G.O.C. STAFF RULE ABSTRACT

BOARD**:**	State Board of Education
SUBJECT:	Amount of performance bond for textbook publishers
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-6-2203(j)
EFFECTIVE DATES:	September 1, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule repeals the rule concerning the amount of the performance bond that a publisher must file when contracting with the state for the publication of textbooks. The law that was in effect prior to January 1, 2015, authorized performance bonds of up to $1,000,000 and the rule being repealed established a graduated scale for the performance bond with a range of $50,000 to $1,000,000 depending on the number of books officially listed by the publisher. Effective January 1, 2015, the amount of a performance bond that is authorized by law was changed to a minimum of $2,000 and a maximum of $10,000.

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.

Not applicable.

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 will have no impact on local governments

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 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: 06-02-15
Rule ID(s): 5959
File Date: 06-03-15
Effective Date: 09/01/15

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 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.

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:	Angela C. Sanders
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
X 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**
0520-05-01	Supplement to Contract-Policies of Tennessee State Textbook Commission
Rule Number	**Rule Title**
0520-05-01-.07	Amount of Performance Bond Required

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

RULES
OF
TENNESSEE DEPARTMENT OF EDUCATION
STATE TEXTBOOK COMMISSION

CHAPTER 0520-05-01
SUPPLEMENT TO CONTRACT-POLICIES OF TENNESSEE STATE TEXTBOOK COMMISSION

TABLE OF CONTENTS

0520-05-01-.01	Definition	0520-05-01-.06	Submitting of Books
0520-05-01-.02	Staggered Adoption	0520-05-01-.07	~~Amount of Performance Bond Required~~
0520-05-01-.03	Minimum Standards and Specification	~~0520-05-01-.08~~	Repealed
0520-05-01-.04	Submitting of Sample Textbooks	through	
0520-05-01-.05	Condition of Sample Textbooks	0520-05-01-.36	

~~**0520-05-01-.07 AMOUNT OF PERFOMANCE BOND REQUIRED**~~

~~(1) The following scale shall designate the amount of performance bond required of each publishing company. "Book" means any item bid for sale with its own separate price.~~

~~No. of Books Officially Listed~~	~~Amount of Bond~~
~~1-10~~	~~$50,000~~
~~11-20~~	~~$100,000~~
~~21-30~~	~~$150,000~~
~~31-40~~	~~$200,000~~
~~41-50~~	~~$250,000~~
~~51 and over~~	~~$250,000~~
~~plus $10,000 per each additional book until $1,000,000 is reached.~~	

* 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)
Chancey	X				
Edwards	X				
Hartrgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/25/2014, 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: 5/12/15

Signature:

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

PHYLLIS E. CHILDRESS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES: January 9, 2016

Subscribed and sworn to before me on: 5/12/15

Notary Public Signature: Phyllis E. Childress

My commission expires on:

State Board of Education Rules
Chapter 0520-05-01 -- Supplement to Contract-Policies of Tennessee State Textbook Commission
Rule 0520-05-01-.07 – Amount of Performance Bond Required

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

May 27, 2015
Date

Department of State Use Only

Filed with the Department of State on: 06-03-15

Effective on: 09-01-15

Tre Hargett
Secretary of State

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2015 JUN -3 PM 1:14
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Underground Storage Tanks and Solid Waste Disposal Control Board
SUBJECT:	List of inactive hazardous substance sites
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-212-206(e)
EFFECTIVE DATES:	September 3, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule removes the Galloway Pitts Site, located in Fayette County, Tennessee from the List of Inactive Hazardous Substance Sites. According to the Board, all remedial activities have been completed at the Galloway Pitts Site.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the comment period.

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.

This proposed rule deletes the Gallaway Pits Site located in Fayette County, Tennessee from the List of Inactive Hazardous Substance Sites.

(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.

There are no small businesses impacted by this rulemaking.

(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.

There are no small businesses impacted by this rulemaking, therefore there are no reporting, recordkeeping, and other administrative costs.

(3) A statement of the probable effect on impacted small businesses and consumers.

There will be no impact on 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.

No alternatives are available to achieve the purpose of this rulemaking

(5) A comparison of the proposed rule with any federal or state counterparts.

This rulemaking is site specific so there is no direct comparison with and federal or state counterpart.

(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.

There is no effect since this rulemaking does not impact 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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Department does not anticipate an impact on local governments from this rulemaking.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 06-06-15
Rule ID(s): 5961
File Date: 6/5/15
Effective Date: 9/3/15

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:	Environment and Conservation
Division:	Remediation
Contact Person:	Robert L. Powell
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0916
Email:	Robert.Powell@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**
0400-15-01	Hazardous Substance Remedial Action
Rule Number	**Rule Title**
0400-15-01-.13	List of Inactive Hazardous Substance Sites

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Amendment

0400-15-01
Hazardous Substance Remedial Action

Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order.

0400-15-01-.13 List of Inactive Hazardous Substance Sites.

Promulgated List

SITE NUMBER	SITE NAME
	ANDERSON (01)
01504	D.O.E Oak Ridge Oak Ridge, TN
01579	Dupont Smith/Atomic City Oak Ridge, TN
01580	Anderson County Landfill Clinton, TN
SITE NUMBER	SITE NAME
	BLOUNT (05)
05501	Aluminum Co. of America Alcoa, TN
05503	Aluminum Co. of America Alcoa, TN
SITE NUMBER	SITE NAME
	BRADLEY (06)
06505	Duracell Inc. Cleveland, TN
SITE NUMBER	SITE NAME
	CARTER (10)
10502	American Bemberg Plant Elizabethtown, TN
10508	Old Bemberg Bldg. Elizabethtown, TN
SITE NUMBER	SITE NAME
	COCKE (15)
15504	Arapahoe/Rock Hill Labs Newport, TN
15505	Newport Dump Newport, TN

15508	Wall Tube and Metal Newport, TN
SITE NUMBER	SITE NAME
	DAVIDSON (19)
19511	Stauffer Chemical Nashville, TN
19524	Municipal Landfill Nashville, TN
SITE NUMBER	SITE NAME
	FAYETTE (24)
24501	Ross Metals Rossville, TN
~~24503~~	~~Gallaway Pits Gallaway, TN~~
SITE NUMBER	SITE NAME
	FRANKLIN (26)
26501	AEDC Arnold Air Force Station, TN
SITE NUMBER	SITE NAME
	GIBSON (27)
27512	ITT Telecommunications Milan, TN
SITE NUMBER	SITE NAME
	HAMBLEN (32)
32506	BASF/Stauffer Chemical Co. Morristown, TN
32514	Old Morristown-Hamblen Co. Landfill Morristown, TN
32517	Neblett Road Dump Morristown, TN
32518	Pine Brook Road Dumb Morristown, TN
SITE NUMBER	SITE NAME
	HAMILTON (33)
33527	Velsicol/Residue Hill Chattanooga, TN
33540	Montague Park Chattanooga, TN
33543	Hamill Road Dump #3 Chattanooga, TN
33547	Chattanooga Coke Chattanooga, TN

33550	North Hawthorne Dump Chattanooga, TN
33557	USVAAP Chattanooga, TN
33584	Chattanooga Creek Chattanooga, TN
33596	Mor-Flo Industries, Inc. Chattanooga, TN
33618	Morningside Chemicals Chattanooga, TN
33620	National Microdynamics (Lutex Chemical) Chattanooga, TN
33635	Tennessee Transformer Chattanooga, TN
33660	Electro-Lite Battery Chattanooga, TN

SITE NUMBER	SITE NAME
	HARDEMAN (35)
35506	Velsicol Chemical Toone, TN

SITE NUMBER	SITE NAME
	HENRY (40)
40506	Henry County Boneyard Paris, TN

SITE NUMBER	SITE NAME
	HICKMAN (41)
41504	Wrigley Charcoal Wrigley, TN

SITE NUMBER	SITE NAME
	JEFFERSON (45)
45503	Hodgson, Hollis Jefferson City, TN

SITE NUMBER	SITE NAME
	KNOX (47)
47514	Witherspoon Landfill Knoxville, TN
47518	Badgett Road Landfill Knoxville, TN
47521	Southern Rail/Coster Shop Knoxville, TN
47523	Foote Mineral/Cas Walker (Dante) Knoxville, TN
47530	Screen Art, Inc. Knoxville, TN
47541	Witherspoon Recycling

	Knoxville, TN
47545	Sanitary Laundry & Dry Cleaning Knoxville, TN
47547	Roscoe Fields Property Knoxville, TN
47559	Smokey Mountain Smelters Knoxville, TN
47573	Dixie Barrel & Drum Co. Knoxville, TN

SITE NUMBER	SITE NAME
	LAWRENCE (50)
50502	Murray-Ohio Landfill Lawrenceburg, TN
50505	Lawrenceburg Horseshoe Bend Lawrenceburg, TN
50509	Former Murray Ohio Plant Lawrenceburg, TN

SITE NUMBER	SITE NAME
	LOUDON (53)
53502	Greenback Industries Greenback, TN
53503	Lenoir City Car Works Lenoir City, TN

SITE NUMBER	SITE NAME
	MADISON (57)
57508	American Creosote Works Jackson, TN
57510	Porter Cable Jackson, TN
57517	Boone Dry Cleaners Jackson, TN

SITE NUMBER	SITE NAME
	MARION (58)
58502	North American Environmental Whitwell, TN

SITE NUMBER	SITE NAME
	MARSHALL (59)
59502	Heil Quaker Corp. Lewisburg, TN
59503	Lewisburg Dump Lewisburg, TN

SITE NUMBER	SITE NAME
	MAURY (60)
60501	Stauffer Chemical Co. Mt. Pleasant, TN
60534	Monsanto Columbia, TN
SITE NUMBER	SITE NAME
	MONROE (62)
62505	Red Ridge Landfill Madisonville, TN
SITE NUMBER	SITE NAME
	POLK (70)
70502	Apache Blast Copperhill, TN
SITE NUMBER	SITE NAME
	PUTNAM (71)
71502	Putnam County Landfill Cookeville, TN
SITE NUMBER	SITE NAME
	ROANE (73)
73504	Roane Alloys Rockwood, TN
73506	Rockwood Iron & Metal Rockwood, TN
73512	Joyner Scrap Yard Rockwood, TN
SITE NUMBER	SITE NAME
	RUTHERFORD (75)
75522	Old Murfreesboro City Dump Murfreesboro, TN
SITE NUMBER	SITE NAME
	SHELBY (79)
79503	Arlington Blending Arlington, TN
79517	Bellevue Avenue Landfill Memphis, TN
79518	Cypress Creek Memphis, TN
79525	International Harvester

