE Scholarship eligibility requirements except that:

1. While the student's parent is serving in another nation as a religious worker, the student does not reside in Tennessee immediately preceding the date of application for financial assistance; and

2. The student did not graduate from an eligible high school as defined in T.C.A. § 49-4-902, an ineligible high school, a Tennessee home school or obtain a GED or HiSET.

(b) To be eligible for the Tennessee HOPE Scholarship under this paragraph (5), the student must:

1. Graduate from a high school in the foreign nation where the student's parent is a religious worker that is accredited by a regional accrediting association as defined in T.C.A. § 49-4-902 and meet the academic eligibility requirements of T.C.A. § 49-4-907(3); or

2. Complete high school in a home school in the foreign nation where the student's parent is a religious worker and meet the academic requirements of T.C.A. § 49-4-908(2)(A).

(c) Paragraph (5) only applies to dependent children of religious workers who are engaged in full-time religious work in another nation for more than one (1) year and who were

(Rule 1640-01-19-.05, continued)

Tennessee residents before leaving the U.S. to do religious work and intend to return to Tennessee upon completion of their assignment as a religious worker.

(6) In addition to the requirements of T.C.A. §§ 49-4-902 and 49-4-931, to be eligible for a Tennessee HOPE Scholarship, a non-traditional student shall meet the general eligibility requirements of Rule 1640-01-19-.04 and:

~~(a) Is at least twenty-five years (25) of age; and~~

~~(b) Has an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2); and~~

~~(c) Has enrolled in an eligible postsecondary institution and, except as provided by T.C.A. § 49-4-919, has maintained continuous enrollment at the eligible postsecondary institution either as a first time freshmen; or at least two (2) calendar years since the end of the semester of previously attending any postsecondary institution; and~~

~~(d) Since meeting the requirements of subparagraph (6)(c), has attended an eligible postsecondary institution and has maintained satisfactory progress in a course of study, in accordance with the standards and practices used for Federal Title IV programs at the postsecondary institution attended, either in an associate's degree program at a community college; or in an associate's or bachelor's degree program at a four-year institution; and~~

~~(e) Meets the GPA requirements at the end of the twelve (12) semester hours as described in T.C.A. § 49-4-931(b); and~~

(~~f~~a) Enroll~~s~~ in the semester immediately succeeding the semester in which eligibility is established~~.~~; and

(~~g~~b) If the student fails to maintain continuous enrollment, ~~as required by subparagraphs (c) and (g) of this paragraph (6), the student must~~ wait two (2) consecutive calendar years from the end of the semester of attending any postsecondary institution, before attempting to establish eligibility.

(7) To be eligible for a Tennessee HOPE Scholarship, students graduating from a high school located in a neighboring state in a county contiguous to Tennessee shall meet the requirements of T.C.A. § 49-4-935.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-905, 49-4-907, 49-4-908, 49-4-910, 49-4-918, 49-4-924, 49-4-926, 49-4-930, 49-4-931, 49-4-934, and 49-4-935.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 1, 2009; effective May 31, 2010. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.06 ELIGIBILITY – TENNESSEE ASPIRE AWARD.

(1) Except as provided in T.C.A. § 49-4-931, any student eligible for the Tennessee HOPE Scholarship with an adjusted gross income attributable to the student that does not exceed the amount as described in T.C.A. § 49-4-915(a)(2) will receive the ASPIRE award in addition to the base award. The adjusted gross income attributable to the student shall be reviewed each academic year to determine continuing eligibility for the ASPIRE award. Notwithstanding the provisions of Rule 1640-04-01-19-.12 to the contrary, a student otherwise eligible for the Tennessee HOPE Scholarship and meeting the requirements of this rule shall receive the ASPIRE award regardless of the student's eligibility for this grant in any prior year. A student eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously receive both awards.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-915, 49-4-917, 49-4-924, 49-4-930, and 49-4-931.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.07 ELIGIBILITY – GENERAL ASSEMBLY MERIT SCHOLARSHIP.

(1) To be eligible for the General Assembly Merit Scholarship the student shall meet the requirements of T.C.A. § 49-4-916.

(2) Students eligible for both the ASPIRE award and the General Assembly Merit Scholarship shall be awarded the ASPIRE award, but shall not simultaneously be awarded both.

(3) A student eligible for a Tennessee HOPE Scholarship under Rule 1640-01-19-.05(7) shall not be eligible for a General Assembly Merit Scholarship supplemental award under T.C.A. § 49-4-916.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-916, 49-4-917, 49-4-924, and 49-4-935.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Amendments filed January 25, 2005; effective May 31, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.08 ELIGIBILITY – TENNESSEE HOPE ACCESS GRANT.

(1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Tennessee HOPE Access Grant a student shall meet the requirements of T.C.A. § 49-4-920.

(Rule 1640-01-19-.08, continued)

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-920, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Amendments filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.09 ELIGIBILITY – TENNESSEE HOPE FOSTER CHILD GRANT.

(1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for the Tennessee HOPE Foster Child Grant a student shall meet the requirements of T.C.A. § 49-4-933.

(2) The Tennessee HOPE Foster Child Tuition Grant shall be the cost of attendance less any gift aid, with the total HOPE Foster Child Tuition Grant amount not to exceed the cost of tuition and mandatory fees at the eligible postsecondary institution attended. Additionally, at an eligible independent postsecondary institution, the Tennessee HOPE Foster Child Tuition Grant shall not exceed the statewide average public tuition and mandatory fee rate for the type of institution (two-year or four-year) attended.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-933.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.*

1640-01-19-.10 ELIGIBILITY – WILDER-NAIFEH TECHNICAL SKILLS GRANT.

(1) In addition to the general eligibility requirements in Rule 1640-01-19-.04, to be eligible for a Wilder-Naifeh Technical Skills Grant a student shall meet the requirement of T.C.A. § 49-4-921.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-921, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Amendment filed October 21, 2004; effective February 28, 2005. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.11 ELIGIBILITY – DUAL ENROLLMENT GRANT.

(1) To be eligible for a Dual Enrollment Grant a student shall meet the requirements of T.C.A. § 49-4-930.

(Rule 1640-01-19-.11, continued)

(2) The student must have completed all of the academic requirements of the 10th grade (high school sophomore) and be classified as an 11th grader (high school junior) or 12th grader (high school senior) by the student's high school or home school program.

(3) The student must not have already received a high school diploma or GED or HiSET diploma.

(4) A student's participation in the Dual Enrollment Grant program is limited to the remaining amount of time normally required to complete the high school diploma, from the time of initial participation in the program. The grant is available for the regular fall and spring semester, and for summer semesters prior to graduation from high school for those students who did not exceed the maximum award during the regular school year.

(5) Any deduction to a student's HOPE Scholarship as a result of taking additional Dual Enrollment Grant courses provided for under T.C.A. § 49-4-930 shall be applied in full against the amount of the student's HOPE Scholarship in the first semester of enrollment at an eligible postsecondary institution. If the student's HOPE award in the first semester is less than the amount of the total deduction, then the remaining deduction amount will be applied against the second semester, and subsequent semesters if necessary, until the deduction is eliminated.

Authority: *T.C.A §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.12 RETENTION OF AWARDS – GENERAL REQUIREMENTS.

(1) To retain a TELS award authorized by this chapter, a student, including a non-traditional student, at an eligible postsecondary institution shall continue to meet all applicable requirements for the scholarship and shall reapply by completing the FAFSA or Renewal FAFSA pursuant to Rule 1640-01-19-.03 for the applicable award for each academic year.

(2) Eligibility for the HOPE Scholarship shall be reviewed in accordance with T.C.A. § 49-4-911.

(3) Except as provided in paragraph (4) of this rule and Rules 1640-01-19-.20 and 1640-01-19-.21, a student may receive a Tennessee HOPE Scholarship until a terminating event as described in T.C.A. § 49-4-913 occurs.

(4) The attempted credit hour includes remedial and developmental studies and all regular college credit courses attempted after high school graduation.

(5) A student who meets all other requirements for fourth or fifth year eligibility except that the student is classified at the professional level rather than as an undergraduate, and has not met a terminating event in accordance with T.C.A. § 49-4-913, is eligible if the student was accepted into the professional level program of study that is an extension of the student's bachelor's degree program.

(Rule 1640-01-19-.12, continued)

(6) If a student ceases to be eligible for any TELS award, except the General Assembly Merit Scholarship, due to failure to achieve the required cumulative grade point average, the student may regain the applicable award or awards by:

(a) Continuing to meet all applicable non-academic requirements for the applicable award or awards;

(b) Maintaining continuous enrollment at an eligible postsecondary institution without the applicable award or awards;

(c) Attaining grade point average requirements as described in T.C.A. § 49-4-911 at the end of any semester in which eligibility would have been reviewed, had the student not lost the award or awards; and

(d) Reapplying for the scholarship as provided in Rule 1640-01-19-.03.

(7) No retroactive awards shall be made for semester hours attempted in order to regain the scholarship.

(8) A student can utilize the option outlined in paragraph (6) of this rule only one time. A student who, after regaining the award or awards pursuant to paragraph (6) of this rule, subsequently fails to retain any TELS award due to failure to achieve the cumulative grade point average at a regular credit hour checkpoint shall not be eligible to regain the TELS award or become eligible for another TELS award.

(9) Except as provided by Rule 1640-01-19-.20 or 1640-01-19-.21, a student receiving a TELS award provided by this chapter shall maintain continuous enrollment at an eligible postsecondary institution and maintain satisfactory progress in a course of study in accordance with the standards and practices used for Title IV programs by the postsecondary institution in which the student is currently enrolled.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-911, 49-4-912, 49-4-913, 49-4-920, 49-4-921, 49-4-924, and 49-4-931.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.*

1640-01-19-.13 RETENTION OF AWARDS – TENNESSEE HOPE ACCESS GRANT.

(1) In addition to the general requirements for retention of award in Rule 1640-01-19-.12:

(a) A Tennessee HOPE Access Grant shall be awarded to an eligible student only until the end of the semester in which the student has attempted a total of twenty-four (24) semester hours. A student who is eligible for a Tennessee HOPE Scholarship shall be ineligible for a Tennessee HOPE Access Grant.

(b) If a student receiving a Tennessee HOPE Access Grant has achieved a cumulative grade point average of at least 2.75 at the end of the semester in which the student has

(Rule 1640-01-19-.13, continued)

attempted twenty-four (24) semester hours, the student shall be eligible for a Tennessee HOPE Scholarship. The student will also receive the ASPIRE award referenced in Rule 1640-01-19-.06, if the adjusted gross income attributable to the student at the time of review does not exceed the amount described in T.C.A. § 49-4-915(a)(2).

(c) If a student ceases to be eligible due to failure to achieve the cumulative grade point average required at the end of the semester in which the student has attempted twenty-four (24) semester hours, the student may be eligible to regain the HOPE Scholarship by following the procedure outlined in Rule 1640-01-19-.12(6).

(d) A student may receive a Tennessee HOPE Scholarship after having received a Tennessee HOPE Access Grant until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-913, 49-4-915, 49-4-920, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.14 RETENTION OF AWARDS – DUAL ENROLLMENT GRANT.

(1) To be eligible for a Dual Enrollment Grant the student must meet the minimum requirements pursuant to T.C.A. § 49-4-930.

(2) The Dual Enrollment cumulative grade point average used to determine eligibility for a renewal of a Dual Enrollment Grant must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all dual enrollment credit hours attempted under this rule.

(3) Distance education courses and independent studies courses are eligible for payment with a Dual Enrollment Grant and shall be included in the calculation of the postsecondary cumulative grade point average for continued eligibility of the Dual Enrollment Grant.

(4) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a Dual Enrollment Grant.

(5) Students who obtain a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his/her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a Dual Enrollment Grant, the student can be awarded retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the award may be adjusted in the current award year.

(6) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for award payment for distance education courses.

(7) The grant will pay only for lower division (courses numbered 100-200 or 1000-2000) postsecondary credit for general education courses and courses in the disciplines. The grant will not pay for upper division courses (numbered 300-400 or 3000-4000).

(Rule 1640-01-19-.15, continued)

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-924, and 49-4-930.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendment filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.15 TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD PROCESS.

(1) On or before June 30 of each year, all eligible high schools shall submit the name, social security number, grade point averages, and highest composite ACT/SAT score on any single test date, for academically eligible students, cumulative through the eighth semester. Students who graduate from summer school shall have their information reported to TSAC on or before August 15 of each year.

(2) Eligible postsecondary institutions that enroll students receiving scholarships or grants shall assist in providing and certifying student information necessary for administering, receiving, and evaluating such programs.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.*

1640-01-19-.16 CONTINUATION OF TENNESSEE EDUCATION LOTTERY SCHOLARSHIP AWARD.

(1) All students receiving a TELS award shall reapply for the award by filing a FAFSA or Renewal FAFSA as provided in Rule 1640-01-19-.03 for each subsequent year.

(a) During the certification process, all eligible postsecondary institutions shall certify the number of credit hours attempted and the cumulative grade point average of all students receiving a TELS award at the end of the semester, as described in T.C.A. § 49-4-911(a).

(b) Notwithstanding the provisions of subparagraph (1)(a) above to the contrary, only those grades earned and credit hours attempted by a non-traditional student, while receiving the TELS award, shall count toward the benchmark requirements.

(2) To remain eligible for the HOPE Scholarship, the student must meet the minimum requirements pursuant to T.C.A. § 49-4-911.

(3) Students who reach a benchmark during the summer semester shall have their continuing eligibility determined based upon the cumulative grade point average and semester grade point average, if required, as of the end of the summer semester.

(4) Students entering into the provisions of T.C.A. § 49-4-911(a)(2) may enter into these provisions as a part-time student. However, upon receiving the award based on the

(Rule 1640-01-19-.16, continued)

provisions of T.C.A. § 49-4-911(a)(2), the student must maintain continuous enrollment each semester.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-911, 49-4-924, and 49-4-931.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010.*

1640-01-19-.17 AWARD MADE IN ERROR.

(1) If a student receives a TELS award and it is later determined that the award or some portion of the award was made in error, the student or the postsecondary institution may be required to repay the amount awarded in error.

(2) If TSAC determines that the error was through no fault of the student, the student will not be required to repay the amount of the payment made in error.

(3) Repayment from the student will be required if TSAC determines that fraud was committed or the error was through fault of the student. When repayment is required, the student may not receive additional student aid from ~~the~~ TSAC until repayment is made.

(4) Repayment from the postsecondary institution will be required if TSAC determines that the error was through the fault of the postsecondary institution.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008.*

1640-01-19-.18 REFUND POLICY.

(1) If a recipient of a TELS award or a Dual Enrollment Grant fails to complete a semester for any reason, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to ~~the~~ TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to the student or the amount to be refunded to ~~the~~ TSAC. Additionally, the eligible postsecondary institution shall notify ~~the~~ TSAC of the charge back, which shall be noted on the student's record. The eligible postsecondary institution shall also be responsible for obtaining repayment from the student. The student shall be ineligible for student aid from ~~the~~ TSAC until the refund is paid.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26*

(Rule 1640-01-19-.17, continued)

reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendment filed January 30, 2009; effective May 29, 2009.

1640-01-19-.19 CONVERTING FROM FULL-TIME TO PART-TIME ENROLLMENT.

(1) Students enrolled in a full-time or part-time status, as of institutionally defined census date, may not convert to part-time or less than part-time status within the same semester and receive a scholarship award for the succeeding semesters unless the student requests and the institution approves the change to part-time or less than part-time status.

(2) An institution may allow a change from full-time to part-time or from part-time to less than part-time status within the same semester only when there are documented medical or personal grounds, in accordance with Rule 1640-01-19-.20.

(3) Each eligible postsecondary institution shall adopt procedures for considering student requests for change from full-time to part-time or from part-time to less than part-time status within the semester. In the event an institution denies a student's request to change ~~from full-time status to part-time~~ enrollment status within a semester, the student may appeal the decision pursuant to Rule 1640-01-19-.28.

(4) In the event that the decision to deny the change of status is upheld through the appeals process, the student shall be ineligible to regain the TELS award or become eligible for another TELS award.

(5) In the event the change to part-time or less than part-time status is approved, the eligible postsecondary institution shall apply its refund policy to determine whether a refund may be required and/or funds returned to ~~the~~ TSAC. The eligible postsecondary institution shall provide the student with a notice indicating the amount to be returned to ~~the~~ TSAC. Additionally, the eligible postsecondary institution shall notify ~~the~~ TSAC of the charge back, which shall be noted on the student's record.

(6) For the purposes of this rule, only courses that are included in the calculation of the grade point average pursuant to Rule 1640-01-19-.22 are to be considered in determining full-time status.

(7) In the event the student is eligible for the HOPE Scholarship as defined in T.C.A. § 49-4-911(a), the student shall maintain continuous full-time enrollment on a semester-by-semester basis.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-911, 49-4-912, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009. Amendments filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.20 PERSONAL OR MEDICAL LEAVE OF ABSENCE.

(1) A student may be granted medical or personal leaves of absence from attendance at an eligible postsecondary institution and resume receiving an award(s) upon resumption of the

(Rule 1640-01-19-.20, continued)

student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. Each eligible postsecondary institution shall adopt procedures for considering student requests for leaves of absence. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, to fulfill a religious commitment ~~expected~~ encouraged of ~~all~~ students of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. Acceptable reasons shall also include a student's participation in an internship or co-op program that is required or encouraged as part the academic program in which the student is enrolled. In the event an institution denies a student's request for a medical or personal leave of absence, the student may appeal the decision in accordance with Rule 1640-01-19-.28.

(2) Students granted a medical or personal leave of absence who resume their education at an eligible postsecondary institution shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-913, 49-4-919, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.21 MILITARY MOBILIZATION OF ELIGIBLE STUDENTS.

(1) Members of the United States Armed Services, National Guard, or Armed Forces Reserves receiving a TELS award who are mobilized for active duty during a semester that is already in progress shall be granted a personal leave of absence by the eligible postsecondary institution the student is attending and shall not have their TELS award eligibility negatively impacted.

(2) If, as a result of being mobilized, a student elects to completely withdraw from an eligible postsecondary institution, then the hours attempted during the semester will not be taken into consideration for purposes of determining future TELS award eligibility.

(3) Upon re-enrollment within one year following mobilization, the student's TELS award eligibility will resume as if no break in enrollment had occurred and shall retain TELS award eligibility until a terminating event as described in T.C.A. § 49-4-913 occurs.

(4) An eligible postsecondary institution shall be authorized to consider a request for a leave of absence from a student whose spouse, child, father or mother is mobilized for active duty as a valid basis for a personal leave of absence. This request shall be made in accordance with the provisions of this rule. If the request is granted the student shall receive the same accommodations described above.

(5) Tennessee residents attending an out-of-state institution, otherwise eligible, shall not have their TELS award eligibility negatively impacted by military mobilization upon their return to the state as a transfer student attending an eligible postsecondary institution.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-913, 49-4-919, and 49-4-924.* ***Administrative History:*** *Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed*

(Rule 1640-01-19-.20, continued)

October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Amendments filed December 19, 2014; effective March 19, 2015.

1640-01-19-.22 CALCULATION OF POSTSECONDARY CUMULATIVE GRADE POINT AVERAGE.

(1) The postsecondary cumulative grade point average used to determine eligibility for a renewal of a TELS award, must be calculated by the institution the student is attending, utilizing its institutional grading policy and must be based on all credit hours attempted after high school graduation, except as otherwise provided in this rule and as described in T.C.A. § 49-4-911.

(a) Notwithstanding the provisions of paragraph (1) above to the contrary, grades earned and credit hours attempted by a non-traditional student, in accordance with T.C.A. § 49-4-931, shall count toward the benchmark requirements.

(2) All credit hours attempted at all postsecondary institutions the student has attended after graduating from high school and their corresponding grades must be included in the calculation of the postsecondary cumulative grade point average, regardless of whether the receiving institution will apply the credit hours toward the student's degree requirements. Except as provided in subparagraph (a) of this paragraph, credit hours that were repeated shall be included in the postsecondary cumulative grade point average calculation.

(a) A student shall have a one-time option to repeat one course and utilize only the higher of the two grades in the calculation of their postsecondary grade point average for purposes of determining continued eligibility for a TELS award. The semester hours for both attempted courses, however, will be included in the overall number of attempted hours for determining HOPE Scholarship eligibility.

(b) It shall be the responsibility of the student to advise the appropriate official of the eligible postsecondary institution when this option is being exercised.

(3) Grades received for courses attempted prior to high school graduation, completion of a home school program in Tennessee or GED or HiSET attainment, including those attempted with the Dual Enrollment Grant, do not count in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.

(4) Credit hours earned by examination are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.

(5) Credit hours attempted as part of a diploma or certificate program of study are not considered to be college credit hours and therefore shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility unless those hours are accepted toward a degree.

(6) Remedial and developmental studies and independent studies courses are eligible for payment with TELS awards and shall be included in the calculation of the postsecondary cumulative grade point average and in the attempted hours for determining HOPE Scholarship eligibility.

(Rule 1640-01-19-.22, continued)

(7) Courses in which a student enrolls as an audit student for which no college credit will be received cannot be paid with a TELS award or included in the attempted hours for determining HOPE Scholarship eligibility.

(8) Continuing education courses are not eligible for payment with TELS awards and shall not be included in the postsecondary cumulative grade point average or in the attempted hours for determining HOPE Scholarship eligibility.

(9) A student who obtains a grade change shall notify the financial aid office within thirty (30) calendar days of the grade change and request reinstatement of his or her award on a form developed by the institution for this purpose. If the grade change makes the student eligible for a TELS award, the student can be awarded a TELS award retroactively in the current award year. If the grade change affects the student's eligibility from the previous award year, the TELS award may be adjusted in the current award year. The eligible postsecondary institution shall make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over-award of need based aid or exceeds the institution's cost of attendance for any semester. If the student's application for reinstatement is denied, the student may appeal the decision in accordance with Rule 1640-01-19-.28.

(10) A student enrolled in a matriculating status at an eligible postsecondary institution shall qualify for TELS award payment for distance education courses if all other eligibility requirements are met. Students may take courses through more than one eligible postsecondary institution during the same semester. Payment for the distance education courses shall be made in the same manner as transient students as provided in Rule 1640-01-19-.24.

(11) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an internship or co-op program if the student receives college credit from the internship or co-op experience and must pay tuition and fees. The semester hours shall be included in the postsecondary cumulative grade point average.

(12) A student enrolled in a matriculating status at an eligible postsecondary institution may qualify for TELS award payment while participating in an alternative study or study abroad program if all other eligibility requirements are met. The eligible postsecondary institution which is the student's home institution must approve the alternative study or study abroad program for credit toward the student's degree and the number of hours that will be applied toward the degree prior to the student's departure.