	Memphis, TN
79536	W. R. Grace & Co. Memphis, TN
79549	Chickasaw Ordinance Works Memphis, TN
79552	Carrier Corporation Collierville, TN
79561	Nilok Chemical Company Memphis, TN
79569	Chapman Chemical Co. Memphis, TN
79582	Diesel Recon Co. Memphis, TN
79598	North Hollywood Dump Memphis, TN
79604	Memphis Public Works/Jackson Pits Memphis, TN
79676	Smalley-Piper Collierville, TN
79742	Pulvair Corporation Millington, TN
79758	Old Osmose Chemical Memphis, TN
79781	John Little/Drum Memphis, TN
79798	61 Industrial Park Site Memphis, TN
79799	Tennessee Air National Guard Memphis, TN
79800	Creotox Chemical Company Memphis, TN
79805	Fiberfine of Memphis Memphis, TN
79843	Warfield Place/Pulvair Memphis, TN

SITE NUMBER	SITE NAME
	SULLIVAN (82)
82514	Sperry/Unisys Bristol, TN
82516	Earhart Bristol, TN

SITE NUMBER	SITE NAME
	UNICOI (86)
86501	Bumpass Cove Landfill Embreeville, TN
86502	Bumpass Cove – Fowler Erwin, TN
86505	Morrell Electric, Inc. Erwin, TN

SITE NUMBER	SITE NAME
	WARREN (89)

89504	Century Electric Facility McMinnville, TN
SITE NUMBER	SITE NAME
	WASHINGTON (90)
90510	Cash Hollow Dump Johnson City, TN
SITE NUMBER	SITE NAME
	WAYNE (91)
91501	Mallory Capacitor Co. Waynesboro, TN
91502	Waynesboro City Dump Waynesboro, TN
SITE NUMBER	SITE NAME
	WILSON (95)
95501	TRW/Ross Gear Division Lebanon, TN

Authority: T.C.A. §§ 68-212-201 et seq. and 4-5-201 et seq.

* 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)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	✓				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	✓				
Kenneth L. Donaldson (Municipal Government)	✓				
Dr. George Hyfantis, Jr. (Institution of Higher Learning)	✓				
Bhag Kanwar (Single Facility with less than 5 Underground Storage Tanks)				✓	
Alan M. Leiserson (Environmental Interests)	✓				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	✓				
David Martin (Working in a field related to Agriculture)	✓				
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)	✓				
DeAnne Redman (Petroleum Management Business)	✓				
Mayor Franklin A. Smith, III (County Government)				✓	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 04/21/2015, 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: 02/24/15

Rulemaking Hearing(s) Conducted on: (add more dates). 04/17/15

CAROL L. GRICE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: April 21, 2015

Signature: Stacey Cothran

Name of Officer: Stacey Cothran

Title of Officer: Chair

Subscribed and sworn to before me on: April 21, 2015

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

Rules of the Board of Underground Storage Tanks and Solid Waste Disposal Control Board
Chapter 0400-15-01 Hazardous Substance Remedial Action
Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites

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

June 2, 2015
Date

Department of State Use Only

Filed with the Department of State on: 6/5/15

Effective on: 9/3/15

Tre Hargett
Secretary of State

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2015 JUN -5 PM 3:42
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Board of Ground Water Management
SUBJECT:	Rules of the Board of Ground Water Management; Conflict of interest policy; Applications for driller and installer licenses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-10-107(d) and (e)
EFFECTIVE DATES:	September 17, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule requires the Board to create a conflict of interest policy for Board members as required by Tenn. Code Ann., Section 69-10-107(d) and establishes criteria that the Board must follow when determining whether to recommend that the commissioner grant or deny an applicant's request for licensure as a driller or an installer as required by Tenn. Code Ann., Section 69-10-107(e).

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the public comment period.

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.

(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.

This new chapter only impacts the Board of Ground Water Management and no small businesses are affected.

(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.

There is no cost to small businesses from this new chapter.

(3) A statement of the probable effect on impacted small businesses and consumers.

There is no impact to small businesses or consumers resulting from this new chapter.

(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.

This new chapter complies with T.C.A. §§ 69-10-107(d) and (e) that the Board of Ground Water Management promulgate rules to mandate the creation of a conflict of interest policy for board members and to establish the criteria to be used by the Board in making recommendations to the Commissioner regarding applications for driller's and installer's licenses, and no alternatives were authorized by the statute.

(5) A comparison of the proposed rule with any federal or state counterparts.

The Board of Ground Water Management is unique to Tennessee.

(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.

There are no small businesses affected by this new chapter.

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)

The department does not anticipate any impact on local governments from these new rules.

Department of State
Division of Publications
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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 06-14-15
Rule ID(s): 5964
File Date: 6/19/15
Effective Date: 9/17/15

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:	Environment and Conservation
Division:	Water Resources
Contact Person:	Anna Rollins
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0159
Email:	anna.rollins@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ 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**
0400-45-10	Rules of the Board of Ground Water Management
Rule Number	**Rule Title**
0400-45-10-.01	Purpose and Intent
0400-45-10-.02	Definitions
0400-45-10-.03	Conflict of Interest
0400-45-10-.04	Reserved
0400-45-10-.05	Criteria for Making Recommendations Regarding License Applications

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

New Rule

Chapter 0400-45-10
Rules of the Board of Ground Water Management

Table of Contents

0400-45-10-.01 Purpose and Intent
0400-45-10-.02 Definitions
0400-45-10-.03 Conflict of Interest
0400-45-10-.04 Reserved
0400-45-10-.05 Criteria for Making Recommendations Regarding License Applications

0400-45-10-.01 Purpose and Intent

It is the purpose of this chapter to address T.C.A. §§ 69-10-107(d) and (e) which require the Board of Ground Water Management to promulgate rules to mandate the creation of a conflict of interest policy for board members and establish the criteria to be used by the Board in making recommendations to the Commissioner regarding applications for driller's and installer's licenses.

0400-45-10-.02 Definitions

As used in this chapter, unless context otherwise requires:

(1) "Board" means the board of ground water management.

(2) "Borehole" means the cylindrical opening created by the action of a drill or auger as it penetrates the subsurface.

(3) "Closed loop geothermal borehole" means a cylindrical opening created by the action of a drill or auger as it penetrates the subsurface greater than twenty (20) feet in depth used to either extract or transfer heat from the earth for heating or cooling. This is also referred to as a geothermal well in T.C.A. § 69-10-101 et seq.

(4) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation.

(5) "Department" means the department of environment and conservation.

(6) "Drill" means to dig, drill, redrill, construct, deepen or alter a well.

(7) "Driller" means any person who digs, drills, redrills, constructs, deepens or alters a well.

(8) "Experience" means the skill and knowledge derived from the actual direct participation and practice gained in a specific occupation. For drillers experience includes the skill and knowledge gained in operating drilling equipment to drill and construct a well or closed loop geothermal borehole. For installers experience includes the skill, knowledge and actual direct participation in determining the equipment required and installing equipment either in or on wells or closed loop geothermal boreholes. Such skill and knowledge must qualify the individual to deal with circumstances and problems that may be encountered by an occupation.

(9) "Geothermal well" means a hole drilled into the earth, by boring or otherwise, greater than twenty feet

(20') in depth constructed for the primary purpose of adding or removing British Thermal Units (BTUs) from the earth for heating or cooling.

(10) "Installer" means any person who installs or repairs well pumps or who installs filters and water treatment devices.

(11) "Well" means one of these three (3) types of holes in the earth: a geothermal well, a monitoring well, or a water well.

0400-45-10-.03 Conflict of Interest

(1) The board shall create a conflict of interest policy governing conflicts of interests that requires board members to avoid conflicts of interest, identifies specific actions that are prohibited to be taken by a board member and, if a matter is considered by the board in which a member of the board has a conflict of interest, mandates disclosure that a conflict exists and recusal from the matter by the board member.

(2) Each board member during the first meeting of the board each calendar year, or the member's first attendance of a board meeting of the calendar year, shall:

(a) Make a written disclosure of financial interests or other interests that the board member reasonably anticipates have potential to become a conflict of interest;

(b) Acknowledge in writing that the board member has read and understands all aspects of the board's conflict of interest policy; and

(c) State as a condition of serving as a board member that he or she is not in conflict with the conditions of the board's conflict of interest policy.

0400-45-10-.04 Reserved

0400-45-10-.05 Criteria for Making Recommendations Regarding License Applications

(1) As provided in Rule 0400-45-09-.05, the board shall determine whether to recommend an applicant to the commissioner for licensing.

(2) To make the recommendation required by paragraph (1) of this rule, a quorum of the board shall interview an applicant that has complied with Rules 0400-45-09-.02 through 0400-45-09-.05 to determine the quality and quantity of the applicant's experience. Questioning by individual board members will include, but not be limited to, the following:

(a) Where and when the applicant's experience was obtained;

(b) Types of equipment used by the applicant;

(c) The applicant's level of responsibility;

(d) Familiarity of the applicant with addressing problems such as:

1. Construction techniques used in each type of well drilled for each license applied for;

2. Operation of drilling equipment used in drilling wells or boreholes; and

3. Installation techniques and principles of operation for pumps and or water treatment devices;

(e) Knowledge of state well construction standards; and

(f) Responsibilities of licensees to the well owner and the department.

Authority: T.C.A. §§ 69-10-107(d) and (e) and 4-5-201 et seq.

* 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)
Brian Keith Campbell Board Member West Tennessee				X	
Robert Hall ExOfficio Environment and Conservation	X				
Tim C. Hawn Board Member East Tennessee	X				
Anna Rollins ExOfficio Environment and Conservation	X				
James C. Watson Board Member Middle Tennessee	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Ground Water Management on 04/23/2015, 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: 12/11/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/09/15

Date: April 23, 2015

Signature: Anna Rollins

Name of Officer: Anna Rollins

Title of Officer: Board Chair

MONYA ETTA BRADLEY NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Subscribed and sworn to before me on: April 23, 2015

Notary Public Signature: Monya Etta Bradley

My commission expires on: March 10, 2019

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

6/11/2015

Date

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Filed with the Department of State on: 6/19/15

Effective on: 9/17/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Alarm Systems Contractors Board
SUBJECT:	Expedited process for certification, licensure or registration with Board for certain applicants
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-10-107(d) and (e)
EFFECTIVE DATES:	September 20, 2015 through June 30, 2016
FISCAL IMPACT:	According to the Board, there may be a minimal increase in state government revenues as a result of this rule.
STAFF RULE ABSTRACT:	The proposed rule provides a process for expedited certification, licensure or registration for applicants who are certain military service members or spouses of military service members as required by Tennessee Code Annotated, Section 4-3-1304(d)-(f).