(13) Courses that appear on a student's transcript as an "incomplete" shall be considered credit hours attempted, except as noted in Rules 1640-01-19-.21(2) and 1640-01-19-.21(4). The student's TELS award eligibility, however, shall be determined by excluding the credit hours attributable to the course for which an "incomplete" has been assigned from the cumulative grade point average calculation.

(a) If the student fails to retain eligibility for a TELS award as a result of the calculation of an incomplete, but later becomes eligible when the grade for the "incomplete" course is reported, the student is eligible to receive a TELS award retroactively within the award year and shall retain eligibility. Retroactive TELS awards for previous award years shall be added to the current award year. The eligible postsecondary institution shall, however, make necessary reductions in the student's financial aid package if the reinstatement of a TELS award results in either an over award of need based aid or exceeds the institution's cost of attendance for any semester. It shall be the responsibility of the student to notify the financial aid office at the eligible postsecondary institution that a grade has been awarded and request that the TELS

(Rule 1640-01-19-.22, continued)

award be reinstated. Each eligible postsecondary institution shall develop a standard form for use by students to comply with this provision. If the student's application for reinstatement is denied, the student may appeal the decision in accordance with Rule 1640-01-19-.28.

(b) If the student retains eligibility for a TELS award as a result of the calculation, but later becomes ineligible when the grade for the "incomplete" course is reported, then the student shall be ineligible for all TELS awards. Additionally, the student shall reimburse the institution for TELS awards received in the interim.

(14) Courses in which a student withdraws shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.

(15) Courses in which a student takes a pass/fail course shall not be used in calculating the cumulative grade point average. The hours shall be included in the attempted hours for determining HOPE Scholarship eligibility.

***Authority**: T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, 49-4-911, 49-4-913, 49-4-919, 49-4-924, and 49-4-931. **Administrative History:** Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Amendments filed December 1, 2009; effective May 31, 2010. Amendments filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.23 TRANSFER STUDENTS.

(1) To be eligible for a Tennessee HOPE scholarship as a transfer student from a regionally accredited postsecondary institution located outside of Tennessee, a student shall meet the requirements of T.C.A. § 49-4-929.

(2) Any student who was initially eligible for a Tennessee HOPE Scholarship or HOPE Access Grant but who instead of enrolling at either an eligible 2-year or 4-year postsecondary institution enrolled at a ~~Tennessee Technology Center~~ TCAT and obtained the Wilder-Naifeh Technical Skills Grant and completed a diploma program is eligible for a HOPE Scholarship at either an eligible 2-year or 4-year postsecondary institution. The student must apply for a HOPE Scholarship within three (3) years of completing the diploma program.

***Authority:** T.C.A. §§ 49-4-201, 49-4-204, 49-4-910, 49-4-911, 49-4-924, 49-4-929, and 49-4-937. **Administrative History**: Original rule filed December 29, 2003; effective April 29, 2004. Public necessity rule filed October 4, 2005; effective through March 18, 2006. Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to rules in effect on October 3, 2005. Repeal and new rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Repeal and new rule filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.*

(Rule 1640-01-19-.23, continued)

1640-01-19-.24 TRANSIENT STUDENTS.

(1) A transient student is eligible to receive a TELS award if all other eligibility requirements are met and if both the home and host institutions are eligible postsecondary institutions.

(2) Each eligible postsecondary institution shall develop a process to effectuate each provision of this rule and shall notify its students of the process and the availability of the necessary forms to comply with the requirements. At the end of the semester, the host institution shall provide the student's home institution with all information necessary for the home institution to determine continued TELS award eligibility.

(3) If the home institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.

(4) If, through collaboration with the home institution, the host institution chooses to certify the transient student to TSAC for payment of the HOPE Scholarship, the host institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.

(5) If the host institution chooses not to certify the transient student to TSAC for payment of the HOPE Scholarship, the home institution shall certify the student at the award amount designated to the eligible postsecondary institution the student is attending.

(6) If the eligible student is concurrently enrolled at the home institution and a host institution, then the home institution shall certify the student at the award amount of the home institution.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924.* ***Administrative History:*** *Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.25 DENIAL OF INITIAL ELIGIBILITY – FAILURE TO TIMELY ENROLL.

(1) A student who fails to timely enroll in an eligible postsecondary institution as required by Rule 1640-01-19-.05 may be granted an exception if the student failed to meet the requirement for any reason provided for in this rule. An exception shall be granted only for medical or personal reasons, in accordance with Rule 1640-01-19-.20. In the event a student's request for an exemption for failing to timely enroll is denied, the student may appeal the decision pursuant to Rule 1640-01-19-.28.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-903, and 49-4-924.* ***Administrative History:*** *Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendment filed November 20, 2007; effective March 28, 2008. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.26 EXTENSION OF FIVE-YEAR TERMINATING EVENT DUE TO MEDICAL DISABILITY

(1) As outlined in T.C.A. § 49-4-913, a HOPE recipient who has a documented medical disability, as verified by a licensed physician, which requires the student to attend part-time, may

(Rule 1640-01-19-.26, continued)

petition TSAC to receive an extension to the five (5) year period. Such extension may not exceed ten (10) years from the student's date of initial enrollment at any postsecondary institution.

(2) Documentation from the licensed physician must include a statement that affirms the student's medical disability and reason(s) the student must attend part-time. The extension will be granted one (1) year at a time and documentation must be provided to TSAC prior to the beginning of the academic term in which the part-time status is being applied for. The extension will be reviewed on an annual basis and a determination made of the student's eligibility for the extension.

(3) A student with a medical disability whose five (5) year period has expired may appeal to TSAC to have the award reinstated, provided the student has maintained eligibility for the HOPE Scholarship. A student whose eligibility has expired may receive up to an additional five (5) years, or the number of years remaining that will equal ten (10) years from initial enrollment, whichever is less.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, 49-4-708, 49-4-904, 49-4-905, and 49-4-913.* ***Administrative History:*** *Public necessity rules 1640-01-19-.01 through 1640-01-19-.26 filed October 4, 2005, expired on March 18, 2006. On March 19, 2006, rules 1640-01-19-.01 through 1640-01-19-.26 reverted to reserved status. Original rule filed November 9, 2005; effective March 30, 2006. Public necessity rule filed November 30, 2006; expires May 14, 2007. Amendment filed November 30, 2006; effective March 30, 2007. Public necessity rule filed November 20, 2007; effective through May 3, 2008. Amendments filed November 20, 2007; effective March 28, 2008. Public necessity rule filed October 23, 2008; effective through April 6, 2009. Public necessity rule filed October 23, 2008 and effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendments filed January 30, 2009; effective May 29, 2009. Repeal and new rule filed August 27, 2014; effective November 25, 2014. Repeal and new rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.27 WILDER-NAIFEH RECONNECT

(1) To be eligible for a Wilder-Naifeh Reconnect Grant, a student shall meet the requirements of T.C.A. § 49-4-923.

(2) All tuition waivers and discounts for which a student or parent qualifies shall first be deducted from the student's tuition and mandatory fees before gift aid is credited.

(3) Each TCAT shall be responsible for certifying to TSAC that the student has met all eligibility requirements. The TCAT will certify each student's eligibility for a financial award for the Wilder-Naifeh Reconnect Grant after gift aid has first been credited to the student's tuition and mandatory fees.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-923.* ***Administrative History:*** *Original rule filed December 19, 2014; effective March 19, 2015.*

1640-01-19-.28 APPEAL AND EXCEPTION PROCESS.

(1) Each eligible postsecondary institution shall establish an Institutional Review Panel (IRP) for the purposes of rendering a decision in order to deny or revoke an applicant's TELS award. Each eligible postsecondary institution shall establish written procedures for an applicant or recipient to appeal a decision of an eligible postsecondary institution to deny or revoke a TELS award. These procedures shall include, but not be limited to, the establishment and composition of the IRP and the process and timelines for appeals to the IRP. Each eligible postsecondary institution shall also establish a process to ensure students applying for or receiving a TELS award are notified of the procedures to appeal the denial or revocation of a

(Rule 1640-01-19-.28, continued)

TELS award including the timeframe within which an appeal must be filed with the TELS Award Appeals Panel. No eligible postsecondary institution official rendering a decision to deny or revoke a TELS award shall participate in the appeal process for the same applicant or recipient. The IRP may award or reinstate the student's TELS award without a meeting and shall make such determination no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. If the IRP determines that a meeting is required, the IRP shall hear the appeal no later than fourteen (14) calendar days after an applicant or recipient properly files an appeal. Except where exigent circumstances exist, the IRP shall render a decision no later than seven (7) calendar days after meeting to consider an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision and reasons for the decision. The IRP shall provide a copy of the IRP decision letter to the appellant as soon as practicable.

(2) The TELS Award Appeals Panel shall be appointed by TSAC's Executive Director for the purpose of meeting to consider appeals from decisions rendered by the IRPs. No official of an eligible postsecondary institution shall sit as a member of the Appeals Panel where the denial or revocation being appealed involves such official's eligible postsecondary institution. A student seeking an appeal of a decision rendered by an IRP shall request an appeal, to include a written statement outlining the basis for the appeal as well as all pertinent information related to the appeal, with TSAC within forty-five (45) calendar days from the date of the IRP decision letter. A complete record of the institutional IRP ruling shall be provided to TSAC by the student. The Appeals Panel may award or reinstate the student's TELS award without a meeting. This decision shall be made no later than thirty (30) calendar days after an appeal is properly filed and the record from the IRP meeting is received. If the Appeals Panel determines that a meeting is required the Appeals Panel shall consider the appeal no later than forty-five (45) calendar days after the appeal is properly filed, unless an extension is requested by the appellant prior to the expiration of the forty-five (45) day time period and granted by the Appeals Panel. Except where exigent circumstances exist, the Appeals Panel shall render a decision no later than fourteen (14) calendar days after ruling on an appeal. Such decision shall be reduced to writing and shall include a summary of the pertinent facts and issues and the panel's decision. The Appeals Panel shall provide a copy of the written decision to the appellant and the appellant's home institution as soon as practicable. The Appeals Panel is the final administrative appeal.

(3) A student may appeal directly to TSAC without first appealing to the IRP under the following circumstances:

(a) Where the reason for the loss of eligibility occurred at a regionally-accredited out-of-state postsecondary institution and the student is now enrolled or attempting to enroll in an eligible postsecondary institution;

(b) Where the loss of eligibility occurs at one eligible postsecondary institution prior to the student transferring to another eligible postsecondary institution;

(c) Where a student has delayed postsecondary enrollment beyond sixteen (16) months after high school graduation;

(d) Where a student withdraws from an eligible postsecondary institution while seeking eligibility as a non-traditional student;

(e) Where a student is enrolled part-time and is seeking an extension to the five-year terminating event due to a documented medical disability as certified by a licensed physician; or

(Rule 1640-01-19-.28, continued)

(f) At TSAC's discretion where the loss of eligibility was due to extraordinary circumstances.

(4) The authority of the IRPs and the TELS Award Appeals Panel shall be strictly limited to consideration of appeals arising from eligibility determinations made by an eligible postsecondary institution or TSAC. Neither appeals panel shall have the authority to rule on the validity of any information provided to the eligible postsecondary institution or TSAC by another entity on which its decision to deny or revoke a TELS award was based, including, but not limited to high school grade point average, ACT or SAT scores, or grades from another eligible postsecondary institution. Additionally, neither appeals panel shall have the authority to consider requests for exceptions to the high school or collegiate grade point average.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-924.* ***Administrative History****: Original rule filed December 19, 2014; effective March 19, 2015.*

effective through April 6, 2009, expired on April 7, 2009; rule reverted to its previous status. Amendment filed January 30, 2009; effective May 29, 2009.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Ms. Jayme Simmons	X				
Mr. David H. Lillard, Jr., by Ms. Ashley Nabors	X				
Comptroller Justin P. Wilson,	X				
Dr. Claude Pressnell	X				
Commissioner Larry Martin, by Mr. Greg Turner	X				
Commissioner Candice McQueen, by Ms. Laura Encalade	X				
Chancellor Flora Tydings By Dr. Heidi Leming	X				
Dr. Joe Dipietro, by Dr. Linda Martin	X				
Mr. Cyrus Vatandoost	X				
Ms. Tiffany Summers	X				
Ms. Keri McInnis	X				
Mr. Tom Hughes	X				
Mr. John Smarrelli	X				
Ms. Sharon Hayes	X				
Mr. Charles Layne				X	
Ms. Sabrina Washington	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Student Assistance Corporation Board of Directors on 08/17/2018 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 10-22-18

Signature: [signature]

Name of Officer: Mike Krause

Title of Officer: Executive Director

CORSINA DICKSON - WILEY
STATE OF TENNESSEE
08/04/2020
DAVIDSON COUNTY

Subscribed and sworn to before me on: 10-22-18

Notary Public Signature: Corsina Dickson-Wiley

My commission expires on: 08-04-2020

Agency/Board/Commission:

Rule Chapter Number(s):

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/29/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/31/18

Effective on: 1/29/19

Tre Hargett
Secretary of State

RECEIVED
2018 OCT 31 PM 1:30
SECRETARY OF STATE
PUBLIC DOCS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Mental Health and Substance Abuse Services
DIVISION:	Offices of Communications
SUBJECT:	Public Records Requests
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503
EFFECTIVE DATES:	January 3, 2019 through June 30, 2019
FISCAL IMPACT:	It is estimated that these rules will not have a fiscal impact on state and local government expenditures.
STAFF RULE ABSTRACT:	This new rule addresses how the public can access public records of TDMHSAS and includes the following: • The process for making requests to inspect public records or receive copies of public records and a copy of any required request form. • The process for responding to requests, including redaction practices. • A statement of any fees charged for copies of public records and the procedures for billing and payment. • The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

See attached.

Department of
Mental Health &
Substance Abuse Services

Rulemaking Hearing Rules
of the Tennessee Department of Mental Health and Substance Abuse Services

Chapter 0940-01-10
Public Records Requests

Responses to Public Comments

I. INTRODUCTION

On June 14, 2018, the Tennessee Department of Mental Health and Substance Abuse Services ("TDMHSAS") filed a notice of rulemaking hearing with the Secretary of State inviting public comment on the proposed new rules in Chapter 0940-01-10, Public Records Requests. These rules are promulgated under the Commissioner of TDMHSAS's rulemaking authority under T.C.A. §§ 33-1-302, 33-1-303, 33-1-305 and 33-1-309, T.C.A. § 10-7-506, and in accordance with the directives contained in T.C.A. § 10-7-503(g).

TDMHSAS held a public rulemaking hearing on August 15, 2018, to receive public comment on proposed revisions to Chapter 0940-01-10. TDMHSAS received comments from Ms. Deborah Fisher, Executive Director of the Tennessee Coalition for Open Government, and Ms. Carol Daniels, Executive Director of the Tennessee Press Association.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDMHSAS hereby summarizes the written comments and comments received at the public rulemaking hearing and makes responses to these comments as follows.

A. General Comments:

Comments from Tennessee Coalition on Open Government:

Our comments are aimed at supporting prompt access to public records and reducing obstacles that hinder access.

TDMHSAS Response:

TDMHSAS accepts these comments and agrees that the law requires prompt access to public records.

B. Rule 0940-01-10-.01 – Purpose.

There were no public comments addressed specifically to this proposed rule, and there is no change in the final rule.

C. Rule 0940-01-10-.02 – Definitions.

There were no public comments addressed specifically to this proposed rule, and there is no change in the final rule.

D. Rule 0940-01-10-.03 – General information.

There were no public comments addressed specifically to this proposed rule, and there is no change in the final rule.

E. Rule 0940-01-10-.04 – Requesting Access to Public Records.

Comments from Tennessee Coalition on Open Government:

Paragraph (5) of the proposed rule states that "The requestor shall provide proof of his/her Tennessee citizenship to the PRRC at the time the requestor submits his/her public records request. The requestor's Tennessee citizenship shall be proven by presentation to the PRRC of a valid Tennessee driver's license or Tennessee identification card. Proof of the requestor's Tennessee citizenship shall be provided as a condition to inspect or receive copies of public records."

Ms. Fisher expressed that her chief concern is that this requirement is almost always unnecessary yet it increases the chance that access to records will be delayed, which is in conflict with the law requiring prompt access. It is a rule that is easy to abuse to prevent or delay access to public records. Tennessee statutes do not require that government entities require proof of Tennessee citizenship, only that they may require it. Her organization has received several complaints from individuals who were required to provide proof of citizenship and in each case this has delayed access to records. She believes this type of delay is in conflict with the law which requires prompt access.

Ms. Fisher requests that TDMHSAS modify the final rule to:

1. Have TDMHSAS consider state residency only when fulfilling the public records request will take an unusually large amount of time and effort;

2. State that requestors may affirm residency through a checkbox on a Public Records Request Form, in an email, or verbally and only require proof of residency if there is a plausible reason to believe the requestor is not a resident;

3. Delete the denial option on the Public Records Response Form found in Rule 0940-01-10-.10 stating the "No proof of TN citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification."; and

4. Eliminate any reference under the "Public Record Request Coordinator" provision and throughout the rules that would conflict with a policy of not requiring identification "except under limited and reasonable circumstances."

Ms. Fisher requested that lack of identification documents not be used as a reason to deny a public records request except under limited, reasonable circumstances when there is a plausible reason to believe they are not a resident after they have affirmed that they are and the request is large or complicated.

Ms. Fisher mentioned several suggested benefits for making these changes. First, it would reduce the work for government officials by eliminating the agency's incorrect denials when a person is actually a resident. Second, it would reduce the chance that the proof of residency requirement would be abused or be perceived to be abused. Third, it would help residents who fear emailing or mailing a copy of their driver's license or who struggle with providing a copy of their driver's license or another form of identification. Finally, it reduces the need for a government entity to handle all of these documents and copies of driver's licenses, documents that could contain confidential or sensitive information.

Ms. Fisher stated her organization believes that if TDMHSAS were to just have a checkbox on the public records request form, then attempted fraud would be extremely low. She stated that most people don't lie on a form or on the phone.

Ms. Fisher commented that there may be legitimate reasons why TDMHSAS might ask for identification from a requestor, including if the requestor listed an out-of-state mailing address, or if the request was very large.

Ms. Fisher commented that the risk of not requiring identification is very low. If the requestor is requesting a lot of records, the requestor is going to have to pay for the records anyway.

Finally, Ms. Fisher stated that these changes would reduce government bureaucracy, improve customer service, save the state time, improve compliance with the spirit and letter of the law, and promote a friendly and accessible government agency that is committed to transparency.

Ms. Fisher suggests a policy [rule] that says the state may require proof of residency on large or complicated requests and when there is plausible reason to believe the requester is not a Tennessee resident.

<u>TDMHSAS Response</u>:

Upon consideration of the comments regarding this Rule, TDMHSAS has modified its proposed rule. TDMHSAS believes it is best to address the proof of citizenship issue on a case-by-case basis and this practices follows the language and requirements of T.C.A. § 10-7-503, which states that a "governmental entity may require any person making a request to view or make a copy of a public record to present a government-issued photo identification" or "other forms of identification acceptable to the governmental entity." T.C.A. § 10-7-503(a)(7)(vi). Accordingly, TDMHSAS has modified its proposed rule as follows:

Rule 0940-01-10-.04(5) has been deleted in its entirety and replaced with the following language:

(5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license, or alternative acceptable form of identification, may be required as a condition to inspect or receive copies of public records.

Given this change to the proof of Tennessee citizenship requirement found in Rule 0940-01-10-.04(5), TDMHSAS finds it necessary to make the additional following modifications to the proposed rule:

Rule 0940-01-10-.05(1)(a) will be modified to state that the PRRC shall make an initial determination of whether the requestor provided evidence of Tennessee citizenship "if required."

F. Rule 0940-01-10-.05 – Responding to Public Records Requests.

Ms. Fisher's comments directed towards the proof of Tennessee citizenship requirement, summarized above in regards to Rule 0940-01-10-.04, Requesting Access to Public Records, are applicable to Rule 0940-01-10-.05 insomuch as the requirements in Rule 0940-01-10-.05 reflected the proof of Tennessee citizenship requirement.

Again, given this change to the proof of Tennessee citizenship requirement found in Rule 0940-01-10-.04(5), TDMHSAS finds it necessary to make the following modifications to the proposed rule:

Rule 0940-01-10-.05(1)(a) will be modified to read as follows:

(a) If the requestor provided evidence of Tennessee citizenship, if required, pursuant to Rule 0940-01-10-.04;

G. Rule 0940-01-10-.06 – Redaction of Public Records.

There were no public comments addressed specifically to this proposed rule, and there is no change in the final rule.

H. Rule 0940-01-10-.07 – Inspection of Public Records.

There were no public comments addressed specifically to this proposed rule, and there is no change in the final rule.

I. Rule 0940-01-10-.08 – Copies of Public Records.

Comments from Tennessee Coalition on Open Government:

Ms. Fisher stated that she appreciates that the Rule states that TDMHSAS can deliver copies of records by email. She believes this makes sense and also understands that TMDHSAS must maintain custody of its own records.

Ms. Fisher requested that TDMHSAS modify the proposed rule to clarify whether a requestor is allowed to photograph a record. She wants to make sure that the rule allows for someone to be able to take pictures of public records with their phone or cameras. She stated that there have been recent complaints from journalists and citizens about not being allowed to take photographs of public records when they arrive to inspect them in person. She does not want the rule to allow a chance that a custodian may deny someone the ability of taking a picture of public records because they simply might have to touch a record or flip through pages.

TDMHSAS Response:

This comment is well taken and TDMHSAS has modified the final rule to clarify that a requestor may use a personal camera or cell phone to take a picture of a record so long as the integrity of the record is maintained and, if a record contains confidential information or information that is not open for public inspection, the record may not be photographed until all appropriate redactions are completed.

Rule 0940-01-10-.08 is modified by adding a new section (5) as follows:

(5) A requestor may use a personal camera or cell phone to take a photograph of a public record, so long as the integrity of the record is maintained. If a record contains confidential information or information that is not open for public inspection, the record may not be photographed until all appropriate redactions are completed.

The previous section (5) is renumbered as section (6) and is otherwise unchanged.

J. Rule 0940-01-10-.09 – Fees and Charges; Procedures for Billing and Payments; Aggregation of Frequent and Multiple Requests

Comments from Tennessee Coalition on Open Government:

Ms. Fisher thanked TDMHSAS for putting in a provision that allows for the waiving of fees that are in the best interest of the agency and for the public good. Ms. Fisher commented that the $10 threshold for waiver of fees is a little low. She said that she has seen other state agencies do $50 or $40. She encouraged TDMHSAS to evaluate this rule section as time goes on. She commented that sometimes the cost of processing a payment can be more expensive than the payment. She commented this is particularly true in terms of time when a Nashville-based state agency is dealing with a requestor who lives in another part of the state where they must mail payment. She commented that a higher threshold might provide a simpler overall government process, eliminating the need to collect fees at lower levels.

Rule 0940-01-10-.09 currently allows the Public Records Request Coordinator ("PRRC") to waive fees for copies of public records and labor that do not exceed $10, and requests for waivers of fees above $10 to be presented to the PRRC. Ms. Fisher requests that this fee threshold be

increased to $50 such that fees for copies and labor that do not exceed $50 may be waived, and requests for waivers of fees above $50 be presented to the PRRC.

Comments from Tennessee Press Association:

Ms. Daniels pointed out that Rule 0940-01-10-.09(2) allows for the PRRC to waive fees that do not exceed $10. She commented that it may be beneficial to have more clarity in the rule about deciding when this fee should be waived because there will eventually be turnover in positions at the Department responsible for implementing this rule, and new staff may not apply the rule as favorably as current staff.

TDMHSAS Response:

Upon further consideration of Ms. Fisher's comments, TDMHSAS believes that the comment is well taken and accordingly, has revised this section in its final rule filing to reflect Ms. Fisher's suggested change. The proposed rule section now states:

Rule 0940-01-10-.09(2)

(6) When fees for copies and labor do not exceed $50, the fees may be waived by the PRRC. Requests for waivers for fees above $50 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TDMHSAS and for the public good. Fees associated with aggregated records requests will not be waived.

In regards to Ms. Daniels' comment about clarifying when this waiver would be applied, the Department has decided not to make any modifications to its rule in response to this comment. T.C.A. § 10-7-503 does not require governmental entities to waive fees. The Department has decided to include this provision in the Rule for the purposes of customer service and efficient government. The Department believes that the PRRC should have the discretion to decide when the waiver is applicable when the charge is below $50, and can consider a waiver of fees upon request if the fee is above $50.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

These rules will not affect small businesses. Although some law firms may qualify as small businesses, this Rule should not change the daily operations of those businesses.

Economic Impact Statement

1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

   These rules will not affect small businesses.

2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

   These rules will not affect reporting, recordkeeping, or other administrative costs of small businesses.

3) A statement of the probable effect on impacted small businesses and consumers.

   These rules will not affect small businesses.

4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

   There is no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rules.

5) A comparison of the proposed rule with any federal or state counterparts.

   The federal Freedom of Information Act (FOIA) provides the public the right to request access to records from any federal agency. These rules compare favorably to federal freedom of information act (FOIA) policies and rules. These rules provide for procedures that citizens can follow in order to request access to public records, inspect and make copies of public records, and for how the Department will respond to such requests.

6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

   These rules will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

TDMHSAS believes that these rules will not have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This new rule addresses how the public can access public records of TDMHSAS and includes the following:

- The process for making requests to inspect public records or receive copies of public records and a copy of any required request form.
- The process for responding to requests, including redaction practices.
- A statement of any fees charged for copies of public records and the procedures for billing and payment.
- The name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Public Chapter 712 of 2018, now codified at T.C.A. § 10-7-503, requires state governmental entities to promulgate rules regarding public records that include the following: the process for making requests to inspect public records or receive copies of public records and a copy of any required request form; the process for responding to requests, including redaction practices; a statement of any fees charged for copies of public records and the procedures for billing and payment; and the name or title and the contact information of the individual or individuals within such governmental entity designated as the public records request coordinator. These rules will put TDMHSAS in compliance with Public Chapter 712.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule affects all members of the public seeking access to TDMHSAS public records. More specifically though, members of the journalism and legal communities are frequent requesters of public records. No stakeholders affected by this rule have informed TDMHSAS of whether they urge adoption or rejection of this rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are a multitude of opinions of the Attorney General and Reporter relating to an agency's duty to respond to public records requests. There are no such opinions known of at this time that relate to the necessity to promulgate a rule relating to public records requests. The rule is required to be promulgated pursuant to Public Chapter 712 of 2018.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

It is estimated that these rules will not have a fiscal impact on state and local government expenditures.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Matthew Parriott, Director, Office of Communications, TDMHSAS
Jim Layman, Legislative Liaison and Rules Coordinator, TDMHSAS

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Matthew Parriott, Director, Office of Communications, TDMHSAS Jim Layman, Legislative Liaison and Rules Coordinator, TDMHSAS

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Matthew Parriott, Director of Communications Tennessee Department of Mental Health and Substance Abuse Services 6th Floor, Andrew Jackson Building 500 Deaderick Street Nashville, TN 37243 Matthew.Parriott@tn.gov 615-532-6597 Jim Layman, Legislative Liaison and Rules Coordinator Tennessee Department of Mental Health and Substance Abuse Services 5th Floor, Andrew Jackson Building 500 Deaderick Street Nashville, TN 37243 Jim.Layman@tn.gov 615-532-0977

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-10-18
Rule ID(s): 7250
File Date: 10/5/18
Effective Date: 1/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Tennessee Department of Mental Health and Substance Abuse Services
Division: Office of Communications
Contact Person: Jim Layman, Legislative Liaison & Rules Coordinator
Address: 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN
Zip: 37243
Phone: 615-532-0977
Email: Jim.Layman@tn.gov

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0940-01-10	Public Records Requests
Rule Number	**Rule Title**
0940-01-10-.01	Purpose
0940-01-10-.02	Definitions
0940-01-10-.03	General Information
0940-01-10-.04	Requesting Access to Public Records
0940-01-10-.05	Responding to Public Records Requests
0940-01-10-.06	Redaction of Public Records
0940-01-10-.07	Inspection of Public Records
0940-01-10-.08	Copies of Public Records
0940-01-10-.09	Fees and Charges; Procedures for Billing and Payment; Aggregation of Frequent and Multiple Requests
0940-01-10-.10	Public Records Request Form
0940-01-10-.11	Public Records Request Response Form

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0940-01-10
Public Records Requests

Chapter 0940-01-10 Public Records Requests is a new rule.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

Chapter 0940-01-10
Public Records Requests

New Rule

Table of Contents

0940-01-10-.01 Purpose
0940-01-10-.02 Definitions
0940-01-10-.03 General Information
0940-01-10-.04 Requesting Access to Public Records
0940-01-10-.05 Responding to Public Records Requests
0940-01-10-.06 Redaction of Public Records
0940-01-10-.07 Inspection of Public Records
0940-01-10-.08 Copies of Public Records
0940-01-10-.09 Fees and Charges; Procedures for Billing and Payment; Aggregation of Frequent and Multiple Requests
0940-01-10-.10 Public Records Request Form
0940-01-10-.11 Public Records Request Response Form

0940-01-10-.01 Purpose.

The purpose of these rules is to establish procedures regarding public records requests received by the Tennessee Department of Mental Health and Substance Abuse Services, and to provide economical and efficient access to public records as provided under the Tennessee Public Records Act.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.02 Definitions.

(1) "Governmental Entity" means the State of Tennessee, or any county, municipality, city or other political subdivision of the State of Tennessee.

(2) "Office of Open Records Counsel" or "OORC" means the office established pursuant to Tenn. Code Ann. §§ 8-4-601 *et seq*, or any successor office or entity.

(3) "Privacy Counsel" means the General Counsel of TDMHSAS unless otherwise delegated.

(4) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency, not otherwise protected by law or exempt from disclosure under the TPRA.

(5) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, designated in Rule 0940-01-10-.05 who has, or have, the responsibility to ensure public record requests are routed

to the appropriate records custodian and are fulfilled in accordance with the TPRA. The PRRC may also be a records custodian.

(6) "Records Custodian" means the office, official, or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

(7) "Requestor" means the citizen seeking access to a public record, whether it is for inspection or duplication.

(8) "TDMHSAS" or the "Department" means the Tennessee Department of Mental Health and Substance Abuse Services.

(9) "TPRA" means the Tennessee Public Records Act found in Title 10, Chapter 7 of the Tennessee Code Annotated.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.03 General Information.

(1) The TPRA provides that all state, county, and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state or federal rule or law. Accordingly, the public records of TDMHSAS are presumed to be open for inspection unless otherwise provided by law.

(2) Personnel of TDMHSAS shall timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provision of this Rule shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of TDMHSAS, shall be protected as provided by current law. Concerns about this Rule should be addressed to the PRRC for TDMHSAS.

(3) This Rule shall be applied consistently throughout the various offices and divisions of TDMHSAS.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.04 Requesting Access to Public Records.

(1) Public records requests shall be made to the PRRC in order to ensure public records requests are routed to the appropriate records custodian and fulfilled in a timely manner. Any employee of TDMHSAS who receives what they believe may be a public records request, formal or informal, shall immediately notify the PRRC.

(2) Requests for inspection are not required to be made in writing. The PRRC shall request a mailing or email address from the requestor for providing any written communication required under the TPRA.

(3) Requests for inspection may be made orally or in writing using the Public Records Request Form at Andrew Jackson Building, 6th Floor, 500 Deaderick Street, Nashville, TN 37243, by phone at 615-532-6610, or by email at oc.tdmhsas@tn.gov.

(4) Requests for copies, or requests for inspection and copies, of public records shall be made in writing. Requestors may use the Public Records Request Form found in Rule 0940-01-10-.01 or any other written form of communication such as mail or electronic mail.

(5) Proof of Tennessee citizenship by presentation of a valid Tennessee driver's license, or alternative acceptable form of identification, may be required as a condition to inspect or receive copies of public records.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.05 Responding to Public Records Requests.

(1) The PRRC, or an employee under the direction of the PRRC, shall review public records requests and make an initial determination of the following:

(a) If the requestor provided evidence of Tennessee citizenship, if required, pursuant to Rule 0940-01-10-.04;

(b) If the records requested are described with sufficient specificity to identify them;

(c) If TDMHSAS has custody of the requested records and, if so, the name of the respective records custodian; and

(d) If the records requested, or any of their contents, are protected by privacy laws or are in any way confidential or privileged under federal and/or state law and whether the Privacy Counsel needs to be consulted.

(2) The PRRC, or an employee under the direction of the PRRC, shall acknowledge receipt of the request and take any of the following appropriate actions:

(a) Advise the requestor of this Rule and the elections made regarding:

1. Proof of Tennessee citizenship pursuant to Rule 0940-01-10-.04;

2. Any forms required for copies;

3. Fees, labor threshold, and waivers, if applicable; and

4. Aggregation of multiple or frequent requests.

(b) If appropriate, deny the request in writing and provide the reason for the denial, which may include but is not limited to any of the following:

1. The requestor is not, or has not presented evidence of being, a Tennessee citizen pursuant to Rule 0940-01-10-.04.

2. The request lacks specificity.

3. An exemption makes the record not subject to disclosure under the TPRA.

4. TDMHSAS is not the custodian of the requested records.

5. The records do not exist.

6. Any other legal grounds for denial.

(c) If appropriate, contact the requestor to see if the request can be narrowed.

(d) Forward the request to the appropriate records custodian in TDMHSAS.

(e) If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity to which the public records request should be made, the PRRC will advise the requestor of the correct governmental entity and the PRRC for that entity, if known.

(3) The designated PRRC is the Director of Communications of TDMHSAS; provided, however, that responsibilities of the PRRC under this Rule may be delegated to one or more employees under the direction of the PRRC. The PRRC may be contacted at:

TDMHSAS Director of Communications
Andrew Jackson Building, 6th floor
500 Deaderick Street
Nashville, TN 37243
Telephone: (615) 741-2941
Email: oc.tdmhsas@tn.gov

(4) Upon receiving a public records request, the PRRC, or an employee under the direction of the PRRC, shall promptly make requested public records available in accordance with T.C.A § 10-7-503. If the PRRC is uncertain as to whether an applicable exemption applies or whether the records requested, or any of their contents, are protected by privacy laws or are in any way confidential or privileged under federal and/or state law, the PRRC will consult with the Privacy Counsel in the Division of General Counsel. The PRRC may also consult with the OORC after first consulting with the Privacy Counsel.

(5) If it is not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then the PRRC, or an employee under the direction of the PRRC, shall, within seven (7) business days from the PRRC's receipt of the request, send the requestor a completed Public Records Request Response Form.

(6) If the PRRC, or an employee under the direction of the PRRC, denies a public records request, he or she shall deny the request in writing as provided in Rule 0940-01-10-.05(2)(b) using the Public Records Request Response Form.

(7) If the PRRC, or an employee under the direction of the PRRC, reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the PRRC, or an employee under the direction of the PRRC, shall use the Public Records Request Response Form to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the PRRC, or an employee under the direction of the PRRC, should contact the requestor to see if the request can be narrowed.

(8) If the PRRC, or an employee under the direction of the PRRC, discovers records responsive to a records request were omitted from a response, then the PRRC, or an employee under the direction of the PRRC, should contact the requestor to inform him/her of the omission. The PRRC, or an employee under the direction of the PRRC, shall ascertain whether the requestor wants to inspect and/or copy the previously omitted records. Any such request shall be subject to the provisions of this Rule regarding inspection and copies of public records, and fees and charges.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.06 Redaction of Public Records.

(1) If a record contains confidential information or information that is not open for public inspection, the PRRC will consult with the Privacy Counsel or other appropriate parties regarding potential redaction of records. The PRRC may also consult with the OORC or with the Office of Attorney General and Reporter after first consulting with the Privacy Counsel.

(2) TDMHSAS will make best efforts to remove any and all information it deems confidential or otherwise protected from disclosure pursuant to any state and/or federal law, rule, or regulation before disclosing the information in response to a public records request.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.07 Inspection of Public Records.

(1) There shall be no charge for inspection of open public records.

(2) The location for inspection of records within the offices of TDMHSAS shall be determined by the PRRC.

(3) Under reasonable circumstances, the PRRC or a records custodian may require an appointment for inspection or may require inspection of records at an alternate location.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.08 Copies of Public Records.

(1) The PRRC shall promptly respond to a public records request for copies in the most economic and efficient manner practicable, to include providing digital copies.

(2) Copies will be available for pickup at a location specified by the PRRC.

(3) Upon payment for postage or delivery charges, copies will be delivered to the address provided by the requestor.

(4) If the requestor requests digital copies, digital copies will be delivered via email to an email address designated by the requestor.

(5) A requestor may use a personal camera or cell phone to take a photograph of a public record, so long as the integrity of the record is maintained. If a record contains confidential information or information that is not open for public inspection, the record may not be photographed until all appropriate redactions are completed.

(6) TDMHSAS, or its contractors or agents, shall maintain custody of its records at all times. A requestor shall not be allowed to take custody of any TDMHSAS record.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.09 Fees and Charges; Procedures for Billing and Payment; Aggregation of Frequent and Multiple Requests.

(1) The PRRC shall provide requestors with an itemized estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested records.

(2) When fees for copies and labor do not exceed $50, the fees may be waived by the PRRC. Requests for waivers for fees above $50 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of TDMHSAS and for the public good. Fees associated with aggregated records requests will not be waived.

(3) Fees and charges for copies are as follows:

(a) $0.15 per page for letter and legal-sized black and white copies.

(b) $0.50 per page for letter and legal-sized color copies.

(c) Labor when time exceeds one (1) hour.

(d) If an outside vendor is used, the actual costs assessed by the vendor.

(4) Fees for labor and actual costs will be assessed in accordance with the OORC's Schedule of Reasonable Charges.

(5) Payment of fees and charges for copies is to be made by personal check payable to "TDMHSAS Fiscal Services" presented to TDMHSAS Fiscal Services, Andrew Jackson Building, 6th Floor, 500 Deaderick Street, Nashville, TN 37243.

(6) Payment in advance will be required when costs are estimated to exceed $50.

(7) Aggregation of Frequent and Multiple Requests:

(a) TDMHSAS will aggregate records requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed to be working in concert.

(b) The level at which records requests will be aggregated is departmental.

(c) The PRRC is responsible for making the determination that a group of individuals are working in concert. As soon as practicable after such a determination is made, the PRRC shall inform the individuals in writing that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309.

0940-01-10-.10 Public Records Request Form.

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

To: [Insert Governmental Entity Name and Name and Contact Information for the Public Records Request Coordinator]

From: [Insert Requestor's Name and Contact Information (include an address for any TPRA required written response)]

Is the requestor a Tennessee citizen? ☐ Yes ☐ No

Request: ☐ Inspection (The TPRA does not permit fees or require a written request for inspection only[i].)

☐ Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $_____? If so, initial here_____.

Delivery preference: ☐On-Site Pick-Up ☐USPS First-Class Mail ☐Electronic ☐Other: _____

RECORDS REQUESTED:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

Signature of Requestor and Date Submitted Signature of Public Records Coordinator and Date Received

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309

[i] Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

PUBLIC RECORDS REQUEST RESPONSE FORM
TN Department of Mental Health and Substance Abuse Services
[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)[1] indicated below:

☐ The public record(s) responsive to your request will be made available for inspection:
Location:_____
Date & Time: _____

☐ Copies of public record(s) responsive to your request are:
- ☐ Attached;
- ☐ Available for pickup at the following location:
_____; or

☐ Being delivered via: ☐ USPS First-Class Mail ☐ Electronically ☐ Other:_____

☐ Your request is denied on the following grounds:
- ☐ Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
- ☐ No such record(s) exists or this office does not maintain record(s) responsive to your request.
- ☐ No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
- ☐ You are not a Tennessee citizen.
- ☐ You have not paid the estimated copying/production fees.
- ☐ The following state, federal, or other applicable law prohibits disclosure of the requested records:
_____.

☐ It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
- ☐ It has not yet been determined that records responsive to your request exist; or
- ☐ This office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is:_____.

If you have any additional questions regarding your record request, please contact [Records Custodian or Public Records Request Coordinator].

Sincerely,

[Records Custodian or Public Record Request Coordinator] [Name, Title, and Contact Information]

---

1 If all requested records do not have the same response, so indicate.

Authority: T.C.A. §§ 10-7-503, 33-1-302, 33-1-303, 33-1-305, and 33-1-309

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services on 9/13/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *June 14, 2018*

Rulemaking Hearing(s) Conducted on: (add more dates). *August 15, 2018*

Date: 9.13.18

Signature:

Name of Officer: Marie Williams, LCSW

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

SUE B. HUNT
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

Subscribed and sworn to before me on: September 13, 2018

Notary Public Signature: Sue B. Hunt

My commission expires on: March 8, 2021

Agency/Board/Commission: Tennessee Department of Mental Health and Substance Abuse Services

Rule Chapter Number(s): 0940-01-10

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

2018 OCT -5 AM 10:45
SECRETARY OF STATE

Filed with the Department of State on: 10/5/18

Effective on: 1/3/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tourist Development
DIVISION:	Administrative
SUBJECT:	Access to the Public Records of the Department of Tourist Development
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)(2)
EFFECTIVE DATES:	January 3, 2019 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	No changes in previous regulation. Rule derived as a result of Public Chapter 712 effective April 12, 2018 codified at T.C.A. Section 10-7-503(g)(2), requiring departments to promulgate rules to effectuate the public records request process.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Proposed rule does not affect small business, unless said business makes a request for public records. Then said small business will be required to submit payment for the department of tourist development's efforts to produce requested records for inspection or for copies of requested records, based upon Rule 1670-07-01-.05. This review yielded that small business are no more affected than any individual Tennessee citizen.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

Local governments shall have no increase in expenditures or decrease in revenues unless said local government requests the department of tourist development to produce requested records for inspection or for copies of requested records, based upon Rule 1670-07-01-.05.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

No changes in previous regulation. Rule derived as a result of Public Chapter 712 effective April 12, 2018 codified at T.C.A. Section 10-7-503(g)(2), requiring departments to promulgate rules to effectuate the public records request process.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. Section 10-7-503(g)(2): Requiring state government entities to promulgate rules regarding public records which must include the process for making requests to inspect public records or receive copies of public records, the process for responding to requests, a statement of feeds charged for copies of public records, billing procedure, and the name or title and contact information for the individual(s) within the governmental entity designated as the public records request coordinator.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

No known impact.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Fiscal impact is minimal.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Alicia C. B. Widrig, General Counsel

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alicia C. B. Widrig, General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

312 Rosa L. Parks Ave., 13th Fl., Nashville, TN 37243; (615)741-9065; Alicia.Widrig@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-09-18
Rule ID(s): 7249
File Date: 10/5/18
Effective Date: 1/3/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Department of Tourist Development
Division:	Administrative
Contact Person:	Alicia C. B. Widrig, General Counsel
Address:	312 Rosa L. Parks Ave., 13th Fl. Tennessee Tower, Nashville, TN
Zip:	37243
Phone:	615-741-9065
Email:	Alicia.Widrig@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1670-07	Access to the Public Records of the Department of Tourist Development
Rule Number	**Rule Title**
1670-07-01-.01	Purpose and Scope of Authority
1670-07-01-.02	Definitions
1670-07-01-.03	Requesting Access to Public Records
1670-07-01-.04	Responding to Public Records Requests
1670-07-01-.05	Inspection and Copies of Records
1670-07-01-.06	Fees, Payment and Waivers
1670-07-01-.07	Aggregation of Frequent and Multiple Requests
1670-07-01-.08	Failure to Inspect Copies or Failure to Pay

Table of Contents

Rule 1670-07-01-.01 Purpose and Scope of Authority. The Tennessee Public Records Act ("TPRA"), T.C.A. §§ 10-7-501 et seq., requires each state agency to provide public access to agency records, unless exempted by the TPRA. This chapter establishes the process and procedure through which the Department of Tourist Development shall provide access to public records, pursuant to T.C.A. § 10-7-503.

(1) Department of Tourist Development public records shall, at all times during regular business hours from 8:00 AM to 4:30 PM Central Time, Monday through Friday, except for holidays and/or state issued office closures, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless provided by law. Appointments for viewing are required and are to be done through the contact mechanisms of Rule 1670-07-01-.03.

(2) The Department of Tourist Development is not required to sort through files to compile information or to create or recreate a record that does not exist.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.02 Definitions.

(1) "Records Custodian" means any office, official or employee of the Department of Tourist Development lawfully responsible for the direct custody and care of a public record. The Records Custodian is not necessarily the original preparer or receiver of the record.

(2) "Public Records" means all documents, papers, letters, maps, books, photographs, mircofilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form of characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency, not otherwise protected by law or exempt from disclosure under the TPRA; and does not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record.

(3) "Public Records Request Coordinator" or "PRRC" means any individual within the Department of Tourist Development whose responsibility it is to ensure that public records requests are routed to the appropriate records custodian and fulfilled in accordance with the TPRA. The Public Records Request Coordinator may also be a records custodian.

(4) "Requestor" means a person seeking access to a public record, whether it is for inspection or duplication.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.03 Requesting Access to Public Records.

(1) Public record requests shall be made to the PRRC or designee in order to ensure public records requests are routed to the appropriate custodian and fulfilled in a timely manner.