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.

(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 are not expected to have a measurable impact on the cost to 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;

There are no projected reporting, recordkeeping or other administrative costs required for these proposed rules.

(3) A statement of the probable effect on impacted small businesses and consumers;

There is no expected adverse impact on small businesses as a result of these proposed rules. The proposed rules are expected to assist with the protection of the welfare of the citizens of the State of Tennessee by seeking to make it easier for military applicants and their spouses who hold alarm contracting or similar licenses in other states to obtain their alarm contracting licenses in Tennessee and thus, more easily obtain employment here.

(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 are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of these proposed rules.

(5) A comparison of the proposed rule with any federal or state counterparts; and

This rule is being adopted pursuant to the requirements as set forth in T.C.A. § 4-3-1304.

(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.

Any possible exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

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)

The Board does not foresee any impact on local government by the promulgation of this Rule,

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Sequence Number: 06-16-15
Rule ID(s): 5966
File Date: 6/22/15
Effective Date: 9/20/15

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 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.

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:	Alarm Systems Contractors Board
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Anthony M. Glandorf
Address:	Davy Crockett Tower 500 James Robertson Pkwy Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Anthony.glandorf@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ 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**
0090-01	General Provisions
Rule Number	**Rule Title**
009-01-.15	Military Applicants

New Rule 0090-01-.15 is added and reads:

(1) An applicant for certification, licensure, or registration meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a certification, license, or registration upon application and payment of all fees required for the issuance of such certification, license or registration, if, in the opinion of the Board, the requirements for certification, licensure, or registration of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's certification, license, or registration does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including - but not limited to – education, training, or experience, in order to meet the requirements for the certification, license, or registration to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular certification, license, or registration of the same type which shall allow such person to perform services as if fully certified, licensed, or registered for a set period of time that is determined to be sufficient by the Board for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full certification, license, or registration shall be issued to the applicant with an issuance date of the original issuance of the temporary permit and an expiration date as if the full certification, license, or registration had been issued at that time.

2. A temporary permit shall be issued for a period no longer than the length of a renewal cycle for a full certification, license, or registration of the same type.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full certification, license, or registration, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full certification, license, or registration of the same type.

(c) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any certification, license, or registration issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such certification, license or registration.

(2) Any certificate holder, licensee, or registrant who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose certification, license, or registration expires during the period of activation shall be eligible to be renewed upon the certificate holder, licensee, or registrant being released from active duty without:

(a) Payment of late fees or other penalties; or

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

2. The person performs the certification, licensed, or registered occupation as part of such person's military duties and provides documentation sufficient to demonstrating such to Board.

(3) The certification, license or registration shall be eligible for renewal pursuant to Paragraph (2) for six (6) months from the person's release from active duty.

(4) Any person renewing under Paragraph (2) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to the renewal of any certification, license, or registration license pursuant to Paragraph (2).

Authority: T.C.A. §§ 4-3-1304(d)(1); 62-32-307(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)
Vivian L. Hixson	x				
McKenzie C. Roberts	x				
Karen D. Jones	x				
John Keith Harvey	x				
Steve Tucker				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Alarm Systems Contractors Board on 03/27/2014, 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: 6/9/2015

Signature:

Name of Officer: Anthony Haedtf

Title of Officer: Chief Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: 06/09/2015

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/2017

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

6/11/2015
Date

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Filed with the Department of State on: 6/22/15

Effective on: 9/20/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	State
DIVISION:	Charitable Solicitations and Gaming
SUBJECT:	Procedures for operating charitable gaming events
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 3-17-115
EFFECTIVE DATES:	September 7, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule reflects the changes to the procedures for operating charitable gaming events that were included in Public Chapter 699 of 2014. The rule reflects that the annual event application period ends on January 31 instead of December 31. A charitable organization will no longer be required to submit an affidavit or copy of meeting minutes indicating their board's approval for filing the application since the law now requires the filing of a sworn statement to that effect. The rule reflects that the sales price of a ticket may be changed before any tickets are sold, in an amount within $50.00 of the ticket price stated in the approved application and subject to filing an amendment form with the Division. The rule also reflects that tickets may be sold at different value levels or tiers subject to recordkeeping requirements.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

See enclosed memorandum.

Tre Hargett, Secretary of State
State of Tennessee

Division of Charitable Solicitations and Gaming
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243-1102

Brent Culberson
Director

615-741-2555
Brent.Culberson@tn.gov

MEMORANDUM

From: Tabatha Blackwell
Assistant Director & Legal Counsel

Date: May 26, 2015

Subject: Public Hearing Comments

The Division of Charitable Solicitations and Gaming filed its Notice of Rulemaking Hearing with the Secretary of State on January 29, 2015, and held a rulemaking hearing on the proposed rules on March 20, 2015. No person requested to be heard or presented comments during the rulemaking hearing. The official record was held open for an additional week after the hearing for the submission of written comments. 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 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.

(If applicable, insert Regulatory Flexibility Addendum here)

These rules do not have a projected 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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These rules do not have a projected impact on local governments.

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Sequence Number: 06-09-15
Rule ID(s): 5962
File Date: 6/9/15
Effective Date: 9/7/15

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:	Department of State
Division:	Charitable Solicitations and Gaming
Contact Person:	Brent Culberson
Address:	312 Rosa L. Parks Ave., 8th Floor, Nashville, TN
Zip:	37243
Phone:	615-741-2555
Email:	Brent.Culberson@tn.gov

Revision Type (check all that apply):

X Amendment
X New
X 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**
1360-03-03	Procedures for Operating Charitable Gaming Events
Rule Number	**Rule Title**
1360-03-03-.03	Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications
1360-03-03-.06	Action by Board of Directors
1360-03-03-.07	Application Correction and Amendment Process
1360-03-03-.08	Sale of Tickets, Shares, Chances or Other Similar Records
1360-03-03-.09	Conduct of the Games
1360-03-03-.10	Criminal Background Checks
1360-03-03-.11	Accounting Procedures
1360-03-03-.12	Proof that Event Proceeds Were Used for a Charitable Purpose
1360-03-03-.13	Disqualifications/Civil Penalties
1360-03-03-.14	Co-Operation with Other State Agencies

RULES
OF
TENNESSEE DEPARTMENT OF STATE
DIVISION OF CHARITABLE SOLICTATIONS
CHARITABLE GAMING SECTION

CHAPTER 1360-03-03
PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS

TABLE OF CONTENTS

1360-03-03-.01	Definitions	1360-03-03-.08	Sale of Tickets, Shares, Chances or Other Similar Records
		1360-03-03-.09	Conduct of the Games
1360-03-03-.02	Application Sliding Fee Scale	1360-03-03-.10	Criminal Background Checks
1360-03-03-.03	Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications	1360-03-03-.11	Accounting Procedures
		1360-03-03-.12	Proof that Event Proceeds Were Used for a Charitable Purpose
1360-03-03-.04	Proof of Active and Continuous Existence	1360-03-03-.13	Disqualifications/Civil Penalties
1360-03-03-.05	Proof of §501(c)(3) Tax Exempt Status and Purpose(s)	1360-03-03-.14	Co-operation with Other State Agencies
1360-03-03-.06	Action Approval by Board of Directors		
1360-03-03-.07	Application Correction and Amendment Process		

1360-03-03-.01 DEFINITIONS.

(1) "Amended annual event application" means those items of information submitted to the Secretary for the purpose of revising, correcting, adding to, or otherwise supplementing an annual event application in order to meet the requirements of the Tennessee Charitable Gaming Implementation Law.

(2) "Conformed copy" A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy shall contain the signatures and dates as shown on the originals. A certificate of incorporation shall be date stamped and show approval by an appropriate state official.

(3) "Compensation" for purposes of T.C.A. § 3-17-103(a)5(A)(i)(b) means anything of value received as a result of work performed on behalf of a §501(c)(3) organization, including, but not limited to, tips, reductions, and waivers of fees.

(4) "Directors or officers of the organization" for purposes of T.C.A. §3-17-104 (a)(12) means the entire slate of members of the governing body of an organization. An executive committee or subcommittee of a governing board shall not qualify as the directors or officers of the organization, unless the organization's by-laws authorize an executive committee to act on behalf of the full board.

(5) "Fair Market Value" means a price at which an unrelated buyer and seller would agree to a transaction; a valuation that is reasonable to all parties involved in a transaction, none of which are under a compulsion to buy or sell while having a reasonable knowledge of the relevant facts.

(6) "Games of chance associated with casinos" includes casino night parties (also known as "Vegas Nights", "Las Vegas Nights", "Monte Carlo Nights")

(7) "Notice", unless otherwise indicated, shall mean a written communication forwarded by U.S. mail, certified return receipt requested.

(Rule 1360-03-03-.01, continued)

(8) "Operate" means

(a) To run or control, directly or indirectly, the functioning of an annual gaming event;

(b) To bring about a desired or proper effect including, but not limited to, planning, promoting, advertising, marketing, authorizing or entering into agreements, purchasing supplies, telephone services, gaming records or devices, buying or leasing services, facilities or locations, printing of materials and tickets, shares, chances or similar records and the transporting of such records and other devices;

(c) To conduct the affairs of an event including, but not limited to, on-site or off-site management;

(9) "Organizational document" shall mean the record that establishes the organization as a legal entity and shall include, but not be limited to, a certified copy of the Articles of Incorporation (or charter), constitution, or trust agreement.

(10) "Physical Presence" means an organization has a tangible office established and located within the state of Tennessee where regular business within the organization's stated mission is transacted. The existence of a post office mailing address or drop box location is not sufficient to create a physical presence.

(11) "Pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols which must be exposed by the player to determine wins or losses. Pull tabs may also be known as break-opens, hard cards, banded tickets, jar tickets, pickle cards, Lucky Seven Cards, Nevada Club tickets, instant bingo cards.

(12) "Secretary" means the Secretary of State or the Secretary's authorized representative.

Authority: *T.C.A. §§3-17-102(A), 3-17-102(8)(A), 3-17-103(a)(3)(B)(i), 3-17-103(a)(5)(A)(i)(a), 3-17-103(a)(5)(B)(i), 3-17-103(d)(1)(B), 3-17-104 (a)(12), 3-17-105(d)(2)(B), and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006.*

1360-03-03-.02 APPLICATION SLIDING FEE SCALE.