(2) Proof of Tennessee citizenship is required as a condition to inspect or receive copies of public records. Proof of citizenship can be furnished by:

(a) Presentation of a valid Tennessee driver's license, or other state issued photographic identification card that includes the requestor's Tennessee address prior to the inspection of records or a requestor obtaining the records in person; or

(b) Submission of a request on business letterhead with the business address in Tennessee. Records will be sent to the Tennessee address on the letterhead and not to any other address.

(3) The Department of Tourist Development reserves the right to request additional identification of the validity of the identification presented or of the business address is in question. The requestor will be notified in writing, when possible, of the need for additional documentation.

(4) A Requestor shall make a request for copies of Public Records in writing to the PRRC. When submitting a written request for copies, a Requestor may, but is not required to use the Public Records Request Form, located on the Department of Tourist Development website on the About the Department, Staff Directory Page, link below at Rule 1670-07-01-.03(5).

(5) A Requestor may request access to Public Records maintained and received by the Department of Tourist Development by making a request in-person, by telephone, fax, mail, email or online portal, depending on whether the Requestor is asking to inspect or receive copies of the Public Records.

Department of Tourist Development
Attn: Public Records Request Coordinator
312 Rosa L. Parks Avenue, TN Tower, 13th Floor
Nashville, TN 37243
p: (615) 741-9065 f: (615) 741-9071
Tourism.OpenRecords@tn.gov
https://stateoftennessee.formstack.com/forms/tourism_public_records_request

A request for inspection or copying of a Public Record shall be sufficiently detailed to enable the Department to identify the specific records for inspection or copying.

(6) Requests for inspection only are not required to be in writing.

(7) A request for inspection or copying of a Public Record shall be sufficiently detailed to enable the Department to identify the specific records for inspection or copying.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.04 Responding to Public Records Requests.

(1) Upon receipt of a public records request(s), the PRRC will review the request and make a determination of the following:

(a) If the Requestor provided evidence of Tennessee citizenship, pursuant to Rule 1670-07-01-.03;

(b) If the records requested are described with sufficient specificity as to be identified;

(c) If the Department of Tourist Development is the custodian of the Public Records;

(d) If the records requested, or any of their contents, are not subject to disclosure based on applicable federal or state laws or rules; and

(e) If applicable, the Department of Tourist Development will inform the Requestor, in writing, of the reasonable copying and labor charges to produce copies and any determinations made regarding aggregation of multiple or frequent requests.

(2) The PRRC shall acknowledge receipt of the request to the requestor and take any of the following appropriate action(s):

(a) Advise the requestor of this rule and the elections made regarding:

1. Proof of Tennessee citizenship;

2. Form(s) required for copies;

3. Fees (and labor threshold and waivers, if applicable); and

4. Aggregation of multiple or frequent requests.

(b) If appropriate, the request will be denied in writing and the ground(s) provided as one (1) of the following:

1. The requestor is not, or has not presented evidence of being a Tennessee citizen;

2. The request lacks specificity. The Department of Tourist Development may work with requestors to clarify the request;

3. An exemption makes the record not subject to disclosure under the TPRA, and inform the requestor of the specific exemption;

4. The Department of Tourist Development is not the custodian of the requested record; and/or

5. The records requested do not exist.

(c) If appropriate, the requestor will be contacted to determine if the request can be specified and/or narrowed.

(d) If requested records are in the custody of a different government entity and the PRRC knows the correct governmental entity, the Requestor will be advised of the correct governmental entity and PRRC for that entity, if known.

(3) Upon receiving a public records request, a Department of Tourist Development records custodian in collaboration with the PRRC shall promptly make requested public record available. If the records custodian is uncertain than an applicable TPRA exemption applies, the custodian may consult with the PRRC or the Office of General Counsel.

(a) If not practicable to promptly provide requested records, a records custodian in collaboration with the PRRC shall, within seven (7) business days from the records custodian's receipt of the request, communicate with the requestor the reason for the delay and an estimate of the time necessary to produce the records or determine the proper response to the request because additional time is necessary:

1. To determine whether the requested records exist;

2. To search for, retrieve, or otherwise gain access to records;

3. To determine whether the records are open;

4. To redact records; or

5. For other similar reasons.

(b) If a public records request is denied, the requestor shall be notified in writing.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.05 Inspection and Copies of Records.

(1) There shall be no charge to inspect Public Records.

(2) If, after viewing the records, a requestor wishes to obtain copies, the Department of Tourist Development shall calculate cost based on the copy and labor charges for the entire request, and, if the requestor does not wish to obtain all records produced, shall pro-rate the charges on a per page basis.

(a) The Requestor will be allowed to make copies of personally inspected Public Records with his or her personal equipment, to include portable scanner, cell phone or camera;

(b) The Requestor will not be allowed to connect any personal equipment directly to a Department of Tourist Development computer or electronic device, including but not limited to, utilizing a flash drive, in order to make copies of Public Records.

(3) If the Department of Tourist Development determines to fulfill the request, the Department shall promptly respond to a public records request for copies by making the copies available to the Requestor in the following manner:

(a) For pick-up at a location specified by the PRRC;

(b) By regular mail delivery through the United States Postal Service to the Requestor's home address or other acceptable address within Tennessee; or

(c) By electronic delivery of copies to an email address as provided by the Requestor.

1. Records which include personally identifiable information cannot be sent by email.

2. Records which contain allowable personally identifiable information will only be provided by Secure File Transfer Protocol, if provided electronically.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.06 Fees, Payment and Waivers.

(1) The Department of Tourist Development shall assess charges for the copying and labor required to produce copies of the requested Public Records based on the most current version of the Schedule of Reasonable Charges, issued by the Office of Open Records Counsel ("OORC"). The Schedule of Reasonable Charges is available on the Tennessee Comptroller of the Treasury's website on the OORC page.

(2) The Department of Tourist Development shall provide a Requestor with a written, itemized estimate of the copying or labor charges prior to producing copies of records. The Requestor must agree, in writing, to pay the charges prior to the Department producing the Public Records. Payment in advance will be required before producing requested Public Records.

(3) When charges for copies and labor do not exceed $10.00, the charges may be waived by the PRRC.

(4) Payment of charges shall be payable to the Department of Tourist Development in the form of cashier's check, money order, or other reliable means as determined by the Department of Tourist Development.

(5) If an outside vendor is utilized to compile, review or redact Public Records in response to a public records request, then the Requestor will be charged the vendor's costs.

(6) The Commissioner of the Department of Tourist Development or the Commissioner's designee, may waive or reduce any part of the fees calculated under these rules upon a written determination that such waiver or reduction would be in the best interest of the public.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.07 Aggregation of Frequent and Multiple Requests.

(1) The Department of Tourist Development will aggregate record requests in accordance with the Reasonable Charges for Frequent and Multiple Requests promulgated by the Office of Open Records Counsel when more than four (4) requests are received within a calendar month either from a single individual or a group of individuals deemed to be working in concert. Records requests will be aggregated at the Department of Tourist Development level.

(2) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the Office of Open Records Counsel.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

Rule 1670-07-01-.08 Failure to Inspect Copies or Failure to Pay.

(1) If a Requestor makes two (2) or more requests to view a Public Record within a six (6) month period and, for each request, the Requestor fails to view the Public Record within fifteen (15) business days of receiving notification that the record is available to view, the Department of Tourist Development is not required to comply with any public records request from the Requestor for a period of six (6) months from the date of the second request to view the Public Record unless it is determined the failure to view the Public Record was for good cause.

(2) If a Requestor makes a request for copies of a public record and, after copies have been produced, the person fails to pay the Department of Tourist Development the cost of producing such copies, the Department of Tourist Development is not required to comply with any public records request from the person until the person pays for such copies; provided that the person was provided with an estimated cost for producing the copies in accordance with state law and these rules prior to producing the copies and the Requestor agreed to pay the estimated cost for such copies.

Authority: T.C.A. §§ 4-4-103 and 10-7-503

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 09/27/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

SHARON REED
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 9-7-2021

Date: 9/27/18

Signature:

Name of Officer: Kevin Triplett

Title of Officer: Commissioner, Tourist Development

Subscribed and sworn to before me on: 9-27-2018

Notary Public Signature: Sharon Reed

My commission expires on: 9-7-2021

Agency/Board/Commission:

Rule Chapter Number(s):

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

2018 OCT -5 AM 10:2
SECRETARY OF STATE
PUBLIC

Filed with the Department of State on: 10/5/18

Effective on: 1/3/19

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Human Services
DIVISION:	Community and Social Services
SUBJECT:	Licensure Rules for Child Care Agencies
STATUTORY AUTHORITY:	N/A
EFFECTIVE DATES:	January 3, 2019 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rule amends Chapter 1240-04-01-.22, Chart 3, to correct an error in the ratio numbers contained in the chart.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This change does not impact small business.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule has no impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule amends Chapter 1240-04-01-.22, Chart 3, to correct an error in the ratio numbers contained in the chart.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

N/A

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

N/A

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

None.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Rebekah Baker, Deputy General Counsel, Rebekah.A.Baker@tn.gov, 615-350-4153

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Rebekah Baker, Deputy General Counsel, Rebekah.A.Baker@tn.gov, 615-350-4153

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

400 Deaderick Street, Nashville, TN 37243, 615-350-4153, Rebekah.A.Baker@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-08-18
Rule ID(s): 7248
File Date: 10/5/18
Effective Date: 1/3/19

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Human Services
Division:	Community and Social Services
Contact Person:	Jude White, Assistant Commissioner, Community and Social Services
Address:	One Citizen's Plaza Bldg., 8th Floor, 400 Deaderick St., Nashville, TN
Zip:	37243
Phone:	(615)837-5092
Email:	Jude.White@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1240-04-01	Licensure Rules for Child Care Agencies
Rule Number	**Rule Title**
1240-04-01-.22	Specific Requirements for Child Care Centers

REDLINE

RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-04-01
LICENSURE RULES FOR CHILD CARE AGENCIES

1240-04-01-.22 Specific Requirements for Child Care Centers.

(1) Required Adult:Child Ratios.

(a) Adult:child ratios in this paragraph shall be maintained by the child care agency while the children are on the premises of the child care agency, including outdoors or on the playground.

(b) Adult:Child Ratio Requirements for Child Care Centers.

1. Adult:child ratios and group sizes in child care centers may exceed requirements set by the rule of the Department of Human Services by up to ten percent (10%), rounded to the nearest whole number, no more frequently than three (3) days per week.

(i) At no time shall the licensed capacity be exceeded.

(ii) Infant and toddler groups may never exceed the required ratios and group sizes.

(iii) The Department may terminate this variance in individual cases under provisions for issuance of a restricted license pursuant to T.C.A. § 71-3-502.

(iv) Child care centers that use the variance may, at the Department's discretion, be required to obtain fire approval prior to enrolling additional children.

2. When more than twelve (12) children are present on the premises, a second adult shall be physically available on the premises.

(c) Child Care Ratio and Group Size Charts.

1. Chart 1 – Age Grouping.

Age of Children	Adult:Child Ratio							Maximum Group Size
Six (6) weeks – Fifteen (15) months	1:4							8
Twelve (12) – Thirty (30) months		1:6						12
Twenty-four (24) – Thirty-five (35) months			1:7					14
Three (3) years					1:9			18

Four (4) years						1:13		20
Five (5) years						1:16		20
School-age (Kindergarten and above)							1:20	No Max

2. Chart 2 – Age Grouping.

Age of Children	Adult:Child Ratio							Maximum Group Size
Six (6) weeks – Thirty (30) months	1:5							10
Two (2) – Four (4) years		1:8						
Two and one-half (2½) – Three (3) years (Thirty (30) – Forty-seven (47) months)			1:9					16
Two and one-half (2½) – Five (5) years				1:11				18
Two and one-half (2½) – Twelve (12) years	1:10							20
Three (3) – Five (5) years					1:13			10
Four (4) – Five (5) years						1:16		22
Five (5) – Twelve (12) years							1:20	No Max

~~3. Chart 3 – Allowable Combined Grouping and Adult:Child Ratio Chart for first/last hour and one-half (½) of each day only:~~

~~Age of Children~~	~~Adult:Child Ratio~~			~~Maximum Group Size~~
~~Two and one-half (2½) – Five (5) years~~	~~1:4~~			~~8~~
~~Three (3) – Twelve (12) years~~		~~1:6~~		~~12~~
~~Four (4) – Twelve (12) years~~			~~1:7~~	~~14~~

[3. Chart 3 – Allowable Combined Grouping and Adult:Child Ratio Chart for first/last hour and one-half (½) of each day only:

Age of Children	Adult:Child Ratio			Maximum Group Size
Two and one-half (2½) – Five (5) years	1:10			10
Three (3) – Twelve (12) years		1:15		15
Four (4) – Twelve (12) years			1:20	20

]

(d) Assignment of Children to Groups.

1. Each child shall be on roll in a defined group and assigned to that group with a specific educator(s).

2. Maximum group size requirements, as established in subparagraph (c) above, shall be maintained at all times with the exception of meals served in common dining rooms, napping in common nap rooms, or outdoors on the playground.

3. Infants shall have a separate space and shall never be grouped with children older than thirty (30) months of age.

4. Extended Care. Children age thirteen (13) months and older may be grouped together while sleeping in overnight care.

5. Children shall be kept with the same group throughout the day.

6. Children shall not be promoted to a new group until required based upon the age and developmental needs of the child.

7. Groups excluding infants and toddlers may be combined for short periods for a special activity (e.g., special assembly, visiting performers or community helpers, etc.) of no more than sixty (60) minutes duration per day as long as adult:child ratios are met.

8. Pre-school and school-age groups may be combined for up to one and one-half (1½) hours at the beginning of the day and for up to one and one-half (1½) hours at the end of the day as set forth in Adult:Child Ratio Chart 3 in 1240-04-01-.22(1)(c)(3).

9. Groups of children may never be mixed as part of the regular routine or operation.

   Exception: Pre-school and school-age groups may be mixed based upon emergencies, holidays or low attendance days.

10. Child care agencies shall define grouping for each classroom.

(e) Each group shall have a designated classroom with enough space for the entire group.

(f) Child care centers shall provide written lesson plans for each group of children.

(g) When more than twelve (12) children in first grade and above are present, a separate educator, a separate group, a separate space, and a separate program shall be provided for them.

(h) Naptime Supervision and Requirements for Naptime and Nighttime Care.

1. At naptime and during nighttime care, after the children have settled down, adult:child ratios for ages thirty-one (31) months and above may be reduced by fifty percent (50%) in each classroom as long as the children are adequately protected and all of the following requirements are met:

   (i) At least one (1) adult educator shall be awake and supervising the children in each nap room/sleeping area;

   (ii) There are enough adults on the premises so that the adult:child ratio required for children when they are awake shall be met immediately.

   (iii) Ratios for children six (6) weeks through thirty (30) months shall be

maintained.

2. Maximum group size limits do not apply.

(2) Multi-Site Personnel Qualifications for Child Care Centers.

(a) Multi-Site Coordinator. The multi-site coordinator shall meet the same requirements listed below for a single-site child care center director.

(b) Qualifications of On-Site Director under a Multi-Site Coordinator.

1. The on-site director under a multi-site coordinator shall have earned at least eighteen (18) credit hours of college course work, or shall have earned a Department-recognized credential and one (1) year of full-time documented work experience with children in a group setting; or

2. The on-site director under a multi-site coordinator shall have a high school diploma or equivalent educational credential recognized by state law, in addition to at least two (2) years of full-time documented work experience with children in a group setting.

(3) Qualifications for Director of a Single-Site Child Care Center.

(a) The director shall meet at least one (1) of the minimum qualifications listed in the chart below:

If Minimum Education Is:	The Minimum Group Care Experience Required Is:
Graduation from an accredited four-year (4-year) college or a registered nurse (RN) with less than a four (4) year degree.	One (1) year of full-time (paid or unpaid) experience with children in a group setting.
Thirty-six (36) credit hours of college coursework at least thirty (30) hours of which shall be in business or management, child or youth development, early childhood education or closely related field or a Tennessee Early Childhood Administrator Credential.	Two (2) years of full-time (paid or unpaid) experience with children in a group setting.
High school diploma (or equivalent as recognized by state law), and Tennessee Early Childhood Training Alliance (TECTA) certificate for completing thirty (30) clock hours of the Administrator Orientation training or the equivalent as recognized by the Department.	Four (4) years of full-time (paid or unpaid) experience with children in a group setting.
Continuously employed as an on-site child care director or a child care agency owner since July 1, 2000.	Not Applicable.

(b) Training Requirements:

1. No more than six (6) months prior to issuance of the first license, owners (or a designee thereof who is not the on-site director) and directors shall complete the Department-sponsored child care informational intake meeting.

2. Within the first three (3) months of employment the director shall complete a Department-provided training that includes but is not limited to applicable licensing rules.

3. The director shall complete pre-employment training, recognized by the

Department that includes but is not limited to, training in interviewing and evaluating educators for service in a child care agency and in working effectively with parents.

4. During the first year of employment a new director shall:

   (i) Complete an orientation course sponsored by the Department within three (3) months of assuming the position.

   (ii) Satisfy one of the following:

      (I) Complete thirty (30) hours of administrator training through the TECTA program; or

      (II) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution.

   (iii) Complete at least six (6) hours of health and safety training such as but not limited to:

      (I) Prevention and control of infectious diseases (including immunization);

      (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

      (III) Administration of medication, consistent with standards for parental consent;

      (IV) Prevention of and response to emergencies due to food and allergic reactions;

      (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

      (VI) Prevention of shaken baby syndrome and abusive head trauma;

      (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

      (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

      (IX) Precautions in transporting children (if applicable);

      (X) First aid and cardiopulmonary resuscitation (CPR);

      (XI) Poison prevention;

      (XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

5. After the first year of employment, the director shall:

(i) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

(ii) The director in a child care center shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions:

(I) Effective July 1, 2018, at least twenty-four (24) clock hours to include the training topics specified below.

(II) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(III) At least six (6) hours must be health and safety such as but not limited to:

I. Prevention and control of infectious diseases (including immunization);

II. Prevention of sudden infant death syndrome and use of safe sleeping practices;

III. Administration of medication, consistent with standards for parental consent;

IV. Prevention of and response to emergencies due to food and allergic reactions;

V. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

VI. Prevention of shaken baby syndrome and abusive head trauma;

VII. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

VIII. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

IX. Precautions in transporting children (if applicable);

X. First aid and cardiopulmonary resuscitation;

XI. Poison prevention;

XII. Nutrition and physical activity;

XIII. Child development; or

XIV. Caring for and inclusion of children with special needs.

(IV) At least three (3) hours of training on the applicable developmental learning standards within the first three (3) months.

(V) Four (4) hours of the required twenty-four (24) hours may be earned by conducting training.

(VI) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety, etc.

(VII) Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

(iii) The director shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(c) The director of a single-site child care center shall be at least twenty-one (21) years of age.

(4) Assistant Director Qualifications for Child Care Centers.

(a) An assistant director shall have:

1. Earned a bachelor's degree, an associate's degree in child development or early childhood education, a CDA credential, or a Child Care Professional credential; or

2. Earned credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution and one (1) year of full-time (paid or unpaid) documented work experience with children in a group setting; or

3. The on-site assistant director shall have earned a high school diploma or equivalent educational credential recognized by the Department and two (2) years of full-time (paid or unpaid) documented work experience with children in a group setting.

(b) Initial Training.

1. During the first three (3) months of employment a new assistant director shall:

(i) Complete an orientation course sponsored by the Department within three (3) months of assuming the position; provided, however, that this course shall not be required if the assistant director has received specific training meeting the requirements of this part within three (3) years prior to

assuming the assistant director position.

2. During the first year of employment a new assistant director shall:

   (i) Satisfy one of the following:

      (I) Earn credit for the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

      (II) Have evidence of receiving at least eighteen (18) clock hours of Department-recognized, competency-based training, six (6) hours of which shall be in administration, management or supervisory training.

   (ii) Complete at least six (6) hours of health and safety training such as but not limited to:

      (I) Prevention and control of infectious diseases (including immunization);

      (II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

      (III) Administration of medication, consistent with standards for parental consent;

      (IV) Prevention of and response to emergencies due to food and allergic reactions;

      (V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

      (VI) Prevention of shaken baby syndrome and abusive head trauma;

      (VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

      (VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

      (IX) Precautions in transporting children (if applicable);

      (X) First aid and cardiopulmonary resuscitation;

      (XI) Poison prevention;

      (XII) Nutrition and physical activity;

      (XIII) Child development; or

      (XIV) Caring for and inclusion of children with special needs.

3. After the first year of employment, the assistant director shall:

(i) Earn credit during the year in one (1) academic course in administration, child development, early childhood education, health/safety or other related field from an accredited academic institution; or

(ii) In addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training, or one-on-one consulting sessions.

(I) Effective July 1, 2018, at least eighteen (18) clock hours to include the training topics specified below.

(II) Four (4) hours of training shall be in administration, management or supervisory training.

(III) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(IV) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(V) At least six (6) hours must be health and safety training such as but not limited to:

I. Prevention and control of infectious diseases (including immunization);

II. Prevention of sudden infant death syndrome and use of safe sleeping practices;

III. Administration of medication, consistent with standards for parental consent;

IV. Prevention of and response to emergencies due to food and allergic reactions;

V. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

VI. Prevention of shaken baby syndrome and abusive head trauma;

VII. Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

VIII. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

IX. Precautions in transporting children (if applicable);

X. First aid and cardiopulmonary resuscitation;

XI. Poison prevention;

XII. Nutrition and physical activity;

XIII. Child development; or

XIV. Caring for and inclusion of children with special needs.

(VI) Two (2) hours of the required eighteen (18) hours may be earned by conducting training.

(VII) This training shall be in addition to other required training in specific subject areas such as Child and Adult Care Food Program (CACFP), personal safety training, etc.

4. Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

5. The assistant director shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(c) The assistant director of a child care center shall be at least eighteen (18) years of age.

(5) Educator Qualifications for Child Care Centers.

(a) Sixteen (16) and seventeen (17) year-old students currently enrolled in a Department-recognized career and technical child care educational program may be used as floaters or assistant teachers provided, however, that they shall always be under the direct supervision of an adult educator and shall not be left alone with a group of children.

(b) Each group shall have at least one (1) educator present who has a high school diploma or equivalent educational credential as recognized by the Department.

(c) Training for Educators during the First Year of Employment.

1. New educators shall complete sixteen (16) clock hours of Department-recognized, competency-based training within the first year of employment, six (6) hours of which shall be completed within the first six (6) months of employment.

(i) At least six (6) hours must be health and safety such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and ·vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

2. Failure of the educator to complete the required six (6) clock hours of training within the first six (6) months of employment shall require that the employee be removed from educator duties until completion of the training.