An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:

Event Gross Revenue	Filing Fee
$0.00 to $5,000.00	$150.00
$5001.00 to $10,000.00	$300.00
$10,001.00 to $20,000.00	$450.00
over $20,001.00	$600.00

Authority: *T.C.A. §3-17-115(a) and Chapter 207 § 14 of the Public Acts of 2005.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006.*

1360-03-03-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT - TIME TO SUBMIT APPLICATIONS.

(Rule 1360-03-03-.03, continued)

(1) Application Period. An application for authorization to hold an annual gaming event shall be submitted beginning July 1 and ending ~~December 31 of each year~~January 31 preceding the annual event period.

(2) Last Date to File. When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)

(3) Timely Filing. The postmark date on the annual event application shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.

(4) Incomplete application. An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 15 ~~in the year~~ subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: *T.C.A. §§ 3-17-103 (a)(1)~~(c)~~, 3-17-104(a), 3-17-105(a)(1), 3-17-105(d)(2)(B), 3-17-115(a), and ~~Chapter 207 §§ 3 and 9 of the Public Acts of 2005~~Chapter 699 §§1 and 16 of the Public Acts of 2014.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment to rule filed January 14, 2009; effective May 29, 2009. Amendment to rule filed ____, 2014; effective ____, 2014.*

1360-03-03-.04 PROOF OF ACTIVE AND CONTINUOUS EXISTENCE.

(1) Acceptable Proof. In addition to the requirements set out in Public Chapter 476, as amended, §3-17-101 et. seq., an organization may submit as proof of its continuous and active existence, including, but not limited to, the following types of information:

(a) A copy of the last five (5) annual Forms 990, 990-EZ, or 990-PF filed with the Internal Revenue Service for the five (5) year period immediately preceding the date of application;

(b) If the organization is a corporation, a copy of the last five (5) annual reports filed with the Secretary's Business Services Division for the five (5) year period immediately preceding the date of application;

(c) Copies of the organization's written authorization to conduct charitable solicitation for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application.

(d) Copies of published annual reports of the organization for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application;

(e) Copies of audited financial statements prepared by an independent certified public accountant and which covers the five (5) year period immediately preceding the date of application;

(f) Copies of minutes of annual meetings duly recorded and attested to by the secretary of the organization and which covers the five (5) year period immediately preceding the date of application;

(Rule 1360-03-03-.04, continued)

(g) Copies of grant approval and continuation notices received by the organization and which covers the five (5) year period immediately preceding the date of application; and/or

(h) Copies of printed advertisements for the organization showing the date of publication of the advertisement and which covers the five (5) year period immediately preceding the date of application.

(2) Multiple Forms of Proof. An organization may submit copies of documents from two or more types as indicated above, so long as documents cover the five (5) year period immediately preceding the date of application. (Example: Organized in 1995, organization was not required to file IRS Form 990 until Year 2001. An annual event application is filed July 1, 2004. It may submit Forms 990 for years 2001, 2002, 2003 and annual reports filed with Business Services Division for years 1999 and 2000.

(3) Authentic Documents. Acceptable documents must be authentic, genuine or bona fide documents. Copies of documents must be conformed copies.

Authority: *T.C.A. § 3-17-104(a)(6) and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006.*

1360-03-03-.05 PROOF OF 501(C)(3) TAX EXEMPT STATUS AND PURPOSE(S).

(1) Chapters or Affiliates. An organization which is a chapter or affiliate operating under a Section 501(c)(3) group exemption must have its own federal employer identification number and shall submit the following documents in support of its tax exempt status:

(a) The Letter of Determination of the parent organization assigned by the Internal Revenue Service which includes the group's 4-digit tax exemption number;

(b) A list of all chapters and affiliates under the group exemption as submitted by the parent organization to the Internal Revenue Service, including the federal tax identification number and physical address of each chapter or affiliate;

(c) A written statement from the parent organization that the applicant is in good standing with the parent organization;

(d) A properly executed Affidavit of the organization's 501(c)(3) status [Secretary of State Form SS-6060]; and,

(e) A copy of the organizational document.

(2) Recognition Prior to 1969. An organization recognized as exempt from federal income taxation by the Internal Revenue Service prior to October 9, 1969, that would otherwise qualify as a 501(c)(3) organization shall, in addition to the requirements of T.C.A. §3-17-103, submit the following documents in lieu of IRS form 1023 in support of its tax exempt status/purpose(s):

(a) A detailed narrative of all of the activities of the organization. List each activity in order of importance based on the relative time and resources devoted to the activity. Indicate the percentage of time for each activity; and

(b) A Statement of Revenue and Expenses for the five (5) years immediately preceding the period under consideration.

Authority: *T.C.A. § 3-17-102(1), 3-17-104(a)(6),and 3-17-115(a); and Internal Revenue Code § 501.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03-.06 ~~ACTION~~ APPROVAL BY BOARD OF DIRECTORS.

(1) ~~Executive Committee Vote. If the organization's by-laws do not authorize an executive committee to act, the minutes shall reflect approval in accordance with the charter or by-laws.~~

~~(2) Affidavit in Lieu of Minutes. In lieu of regular or special minutes of the board of directors, an organization shall submit an affidavit (Secretary of State Form SS-6062) indicating the date of the meeting, the total number of directors or trustees present, and the number casting an affirmative vote to operate a gaming event. The affidavit must bear the notarized signatures of all members of the governing body, whether or not a member attended the meeting or voted in the affirmative to operate an event.~~The board of directors of an organization must authorize an annual event application to be filed. If the organization's bylaws authorize an executive committee to act on behalf of the full board, approval by the executive committee shall suffice.

Authority: *T.C.A. ~~§§ 3-17-104(a)(10), 3-17-104(a)(12), 3-17-104(a)(12)(A) and (B),~~§ 3-17-115(a) ~~, and Chapter 207 § 10 of the Public Acts of 2005~~and Chapter 699 § 13 of the Public Acts of 2014.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009. Amendment to rule filed ____, 2014; effective ____, 2014.*

1360-03-03-.07 APPLICATION CORRECTION AND AMENDMENT PROCESS.

(1) Application Correction. The division will notify each organization of any deficiencies in the application. The organization must correct any deficiencies in or make any changes to the application by February 15. Pursuant to T.C.A. § 3-17-105(b)(2), the Secretary does not have authority to accept an annual event application change after February 1 of the annual event period.

(2) Amendment Process. After February 1 of each year, the organization may amend its application in the following manner and circumstances.

(a) Date Changes. To change an annual event date, the organization must file an Amendment Form, SS-6065, with the Division requesting the new date of the annual event. Pursuant to T.C.A. § 3-17-103(d)(1)(A), the new date must be within twenty-eight (28) days of the original date listed on the application. The twenty-eight (28) day period may be counted prior to or after the event date listed in the approved application.

(b) Location Changes. If an organization's approved location listed in the event application becomes unavailable on the event date, the organization may change the location of the event by filing an Amendment Form, SS-6065, with the Division stating the reason for unavailability and the address of the new location.

~~(b)~~(c) Price Changes. To modify the actual dollar amount at which a ticket, share, chance or other similar record shall be sold, the organization must file an Amendment Form, SS-6065, with the Division stating the new dollar amount. If an organization was approved to sell tickets, shares, chances or other similar records at different value levels or tiers, the organization may amend the dollar amount at which each value level or tier is to be sold. Pursuant to T.C.A. § 3-17-103(d)(3), only one such modification shall be made prior to the sale of any ticket, share, chance or other similar record and only in an amount within fifty dollars ($50.00) of the actual dollar amount or amounts listed in the approved application.

~~(c)~~(d) Notifying Law Enforcement. The organization must notify the Tennessee Bureau of Investigation, and the district attorney general for the judicial district in which

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(Rule 1360-03-03-.079, continued)

the event is conducted. The organization must also provide sufficient public notice in accordance with T.C.A. § 3-17-103(B)(ii).

Authority: *T.C.A. § 3-17-103(a)(3)(B)(i) and (iii), 3-17-103(d)(1)(B), 3-17-105(b)(1) and (2), 3-17-105(d)(2)(B), 3-17-103(a)(3)(C)(i)-(iii), 3-17-103(d)(A) and (B)(i)-(ix), and 3-17-115(a); and Chapter 207 § 15 of the Public Acts of 2005.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03.08 SALE OF TICKETS, SHARES, CHANCES OR OTHER SIMILAR RECORDS

(1) Tickets, shares, chances or other similar records may be sold at a single price or at different value levels or tiers. All tickets, shares, chances or other similar records must contain the name of the organization on whose behalf the event is being conducted.

(2) If tickets, shares, chances or other similar records are sold at different value levels or tiers, the organization must keep a record of each sale, which must include the name, the amount paid, the mailing address, and the contact information of the purchaser for the purpose of issuing refunds if a cancellation of the annual event occurs.

(3) If a different value level or tiered pricing annual event is cancelled, any refund shall be for either the actual amount received by the organization from any individual, or if there is no record of each sale, the refund shall be equal to the highest value level or tiered price charged on a per ticket, share, chance or other similar record basis.

Authority: *T.C.A. §§ 3-17-110(a) and 3-17-115(a); and Chapter 699 §§ 9 and 26 of the Public Acts of 2014.* ***Administrative History:*** *Original rule filed , 2014; effective , 2014.*

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1360-03-03-.098 CONDUCT OF THE GAMES.

(1) Advertising. Nothing in the act shall be construed as prohibiting an organization from accepting donations of advertising services. For purposes of the Act and these rules, however, granting permission to post flyers for an event on the premises of a vendor shall not be construed as donating advertising services.

(2) Ticket Sales and Sale of Similar Records. Persons under the age of eighteen (18) are prohibited from selling or purchasing tickets and similar records for charitable gaming activities.

(3) Officer(s) Responsible for Gross Receipts. The authorized organization shall duly designate an officer/officers of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all gaming event receipts. The name of each officer shall appear on the list required under T.C.A. § 3-17-104 (a) (20) and (21).

(4) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses, or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any annual gaming event except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of an annual gaming event either directly or indirectly.

Authority: *T.C.A. §§ 3-17-103(a)(5)(A)(i)(a),(b), 3-17-103(a)(5)(B)(i), 3-17-104(a)(20)-(21), 3-17-115(a), and 39-17-602 through 39-17-603.* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03-.1009 CRIMINAL BACKGROUND CHECKS.

(Rule 1360-03-03-.10~~09~~, continued)

(1) Effective Date. Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the Secretary.

(2) Persons Subject to Criminal Background Checks. Fingerprint-based criminal background checks may be required of officers, directors, trustees, staff and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.

(3) Criteria for requiring Criminal Background Checks. Upon a determination by the Secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the Secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the Secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the Secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.