3. Exception: Educators who hold a Bachelor's or Associate's degree in child development or a related field, a CDA credential, or Certified Child Care Professional (CCP) credential, as recognized by the Department, shall instead comply with the training requirements for experienced educators required in subparagraph (d) below.

(d) Training for Educators after the First Year of Employment.

1. Educators in a child care center shall have, in addition to other required training in specific subject areas, evidence of receiving annual training as follows in Department-recognized workshops/training or one-on-one consulting sessions:

(i) Effective July 1, 2018, at least twelve (12) clock hours to include the training topics specified below.

(ii) At least three (3) hours of training on the applicable developmental learning standards within the first three months.

(iii) At least three (3) hours of training on pre-literacy and literacy skills and education implementation.

(iv) A maximum of two (2) clock hours training credit annually may be credited

for Child and Adult Care Food Program (CACFP) training.

(v) At least six (6) clock hours of the required training shall be non-agency based, e.g., obtained from sources other than training resources developed within the center itself. Multi-location programs may conduct conference-like or pre-service events that meet the required training needs.

(vi) At least six (6) hours must be health and safety training such as but not limited to:

(I) Prevention and control of infectious diseases (including immunization);

(II) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) Administration of medication, consistent with standards for parental consent;

(IV) Prevention of and response to emergencies due to food and allergic reactions;

(V) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and ·vehicular traffic;

(VI) Prevention of shaken baby syndrome and abusive head trauma;

(VII) Emergency preparedness and response planning for emergencies resulting from an actual disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a);

(VIII) Handling and storage of hazardous materials and the appropriate disposal of biological contaminants;

(IX) Precautions in transporting children (if applicable);

(X) First aid and cardiopulmonary resuscitation;

(XI) Poison prevention;

(XII) Nutrition and physical activity;

(XIII) Child development; or

(XIV) Caring for and inclusion of children with special needs.

6. Up to four (4) clock hours training credit annually may be earned by conducting training.

7. After the first year, this training shall be in addition to other required training in specific subject areas, such as Child and Adult Care Food Program (CACFP), personal safety training, etc.

8. Training in first aid and CPR may be counted as necessary to maintain current certification as required by 1240-04-01-.12.

9. Educators shall have evidence of completing training in Adverse Childhood Experiences every five (5) years.

(6) Licensed Capacity of Physical Space.

(a) The maximum number of children who may be present inside a physical space, e.g., the child care agency's "licensed capacity", shall be determined in accordance with the minimum square footages set forth in this paragraph.

(b) The Department may, in its discretion, as determined reasonably necessary to maintain the health and safety of the children in care, restrict the child care agency's licensed capacity below the maximum set forth in these rules.

(c) A minimum of thirty (30) square feet of usable indoor play space shall be provided for each child in each classroom.

(d) Each nap room shall contain a minimum of thirty (30) square feet of floor space per child.

(e) Teen parenting, occupational/career, and technical education classes shall have a separate space for the group, with a minimum of thirty-five (35) square feet of usable play space per child that is apart from the classroom space for students. The designated separate space may be located in the same room and divided by movable barriers less than four (4) feet in height.

(f) The following are not counted toward required square footage:

1. Restrooms;

2. Halls;

3. Kitchen;

4. Office space; or

5. Any space used by cribs or large pieces of furniture.

(g) Rooms with sufficient floor space may be divided by a barrier at least four (4) feet in height for use by more than one (1) group if each area is adequately equipped and arranged and that each group shall have the security of a stable classroom space.

(h) Adequate Plumbing Facilities. The child care agency shall have the minimum number of functional toilets and hand-washing stations in accordance with the:

1. Requirements of any applicable local ordinances and regulations;

2. Proximity of the plumbing to the classroom(s); and

3. Ages of the children served.

(7) Equipment for Children.

(a) Individual lockers or cubbies, separate hooks and shelves or other containers, placed so that children may reach them, shall be provided for each child's belongings.

(b) Naptime Sleeping Procedures.

1. Positioning of cots, cribs and sleeping mats.

(i) In order to avoid the spread of airborne diseases children shall be positioned on mats in a face to feet alternating pattern, unless they are separated by an appropriate solid barrier.

(ii) Cots, cribs, and mats shall be positioned at least eighteen inches (18") apart to allow an adult to walk between them, unless they are separated by a solid barrier.

(I) If barriers are used, they shall be arranged to permit staff to observe and have immediate access to each child.

(8) Meals and Snacks. Any person responsible for preparing meals or snacks shall not be included in the adult:child ratio while preparing meals/snacks or doing related tasks, such as washing dishes.

(9) Schedules and Routines. In an infant or toddler room with more than one (1) educator, each educator shall be responsible for providing consistent care for specific infants and toddlers. Consistent care includes, but is not limited to, planning and record-keeping for the child, communication, general interaction with and routine care of the child.

(10) Interim Director. Following the issuance of an annual license, a child care center may operate without an on-site director for a period of no more than sixty (60) days total within the licensing year. A qualified person, as determined by the Department, shall be in charge in the interim.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-1-105(5); 71-3-501 et seq.; 71-3-502(a)(2).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 8/7/2018 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: August 7, 2018

Signature: Cherrell Campbell-Street

Name of Officer: Cherrell Campbell-Street

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: August 7, 2018

Notary Public Signature: Jacqueline Griffin

My commission expires on:

JACQUELINE GRIFFIN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY My Commission Expires SEPT. 7, 2021

Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): Chapters 1240-04-01

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

9/27/2018
Date

Department of State Use Only

RECEIVED 2018 OCT -5 AM 9:17 SECRETARY OF STATE PUBLICATIONS

Filed with the Department of State on: 10/5/18

Effective on: 1/3/19

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Housing Development Agency
DIVISION:	Executive
SUBJECT:	Housing Choice Voucher Program
STATUTORY AUTHORITY:	The federal rules governing the program are found at 24 CFR 982. While not requiring a state rule, the federal rules do require an administrative plan to govern the program. While much of that plan implements federal requirements, there are sections where THDA must make choices on how to run its program. These amended rules satisfy the federal requirements.
EFFECTIVE DATES:	January 3, 2019 through June 30, 2019
FISCAL IMPACT:	There will be no fiscal impact.
STAFF RULE ABSTRACT:	The amended rule incorporates all requirements governing the program, providing greater clarity and detail in program administration. The rules now incorporate the entire administrative plan required under federal law.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Rulemaking Hearing, July 11, 2018

No members of the public attended the rulemaking hearing. No oral comments were made at the rulemaking hearing and no written comments were received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(Insert statement here)

1. Types and estimated number of small businesses directly affected:

   No small businesses will be affected by the rule.

2. Projected reporting, recordkeeping, and other administrative costs:

   There is no foreseeable alteration in small business reporting or recordkeeping that will result from the rule.

3. Probable effect on small businesses:

   No small businesses will be affected by the rule.

4. Less burdensome, intrusive, or costly alternative methods:

   Since the rule will not impact small businesses, a less burdensome, intrusive or costly alternative method has not been identified or recommended for use.

5. Comparison with federal and state counterparts:

   There are no federal counterparts to the rule.

6. Effect of possible exemption of small businesses:

   There are no exemptions for small businesses to the requirements because the rule will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

(Insert statement here)

1. These rule amendments are not expected to have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amended rule incorporates all requirements governing the program, providing greater clarity and detail in program administration. The rules now incorporate the entire administrative plan required under federal law.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The federal rules governing the program are found at 24 CFR 982. While not requiring a state rule, the federal rules do require an administrative plan to govern the program. While much of that plan implements federal requirements, there are sections where THDA must make choices on how to run its program. These amended rules satisfy the federal requirements.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Low income renters who are assisted by the program. THDA elicited public comment and received no feedback from any participants.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

While not directly related to the rules THDA is proposing to amend, the Davidson County Chancery Court (In the Matter of Jeannette Green No. 11-695-I) did hear a case involving notice requirements for participants in THDA's program. The court found that in order to enforce a particular notice requirement THDA would need to have a state rule. This amendment will address the court's opinion in that case.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There will be no fiscal impact.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Ralph M. Perrey, THDA Executive Director, and Bruce Balcom, THDA Assistant Chief Legal Counsel.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Ralph M. Perrey, THDA Executive Director, and Bruce Balcom, THDA Assistant Chief Legal Counsel.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Ralph M. Perrey, THDA Executive Director, RPerrey@thda.org, 615-815-2200 Bruce Balcom, THDA Assistant Chief Legal Counsel, BBalcom@thda.org, 615-815-2026 Tennessee Housing Development Agency Andrew Jackson Building, 3rd Floor 502 Deaderick Street Nashville, TN 37243-0200

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

Department of State
Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 10-12-18
Rule ID(s): 7251
File Date: 10/5/18
Effective Date: 1/3/19

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Housing Development Agency
Division:	Executive
Contact Person:	Bruce Balcom, Assistant Chief Legal Counsel
Address:	502 Deaderick Street, 3rd Floor, Nashville, TN
Zip:	37243-0200
Phone:	615-815-2026
Email:	BBalcom@thda.org

Revision Type (check all that apply):
x Amendment
____ New
____ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0770-01-05	Housing Choice Voucher Program
Rule Number	**Rule Title**
0770-01-05-.06	Application Process
0770-01-05-.11	Family Composition (24 CFR 5.403, 982.201)
0770-01-05-.15	Student Status
0770-01-05-.16	Other Eligibility Criteria
0770-01-05-.17	Eligibility Process
0770-01-05-.18	Verification Process (24 CFR 82.516)
0770-01-05-.20	Obligations Of Participants (24 CFR 982.551)
0770-01-05-.21	Determination Of Eligibility
0770-01-05-.22	Lease-Up Process
0770-01-05-.23	Housing Quality Standards (HQS)–Initial (24 CFR 982.305, 24 CFR 982.4, 24 CFR 982.405)
0770-01-05-.24	Owner Responsibilities (24 CFR 982.54(d)(5), (8); 982.153(b)(1); 982.306; 982.302(a)(8); 982.453)
0770-01-05-.25	Moving/Portability (24 CFR 982.354)
0770-01-05-.26	Annual And Interim Activities (24 CFR 982.516, 982.405)
0770-01-05-.27	Terminations (24 CFR 982.552(b), 982.310, 982.455, and 982.354)
0770-01-05-.28	Complaints, Conferences, Appeals (24 CFR 982.54(d)(2), (13), 982.554, 982.555(a-f)
0770-01-05-.29	Notice And Mailings Rules

RULES OF
TENNESSEE HOUSING DEVELOPMENT AGENCY

CHAPTER 0770-01-05
HOUSING CHOICE VOUCHER PROGRAM

TABLE OF CONTENTS

0770-01-05-.01	GENERAL	0770-01-05-.18	VERIFICATION PROCESS
0770-01-05-.02	ADMINISTRATIVE PLAN PURPOSE	0770-01-05-.19	INCOME AND ASSET DETERMINATION
0770-01-05-.03	OBJECTIVE OF THE PROGRAM	0770-01-05-.20	OBLIGATIONS OF PARTICIPANTS
0770-01-05-.04	BASIC STRUCTURE OF THE PROGRAM	0770-01-05-.21	DETERMINATION OF ELIGIBILITY
0770-01-05-.05	CONFLICT OF INTEREST	0770-01-05-.22	LEASE-UP PROCESS
0770-01-05-.06	APPLICATION PROCESS	0770-01-05-.23	HOUSING QUALITY STANDARDS - INITIAL
0770-01-05-.07	NOTICE OF ADDRESS CHANGE	0770-01-05-.24	OWNER RESPONSIBILITIES
0770-01-05-.08	SPECIAL, NON-WAITING LIST ADMISSION	0770-01-05-.25	MOVING/PORTABILITY
0770-01-05-.09	PROHIBITED SELECTION CRITERIA	0770-01-05-.26	ANNUAL AND INTERIM ACTIVITIES
0770-01-05-.10	ELIGIBILITY REQUIREMENTS	0770-01-05-.27	TERMINATIONS
0770-01-05-.11	FAMILY COMPOSITION	0770-01-05-.28	COMPLAINTS, CONFERENCES, APPEALS
0770-01-05-.12	INCOME LIMITS	0770-01-05-.29	NOTICE AND MAILINGS RULES
0770-01-05-.13	CITIZENSHIP	0770-01-05-.30	FAIR HOUSING, DISABILITY, AND VAWA
0770-01-05-.14	SOCIAL SECURITY NUMBER PROVISION	0770-01-05-.31	REQUESTS FOR INFORMATION RULES
0770-01-05-.15	STUDENT STATUS	0770-01-05-.32	RESIDENT ADVISORY BOARD
0770-01-05-.16	OTHER ELIGIBILITY CRITERIA	0770-01-05-.33	SPECIAL HOUSING
0770-01-05-.17	ELIGIBILITY PROCESS	0770-01-05-.34	HOMEOWNERSHIP VOUCHER OPTION

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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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 CFR 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 CFR 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 a county with an 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 may only have one active application per county at any time, but may apply to multiple county waiting lists.

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.

(i) 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. A written pre-application will be accepted from applicants that qualify for the natural disaster preference and may be obtained through the local THDA field office. See §0770-01-05-06(7)(h)4.

(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 CFR 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 CFR 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 CFR 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 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 and phone system, 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 CFR 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 county 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-application 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.

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 mail a purge notice to all applicants' last given address requesting information regarding an applicant's continued interest in maintaining a place on a particular county's 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 by the 14-day deadline date.

(I) Failure to Update Address. If the failure to respond is due to an applicant not receiving the purge notice because the household relocated and does not currently live at the address provided to the THDA or the purge notice is returned to the THDA by the post office for insufficient address or expiration of a forwarding address, the applicant will be removed from all

waiting lists for failure to comply with the requirement of always providing the THDA with a current address, unless the applicant can prove that a change of address was submitted to the THDA prior to or simultaneously to the postmark date of the Purge Notice.

(II) Failure to Return the Purge Notice to the THDA by the Deadline.

I. If the purge notice is returned to the THDA by mail, it must be postmarked no later than 14 calendar days from the date of the Purge Notice and the THDA will not accept any responsibility for mail delays.

II. If the purge notice is returned to the THDA by email, fax, or hand delivery, the THDA must receive it within 14 calendar days of the date of the Purge Notice.

III. The applicant shall bear the burden of proof where the applicant argues 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 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.

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 re-instated to the former position on the waiting list(s) as a reasonable accommodation. See §0770-01-05-30.

(i) The applicant must provide the appropriate requested verifications to the THDA within fourteen-calendar (14) days of a THDA request of verification.

(f) Selection of Applicants from a Waiting List.

1. As vouchers become available for a particular county, the THDA will determine whether there are enough applicants to meet the funding.

(i) If there are not enough applicants on the waiting list, then the waiting list for that county will be opened to take pre-applications.

(ii) When there are enough applicants on the waiting list, the waiting list is closed and sorted and applicants are selected from the waiting list typically 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 lottery, a random computer selection. If lottery selection is utilized, all waiting list applicants will be notified that the lottery selection will be utilized for the selection of applicants from the particular waiting list.

(g) Local Preferences. Under 24 CFR 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.

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 Residency Preference.

(iii) Elderly or Disabled Families Preference.

2. To ensure that pre-applications are weighted properly by local preference and date and time of the pre-application, applicants will not be selected during an open-enrollment period. A waiting list must be closed and sorted before any applicant is selected.

3. The THDA verifies preferences for applicants selected by sending the applicant a preference claim and verification form, which must be received by the THDA no later than fourteen (14) calendar days from the date of the request for verification, subject to the THDA's Mail Policy. See §0770-01-05-.20.

   (i) If the preference does not verify, then the applicant is placed in the proper order on the waiting list without the preference. An applicant may request an informal review for the denial of the preference.

   (ii) If the THDA does not receive the verification before the deadline, the THDA will send a notice of denial of ~~assistance~~preference and a notice of opportunity for informal review.

   ~~(iii) If the applicant does not request an informal review within the deadline, the applicant will be removed from the waiting list. (24 CFR 982.204(c)). See §0770-01-05-.28 regarding Informal Reviews.~~

   (~~iv~~iii) If the preference verifies, then the THDA proceeds to final eligibility verification. (HCV GB, pp. 4-17 – 4-18).

4. 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 (fire, flood, tornado, etc.) may claim a local 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 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.

(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 form a third-party source that verifies that the damage to the unit from the natural disaster made the unit uninhabitable within fourteen calendar days.

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 (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 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 pre-application will be denied and the applicant will be removed from the waiting list.~~

(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 ~~A~~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 county's waiting list, any applicant with this preference will be called in 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 county, and such applicant may be issued a voucher for any county they wish.

~~(IV) If funding does not become available within 6 months from the date of the displacement event, the pre-application will be denied and the applicant will be removed from the waiting list.~~

(IV) If funding does not become available within 6 months from the date of the displacement event, the pre-application will be denied and the applicant will be 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.

5. Local Residency Preference. A Local Residency Preference may be claimed by an applicant on a pre-application for assistance when, at the time the pre-application is submitted, the applicant actually lives in the county the pre-application was submitted for.

(i) The residential/physical address entered on the pre-application will be used to determine residency.

(ii) If an applicant selects the local 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.

(I) 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.

6. 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) Verification. Applicant must bring a current benefit letter from the SSA to their eligibility appointment. Persons who have applied for SSI, but are not receiving SSI income, do not qualify for the preference.

(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 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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 and Elite is notated as to whether the address change was received by mail, fax, email, or delivery to a THDA field office.

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

0770-01-05-.08 SPECIAL, NON-WAITING LIST ADMISSION (24 CFR 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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 CFR 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 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 CFR 982.201 outlines that only eligible families 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.*

0770-01-05-.11 FAMILY COMPOSITION (24 CFR 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 as a result 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.

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 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 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 CFR 982.316, a live-~~l~~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 ~~medical~~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 aid the remaining member of household. If the THDA discovers that such manipulation has occurred, the household will be terminated from the program~~

(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. 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. If the medical certification requires full-time, live-in care, a person may not be designated as a live-in aide if they work full time outside of the household, unless the family verifies that a service agency provides care for the disabled member while the live-in aide is at work.~~

2. If the medical certification requires full-time, live-in care, a person may not be designated as a live-in aide if they work full time outside of the household, unless the family verifies that a service agency provides care for the disabled member while the live-in aide is at work. 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 a 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 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.

(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.

   (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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.* ***Administrative History:***

0770-01-05-.12 INCOME LIMITS (24 CFR 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 any program under the act when the family is admitted to the HCV Program;

(I) 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 CFR 511;

(iii) Non-purchasing family residing in a HOPE 1 or HOPE 2 project or a project similar to a homeownership program under 24 CFR 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 CFR 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.*

0770-01-05-.13 CITIZENSHIP (24 CFR 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 CFR 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) The family was granted continued assistance before November 29, 1996. If the family was granted continued assistance before November 29, 1996, then the family is entitled to receive non-prorated assistance, but if the grant was after, 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.

(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.

(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 CFR 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).

(II) 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.

(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 pro-rated at that time.

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.*

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), preferably the original SSN card, 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.

(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) If the household requests to add a new member who is at least six (6) years of age, or under six and has an 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 SSN card issued by SSA;

(b) An original SSA-issued document, which contains the name and SSN of the individual; or

(c) An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual (i.e. welfare agency documents, military papers, unemployment insurance documents, or any other government-issued document).

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

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 USC 1002) and:

(i) Is under twenty-four (24) years of age; and

(ii) Is not a veteran of the United States military; and

(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.

~~2. Two-part Income Eligibility Test. Students are then subject to a two-part income eligibility test. Therefore, if a student is not under the age of 24, or is a veteran, or is married, or has 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.~~

(I) 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.

~~3~~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.

~~4. When to Obtain Declaration and Certification from Parents. If a student is either not under the age of 24, is a veteran, is married, or has 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:~~

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 CFR 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:

(I) The individual must be of legal contract age under state law; and

(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.

~~5~~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.

~~6~~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.

   (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 CFR 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.

(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 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.* ***Administrative History:***

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

(1) Violation of Family Obligations (24 CFR 982.552(1)(c)(iii)). If an applicant, or any household member, has previously violated the family obligations listed in 24 CFR 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 CFR 982.551(b)(1)(3), 24 CFR 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.

(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.

(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 CFR 982.551(b)(4), 982.552(c)(1)(i)).

(d) Fraud (24 CFR 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).

(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 CFR 982.552(1)(c)(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 three-year (3) 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.

(7) Threatening or Abusive Behavior Towards the THDA (24 CFR 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 CFR 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 three-year (3) 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.

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 contender 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 is an assisted unit.

(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-~~102~~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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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.

(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, a Personal Declaration, release forms, and, if needed, a local preference request for verification and any other requisite requests for information.~~

(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 his own handwriting, 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.

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) If any adult member fails to attend the eligibility briefing appointment, the rest of the household will not be allowed to attend the briefing. The applicant will only be offered one additional eligibility appointment. The applicant may reschedule for a subsequent briefing on the same date as the initial appointment, if one is available, or on one of the days at the end of a month that a THDA field office reserves for rescheduled briefings. However, if a household is 15 minutes late, fails to attend, or fails to have all adult members of the household present at a rescheduled eligibility briefing, the household will not be put back on the waiting list, but will be denied.~~

   (i) If part of the adult members of the household show for the briefing, but any other adult member fails to attend the eligibility briefing appointment, the rest of the household will not be allowed to attend the briefing. The applicant will only be offered one additional eligibility appointment. The applicant may reschedule for a subsequent briefing on the same date as the initial appointment, if one is available, or on one of the days at the end of a month that a THDA field office reserves for rescheduled briefings. However, if a household is 15 minutes late, fails to attend, or fails to have all adult members of the household present at a rescheduled eligibility briefing, the household will not be put back on 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.

4. The applicant household must arrive on time for the eligibility appointment. If the household is fifteen (15) minutes late or more and the eligibility briefing has begun, the household will not be allowed to attend the briefing. The applicant will only be offered one additional eligibility appointment. The applicant may reschedule for a subsequent

briefing on the same date as the initial appointment, if one is available, or on one of the days at the end of a month that a THDA field office reserves for rescheduled briefings. However, if a household is 15 minutes late, fails to attend, or fails to have all adult members of the household present at a rescheduled eligibility briefing, the household will not be put back on the waiting list, but will be denied.

(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 CFR 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.

(b) During the briefing, staff collects verification documents (e.g. driver's license, social security cards, birth certificates, verifications, etc.) from the applicants to make copies or for verification, enters certain family data into the tenant-file database, processes the criminal background checks, prints online verifications needed, reviews verification documentation, and performs any further needed verifications.

(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 CFR 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.

   (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 CFR 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.

(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 that must be signed by all adult household before an eligibility determination may be made.

(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 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 reports a decrease in income during such time, the change will be processed as an interim after lease-up and the family share adjusted accordingly.~~

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.18 VERIFICATION PROCESS (24 CFR 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 CFR 982.551).