(4) Procedure for Obtaining Criminal Background Checks. Upon notification by the Secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the Secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested. Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check.

The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.

(5) Information from Law Enforcement Agency. The Secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.

(6) Denial of Application to Conduct Annual Gaming Event. The Secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the Secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law.

Penalties shall be determined based upon the rules for disqualification located below at section 1360-03-03-.14.

(Rule 1360-03-03-.1009, continued)

Authority: *T.C.A. § 3-17-114(a)-(c), 3-17-114(e)(1)-(2), and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006.*

1360-03-03-.110 ACCOUNTING PROCEDURES.

(1) Records:

(a) Record Keeping. Accurate records shall be kept by each authorized organization in a manner which shows in detail the amount and source of gross receipts, the expenses incurred and the name and address of each person receiving a prize over fifty ($50.00) dollars and the value of the prize. Prize information shall be reported on the Acknowledgement of Prize Winner form (SOS Form SS 3037).

(b) Access to Records. The Secretary of State, the Attorney General and Reporter and the Tennessee Bureau of Investigation or their authorized agents or representatives shall at all times have access to all books and records of any authorized organization for the purpose of examining and checking them.

(c) Period of Retention of Records. All records, books of account, bank statements and all other papers related to the operation of an annual gaming event shall be retained and available for inspection by the Secretary of State and the Tennessee Bureau of Investigation or their authorized agents or representatives for a period of at least five (5) years after the date of the annual gaming event to which they relate.

(d) Payment of Allowable Expenses. Money for reasonable and necessary expenses may be paid from gross receipts only by checks having preprinted consecutive numbers drawn on the organization's account. Said checks must be made payable to the specific person providing the goods or rendering the service which gives rise to the expense item and at no time may checks be payable to "cash" or "bearer".

(e) Prizes, Donated Prizes, Goods, or Services. The organization shall disclose the fair market value of all prizes, goods and services as revenue (cash or in-kind) on the Financial Accounting form (SOS Form SS-6066).

(2) Reporting. All organizations must file a financial report with the Division on forms approved by the Division. If the organization grosses more than fifty thousand dollars ($50,000) in revenue, the organization must also complete an audit of the annual event in accordance with T.C.A. § 3-17-106(c).

Authority: *T.C.A. § 3-17-103(a)(5)(B)(i), 3-17-106(a), 3-17-106(b)(1)-(4), 3-17-106(c)(1)-(4), 3-17-108(a)(1)-(2), and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03-.121 PROOF THAT EVENT PROCEEDS WERE USED FOR A CHARITABLE PURPOSE.

Documentation to prove that event proceeds were used for a charitable purpose may include:

(1) Cancelled checks which state the purpose of the payment and which are endorsed by and identify the payee shall be one form of acceptable documentation;

(2) Signed and attested board minutes.

(3) A copy of the organization's balance sheets and monthly statements should be provided to substantiate that funds have been earmarked.

(Rule 1360-03-03-.12, continued)

Authority: *T.C.A. § 3-17-104(a)(19), 3-17-106(c)(2),and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03-.132 DISQUALIFICATIONS/CIVIL PENALTIES.

(1) Any violation of the Tennessee Charitable Gaming Implementation Law shall be a basis for disqualification or the imposition of civil penalties. Civil penalties may be assessed for the violation of either civil or criminal provisions of the Act.

(2) Upon concluding that an organization violated any provision of T.C.A. § 3-17-101 et seq., pursuant to T.C.A. § 3-17-113(a), the Secretary of State shall notify the registrant of his intent to disqualify the organization or assess a civil penalty. The notification shall contain the reasons for the action and shall inform the organization of its right to request an administrative hearing within thirty (30) days of receipt of the notification. The disqualification or penalty shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the disqualification or penalty is upheld, the action shall become effective upon the service of the final administrative decision on the organization.

(3) The hearing shall be held before an administrative law judge from the Administrative Procedures Division of the Tennessee Department of State and conducted pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. and Rule 1360-04-01-.14, Uniform Rules of Procedure for Contested Cases of State Agencies.

(4) An organization that loses its tax exempt status shall be ineligible to hold an annual gaming event. The years for which the tax exempt status was not in effect shall not be countable as part of the period of active and continuous operation. If the Internal Revenue Service revokes an organization's tax exempt status and the revocation is made retroactive, the period of retroactivity will not be countable as part of the period of active and continuous operation.

(5) A period of disqualification shall run from the date of application, the date of discovery of the violation or the date of imposition of the disqualification, whichever is later.

Authority: *T.C.A. § 3-17-111(a)-(b), 3-17-111, 3-17-113(a), and 3-17-115(a).* ***Administrative History:*** *Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.*

1360-03-03-.13 CO-OPERATION WITH OTHER STATE AGENCIES.

(1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of T.C.A. 3-17-102 et. seq. and T.C.A. 39-16-702 and T.C.A. 39-16-703 and T.C.A. title 39, chapter 17 Parts 5 and 6, T.C.A. § 39-17-502(b), T.C.A. § 39-17-505, T.C.A. § 39-17-506(a), T.C.A. § 39-17-601, T.C.A. § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.

(2) The Secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

Authority: *T.C.A. § 3-17-113(a)-(b, 3-17-111) and 3-17-115(a).* ***Administrative History****: Original rule filed October 7, 2005; effective February 28, 2006.*

* 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 Department of State on 03/20/2015, 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)* 01/29/2015

Rulemaking Hearing(s) Conducted on: (add more dates). *(mm/dd/yy)* 03/20/2015

Date: 5/26/15

Signature: [signature]

Name of Officer: Brent Culberson

Title of Officer: Director, Division of Charitable Solicitations and Gaming

JENNIFER A. COWHERD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 5/26/15

Notary Public Signature: Jennifer A Cowherd

My commission expires on: 11/3/15

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

June 5, 2015

Date

Department of State Use Only

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Filed with the Department of State on: 6/9/15

Effective on: 9/7/15

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Long-Term Care Programs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 71-5-105 and 71-5-109
EFFECTIVE DATES:	June 30, 2015 through December 27, 2015
FISCAL IMPACT:	The Department estimates that the rule will decrease state government expenditures by $3,846,100
STAFF RULE ABSTRACT:	The emergency rule limits enrollment in CHOICES 3 Group to individuals eligible in an SSI eligibility category.

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)

These rules are not anticipated to have an impact on local governments.

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For Department of State Use Only

Sequence Number: 06-28-15
Rule ID(s): 5977
File Date (effective date): 6/30/15
End Effective Date: 12/27/15

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	Bureau of TennCare 310 Great Circle Road Nashville, TN
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

The Appropriations Act, Public Chapter 427, effective July 1, 2015, requires the Bureau of TennCare to reduce expenditures for CHOICES Group 3. The reduction will be accomplished by limiting new enrollment into CHOICES Group 3 to individuals eligible in an SSI eligibility category, consistent with the waiver authority granted to the State pursuant to its approved 1115 demonstration.

T.C.A. § 4-5-208 permits an agency to adopt an emergency rule when it is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

Based upon the above information, I have made the finding that the emergency adoption of this rule is required in order to achieve implementation by July 1, 2015.

For a copy of this emergency rule contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

Darin J. Gordon
Director, Bureau of TennCare
Tennessee Department of Finance and Administration

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE
AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-01
TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.02 DEFINITIONS.

(108) Physical Disabilities.

(a) One or more medically diagnosed chronic, physical impairments, either congenital or acquired, that limit independent, purposeful physical movement of the body or of one or more extremities, as evidenced by substantial functional limitations in one or more ADLs that require such movement—primarily mobility or transfer—and that are primarily attributable to the physical impairments and not to cognitive impairments or mental health conditions. Includes any adult age 21 or older who meets level of care criteria for Medicaid Level 1 reimbursement of care in a nursing facility, CHOICES HCBS and PACE as set forth in TennCare Rule 1200-13-01-.10(4).

(b) An individual with cognitive impairments or mental health conditions who also has one or more Physical Disabilities as defined above may qualify as "Physically Disabled," and may be enrolled into CHOICES Group 2 or CHOICES Group 3 so long as such individual can be safely served in the community and at a cost that does not exceed the individual's Cost Neutrality Cap or Expenditure Cap, as applicable. This includes consideration of whether or not the CHOICES Group 2 or CHOICES Group 3 benefit package, as applicable, adequately addresses any specialized service needs the applicant may have pertaining to the cognitive impairment or mental health condition, as applicable.

1200-13-01-.10 MEDICAL (LEVEL OF CARE) ELIGIBILITY CRITERIA FOR TENNCARE REIMBURSEMENT OF CARE IN NURSING FACILITIES, CHOICES HCBS AND PACE.

(4) Level of Care Criteria for Medicaid Level 1 Reimbursement of Care in a Nursing Facility, CHOICES HCBS and PACE.

(a) The NF must have completed the PASRR process, as applicable and as described in 1200-13-01-.10(2)(i) above and pursuant to 1200-13-01-.23.

(b) An Applicant must meet both of the following LOC criteria in order to be approved for TennCare-reimbursed care in a NF, CHOICES HCBS or PACE, as applicable:

1. Medical Necessity of Care:

(i) Applicants requesting TennCare-reimbursed NF care. Care in a NF must be expected to improve or ameliorate the Applicant's physical or mental condition, to prevent a deterioration in health status, or to delay progression of a disease or disability, and such care must be ordered and supervised by a physician on an ongoing basis.

(ii) Applicants requesting HCBS in CHOICES or PACE. HCBS must be required in order to allow the Applicant to continue living safely in the home or community-based setting and to prevent or delay placement in a NF, and such HCBS must be specified in an approved plan of care and needed on an ongoing basis.

(I) The need for one-time CHOICES HCBS is not sufficient to meet medical necessity of care for HCBS.

(II) If a Member's ongoing need for assistance with activities of daily living and/or instrumental activities of daily living can be met, as determined through the needs assessment and care planning processes, through the provision of assistance by family members and/or other caregivers, or through the receipt of services available to the Member through community resources (e.g., Meals on Wheels) or other payer sources (e.g., Medicare), the Member does not require HCBS in order to continue living safely in the home and community-based setting and to prevent or delay placement in a NF.

2. Need for Inpatient Nursing Care:

(i) Applicants requesting TennCare-reimbursed NF care.

The Applicant must have a physical or mental condition, disability, or impairment that, as a practical matter, requires daily inpatient nursing care. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

(I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or

(II) Meet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)~~(2)~~.(iii) on an ongoing basis and be determined by TennCare ~~to not qualify for enrollment in CHOICES Group 3 (see TennCare Rule 1200-13-01-.05)~~ through approval of a Safety Determination Request to not qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination.