2. Forms.

(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 CFR 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 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 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. 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 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 a day for three consecutive business days in a row. If there is no return call by the 5th business day from the last call, then a participant self-certification will be used.~~

(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.

(iii) 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.

(iv) 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, for example, when the THDA determines that a third party's privacy rules prohibit the source from disclosing information. Another example would be when the SSA has refused to respond to requests for third-party verification.

(v) 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 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. Under no circumstances is a certification or recertification complete without all required verifications.~~

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. For example, if the holder of a pension annuity provides semi-annual reports, the THDA will accept the most recent report.

8. For documents that cannot be copied for various reasons (including government checks), a Review of Documents form is completed. The form asks for 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, assistance may be denied or terminated.~~

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 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)(h)4.

2. Local Residency Preference. See §0770-01-05-.06(7)(h)5.

3. Elderly or Disabled Families Preference. See §0770-01-05-.06(7)(h)6.

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.* ***Administrative History:***

0770-01-05-.19 INCOME AND ASSET DETERMINATION (24 CFR 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 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 CFR 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. 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.

(I) Example of Sporadic Work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, the THDA will exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

(II) Example of Self-employment Income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas, but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. The THDA will use the IRS Form 1040 she filed the prior year to estimate current annual income, unless Ms. James can verify that she will not work or sell the products in the upcoming year. In that case, her earnings are not included in annual income, but she must report interim if she returns to sales or other employment.

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 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 w1)age 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 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 CFR 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.

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 CFR 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 CFR 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 CFR 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 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 CFR 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 CFR 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 CFR 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 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. Worker's 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 CFR 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 CFR 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

      (I) 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 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, $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 CFR 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 CFR 5.603(d)). Contributions to company retirement and pension funds are handled in the following manner:

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 CFR 5.609 (c)).

(i) Lump-sum Payments (24 CFR 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

(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 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?

(b) Earned Income Disallowance for Households with a Person with Disabilities (EID) (24 CFR 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.

      (I) 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.

(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 CFR 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;

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:

    (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 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 CFR 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 CFR 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 CFR 5.611l 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 CFR 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 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 on-going 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 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 CFR 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.

(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;

(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 CFR 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.

      (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 re-examination 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 where 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.

(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 CFR 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 is 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 x 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 an asset. $200/12 months = $16.67 interest per month. $16.67 x 3 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.

   (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.

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 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 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 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.

(I) 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.

(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:

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 am 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 a 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.

2. Unemployment Compensation. The following are acceptable documents for unemployment compensation verification in order of hierarchy level.

(i) Computer-generated letter or report from the unemployment office to confirm benefit status and payments. The Tennessee Department of Labor provides web-based unemployment reports for beneficiaries.

(ii) The four (4) most recent unemployment payments. If unemployment period is less than four pay periods, all of the payments received up to the date of the reexamination appointment, in consecutive order, may be provided.

(iii) ACCENT computer report showing the amount of benefits the household is currently receiving.

(iv) If an EIV report includes employment at an employer where the participant claims to be no longer employed, the participant must provide a computer-generated document to verify the separation date of the employment, unless the unemployment documents clearly document the separation date from the employer on the EIV report.

(I) If a computer-generated letter is not provided, the THDA must initiate third-party methods to verify the separation before excluding the employment from annual income or not counting the income as a discrepancy for repayment.

3. Social Security/SSI Benefits (Periodic Payments and Payments in Lieu of Earnings).

(i) For applicants:

(I) Current Social Security Administration (SSA) benefit verification letter for each household member receiving SS/SSI benefits, dated within sixty (60) days of the request date, since Enterprise Income Verification (EIV) reports are not available for applicants at initial move-in.

(ii) For participants:

(I) HUD EIV report. Social security information in EIV is updated every three (3) months for participants.

I. Therefore, supplemental information is not necessary unless the participant disputes the EIV report, in which case, a current SSA benefit letter, dated within sixty (60) days of a request by the THDA, must be provided to the THDA to supplement the EIV report information.

(iii) If an applicant or participant is unable to provide a current benefit letter dated within the deadline, the household must request a benefit verification letter and submit it to the THDA within fourteen (14) days of receipt.

4. Alimony or Child Support. Verification method is dependent upon whether there is a court decree or not.

(i) If payments are court ordered and paid through a state or local agency:

(I) 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 (TCSES) 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:

(I) 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:

(I) 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.

(I) 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.

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.

   (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.

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 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.* ***Administrative History:*** *Original rule filed May 16, 1980, effective June 30, 1980. Repeal and new rule filed September 24, 2004; effective December 12, 2004. Repeal and new rule filed June 4, 2015; effective September 2, 2015.*

0770-01-05-.20 OBLIGATIONS OF PARTICIPANTS (24 CFR 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.

(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.

(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 CFR §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.

(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 CFR §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, as are all other required notices, by regular USPS mail.

~~(4) 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 household~~

~~(a) Delivery of the notice by mail is complete upon deposit in a mail box or upon posting. If the household 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.~~

~~(b) 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 argues that the notice was not received due to circumstances beyond the household's control.~~

~~(c) 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.~~

(4) Mail Policy.

(a) 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 household, unless an alternative form of electronic communication, such as email, is requested by the applicant or participant in writing or is the only means by which the THDA can reach the applicant or participant (moves without notice, etc.).

(b) Delivery of the notice by mail is complete upon deposit in a mail box or upon posting. If the household 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.

(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 argues 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.

(a) The THDA and its agents set appointments for family's 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.

Authority: *T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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 CFR 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 CFR 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 CFR 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 CFR 982.402(b)(1));

(ii) Comply with HQS space requirements (24 CFR 982.402(b)(2); and

(iii) Are applied consistently for all families of the same size and composition, unless a defined exception exists (24 CFR 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).

(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 This determination remains the same regardless of the unit size selected by the family.~~

(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) 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.

~~(iii) The maximum number of persons who may share a sleeping room is two and persons are required to share a bedroom as follows:~~

~~(I) Adults of the same or opposite genders, with or without a familial relationship, must share a sleeping room, 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) Minors of the opposite gender must share a bedroom until one of the minors reaches the age of ten (10) years old;~~

~~(III) Minors of the same gender must share a bedroom regardless of age;~~

~~(IV) A minor must share a bedroom with a single, custodial parent until the child reaches the age of four (4).~~

~~(V) A single, pregnant head of household is considered a two-person family, but must share a bedroom with a child until the child reaches the age of four (4).~~

~~(VI) Minor children of any age must not share a bedroom with a non-custodial parent or other adult.~~

(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 are 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.

   (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 the need is verified by a medical professional. 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 CFR 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 CFR 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 CFR 982.555(b)).

   (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 CFR 982.503(c)(2)(i)), (c)(3). 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 CFR 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 CFR 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 CFR 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 CFR 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 after the change in family unit size occurs, regardless of any increase or decrease in the payment standard schedule, but may be used sooner if specifically expressed for within this Plan.

   (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 for the unit size actually selected is always used to calculate the housing assistance payment, regardless of the size authorized on the voucher.~~

9. The utility allowance is the lesser of the unit size actually selected and the size authorized on the voucher.

(c) Minimum Rent (24 CFR 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 CFR 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 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 CFR 5.628, 24 CFR 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

(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 CFR 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 CFR 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 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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 the purpose of 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 CFR 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.

~~2. If a voucher cannot be issued to the applicant household during the eligibility briefing because all of the required documentation is not complete, the household will sign a blank voucher or a voucher with current date information. If the applicant provides the required documentation within the fourteen-calendar (14) day deadline, then a new voucher will be printed with updated information, attached to the original signed voucher, and mailed to the applicant. Both copies will also be placed in the tenant file.~~

2. Extension and Suspension of Voucher Search Term.

   (i) If the household does not find a unit within the 60-day voucher search term, then the household may request extension of the voucher in 30-day increments, but only if they can clearly illustrate that they have actively searched, but have been unable to find a unit eligible for the HCV Program.

   (ii) Approval of any extension must be by the Director of the HCV Program or the assigned designee.

   (iii) The total voucher search term may not exceed 120 days.

   (iv) 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~~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 not find a unit within the initial sixty-day (60) voucher term and the head 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.

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 CFR 982.305(b)).

~~(a) Submission of the 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 as a reasonable accommodation. 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 a Request for Tenancy Approval (RTA) and a Substitute W-9 form, a Lead-Based Paint Disclosure, a blank copy of the lease, and proof of ownership or 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.~~

(a) Submission of the 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 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 a Request for Tenancy Approval (RTA) and a Substitute W-9 form, a Lead-Based Paint Disclosure, a blank copy of the lease, and proof of ownership or 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.

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/tenant 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 property is managed by a person other than the owner, 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 CFR 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 (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. <u>The utility allowance will be based on the lesser of the actual voucher size issued and the actual size unit selected by the family.</u>

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 CFR 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.

(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 CFR 982.503). 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.

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.

(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 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;

(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 approval of the RTA, the voucher is extended thirty (30) days 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 a reasonable accommodation.~~

(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) The unit must pass inspection before the expiration of the voucher or the applicant will be denied assistance and must reapply to the program.~~

~~1. If the unit does not pass inspection, but the owner agrees to make the required repairs, the owner must bring the unit into compliance before the 90-day expiration of the voucher or the applicant will be denied assistance and must reapply to the program.~~

~~2. If the unit does not pass inspection and the owner will not agree to make the required repairs, then the applicant must find a new unit, submit another RTA before the 60th day of the voucher term, and have the new unit pass inspection within 90 days of the initial issuance of the voucher.~~

~~3. If the delay of an owner causes an applicant to lose time under their voucher, then the voucher may be extended for the amount of time lost.~~

(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.

~~4.~~(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 CFR 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.

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 lease and continue until termination, but such term may not begin until the unit has passed the Housing Quality Standards.~~

(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~~

1. The initial lease term must be for a period of 12 months[JKC1], unless[DS2] 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 CFR 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.

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.

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 CFR 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

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 to assign or transfer 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.~~

(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.

(c) The payment may not be paid to the new owner until all appropriate transfer and ownership documentation is received by the THDA.

(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. ~~This documentation must be received within sixty (60) calendar days of a request by the THDA or the family will be issued a voucher for relocation and will have to move.~~

(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 HAP Contract Transfer form and W-9 form must be signed by the new owner. Also see §0770-01-05-.27(2)(d)3. regarding the death of the only remaining household member.

Authority: *T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.23 HOUSING QUALITY STANDARDS (HQS) - INITIAL (24 CFR 982.305, 24 CFR 982.4, 24 CFR 982.405).

(1) Responsibility for Locating a Suitable Unit. The applicant or participant is responsible for locating a suitable unit.

(a) At the applicant eligibility briefing and in the relocation materials, suggestions on how to find a unit are also given.

(b) An online database of available rental property, TNHousingSearch.org, is also available for families to use to find available units.

(c) Ultimately, the selection of the unit is the applicant's preference as long as the unit meets the eligibility criteria.

(2) Scheduling of the Inspection.

(a) Upon receipt of the Request for Tenancy Approval (RTA) and other requisite documentation, if the THDA approves the RTA, then the inspector will schedule the inspection with the owner of the unit within ~~fifteen (15)~~fourteen (14) calendar days of the submission of the RTA, giving the owner an exact date and approximate time for the inspection.

(b) The inspector will provide the owner with the date and approximate time, within a four hour block, of the inspection.

(c) A Confirmation of Scheduled Initial Inspection will be mailed to the owner and tenant.

(d) The inspector will give the owner a courtesy call approximately 45 minutes prior to arriving at the unit.

(3) Housing Quality Standards, Acceptable Subsidy Standards, and Criteria for Acceptable Housing (24 CFR 982.4). Units are inspected according to HUD Housing Quality Standards, must meet acceptable subsidy standards, and must conform to certain criteria for acceptable housing.

(a) General Information.

1. At the initial briefing, the household is given information on what is required for a unit to pass the Housing Quality Standards (HQS) inspection and they are informed of their responsibility to assist in maintaining the assisted unit so that it remains in an approved status, including reporting any needed repairs to the owner, and being accountable for damages that are the tenant's responsibility.

~~2. 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, but encourages the owner or management agent to be present at the initial~~

~~move-in inspection so the inspector can explain the HQS requirements and answer questions about the program.~~

2. 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, but encourages the owner or management agent to be present at the initial move-in inspection so that the inspector can answer questions about the inspection appointment.

3. The owner shall assure that the tenant has the electric and water on in the unit prior to the day of the scheduled inspection, and if not, the owner must turn the electric and water on in the owner's name on the day of the inspection, even if only temporarily. If the electric is not on for the inspection, the unit will not be inspected and will result in a failed inspection. The unit may only receive two failed inspection results before the Request for Tenancy Approval will be cancelled.

(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 actions such as repeated HQS violations, HAP Contract violations under the voucher or other HUD programs, fraud, and bribery.

   (ii) For example, an owner who has illegally evicted subsidized tenants may be prohibited from future participation.

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 the unit is owned by a parent, stepparent, child, stepchild, grandparent, grandchild, sister or brother of any member of the family, 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 through the THDA's Research and Planning Division.~~

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.

(c) Eligible Housing Types (24 CFR 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 or where the participant owns the mobile home and just leases the pad.

4. For disabled and elderly households only:

(i) Independent group residences.

(ii) Group Homes.

(iii) Assisted Living Facilities.

(4) Types of Inspections and When Conducted (24 CFR 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 Contract.

(b) Special or Complaint Inspection. A unit may also be inspected at the request of the owner or the household as a result of a complaint or special issue, but only if the issue reported represents ~~an immediate threat to the health and safety of the family~~ a potential violation of the Housing Quality Standards, not just a landlord-tenant issue.

(c) 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.

~~(d) Annual or Biennial Re-inspections. After a unit is accepted into the program, it is inspected annually as long as it remains on the Program. The unit must be inspected before or during the same month each year. For example, if the unit was inspected in May at the first annual recertification, the unit must be inspected in May or earlier the next year. HUD has recently approved biennial inspections, which the THDA is currently working towards implementing.~~

(d) Annual or Biennial Re-inspections. After a unit is accepted into the program, it is inspected annually and/or biennially as long as it remains on the Program. If the assisted unit has nine (9) or more failed inspection items, the unit will remain on the annual inspection rotation. If the assisted unit has eight (8) or fewer failed inspection items, the unit will transition to the biennial inspection rotation.

(5) Minimum Acceptability Standards. The purpose of the Housing Choice Voucher Program is to provide decent, safe, and sanitary housing to those in need. HUD's Housing Quality Standards provide the criteria for determining the minimum standards for a unit to be eligible for assistance

under the program. All HUD HQS requirements are not restated in this plan. A full listing of the criteria may be found in the THDA's HQS Inspection Booklet.

(a) General Health and Safety Standards – Interior.

1. All utilities must be connected either by the landlord or the tenant. A unit without utilities is considered substandard and cannot pass inspection.

2. There must be a Living Room, Kitchen, at least one Bathroom, and one Bedroom for every two persons.

3. There must not be any hazardous conditions present.

4. The unit must be capable of being entered without going through another unit.

5. The unit must be free of insects, mice, rats, other vermin, and garbage or debris. In the case of bed bugs, the lease will rule as to whether the participant or owner is responsible for the extermination. If the lease is silent, the owner is responsible.

6. Unit must be free of chipping, cracking, peeling paint.

7. Unit must have adequate ventilation and be free of abnormally high levels of air pollution such as vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants.

8. Unit must be free of other hazards such as splintered doors, sliding closet doors that could fall down, protruding nails, etc.

9. If applicable, elevators must have a current inspection certificate and be in a safe and working condition.

10. Ceilings and walls must be sound and free from hazardous defects, leaks, holes, or bulges.

11. Floors must be sound and free from hazardous defects, holes, soft spots, bulges, or tripping hazards.

12. The unit must be free of chipping, cracking, peeling paint.

13. Interior stairs and common halls must have adequate lighting and be free of any hazardous or failing conditions in the walls, floor, ceiling, windows or doors. If there are four or more steps, or the steps, balconies or ledges are 30" or higher, there should be a secure handrail with adequate protection such as slats, lattice, etc. All steps should be present, stable and secure.

(b) Egress Standards.

1. There must be adequate exterior doors and operable windows for exit.

2. Each unit must have two or more exits for use in case of fire. An exit may be a window or a door.

3. Any unit located three stories or higher must have a fire escape in the unit. A rope ladder is acceptable. The THDA may also require a fire escape for a second-story unit if the location of the unit or the physical condition of the tenant might present a problem if there was a fire.

4. If a unit has security bars on the windows, each room with the bars must have an exterior door or at least one window in each room must have bars which open from the inside and the security bars must meet HUD HQS requirements.

(c) Window Standards.

1. Windows must be airtight, free of breaks and cracks, and the sashes must meet. There must be minimal or no deterioration. Screens, if present, must be in good condition with no holes or frays.

2. In rooms where windows are required, the windows must open to the exterior of the unit.

3. At least one window in each room must open and remain open unassisted, if designed to open. Props are not allowed in any windows.

4. If the unit does not have central air conditioning, a screen must be installed on a window that opens.

5. A screen is required on at least one window in each room used for living or sleeping, including the bathroom, if there is a window present and it is made to be opened, unless there is central air conditioning.

6. Sliding glass doors can serve as windows in the Living Room or Bedroom if there are no windows. If the unit does not have central air conditioning, then a screen must be present on the sliding glass door. If windows are designed to be opened, at least one in each room used for living and sleeping must open and be capable of remaining up when opened without a prop.

7. Windows which are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

8. All windows accessible from the outside and made to be opened must have a permanent locking device. A storm window with an adequate locking device suffices for the security criteria if the storm window cannot be removed from the outside and provides the security throughout the entire year.

9. If windows are opened by cranks, the cranks must be present and operable.

10. Skylights and doors with glass may suffice for window requirements when air quality, ventilation, and egress criteria are otherwise met. A storm window may be used as the window unit only after thorough examination to determine that the security and ventilation requirements are met, and that there is adequate protection from weather elements.

(d) Door Standards.

1. All doors that are accessible from the outside must have secure frames and acceptable locks that work. Padlocks are not acceptable locks on exterior doors. Double keyed locks are acceptable only on doors that are partially glass or on solid doors if there is an alternate means of egress in the same room.

2. Exterior doors must be airtight, have adequate weather-stripping, and have a sound threshold. If there is a storm door present, it must be properly installed.

3. Door knobs must be properly installed.

4. Interior doors (closet doors, doors opening into rooms, etc.) must be properly installed.

5. All doors accessible from the outside must have permanent locks. At least one exterior door must have a key lock which can be opened by the tenant from the outside. Padlocks are not acceptable locks. A storm door alone does not suffice as an exterior door. Double keyed locks are acceptable on glass doors or solid core doors if there is an alternative means of egress from the room (such as a window that opens or another exterior door).

(e) Kitchen Standards.

1. Must have at least one working outlet and one working permanently installed ceiling or wall light fixture.

2. The stove and refrigerator must be plugged into an outlet (cannot be plugged into an extension cord).

3. There must be a microwave or stove with an oven and all burners in working condition. The oven door must be secure, all knobs and handles present, and it must have racks. The gaskets and seals must be in good condition. The grill area must be adequately covered.

4. If a landlord provides a microwave in lieu of an oven for the family's use, the family must sign a statement that this is acceptable. This can be done on either the "Lease" or the "Request for Tenancy Approval".

5. If there is a stove and a microwave present in the unit but the stove does not work, it does not have to be removed from the unit unless there are electrical hazards present. If the landlord has agreed to provide a stove for the tenants' use, then the stove must be repaired or replaced.

6. A refrigerator must be present which freezes and cools properly and has shelving.

7. A sink must be present with hot and cold water, which drains properly. Handles must be present on the sink and the trap must be properly installed. All pipes and faucet must be free of leaks or drips and there must be no visible holes around the pipes.

8. There must be space to store and prepare food.

(f) Bedroom Standards.

1. There must be at least two working outlets or one working outlet and one working, permanently installed light fixture.

2. All bedrooms must have direct or indirect heat.

3. There must be at least one window, and if it is designed to open, it must open and remain up without a prop. If the unit does not have central air conditioning, then this window must open and also have a screen.

4. Doors are required for privacy on bedrooms. The door(s) must be properly installed and remain shut when closed. Interior doors are not required to have locks that function. Locking interior doors are a tenant preference. If the bedroom is structurally designed so that it is not possible to have a door (for example, a loft bedroom), then it

will be up to the tenant to decide whether the household wants to rent that particular unit.

5. Tenants may choose to not have any interior doors if that is the tenant's preference, but certification of this preference must be obtained from the tenant and placed in the tenant's file.

(g) Bathroom Standards.

1. There must be at least one working, permanently installed light fixture.

2. If a window is present in the bathroom, it must open to the exterior of the unit and remain up without a prop. If there is no central air conditioning in the unit, the window must have a screen. If there is no window that opens to the exterior of the unit, then an operable vent fan must be present.

3. There must be a sink with hot and cold water, which drains properly. Handles, faucets, vents, traps, and pipes must be properly installed, secured, and free of leaks and drips. There must be no visible holes around the pipes.

4. There must be a flush toilet in an enclosed room that flushes and shuts off properly. It must be free of leaks and cracks and must have a seat and tank top.

5. There must be a tub or shower with hot and cold running water, which drains properly and has adequate water pressure. It must be free of leaks, drips, and sharp objects and all handles and levers must be present.

6. Doors are required for privacy in the bathroom(s). They must be properly installed and remain shut when closed. Like other interior doors, they are not required to have locks that function, as that is a tenant preference.

(h) Plumbing and Water Standards.

1. Each unit must have a properly installed, operating hot water heater.

(i) If the hot water heater is gas, the flue must be secure. Collars must be present and installed securely with no visible openings. If a gas hot water heater is located in a living or sleeping area, it must have an adequate enclosure of a "shield" secured to the floor or walls, which provides adequate ventilation, is 6" higher than the water heater, and that will protect the tenant in the event of an explosion. Rooms used for living are defined as areas of the unit that are walked through or lived in on a regular basis. Rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered are not included. Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use.

(ii) If the hot water heater is electric and is accessible to the tenant (e.g. located in a living, sleeping, bath, or utility room), the romex wiring to the water heater must be enclosed in rigid protective conduit. The protective conduit is not required if the water heater is located in its own closet or in an attic, crawl space, behind a wall, or other area inaccessible to the tenant.

(iii) Temperature-pressure relief valves and drain lines are required on all water heaters. If a water heater is not accessible to be inspected (enclosed in a wall or cabinet, etc.), the owner must submit a statement certifying that the heater has a temperature-pressure relief valve and a drain line. The drain line must be the

proper size for the water heater (it cannot be downsized) with a 3/4" overflow pipe and must extend to within 6" of the floor or drain to the exterior of the unit.