(ii) Applicants eligible to receive care in a NF, but requesting HCBS in CHOICES Group 2 or PACE.

The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS or PACE, the Applicant would require and must qualify to receive NF services in order to remain eligible for HCBS. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

(I) Have a total score of at least nine (9) on the TennCare NF LOC Acuity Scale; or

(II) Meet one (1) or more of the ADL or related criteria specified in 1200-13-01-.10(4)(b)~~(2).~~(iii) on an ongoing basis and be determined by TennCare through approval of a Safety Determination Request to not qualify for enrollment in CHOICES Group 3. An applicant who could be safely served in CHOICES Group 3 except that he does not meet Medicaid categorical and financial eligibility criteria for CHOICES Group 3 (i.e. is not an SSI recipient) shall not be eligible for CHOICES Group 1 or Group 2 as a result of a Safety Determination. ~~To not qualify for enrollment in CHOICES Group 3 (see TennCare Rule 1200-13-01-.05).~~

(iii) Applicants not eligible to receive care in a NF, but at risk of NF placement and requesting HCBS in CHOICES Group 3, including Interim CHOICES Group 3.The Applicant must have a physical or mental condition, disability, or impairment that requires ongoing supervision and/or assistance with activities of daily living in the home or community setting. In the absence of ongoing CHOICES HCBS, the Applicant would not be able to live safely in the community and would be at risk of NF placement. The following criteria shall reflect the individual's Applicant's capabilities on an ongoing basis and not isolated, exceptional, or infrequent limitations of function in a generally independent person who is able to function with minimal supervision or assistance. The Applicant must be unable to self-perform needed nursing care and must meet one (1) or more of the following criteria on an ongoing basis:

GW10115156

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

Date: 6/19/2015

Signature: D. J. Gordon

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

KATHY CROCKARELL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/19/15

Notary Public Signature: Kathy Crockarell

My commission expires on: 1/8/19

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

Herbert H. Slatery III
Attorney General and Reporter

6/30/2015
Date

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Filed with the Department of State on: 6/30/15

Effective for: 180 *days

Effective through: 12/27/15

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

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Collateral Pool Board
SUBJECT:	Bank collateral pool
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 9-4-508(7)
EFFECTIVE DATES:	September 21, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule makes the rules consistent with present law concerning the manner in which the state treasurer appoints board members. The rule deletes the board's formula for calculating the collateral pool participation fee. According to the Board, the rule removes all references to the Sheshunoff bank rating as part of the criteria that the Board uses to evaluate a bank that is applying to participate in the pool.

Regulatory Flexibility Addendum

Not applicable.

Impact on Local Governments

None.

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Sequence Number: 06-24-15
Rule ID(s): 5972
File Date: 6/23/15
Effective Date: 9/21/15

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 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.

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:	Collateral Pool Board
Division:	Cash Management
Contact Person:	Tim McClure
Address:	502 Deaderick Street, Andrew Jackson Building, 13th Floor, Nashville, TN
Zip:	37243
Phone:	(615) 532-1166
Email:	Tim.mcclure@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**
1700-04-01	Bank Collateral Pool
Rule Number	**Rule Title**
1700-04-01-.02	Board Membership and Operations
1700-04-01-.03	Admission to Collateral Pool
1700-04-01-.04	Determination of Collateral Pledge Level
1700-04-01-.09	Fees

RULES
OF
THE TENNESSEE DEPARTMENT OF TREASURY
BANK COLLATERAL POOL BOARD

CHAPTER 1700-4-1
BANK COLLATERAL POOL

TABLE OF CONTENTS

1700-4-1-.01	In General	1700-4-1-.08	Reports and Procedures for Trustee Custodians
1700-4-1-.02	Board Membership and Operations	1700-4-1-.09	Fees
1700-4-1-.03	Admission to Collateral Pool	1700-4-1-.10	Withdrawal from Collateral Pool Participation
1700-4-1-.04	Determination of Collateral Pledge Level	1700-4-1-.11	Reports by Public Depositors
1700-4-1-.05	Enforcement Actions - Cease and Desist Orders	1700-4-1-.12	Payment of Losses
1700-4-1-.06	Suspension from Pool	1700-4-1-.13	Appeal of Decisions
1700-4-1-.07	Reporting by Qualified Public Depository		

1700-4-1-.01 IN GENERAL.

(1) Purpose. T.C.A., Title 9, Chapter 4, Part 5 enacted the Collateral Pool for Public Deposits Act of 1990. The Act creates a Collateral Pool as an alternative means for securing public deposits. The purpose of these rules is to establish requirements for admission, participation, and administration of the Collateral Pool as required by and consistent with the Act.

(2) Definitions. For the purpose of these rules:

(a) Average daily balance means the sum of the average daily demand deposits, the average daily time deposits, and the average daily savings deposits of public depositors held during the calendar month immediately preceding the current month less any applicable Federal Deposit Insurance.

(b) Average daily demand deposit means the total by account of all public funds held on a daily basis in demand deposit accounts during the calendar month immediately preceding the current month divided by the number of calendar days in the month. Demand deposit account shall have the meaning as defined by the Board of Governors of the Federal Reserve System, Regulation D, 12 CFR 204, as amended.

(c) Average daily time deposit means either:

1. The total by account of all public funds held on a daily basis in time deposit accounts during the calendar month immediately preceding the current month divided by the number of calendar days in the month; or

2. The higher of (i) the actual amount of public funds in time deposit accounts on the last day of the calendar month immediately preceding the current month; or (ii) the sum of the amount of public funds in time deposit accounts on the last day of the two (2) calendar months immediately preceding the current month divided by two (2). Time deposit accounts shall have the meaning as defined by the Board of Governors of the Federal Reserve System, Regulation D, 12 CFR 204, as amended.

(d) Average daily savings deposit means either:

1. The total by account of all public funds held on a daily basis in savings deposit accounts during the calendar month immediately preceding the current month divided by the number of calendar days in the month; or

(Rule 1700-4-1-.01, continued)

2. The sum of the amount of public funds in savings deposit accounts on the last day of the two (2) calendar months immediately preceding the current month divided by two (2). Savings deposit account shall have the meaning as defined by the Board of Governors of the Federal Reserve System, Regulation D, 12 CFR 204, as amended.

(e) Federal Deposit Insurance means the sum of the insurance provided by the Federal Deposit Insurance Act on all accounts of public depositors at the qualified public depository; such insurance for public depositors shall be determined in accordance with FDIC Regulations, 12 CFR 330.14, as amended.

(f) Person qualified to conduct audits means a person who is certified or licensed to practice public accountancy. Such person may be an employee of the qualified public depository.

Authority: *T.C.A. §9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed August 30, 1996; effective December 27, 1996.*

1700-4-1-.02 BOARD MEMBERSHIP AND OPERATIONS.

(1) Board Membership.

(a) Generally. The Board shall be comprised of seven (7) members as follows: The Commissioner of Financial Institutions and the State Treasurer who serve as Ex-Officio members; one (1) representative of local government; and four (4) representatives of the banking industry. All seven (7) members shall be voting members of the Board.

(b) Local Government Representative. The local government representative shall be appointed by the State Treasurer for a two (2)-year term and shall have at least two (2) years of experience in the field of finance. The State Treasurer may select the local government representative from lists of qualified persons submitted by interested county and municipal organizations including, but not limited to, the Tennessee County Services Association, the Tennessee Municipal League and the Tennessee County Officials Association. ~~be for a term of one (1) Provided, however, the representative shall serve on the Board until his successor is elected~~.

(c) Banking Industry Representatives. The State Treasurer shall appoint four (4) members to the Board from a list of two (2) nominees for each member position submitted by the Board of Directors of the Tennessee Bankers Association. Appointment of these members shall be effective at the time the Secretary of the Board is notified by the State Treasurer of such appointment. The Tennessee Bankers Association shall designate the initial terms of the members as one (1) year or two (2) year terms. The initial banking industry representatives shall serve the term designated by the Tennessee Bankers Association. All subsequent banking industry representatives shall serve two (2) year terms unless completing the unexpired term of a member due to a vacancy. Provided, however, a banking industry representative shall continue to serve until his successor is appointed.

(d) In determining qualified persons to fill positions on the Board appointed by the State Treasurer, the State Treasurer shall consult with the interested groups, including, but not limited to, the organizations listed in Tenn. Code Ann. §9-4-506(a)(1).

(2) Meetings.

(a) How Called. The Board shall meet at the call of the Chairman or upon written request to the Chairman by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least five (5) calendar days prior to the date of the meeting. Notice of the Board meetings shall be posted in locations in the State Capitol complex at least forty-eight (48) hours prior to any Board meeting by the Board Secretary. The Board may meet by telephone conference call upon a determination by the Board

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(Rule 1700-4-1-.01, continued)

that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Secretary to the Board shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in locations in the State Capitol complex at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present in person at the meeting for purposes of quorum requirements and voting, but not for purposes of determining per diem eligibility.

(b) Quorum. A quorum of the Board shall consist of four (4) members of the Board. Notwithstanding the presence of a quorum, where these rules require certain actions to be taken by a specified number of votes, the action may not be taken unless the requisite number of votes is cast.

(c) Presiding Officer. The Chairman shall preside at all meetings of the Board. In the Chairman's absence, the Vice-Chairman shall preside.

(d) Executive Session. In the event that information deemed confidential pursuant to T.C.A. § 9-4-518(e) is to be discussed by the Board, the Board shall meet in executive session pursuant to T.C.A. § 9-4-518(f). The presiding officer shall announce to those in attendance that the Board, due to the confidential nature of material to be discussed, will meet in executive session which is closed to the public. The presiding officer shall set and announce a time specific at which point the meeting will again be opened for public attendance. The Board shall not take any official action during executive sessions. Minutes of executive sessions shall be maintained in such a manner as to not disclose the nature of confidential information discussed.

(3) Records.

(a) Where Maintained. All records of the Board shall be maintained by the State Treasurer in accordance with the requirements of applicable state law and rules and regulations pertaining to the receipt and maintenance of public records.

(b) Confidential Records. Records submitted from any source which are confidential in nature as provided in T.C.A. § 9-4-518(e) shall be maintained by the State Treasurer in such a manner as to protect the confidentiality of those records and to prevent the unauthorized dissemination of such information.

(c) Access to Records. Persons requesting access to the records of the Board shall submit their request to the State Treasurer who, upon determining that such records are not confidential in nature, shall permit the inspection of such records in accordance with applicable law, rules and regulations.