2. Water and Sewer Systems.

(i) The water and sewer system must be through an approved public or private system.

(ii) If a private water supply system is used instead of a public system, the well must be tested at initial leasing and every two years thereafter by a state-approved laboratory, which may be a local health department or an independent laboratory willing to certify the results of the tests.

(iii) The water must be tested for Coliform (bacteria from fecal matter and E-coli) and lead levels. A copy of the signed report of the results must be provided to the THDA and the tenant. For information on laboratory services, visit the Department of Health's website at http://health.state.tn.us/Lab/index.htm.

(iv) Test Results. The THDA requires that all well water samples show no evidence of coliform (bacteria) and a lead level equal to or less than .015 PPM or mg/L. Any well water that shows evidence of Coliform and/or lead contamination must be treated and retested. The THDA will not approve the unit for the HCV program until test results show no evidence of Coliform and a lead level within the allowable limit.

(v) Voucher holders living in units with well water should educate themselves about well water safety and may want to discuss further water testing with their landlords to ensure that the water is suitable for drinking since the THDA requires limited testing. Households with pregnant women and/or infants are encouraged to test the water for nitrate and nitrite levels. Elevated levels of nitrates and nitrites can cause serious illness and possible death in infants. For more information about wells and well water safety, go to the Water Systems Council's website at www.watersystemscouncil.org or call the well care Hotline at 888-395-1033. For information sheets about wells and well water testing, go to http://www.watersystemscouncil.org/infoSheets.php.

(i) Heating Standards. Each unit must have a permanent heat source with working knobs that provides adequate heat to each room used for living or sleeping, which is capable of maintaining a minimum temperature of 68 degrees Fahrenheit within three feet of the floor in all living/sleeping rooms during colder weather.

1. Portable electric heaters may be used as a primary heat source only with a waiver from HUD.

2. Portable gas and kerosene heaters are not acceptable as a permanent heat source.

3. Wood stoves and/or fireplaces may be used as a primary heat source if properly installed, except in mobile homes, but the flues must be installed properly with secure pipes and collars must be present and installed securely with no visible openings.

4. Owners of units where gas is used, either natural or propane, are required to provide a carbon monoxide detector near the bedrooms.

(j) Wiring, Lighting, and Electrical Outlet Standards.

1. All rooms must be free of any frayed or exposed wiring, and the wiring must be the proper type.

2. All outlets and switches must be flush with the wall and have unbroken, tight fitting cover plates.

3. All light fixtures and/or ceiling fans must be secured to the wall or ceiling. It is recommended that pull chains on fans and light fixtures be string, rope, or cord rather than metal, which conducts electricity.

4. Permanently installed ceiling or wall light fixtures must have covers (globes) if the fixture hangs or is installed at or below 6 feet from the floor/ground.

5. There must be a metal cover over the fuse/breaker box. There should be not be any hazardous conditions, including openings, inside or around the fuse/breaker box.

6. In interior rooms used for living and sleeping, surface mounted romex wiring must be enclosed behind a wall or enclosed in protective conduit. Both metal and rigid rubber type of conduit are perfectly acceptable.

7. The kitchen must have at least one electrical outlet in proper operating condition.

8. The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the electrical outlets

9. Electrical hazards that will result in the unit failing the inspection include broken wiring, non-insulated wiring, frayed wiring, improper types of wiring, connections or installation, wires lying in or located near standing water or other unsafe places, light fixture hanging from electrical wiring without firm support, missing cover plates on switches or outlets, badly cracked outlets or plates, exposed fuse box connections, and overloaded circuits.

10. Types of Outlets and Their Proper Operating Condition. Two basic types of outlets are typically found in units, which are two-pronged, ungrounded outlets and three-pronged, grounded outlets. Three-pronged grounded outlets may also have GFCI protection.

    (i) Two-pronged, Ungrounded Outlets. Sometimes, two pronged outlets in older homes are upgraded to a three-pronged outlet without proper grounding, which is the primary reason for testing the outlets to ensure they are working properly. However, two-pronged outlets are acceptable granted the outlet has no failing conditions. Older construction homes built before 1975 will typically have ungrounded outlets. Two-pronged outlets have a two-wire electrical system including only a hot and neutral wire. To test an original, non-upgraded outlet, plug an appliance into the outlet and verify it turns on and if the appliance turns on properly, the outlet passes inspection. For new move-in inspections where appliances will not be in the unit, the inspector may carry a nightlight to test any two-pronged outlets.

    (ii) Three-pronged, Grounded Outlets. Three-pronged outlets are more common in newer construction units and have a three-wire electrical system, with a third hole, that includes a hot, neutral and ground wire. When a three pronged outlet is located in an older construction home, it is an indication that the outlet has been "upgrade" and particular caution should be used to ensure the outlet is properly functioning because the necessary re-wiring that adds a ground wire to the newly installed, grounded outlet may be missing.

(I) The three-pronged outlet must be properly grounded, have a GFCI that protects the outlet properly, or the outlet must comply with local codes and be verified by the owner.

(II) To test a three-pronged, grounded outlet without GFCI for proper grounding, the inspector should use a three-pronged outlet tester by inserting the device into the outlet. The instructions that accompany the tester should be followed when making a determination.

I. Unplug all appliances or devices on the circuit being tested before using the tester.

II. The bulbs on the tester will light to identify the wire condition. Follow the instructions on the front of the device to determine the result based on what, if any, of the bulbs light.

III. Result Types.

A. Open ground means that the ground wire is not connected to the circuit box ground or earth ground, and is a fail indicator.

B. Open neutral is the same as an open ground and is a fail indicator.

C. Open hot means the circuit is dead or there is no power to the outlet. When the outlet is open hot, typically, no lights will appear on the indicator. Open hot is a fail item only when the required number of working outlets or fixtures is not met in the particular room.

D. Hot/Ground Reversed is a rare finding that may appear when the outlet is actually open neutral. It is a fail indicator.

E. Hot/Neutral Reversed means that the outlet does have power but could be unsafe to use the outlet. It is a fail indicator.

(III) Three-pronged, grounded outlets with GFCI are typically found in kitchens, bathrooms, and areas where the plug could get wet. To test a three-pronged outlet with GFCI, the inspector should first use the tester following instructions. If the tester does not show any problems, the inspector should then press the "test" button to trip the outlet and break the circuit. If pressing the test button does not cause the outlet to lose power, the outlet is not wired correctly and fails the inspection. If pressing test button does trip the outlet and cause it to lose power, the outlet passes the inspection. Before completing the inspection of the outlet, the inspector should press the reset button.

11. All outlets are not required to provide power as long as there are no unsafe conditions with any particular outlet, but the minimum number of operable outlets and light fixtures must be met in each room type.

12. When an electrical outlet fails inspection, the THDA recommends that the owner/manager hire a licensed electrician to make repairs according to local codes. If the outlet testing is inconclusive for any reason, the owner/manager may present certification from the local codes department that the outlets are in compliance.

(k) Building Exterior Standards.

1. Adequate weather-stripping is required on exterior doors.

2. Roofs must be free of damage or leaks.

3. The foundation must be free of large cracks, and must be stable.

4. Vents and crawl spaces must be covered.

5. Stairs, rails, and porches must be secure. If steps are present, they must be stable, and secure. Unsecured concrete blocks cannot be used as steps.

6. Depending upon the location and height of the stairs, a rail may be required on both sides of the steps. If there are four or more steps, 29" or less in height, there must be at least one handrail. If there are four or more steps, 30" or higher, and both sides of the steps are exposed (open), there should be two secure handrails with adequate protection (slats, lattice, etc.) to prevent a person from falling through.

7. If there is a porch or balcony 30" or higher, a secure rail with adequate protection (slats, lattice, etc.) must be installed to prevent a person from falling through. It is recommended that slats be installed no more than 6" apart, and that railings be installed to within 6" of the porch or steps.

8. Gutters and downspouts, if present, must be sound and secure.

9. The exterior must be free of holes, missing siding, and appear airtight.

10. The chimney must be sound, stable, and free of hazards.

11. Plumbing vent pipes and flues must extend above the roofline.

12. Exterior of the unit must be free of loose, frayed or exposed wires that could be hazardous.

13. Exterior must be free from chipping, cracking, peeling paint.

14. Window air conditioners must be installed securely, and be free of any exposed or frayed wiring or other hazardous conditions.

15. Surface mounted romex wiring found on the exterior of the unit, or in rooms not used for living or sleeping, such as an unfinished utility room or basement, must be enclosed in protective conduit if it is within four feet of the floor or ground. Romex in these locations installed higher than four feet must be secured to walls, rafters, studs, etc.

(l) General Health and Safety Standards - Exterior/Neighborhood.

1. The grounds must be free of garbage, debris, trash, etc.

2. Covered trash cans or dumpsters must be provided for the tenant's use.

3. Outbuildings must be in sound condition.

4. If a sidewalk is present, it must be free of large holes and cracks, and should be stable.

5. The site and immediate neighborhood must be free from conditions that would seriously endanger the health or safety of the residents such as uncovered wells, deep holes, abandoned appliances, abandoned cars, etc.

6. Additionally, the site and immediate neighborhood must not have an unacceptable rate of crime, most particularly violent or drug crimes, as determined by the THDA.

7. Water hydrants must be free of leaks and drips.

(m) Manufactured Housing Standards.

1. Tie downs are required on mobile homes. If tie downs are not visible, an affidavit must be signed by the owner stating that tie downs have been installed.

2. Underpinning is required. It must be installed securely, with no large openings.

(n) Group Facility Special Provisions. Special provisions for sanitary and food preparation and service facilities are required in group home and Independent Group Residence (IGR) units as follows:

1. Sanitary. Group homes must have at least one bathroom in the unit, with a flush toilet that may be used in privacy; a fixed basin with hot and cold running water; and a shower or bathtub with hot and cold running water. The facility may contain private or common bathrooms, but no more than four residents may be required to share a bathroom.

2. Food Prep & Service. Group homes must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or shared by other residents. The kitchen must contain a range, an oven, a refrigerator and a sink with hot and cold running water. The sink must drain into an approved public or private disposal system.

3. The housing quality standards for lead-based paint do not apply to group homes or IGRs.

(o) Single Residence Occupancy (SRO) Special Provisions. Special provisions for access, fire safety, sanitary facilities, space and security are required in SRO units as follows:

1. Access. Access doors to individual SRO bedrooms must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level.

2. Fire Safety. The facility must have a sprinkler system that protects the major spaces. "Major space" includes hallways, common areas, and any other areas specified in local codes. SROs must also have hard-wired smoke detectors.

3. Sanitary. At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit.

4. Space/Security. An SRO bedroom must contain at least 110 square feet of floor space, and at least four feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible outside the SRO bedroom must be lockable.

5. The housing quality standards for lead-based paint do not apply to SROs.

(p) 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) (72 months or younger) who resides, or is expected to reside in the unit, which includes a pregnant woman.

1. Lead poisoning can cause permanent damage to the brain and many other organs, and can result in reduced intelligence and behavioral problems. The most common sources of lead hazards are deteriorated lead-based paint and the contaminated dust and soil it generates in the residential environment.

2. 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.

3. Inspection Requirements and General Actions.

(i) 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, an entity certified by the State of Tennessee to conduct lead testing must be employed. 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.

(ii) Units constructed prior to 1978 with a child under 72 months 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.

(iii) 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.

(iv) The entrance and hallway providing ingress and egress to a unit in a multi-unit building should be inspected for deteriorated paint.

(v) 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.

(vi) 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.

(vii) If the area of deteriorated paint exceeds set de minimis levels, the paint must be stabilized by a person who has received training in lead-safe work practices

through a HUD-approved training course and 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.

(viii) 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.

4. Cost of Stabilizing Deteriorated Paint. Even though the THDA may not provide assistance until the deteriorated paint surfaces have been stabilized, the THDA is not responsible for paying the costs incurred when stabilizing deteriorated paint.

5. Clearance Examinations.

(i) The unit does not pass HQS until the unit passes the Clearance Examination.

(ii) Once the deteriorated paint has been 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) The owner must maintain the unit to ensure the paint remains intact.

6. 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 CFR 35.1225).

(i) 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.

(ii) 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.

(iii) If a lead-poisoned child is identified in a unit, any lead hazards identified in the risk assessment must be corrected, and 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 cannot 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(5)(o)5~~§0770-01-05-.23(5)(p)5. 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 list of companies certified by the State of Tennessee to perform lead-hazard reduction work. The list is continually updated.

(6) Inspection Booklets and Certifications.

(a) The Inspection Booklet is completed at every initial, annual/biennial, and special inspections and all correspondence related to Housing Quality Standards are retained in the tenant file.

~~(b) The inspector will collect all required THDA and HQS owner certifications. Inspectors will have 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.

(7) Delays in Completing the HQS Inspection.

(a) Administrative Delay. If an administrative delay occurs that causes an inspection or re-inspection to be delayed, no action may be taken that negatively impacts the tenant or owner.

(b) Tenant Caused Delay. The tenant must assure that the owner or either a representative of or member of the tenant household who is at least age eighteen (18) is present for the inspection or the inspection will not be conducted and will be considered a missed appointment.

(c) Missed Appointments.

1. If ~~the~~ neither the owner or an adult member or representative of the tenant household (age 18 or older) are present for the initial inspection, a Missed Inspection Notice will be left in the door.

~~2. A Notice of Rescheduled Initial Inspection letter will be mailed to the owner and the applicant and a new inspection will be scheduled within fourteen (14) calendar days, taking into consideration the expiration of the 90-day deadline. The landlord can always call to reschedule at an earlier date and be accommodated as the schedule allows.~~

2. A Notice of Rescheduled Initial Inspection letter will be mailed to the owner and the applicant or participant and a new inspection will be scheduled within fourteen (14) calendar days. The landlord can always call to reschedule at an earlier date and be accommodated as the schedule allows.

3. If two 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.

(8) Inspection Results.

(a) If the utilities are not turned on at the time of the inspection or the appliances are not in place or operational, the inspection will not be conducted and will result in a failed inspection.

(b) The inspection results must be signed by the adult that allowed entry into the unit and the name of that person printed below.

(c) Failed Results.

1. If the only fail items present are damaged or missing smoke detector batteries and outlet/light switch covers, the inspector will repair or replace the items so that the unit may receive a pass result.

~~2. Notice of Initial Inspection Failure will be sent to the owner and tenant by the next business day following a failed inspection indicating the necessary repairs and the fourteen (14) calendar-day deadline to make the repair.~~

~~(i) Sometimes the deadline may be shorter considering the 90-day expiration of the voucher from its issuance.~~

~~(ii) The deadline may be extended if it is impossible for the repair to be completed in fourteen days, but the extension cannot exceed the expiration of the voucher.~~

2. Notice of Initial Inspection Failure will be sent to the owner and tenant within 3 business days following a failed inspection indicating the necessary repairs and the fourteen (14) calendar-day deadline to make the repair.

(i) The deadline may be extended, by request, if it is impossible for the repair to be completed in fourteen days. This must be approved by the Director of the HCV Program or the assigned designee.

3. Conducting Initial Re-inspections for Failed Results. A new inspection will be scheduled within fourteen (14) days of the first inspection or the owner may request a re-inspection sooner if the issues are corrected prior to the appointment date.

(i) The inspector will conduct the re-inspection inspecting only the previously failed items, unless a new failed item is observed.

(ii) Tenants are only allowed two (2) failed inspections before the RTA will be cancelled for that particular unit, unless an additional inspection is approved by the Director of the HCV Program.

~~4. 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 extension.~~

4. 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.

(d) Pass Results. If the unit passes inspection a HQS Compliance Pass Card will be mailed to the tenant family and either left with the owner at the unit if the owner is present for the inspection or mailed to the owner as documentation of the unit's passed status.

~~(9) If the voucher expires before a unit passes inspection, the applicant must reapply to the program, unless there is an owner-caused delay, in which case the voucher will be extended for the amount of time of the owner's delay.~~

(9) 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.

Authority: *T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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

(1) Owner Outreach (24 CFR 982.54(d)(5); 24 CFR 982.153(b)(1)).); 24 CFR 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. Monthly subsidy payments are mailed to the owner on the last working day of the month prior to due date.~~

3. Monthly subsidy payments are submitted via ACH to owners on the 1st of each month and are not considered late until after the 5th of the month. If the 5th of the month occurs on a Sunday or legal holiday, the THDA is not responsible for any fee for the late payment of rent; provided, that the monthly subsidy payment is paid on the next business day.

4. The THDA does not interfere with the owner-tenant relationship, except to ensure compliance with HCV Program.

~~5. Rents may be adjusted annually.~~
5. Rents may only be adjusted at the family's annual re-examination.

6. Owner's current tenants may be eligible to participate in the program.

~~7. An owner newsletter will be generated at least annually and will be attached to the monthly HAP check. The newsletters will contain updates on federal, state, and agency regulations.~~
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 agency 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:

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 CFR 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;

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;

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 CFR 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 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 CFR 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, checks will be mailed to the owner on the last working day of the month preceding the month the payment is due.~~

(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 ~~check~~HAP is not received by the owner by the fifth working 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.

~~1. If the THDA can verify that the check was processed and mailed appropriately, a late fee will not be allowed.~~

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 is 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.25 MOVING/PORTABILITY (24 CFR 982.~~314~~354).

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 deals with requests from participant families wanting to move to an area that is located outside of the jurisdiction of the housing authority that initially issued the family their voucher.

(1) Relocation/Other Change of Unit. When a participant family was issued a voucher by the THDA and moves within the THDA's jurisdiction, this move is considered a "relocation" or "other change of unit".

(a) Relocation Reasons. There are different reasons a family may relocate to a new unit.

1. The Family is required to Move by the THDA. Families are not restricted in the number of moves per year due to the THDA-initiated action, as long as the family remains eligible for and in compliance with HCV Program. The THDA may require a family to move when:

   (i) The move 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.

      (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 to not meet HQS or subsidy standards, 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 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 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 other minors would cause the unit to not meet HQS or subsidy standards, the household must wait to add any additional household members until the end of the lease term or, if eligible to relocate, they 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;

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, which is usually for twelve (12) months, the owner may not terminate for certain "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 will 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 a 30 days before the owner plans 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 Move.

(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.

(II) Initial Lease Term. If a family is in the initial lease term, they are not eligible to move with continued assistance until the day after their lease term for the current unit expires.

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. 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."

II. 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.

III. 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.

(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 at a minimum. However, the notice must comply with whatever the lease terms specify. This requirement is explained in the THDA Relocation Requirement Form and Guide to a Successful Relocation.

(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, unless the family meets the definition of good cause.

(III) The THDA will verify with the owner that the proper notice was given.

(iv) Termination of HAP Contract.

(I) When the THDA receives a Notice of Intent to Vacate, 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.

(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.

(v) Relocation Notice. At the same time the Termination of HAP Contract is mailed to the Owner, 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.

(b) Other Items to Consider when Determining Eligibility to Relocate.

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.

2. Income Discrepancy. If an income discrepancy is discovered that results in a debt to the THDA, the family must sign the plan of repayment and pay the deposit before they may be issued a voucher for relocation 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.

~~3. Serious Lease Violations. A household is not eligible to relocate when an owner has provided the THDA with proper notice of such violation.~~

~~(i) Unpaid Rent. The family must be current in the tenant rent to owner. 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 rent 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 unpaid rent in the approval to relocate the participant. However, if the owner later receives a judgment for unpaid rent, the participant will be terminated. If the owner returns the inquiry in a timely manner and demonstrates that the family is not current in their rent to owner, 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. 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. 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.~~

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 and 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 of an additional 60 days to the initial 60-day term, for a maximum initial 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.

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 and 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 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 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 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.

(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.

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 area at the time they applied for admission to the program ("residency rule").

2. 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 PHA's that service the city.~~

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.

(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) PHA Administering a THDA Voucher. When a PHA administers a THDA voucher, the PHA bills the THDA for HAP, UAP, and 80 percent of the THDA's ongoing 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.~~

(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.

~~6. Ports to Davidson, Rutherford, or Shelby Counties. The THDA no longer manages relocations or new applicants, including internal transfers, to Davidson, Rutherford, or Shelby Counties where there is another large PHA presence. If a family requests to port to Davidson they will be referred to the Metropolitan Development and Housing Agency (MDHA), to port to Rutherford County the Murfreesboro Housing Authority, and to port to Shelby County they will be referred to either the Memphis Housing Authority or the Shelby County Housing Authority.~~

~~7~~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.

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 originating PHA is billed for HAP, UAP, and 80 percent of the originating PHA's ongoing 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 50058 to the initial PHA for every annual and interim.~~

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 50058 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 THDA will assure that the voucher issued by the THDA will not expire before thirty (30) calendar days has passed from the expiration date of the initial PHA's 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) Veteran's 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.

(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 CFR 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 CFR 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 CFR 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 CFR 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 CFR 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:

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 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 per every ninety (90) calendar days. Requests to relocate within THDA jurisdiction must occur within the 120 day annual re-exam period.

Authority: *T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.26 ANNUAL AND INTERIM ACTIVITIES (24 CFR 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 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 of the family's recertification date. ~~Also included will be a copy of online verifications (EIV, child support print out, Work Number, etc.) for the head of household only.~~ 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.

(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.

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 ~~thirty (30)~~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 ~~30~~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 ~~30~~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 delay was caused by the owner.

      (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 CFR 982.519, 24 CFR 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[DS3][JKC4].

   (ii) The owner must submit any request for an annual rent increase, along with documentation of justification for the increase, sixty (60) calendar days prior to the recertification anniversary date.

   (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.

   (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 commencing on or after the contract anniversary date, but 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. 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.

(d) Annual/Biennial HQS Inspection. HUD requires that the owner and assisted family household allow the unit to be inspected at reasonable times with reasonable notice.

1. Scheduling of the Inspection.

(i) After a unit is accepted into the HCV Program, it is inspected annually/biennially as long as it remains on the Program. HUD had approved biennial inspections and the THDA is moving toward switching to biennial inspections, which means the unit will be inspected every two years or every other year. Inspections are conducted between 60 to 120 days before the inspection due date. The due date is the original date in which the first inspection was scheduled the previous year, regardless of any additional inspections that may have been required. The anniversary date is always driven from this original inspection date.

(ii) Notice. The HQS Inspection Letter will automatically be generated for the unit with the scheduled date and approximate time of the inspection and will be mailed to the owner and family approximately fourteen (14) days before the inspection.

(iii) Reminder Call. An automated reminder call will be placed to the family the forty-eight (48) hours prior to the inspection.

2. Minimum Acceptability Standards. The purpose of the Housing Choice Voucher Program is to provide decent, safe, and sanitary housing to those in need. HUD's Housing Quality Standards provide the criteria for determining the minimum standards for a unit to be eligible for assistance under the program. All HUD HQS requirements are not restated in this plan. A full listing of the criteria may be found in the THDA's HQS Inspection Booklet.