(4) General Delegation to Treasurer. The Board, upon the affirmative vote of seven (7) members, may delegate such of its duties to the State Treasurer as the Board deems appropriate. In exercising such delegations, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper.

(5) Votes Required for Board Action.

(a) Admission. Pursuant to T.C.A. § 9-4-503(b), no bank nor savings institution shall be admitted for participation in the Collateral Pool unless it receives six (6) affirmative votes of the Board.

(b) Increase Collateral Pledge Level. The collateral pledge level of a qualified public depository may be increased upon four (4) affirmative votes of the Board.

(c) Suspension from Collateral Pool. A qualified public depository may be suspended from participation in the collateral pool upon four (4) affirmative votes of the Board.

(d) Mandatory Withdrawal. Pursuant to T.C.A. § 9-4-517(a), a qualified public depository shall be required to withdraw upon a majority vote of the Board. For purposes of this rule, a majority vote shall mean an affirmative vote of four (4) members of the Board.

(e) ~~Rating Criteria and~~ Benchmark Levels. The Board, upon the affirmative vote of four (4) members, shall set the ~~initial rating criteria and~~ benchmark levels ~~as provided~~ in accordance with rule 1700-04-01-.03(2)(b) and (c). Any subsequent revision to the established ~~rating criteria or~~ benchmark levels may be accomplished by a majority vote of the Board, unless the ~~such~~ revision causes the benchmark ~~criteria or~~ levels to be less stringent upon applicants. Should the Board's ~~Any~~ subsequent revision cause the ~~to the rating criteria or~~ benchmark levels ~~which causes the criteria or levels~~ to be less stringent upon applicants, then the revision shall require six (6) affirmative votes of the Board. The benchmark levels shall be included in the Collateral Pool Operations Manual and made available to prospective applicants for admission to the collateral pool.

(f) Majority Vote for Other Actions. Any action of the Board, other than that requiring a specific affirmative vote, may be accomplished by a majority vote. For purposes of this rule, a majority shall mean the affirmative vote of four (4) members of the Board.

(6) Board Officers.

(a) Selection. Officers shall be elected by majority vote of the Board. The election of officers shall occur at the first Board meeting held after June 30 of each year.

(b) Term. Officers shall serve a one (1) year term to expire upon election of a successor by the Board.

(c) Chairman. The Chairman shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. The Chairman shall have other duties and powers as may be assigned by the Board by majority vote.

(d) Vice-Chairman. The Vice-Chairman shall preside at meetings in the absence of the Chairman. The Vice-Chairman shall exercise such other duties as may be assigned by majority vote of the Board.

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(Rule 1700-4-1-.09, continued)

(e) Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chairman, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members. The Secretary shall also maintain information on the appointment of members to the Board and their term of office.

(7) Miscellaneous.

(a) Attachment to Treasury Department. The Board, for administrative purposes, is attached to the Tennessee Treasury Department pursuant to T.C.A. § 9-4-506(e).

(b) Vacancies. Should any appointed member of the Board become unable to continue to serve on the Board for whatever reason, the member or his representative shall notify the Board of such inability to serve by submitting a letter of resignation to the Secretary. The Secretary shall notify the appropriate appointing Authority of the resignation and request that another representative be appointed to serve the remainder of the member's term.

Authority: *T.C.A. §§9-4-503, 9-4-506, 9-4-508, and 9-4-521(c).* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed January 30, 1995; effective May 31, 1995. Amendment filed August 30, 1996; effective December 27, 1996. Amendment filed October 29, 1999; effective February 28, 2000.*

1700-4-1-.03 ADMISSION TO COLLATERAL POOL.

(1) Application by Public Depository.

(a) Applications for Participation. To be considered for admission to the collateral pool, a Tennessee bank, as defined in T.C.A. § 45-12-102, or a Tennessee savings institution, as defined below, shall submit a completed Application Package to the Board. The Application Package shall include a completed application form and required supplemental information and documents. For purposes of these rules, a "Tennessee savings institution" means any savings association as defined in 12 U.S.C. § 1813 and which has branches located in the State of Tennessee authorized to accept federally insured deposits.

(b) Application Form. The State Treasurer shall prescribe an appropriate form which solicits from applicants the following information:

1. the legal name of the financial institution;

2. the address of principal offices of the institution;

3. the institution's transit routing number;

4. the institution's FDIC insurance certificate number;

5. the institution's tax identification number;

6. the date the institution was chartered;

7. the date the institution commenced operations in Tennessee;

8. a list of the applicants three (3) senior officers, including a resume of their experience and qualifications;

9. a list of public depositors by account held by the applicant at the end of the preceding calendar year;

10. for the twelve (12) months preceding the date of application, the average monthly balance

(Rule 1700-4-1-.09, continued)

of public deposits held for each month;

11. the legal name and address of the principal offices of all trustee custodians proposed to safekeep eligible collateral pledged to the pool;

12. the institution and institution's holding company (if any) debt ratings from two (2) recognized rating agencies (if available); and

13. for the eight (8) quarters immediately preceding the date of application, a schedule of financial information, as determined by the Board, to be taken from the institution's Report of Condition to the FDIC or from the institution's Thrift Financial Report to the OTS (collectively referred to as call report).

(c) Supplemental Information and Documents Required. The Application Package shall include the following executed documents:

1. copies of the Depository Pledge Agreement; and

2. copies of the Contingent Liability Agreement.

(d) Completion of Application Form. The application form shall be executed by the president or chief executive officer of the applicant and the individual responsible for preparing the application and contain all the prescribed information to be considered complete. The applicant may withdraw the application at any time prior to the Board taking final action on the application.

(2) Admission Criteria.

(a) Admission Criteria ~~Generally~~. In order t~~T~~o be admitted to the collateral pool, each applicant must meet or exceed the standards established by the Board, which include, but are not limited to benchmark levels and financial standards. ~~in the areas of rating criteria, and in an evaluation of financial standards.~~

(b) Benchmark Levels. ~~Rating Criteria~~. Any applicant requesting participation in the collateral pool shall meet the benchmark levels established ~~must have a rating equal to or greater than a certain rate as shall be set~~ by the Board to determine an applicant's eligibility to participate in the collateral pool. In addition to the benchmark levels established by the Board pursuant to this Paragraph, the Board may consider, in its sole discretion, any private source of information that is available to the Board at the time that it considers the applicant's participation in the collateral pool to evaluate the applicant's performance. ~~from time to time~~. ~~The rating of an applicant shall be determined from the most recent quarterly report published by Sheshunoff Information Services, Inc. (Organization rating) prior to application. Provided, however, the Board may admit an applicant with a rating of less than the rate set by the Board if it is determined that the applicant is otherwise financially sound.~~

(c) Evaluation of Financial Standards. The Board may consider any one, all, or any combination of the following guidelines for evaluating financial standards. The guidelines include, but are not limited to, benchmark levels as shall be determined by the Board from time to time calculated by the following ratios taken from the schedule submitted by the applicant pursuant to rule 1700-4-1-.03(1)(b)13:

1. Capital Adequacy Ratios:

(i) Primary Capital to Assets

$$\frac{\text{Total Equity Capital}}{\text{Total Assets}}$$

(Rule 1700-4-1-.09, continued)

(ii) Total Capital to Assets

Subordinated Notes & Debentures
Limited Life Preferred Stock
Total Equity Capital
Total Assets

(iii) (I) For banks, Regulatory (Tier 1) Capital

Calculated in accordance with 12 CFR Part 225, Appendix A; 12 CFR Part 208, Appendix A; or 12 CFR Part 325, Appendix A, as applicable to the applicant based upon Federal Regulations.

(II) For savings institutions, Core (Tier I) Capital

Calculated in accordance with 12 CFR Part 567.5(a), as applicable to the applicant based upon Federal Regulations.

(iv) (I) For banks, Regulatory (Tier II) Capital

Calculated in accordance with 12 CFR Part 225, Appendix A; 12 CFR Part 208, Appendix A; or 12 CFR Part 352, Appendix A, as applicable to the applicant based upon Federal Regulations.

(II) For savings institutions, Supplemental (Tier II) Capital

Calculated in accordance with 12 CFR Part 567(b), as applicable to the applicant based upon Federal Regulations.

Savings institutions must pass the three (3) risk-based capital requirements set forth in 12 CFR 567.2(a)(1).

2. Asset Quality Ratios:

(i) Loan Loss Allowance to Non-Performing Loans

Allowance for Loan Losses
Total Loans Past Due 90 Days
Total Non-Accrual Loans

(ii) Loans 90 Plus Days to Total Loans

Total Non-Accrual Assets
Total Loans Past Due 90 Days
Total Loans

(iii) Non-Performing Assets to Total Assets

Total Loans Past Due 90 Days
Total Non-Accrual Loans
Other Real Estate Owned
Total Assets

3. Earnings Ratio:

Return on Average Assets (Annualized)
Net Income (Annualized)
Average Assets

(Rule 1700-4-1-.09, continued)

4. Liquidity Ratio:

Loans to Total Assets

$$\frac{\text{Total Loans}}{\text{Total Assets}}$$

The Board may consider such other financial information as it deems necessary or appropriate. (d)

Evaluation of Other Factors. The Board may further consider such other information bearing on the applicant's appropriateness for participation in the pool as in the opinion of the Board may be relevant including, but not limited to, the applicant's mode of conducting and managing its affairs, the action of its directors, the investment of the applicant's funds, the safety and prudence of the applicant's management, and any administrative proceeding or court action initiated against the applicant.

(3) Consideration of Application.

(a) Consideration by the State Treasurer. Upon receipt of an Application Package, the State Treasurer shall review the contents of the Application Package to ensure completeness. In the event that an Application package is found to be incomplete, the State Treasurer shall notify the applicant of the deficiency and provide the applicant with sixty (60) calendar days in which to cure the deficiency. If the deficiency is not cured within this time, the State Treasurer shall return the Application Package to the applicant. Upon determining that an Application Package is complete, the State Treasurer shall notify the Chairman that applications are ready for consideration by the Board.

(b) Consideration by the Board. The Board shall consider each completed application submitted by an applicant for participation in the collateral pool. The Board, upon majority vote, may delay action upon any application until the next succeeding meeting of the Board. Provided, however, the Board may not delay action on any application more than one (1) time. An applicant receiving the requisite number of votes for admission shall be admitted to the pool.

(c) Notice to Applicant. The Secretary of the Board shall notify an applicant in writing of any action taken by the Board or by the Treasurer within ten (10) calendar days of such action.