3. Lead-Based Paint Procedures.

4. Inspection Booklets and Certifications.

   (i) The Inspection Booklet is completed at every initial, annual, and special inspection and all correspondence related to Housing Quality Standards are retained in the tenant file.

   (ii) The inspector will collect all required THDA and HQS Owner Certifications. Inspectors will have blank forms if needed.

5. 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 impacts the tenant or owner.

   (ii) Family Caused Delay. The family must assure that the owner or an adult representative or member of the family's household (age 18 or older) is present for the inspection or the inspection will not be conducted and will be considered a missed inspection appointment.

   (iii) Missed Appointments.

      (I) A participant may miss the first inspection for any reason. If either the owner or an adult member or representative of the family's household (age 18 or older) cannot be present or are not present for the inspection, this will be considered a Missed Appointment.

         I. If the participant notifies the inspector that no one is able to be present at the first scheduled inspection, a Notice of Rescheduled Inspection letter will be mailed.

         II. If the participant does not notify the inspector and there is no one present for the inspection, a Missed Inspection Notice will be left in the door and a Notice of Rescheduled Appointment will be mailed.

      (II) After the first missed appointment, a Notice of Rescheduled Inspection letter will be mailed to the owner and the family and a new inspection will be automatically scheduled within fourteen (14) calendar days.

      (III) If the family misses two 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.

6. Inspection Results.

   (i) The inspection results must be signed by the adult that allowed entry into the unit and the name of that person printed below.

   (ii) Failed Results.

(I) If the only fail items present are damaged or missing smoke detector batteries and outlet/light switch covers, the inspector will repair or replace the items so that the unit may receive a pass result.

(II) If other fail items are present, the inspector will mail the Notice of HQS Violations to the owner and participant family by the next business day indicating the necessary repairs, 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.

(iii) Pass Results. If the unit passes the HQS inspection, a HQS Compliance Pass Letter will be mailed to the owner and left with the participant family.

7. Self-Certification for Non-Emergency Failed Items (PIH Notice 2010-10). HUD allows owners and participants to self-certify that repairs for non-emergency failed items have been completed, which eliminates the need for re-inspections.

(i) Self-Certification Form. The inspector mails the Self-Certification Form to the owner and along with the Notice of HQS Violations to both the owner and participant the next business day upon the finding of non-emergency failed items.

(I) The Self-Certification requires the owner to complete the required repairs that are the owner's responsibility and inspect the unit to verify that any repairs that are the family's responsibility are complete.

(II) The owner is also required to sign the Self- Certification form, and collect the participant's signature also verifying repairs are complete.

(III) If at a later date 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.

(ii) Deadline for Repairs. The owner and participant must complete all required repairs, both parties must sign the Self-Certification form, and the Self-Certification form must be received at the address outlined in the form, all within thirty (30) days of the failed inspection. If mailed, the postmark date will be used to determine timeliness. If all three requisites are not met by the 30th day after the failed inspection, Housing Assistance Payments for the assisted unit will be abated (stopped).

(iii) Extensions. If the repairs cannot be completed by the 30-day deadline date due to an extenuating circumstance, such as inclement weather, inability to obtain parts, or extensive work needed, an extension beyond the initial 30-days will be granted if the owner or participant provide the THDA with verification of such extenuating circumstance before the expiration of the first 30-day deadline.

(I) No Abatement. The Housing Assistance Payments will not be abated during any extension.

(II) Extension Periods. Extension periods are granted in 30-day increments, but must be requested and verified before the expiration of any prior deadline.

(iv) Failure to Repair and Certify Timely (24 CFR 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 any extension, the following actions will be taken:

(I) Owner's Responsibility. If the required repairs that are the responsibility of the owner are not completed or the Self-Certification is not completed correctly or returned by the 30-day deadline or any extension, the Housing Assistance Payments will be abated for a maximum of thirty (30) days.

I. The abatement may not exceed 30 days. If the repairs are not completed or the Self-Certification is not completed correctly and received by the THDA within the 30-day abatement period, the HAP contract will be terminated and the participant will be issued a voucher for relocation.

II. If the repairs are completed, the Self-Certification is completed correctly, and the Self-Certification is received during the 30-day abatement, the abatement ends on the day the fully completed Self-Certification is received by the THDA or the completion of the work is otherwise verified by the inspector.

(II) Participant's Responsibility.

I. According to the Family Obligations, which HUD requires participants to follow in order to be eligible for the HCV Program, the participant family is responsible for a breach of the HQS that is caused by:

A. The participant family failing to provide or maintain any appliances which are the family's responsibility; or

B. Any member of the household or guest damaging the dwelling unit or premises, when those damages are beyond ordinary wear and tear.

II. If the participant fails to remedy any breaches of the HQS that are the participant's responsibility and submit the fully completed Self-Certification during the 30-day deadline or any extension, the payment will be abated as described above. If the repairs are not made within the abatement period, then the participant will be terminated from the program and the HAP Contract will be terminated.

III. If the family's assistance is terminated, the HAP Contract will be terminated at the end of the month, similar to a move without notice, since the owner did not contribute to the HQS breach.

IV. The participant has the right to appeal a termination decision that results from the failure to make HQS repairs. If the participant appeals, the THDA will continue the HAP through the informal hearing process, but only for non-emergency repairs.

(v) Affidavit in Lieu of Self-Certification. If either party demonstrates by a preponderance of the evidence that they attempted to comply with this requirement,[JKC5] but[DS6] forces beyond their control prevented compliance, the THDA will accept an affidavit in lieu of the self-certification and will consider the self-certification as timely.

(e) Emergency Repairs.

1. Emergency Repair Items. 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:

   (i) Escaping gas from stove;

   (ii) Major plumbing leaks or flooding;

   (iii) Natural gas leak or fumes or other air pollutant levels that threaten the occupants' health;

   (iv) Electrical situation which could result in shock or fire;

   (v) No heat when outside temperature is below 50 degrees;

   (vi) No running water;

   (vii) Utilities turned off, including no running hot water;

   (viii) Broken glass or other conditions that present the imminent possibility of injury;

   (ix) Obstacle which prevents or hinders entrance to or exit from the unit;

   (x) Absence of a functioning toilet or an overflowing toilet;

   (xi) Unit cannot be adequately secured;

   (xii) Inoperable Smoke Detector (if when tested, smoke detector fails test); or

   (xiii) Combustible materials near the gas water heater or gas furnace.

2. Deadline for Emergency Repairs. Such defects must be corrected within twenty-four (24) hours of the repair notice or the Housing Assistance Payment will be abated or terminated, depending on the circumstances as outlined below.

   (i) Extension. A short extension of no more than forty-eight (48) hours will be given where the owner cannot be reached or if it is impossible to repair within the twenty-four (24) hour period, i.e., or it is a weekend, etc.

   (ii) Owner Responsibility.

      (I) 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.

      (II) If the owner takes steps to correct the defect, but it is impossible for the defect to be corrected in 24 to 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 Housing Assistance Payments will be abated until repairs are complete for a maximum of thirty (30) days. If the participant is unable to find alternate housing, then the household must relocate.

      (III) Extension Periods. If the repairs cannot be completed by the 30-day deadline date due to an extenuating circumstance, such as inclement

weather, inability to obtain parts, or extensive work needed, an extension beyond the initial 30-days will be granted if the participant requests it and provides the THDA with verification of such extenuating circumstance before the expiration of the first 30-day deadline, otherwise the HAP Contract will be terminated and the participant will be issued a relocation voucher, if the participant remains eligible for the Program. Extension periods are granted in 30-day increments, but must be requested and verified before the expiration of any prior deadline and may never exceed a total of 180 days.

(iii) Participant Responsibility.

(I) If an HQS breach caused by the family is life threatening, the family must correct the defect.

(II) Disconnected Utilities.

I. If utilities, which are the participant's responsibility, are disconnected for more than 72 hours, assistance will be terminated.

II. HAP Contract Termination. The effective date of the HAP Contract termination is as follows:

A. 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.

B. 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 month in which the THDA became aware of the disconnected utilities.

C. 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, the THDA will contact the utility company to determine the exact date the utility was disconnected.

3. 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.

4. If assistance is terminated due to missed appointments, failure to repair, or emergency HQS and the participant requests a hearing, the participant will be allowed to schedule one more inspection appointment to come into compliance for payments to resume during the appeals process.

(2) Interim Activities (24 CFR 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 basically 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 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) days of such occurrence.

~~(III) The household must notify the THDA with 30 calendar-days if any household member no longer resides in the unit.~~
(III) The household must notify the THDA within 14 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, must be reported within 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.

(i) Change is not within 120 Days of the Next Annual Recertification.

~~(I) The THDA will mail the participant the Personal Declaration Form, along with the Acceptable Verification Documents Form and the Interim Letter.~~
(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. There is no time deadline for returning the documentation, but the change will not become effective until processed. For the change to be effective the first of the month following the month in which the documentation is received, the documentation must be received by the 20th day of the month.~~

I. Interim Decreases in Income. Decreases in income should be reported to 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 30th, the interim change will be effective May 1st. If the documentation is received any time after April 30th, the interim change will be effective June 1st.

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 2nd Notice of Verification Needed giving the participant an addition 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 the participant the Personal Declaration Form, along with the Acceptable Verification Documents Form and the Interim Letter.~~

(I) Decrease in Income or Household Composition. The THDA will mail the participant Interim Letter and notify the participant which forms to download, complete, and return from the THDA's website.

I. Interim Decreases in Income. There is no time deadline for returning the documentation, but the change will not become effective until processed. For the change to be effective the first of the month following the month in which the documentation is received, the documentation must be received by the 20th day of the month.

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.

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 the 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. If the amount of the overpayment is $3,000 or less, than in order to avoid termination all adult household members must enter in to a repayment agreement to pay the debt back to the THDA.~~

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 the 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) 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.

(III) A minimum down payment of 10% of the total debt is required at the time the repayment agreement is signed, but the household may pay a higher amount, which will reduce the balance owed and affect the monthly payment schedule outlined below.

(IV) All adult household members must sign the repayment agreement to remain in good standing or assistance will be terminated.

(V) 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) When the household becomes 30 days delinquent in their repayment debt, a case conference will be scheduled to discuss any circumstances with the household that led to the delinquency and reiterate the policy and the seriousness of bringing the a balance current to avoid termination.~~

(~~III~~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.

(~~IV~~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 the termination notice will 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.

(~~V~~IV) If the household is terminated due to a repayment delinquency, they will be afforded the opportunity for an informal hearing, 24 CFR 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 and placed in the new head of household's name.~~

(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 CFR 982.163). However, the THDA must be the principal party initiating or sustaining the action to recover amounts due. 24 CFR 792.202 permits the THDA to retain the greater of the following:

(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~~ using the Addition of Household Member Form~~.

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 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.

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 CFR 982.312 and 24 CFR 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 thirty (30) days of the occurrence, in writing on the Reduction in Household Size Form and certify as to whether the member is temporarily absent or permanently absent.~~

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;

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 the purpose of 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.

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.

~~4~~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.

~~5~~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.

~~6~~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 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.

~~7~~8. Absence Due To Medical Reason (24 CFR 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 the 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.

~~8~~9. Absence of Entire Household (24 CFR 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;

(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 which 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.

~~9~~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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.27 TERMINATIONS (24 CFR 982.552(b), 982.310, 982.455, and 982.~~314~~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.

(2) Termination of Assistance (24 CFR 982.552(b)).

(a) Involuntary Termination of Assistance related to a Violation of the Family Obligations (24 CFR 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.

(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 that the owner is not required to pay for, but which are to be paid by the tenant;~~

(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;

(I) Serious and repeated lease violations may include, but are not limited to, the following:

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 (unless the judgment is entered by agreement of the parties for possession only).~~

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.

~~C. Judgments in favor of the owner for unpaid rent 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 estopped from terminating the rental agreement as to that breach.~~

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 estopped 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.

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 CFR 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;

(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.

(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 contendre 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-~~102~~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.

(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 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 mail box 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.

(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, 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 re-start 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.

~~(ii) Tenants who plan to relocate with continued assistance are encouraged not to give notice until they have located new housing, and the THDA has approved the Request for Tenancy Approval.~~

(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.

(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.

(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;

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

0770-01-05-.28 COMPLAINTS, CONFERENCES, APPEALS (24 CFR 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 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 participant. If the participant chooses not to file a request for an informal review or informal hearing, the complaint will not be heard.~~

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 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.~~

(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 ~~seven (7) business~~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 participant is dissatisfied with the outcome, the RAM will mail the participant a THDA Complaint Intake form to file a written complaint.~~

4. If the RAM responds verbally or holds a case conference, and the applicant or participant is dissatisfied with the outcome, the RAM will mail the applicant or participant a THDA Complaint Intake form to file a written complaint.

~~(c) When a participant files a written complaint, it will be reviewed by the THDA central or executive management and a written response will be made on the THDA Complaint Response Form within thirty (30) days.~~

(c) When an applicant or a participant files a written complaint, it will be reviewed by the THDA central or executive management 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 Specialist, Manager, or other supervisory staff. The THDA will record the significant elements 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.~~

(2) Case Conferences. A case conference is an informal, documented meeting with a THDA Rental Assistance Coordinator, Manager, or designee. In the event of inclement weather, the applicant or participant may request the appointment via teleconference. The THDA will record the significant elements 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 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. Staff may schedule a case conference to allow the participant to submit certification documents before the date of the proposed informal hearing. With Director approval, THDA will rescind the proposed termination for failure to supply certification documents.

(3) Informal Reviews for Applicants (24 CFR 982.54(d)(2), 982.554, and 982.555). Under the federal regulations for the HVC 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.

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 mail box.

(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) The reason for the denial;

(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 will be conducted by telephone, but the applicant will have an opportunity to present written or oral objections to the THDA's decision. Written objections must reach the THDA at least three (3) business days before the appointment; and~~

(III) That the appointment will be conducted in person, unless the applicant requests that it be by telephone, and the applicant will have an opportunity to present written or oral objections to the THDA's decision. If the applicant chooses a review by phone, 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 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[UKC7][DS8].

(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.

(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. No more than ~~fourteen (14)~~thirty (30) days after the informal review is held, a written determination that upholds, modifies, or overrules the original adverse decision, and that states the reasons for such decision, will be sent to the applicant by USPS regular delivery mail to the last known address reflected in the THDA's file for the applicant.

1. Delivery of the notice by mail is complete upon deposit in a mail box 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 CFR 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.

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 by the 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 participant file, unless a different mailing address is clearly noted on the hearing request letter.

(I) Delivery is complete upon deposit in a mail box.

(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 are usually scheduled on the same day of the month for each field office. When the THDA receives the written request for the informal hearing, the informal hearing will be scheduled, not for the next scheduled hearing, but at the subsequent hearing scheduled at the local THDA field office where the participant's case is managed. However, at the THDA's discretion, the review may be held at the THDA's main office in Nashville.~~

2. Date of Informal Hearing. Since the THDA's Housing Choice Voucher Program is multijurisdictional, informal hearings are usually scheduled on the same day of the month for each field office. When the THDA receives the written request for the informal hearing, the informal hearing will be scheduled within 30 days and/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. The participant may request to participate in the informal hearing via conference call and/or teleconference.

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.

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 correct any THDA errors that may have occurred in the decision-making 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.

   (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.

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 for.

(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. No more than fourteen (14) days after the informal hearing record is closed, a written determination that upholds, modifies, or overrules the original adverse decision, and that states the reasons for such decision, will be sent to the participant by USPS regular delivery mail to the last known address reflected in the THDA's file for the applicant.

1. Delivery of the notice by mail is complete upon deposit in a mail box 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 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 ~~fifteen (15)~~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.

2. Notice is 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.

(i) 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.

(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.

(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.

(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 CFR 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.

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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

(1) Service by USPS. 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), unless an alternate form of electronic communication, such as email, is requested by the applicant or participant in writing or is the only means by which the THDA can reach the applicant or participant (moves without notice, etc.).

(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 Policy.

(a) Proof of Service. Service by mail is complete upon deposit in a mail box 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.

(b) If an applicant, participant, or owner claim that a request for information or to attend 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 to which the THDA mailed the notice was not the proper address, or where the receiving party argues that the notice was not received due to circumstances beyond the their control.

(i) Sufficient proof includes, but is not be 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 that there have been problem 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 household.

(4) Address Used. The THDA sends notices to the last known address 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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

(1) Fair Housing (24 CFR 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 CFR 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. Program accessibility for the hearing impaired is provided by the TDD telephone number: (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.

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 CFR 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 CFR 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 CFR 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 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 CFR 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

   (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. Residency Rule. The THDA does not offer an accommodation of the "residency rule." The residency rule requires that any household who applies for a county 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 county or state. Since the THDA allocates resources, including staff, by county/regional area, the THDA has determined that relocations or ports within the first 12 months for out of county applicants would fundamentally alter the nature of the THDA's HCV Program operation, as well as cause an unreasonable administrative burden because the agency cannot plan for the staff and resources necessary to manage these types of relocations or ports.~~

~~2~~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.

~~3~~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 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 members 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.

~~4~~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 CFR 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.

(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.

~~5~~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 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 CFR 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.

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 eye witness, 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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.

(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.

(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 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, 13-23-115(18), 42 USC §§ 1437, and 24 CFR, 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 CFR 964).

(1) Resident Advisory Board. The THDA will maintain a Resident Advisory Board for the Housing Choice Voucher Program.

(a) Resident Participation (24 CFR 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 CFR 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 CFR 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, 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 CFR 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 CFR 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 CFR 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. A term expires earlier upon the occurrence of any one of the following events:~~

(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 CFR 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

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.

~~9. Any Resident Board Member selected to fill a vacancy shall serve a four (4) year term, commencing from the dated of selection, subject to the requirements herein.~~

(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 CFR 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 TCA Section 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 CFR 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 elect any eligible person, then the requirements of 24 CFR Section 964.425(a) and 24 CFR 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. Section 13-23-110 or in the THDA by- laws, as adopted or amended from time to time.

Authority: *T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

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 CFR 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.

(iv) A group home may be approved if the bedrooms (sleeping quarters) are shared, if the rent is appropriately pro-rated.

(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.

(I) 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 x .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 x .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.

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 4 or fewer residents. However, in some cases the facility may house more than 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 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 CFR 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.

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 is 75 percent of the HUD-approved zero-bedroom exception payment standard amount. 24 CFR 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.

(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.

      (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 (1) qualifies for a smaller unit than the actual size of their current unit and (2) 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.

(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. §13-23-115(18), 42 USC §§1437, and 24 CFR, 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-.34 HOMEOWNERSHIP VOUCHER OPTION (24 CFR 982.625). Under 24 CFR 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 CFR 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 CFR 982.627 (a) (5); (e)).

(c) All household members must be in compliance with the Housing Choice Voucher family rules and obligations (24 CFR 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. 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, families with a disabled household member who requires a reasonable accommodation so that 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. The first-time homeowner requirement does not apply after the initial purchase with Homeownership Voucher (24 CFR 982.4 (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. 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, so that 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. The first-time homeowner requirement does not apply after the initial purchase with Homeownership Voucher (24 CFR 982.4 (b)).

(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 CFR 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. Also, 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 CFR 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.

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 CFR 982.627 (c)).

~~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 four (4) 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 four month time period, the assistance will be terminated.~~

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 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 ~~four (4)~~six (6) month timeframe for securing new employment may be considered when a household member loses his job due to no fault of their 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 CFR 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 CFR 982.626 (b)).

~~(j) A married head of household, who is physically separated and does not share residence with the spouse, but not legally divorced from the spouse, must either divorce or include the spouse's income in the household for the eligibility determination (24 CFR 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 CFR 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 CFR 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 CFR 982.626 (b)).

(m) The family must cooperate by attending required meetings and providing requested documentation within the required timeframe. (24 CFR 982.626 (b)).

(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. Additional 30-day extensions may be approved by the Director of Rental Assistance, not to exceed 270 days. If the time limit is exceeded they will be denied and may be required to wait one year (24 CFR 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 CFR 982.626 (b); 982.629 (c)).

~~(p) The Head of Household must enroll and participate in the Family Self-Sufficiency program until after he/she purchases a home.~~

(p) The Head of Household may also enroll and participate in the Family Self-Sufficiency Program.

(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 CFR 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;

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 CFR 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 CFR 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 (HUD-1 Settlement) 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;

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.

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. The second mortgage is provided by a THDA partner, typically a nonprofit entity. 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 CFR 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.

(9) Voucher Issuance and Timeframe for Utilization (24 CFR 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 CFR 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 CFR 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 CFR 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.

(d) Environmental Review. Additionally, according to 24 CFR § 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 CFR § 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 CFR 982.628 (d) (3) (iv); 982.626 (c)).

(12) Portability (24 CFR 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 CFR 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 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 CFR 982.628). To be approved for the program, a home must either be 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 CFR 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 utilities, maintenance and repairs costs are based on the number of bedrooms of the unit, not allocation.

(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 CFR 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 CFR 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:

(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 CFR 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 CFR 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 CFR 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 CFR 982.633). At least ninety (90) 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) Reinspections. 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 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 CFR 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 CFR 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 CFR 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 on the homeownership program (24 CFR 982.627 (e); 982.638 (d)).

(25) Recapture (24 CFR 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 CFR 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.

(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) Nonelderly 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 leased 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.

(28) Informal Hearing Process (24 CFR 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. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.* ***Administrative History:***

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Kim Grant Brown	x				
Dorothy L. Cleaves				x	
Tre Hargett	x				
Regina Hubbard	x				
David H. Lillard, Jr.	x				
Larry Martin	x				
Austin McMullen				x	
Todd Skelton	x				
John K. Snodderly	x				
Lynn Tully	x				
Pieter J. van Vuuren				x	
Justin Wilson	x				
Mary Mac R. Wilson				x	
Daisy Fields				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Housing Development Agency on July 24, 2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: May 16, 2018

Rulemaking Hearing(s) Conducted on: (add more dates). July 11, 2018

Date: September 7, 2018

Signature:

Name of Officer: Bruce Balcom

Title of Officer: Assistant Chief Legal Counsel

DEBORAH S. SANDERS
STATE OF TENNESSEE NOTARY PUBLIC
CHEATHAM COUNTY

Subscribed and sworn to before me on: September 7, 2018

Notary Public Signature: Deborah S. Sanders

My commission expires on: September 20, 2021

Agency/Board/Commission: Tennessee Housing Development Agency

Rule Chapter Number(s): 0770-01-05

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

10/4/2018
Date

Department of State Use Only

Filed with the Department of State on: 10/5/18

Effective on: 1/3/19

Tre Hargett
Secretary of State

2018 OCT -5 PM 2:06
SECRETARY OF STATE