(4) Appeal of Admission Determination. Any applicant denied admission to the collateral pool may make a written request for reconsideration to the Board by following the appeal procedure in rule 1700-4-1-.13.

Authority: *T.C.A. §§9-4-503 and 9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed January 30, 1995; effective May 31, 1995. Amendment filed August 30, 1996; effective December 27, 1996.*

1700-4-1-.04 DETERMINATION OF COLLATERAL PLEDGE LEVEL.

(1) Collateral Pledge Level. A qualified public depository shall pledge eligible collateral having a market value not less than the greater of the average daily balance or average monthly balance of public deposits held by the qualified public depository multiplied by the qualified public depository's collateral pledging level. The collateral pledging level for all qualified public depositories shall be calculated quarterly according to the following schedule:

(a) If the qualified public depositories hold an aggregate of less than thirty percent (30%) of the sum total of deposits held in the State of Tennessee by banks and savings institutions, the collateral pledging level shall equal two hundred percent (200%).

(b) If the qualified public depositories hold an aggregate of thirty percent (30%) or more of the total

sum of deposits held in the State of Tennessee by banks and savings institutions, the collateral pledging level shall equal one hundred fifteen percent (115%), except as provided in parts 1 through 3 of this subparagraph below:

1. The collateral pledging level shall equal one hundred percent (100%) for any qualified public depository that ~~which has a rating equal to or greater than twenty-five (25) as determined from the most recent quarterly report published by Sheshunoff Information Services, Inc. (Organization rating), and~~ meets the benchmark levels established pursuant to part 4 of this subparagraph below for at least seven (7) of the nine (9) ratios pursuant to ~~set forth in~~ rule 1700-04-01-.03(2)(b) and (c);

2. The collateral pledging level for a qualified public depository shall equal ninety percent (90%) if: ~~(i) the long-term debt of both the qualified public depository and the depository's holding company (if any) are included in the three (3) highest ratings given by Moody's Investors Service, Inc. or by Standard and Poor's Corporation (excluding any modifiers);~~ (ii) the qualified public depository meets the benchmark levels established pursuant to part 4 of this subparagraph below for all four (4) of the Capital Adequacy Ratios set forth in rule 1700-04-01-.03(2)(c)1; and (iii) during any two (2) consecutive quarters, the qualified public depository does not fail to meet ~~during any two (2) consecutive quarters~~ the benchmark levels established pursuant to part 4 of this subparagraph below for any two (2) of the non- Capital Adequacy Ratios set forth in rules 1700-04-01-.03(2)(c)2 through 1700-04-01-.03(2)(c)4.

   (I) If a long-term debt rating does not exist for both the qualified public depository and the depository's holding company, the qualified public depository may nevertheless have a collateral pledging level equal to ninety percent (90%) provided the rating which is in existence meets the requirements in subpart 2(i) of this subparagraph above and provided the qualified public depository meets the other requirements contained in subparts 2(ii) and 2(iii) above.

   (II) If a long-term debt rating has been given by both Moody's Investors Service, Inc. and by Standard and Poor's Corporation to either the qualified public depository or to the depository's holding company, then both ratings must be included in the three (3) highest grades (excluding any modifiers) in order for the qualified public depository to meet the requirements in subpart 2(i) of this subparagraph above.

~~3. The collateral pledging level for a qualified public depository shall equal ninety percent (90%) if: (i) a long-term debt rating does not exist for either the qualified public depository or the depository's holding company and the qualified public depository has a rating equal to or greater than forty (40) as determined from the most recent quarterly report published by Sheshunoff Information Services, Inc. (Organization rating); (ii) the qualified public depository meets the benchmark levels established pursuant to part 4 of this subparagraph below for all four (4) of the Capital Adequacy Ratios set forth in rule 1700-4-1-.03(2)(c)1; and (iii) the qualified public depository does not fail during any two (2) consecutive quarters the benchmark levels established pursuant to part 4 of this subparagraph below for any two (2) of the non-Capital Adequacy Ratios set forth in rules 1700-4-1-.03(2)(c)2 through 1700-4-1-.03(2)(c)4.~~

3~~4~~. The Board shall determine from time to time the benchmark levels referred to in parts 1 through 3 of this subparagraph above. Such benchmarks may differ from the benchmark levels established by the Board for evaluating collateral pool admission pursuant to rule 1700-4-1-.03(2)(c). The financial information necessary in determining whether the benchmark levels have been met by a qualified public depository for a given quarter shall be taken from the quarterly report submitted pursuant to rule 1700-4-1-.07(2), or, if the quarterly report requirement is suspended, from the source described in rule 1700-4-1-.07(2)(c).

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(Rule 1700-4-1-.09, continued)

(2) Minimum Pledged Collateral. Notwithstanding the average daily balance or average monthly balance, a qualified public depository shall maintain a minimum of pledged eligible collateral whose market value is not less than one hundred thousand dollars ($100,000).

(3) Limitations.

(a) Excess of Capital. For any deposits that a qualified public depository holds in excess of its capital, surplus, and undivided profits, the Board may require the qualified public depository to pledge eligible collateral at a higher pledge level.

(b) Ten Percent (10%) of Pool. The Board may require a qualified public depository which holds public deposits which exceed ten percent (10%) of the collateral pool to pledge eligible collateral against such deposits at a higher collateral pledge level.

(c) New Institutions. The Board may required a qualified public depository which has been operating less than three (3) years to pledge eligible collateral at a higher pledge level.

(4) Temporary Increases in Collateral. A qualified public depository which accepts any public deposit that causes its public deposits to exceed the greater of its average daily balance, or average monthly balance by twenty-five percent (25%) shall be required to pledge additional eligible collateral with the Treasurer within two (2) business days of the deposit. The additional eligible collateral shall be equal to the difference between the actual public deposits and the greater of the average daily balance or average monthly balance times the applicable collateral pledge level, including any limitations thereto. The additional eligible collateral shall not be required if deposit(s) causing the increase are withdrawn within the two (2) business days and prior to pledging of the additional collateral. Additional pledged collateral shall be included in required collateral and held by the Treasurer until the next regular monthly report is filed.

Authority: *T.C.A. §§9-4-504, 9-4-508(7), 9-4-508(1)(D), and 9-4-508(7).* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed August 30, 1996; effective December 27, 1996. Amendment filed October 29, 1999; effective February 28, 2000. Amendment filed May 31, 2000; effective September 28, 2000. Amendment filed October 30, 2001; effective February 28, 2002.*

1700-4-1-.05 ENFORCEMENT ACTIONS - CEASE AND DESIST ORDERS.

(1) Cease and Desist Orders. If the Board has reason to believe that any qualified public depository or other financial institution subject to the regulatory Authority of the Board is or has been violating any of the provisions of the Act or of these rules including, but not limited to, any action that would constitute a default under the Act, or any failure to meet the criteria set forth in rule 1700-4-1-.03(2), or any failure to file any required report or perform any required action, the Board may issue to the qualified public depository or other financial institution that is subject to the Authority of the Board an order to cease and desist from the violation or to correct the condition giving rise to or resulting from the violation.

(2) Notice to Qualified Public Depository. The qualified public depository shall be notified within five (5) business days of the cease and desist order. The cease and desist order shall specify the violation, the effective date of the cease and desist order, and the terms and conditions of such cease and desist order.

(3) Effect of Cease and Desist Order. A cease and desist order may contain any terms and conditions the Board may deem necessary or appropriate to remedy any violation of law or these rules. Such terms and conditions may include, but shall not be limited to, enhanced reporting requirements or pledging of additional collateral.

(4) Appeal. A qualified public depository which is issued a cease and desist order may appeal the decision by following the appeal procedure in rule 1700-4-1-.13.

Authority: *T.C.A. §9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

(Rule 1700-4-1-.09, continued)

1700-4-1-.06 SUSPENSION FROM POOL.

(1) Notice of Suspension to Qualified Public Depository. The Board may suspend or disqualify any qualified public depository for a violation of any order issued pursuant to these rules or for violation of any of the provision of the Act or these rules. The qualified public depository shall be notified of the effective date of the suspension, the length of the suspension and such terms or conditions of the suspension that the Board may prescribe within ten (10) business days of the action by the Board.

(2) Notice of Suspension to Public Depositors. The qualified public depository shall furnish the Treasurer, in a form prescribed by him, a current listing of all public depositors within five (5) business days of the receipt of a notice of suspension. The Treasurer shall notify each public depositor appearing on the listing submitted by the qualified public depository of the effective date, duration and terms of suspension of any qualified public depository. In addition, if the suspension is for longer than sixty (60) calendar days, the Treasurer shall publish the notice of suspension in the Tennessee Administrative Register.

(3) Effect of Suspension. A qualified public depository which is suspended from participation in the pool shall be prohibited from opening additional demand deposit accounts, accepting any savings deposits or time deposits which would be secured by the pool or from renewing any time deposits which are secured by the pool. The qualified public depository shall continue to file all required reports and shall continue to collateralize all existing time deposits, savings deposits and demand deposits secured by the pool.

(4) Appeal. A qualified public depository which is suspended may appeal the decision by following the appeal procedure in rule 1700-4-1-.13.

Authority: *T.C.A. §9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

1700-4-1-.07 REPORTING BY QUALIFIED PUBLIC DEPOSITORY.

(1) Monthly Reports.

(a) Report Contents. A qualified public depository shall submit a monthly report to the Treasurer containing information required by the Board and prescribed by the Treasurer. The report shall include, but shall not be limited to, the following: average daily balance of all demand deposits; the average daily balance of all time deposits and the average daily balance of all savings deposits held by it during the month; the average monthly balance of all public deposits held for the previous twelve (12) calendar months; a detailed schedule of all securities pledged as collateral; a statement of selected financial information; and such other information requested on the form.

(b) When Due. The monthly report shall be delivered to the Treasurer not later than the fifteenth (15th) day after the end of each calendar month, or when requested by the Treasurer, and shall contain the applicable information for the preceding calendar month. The report shall be submitted under oath, and signed by the president or other duly authorized officer of the institution, and by the individual who prepared the report.

(c) Supplemental Report. At any time, the Board or the Treasurer may, in writing, request any information which would be included in the monthly report. The qualified public depository shall provide the supplemental report to the Treasurer within five (5) business days of receipt of the request.

(d) Amended Reports. At any time that a qualified public depository determines that any information contained on a monthly report is inaccurate or incomplete, the qualified public depository shall file an amended report with the Treasurer not later than ten (10) business days after the determination is made.

(Rule 1700-4-1-.09, continued)

(2) Quarterly Reports.

(a) Report Contents. Every qualified public depository shall file with the Treasurer on a quarterly basis a statement of selected financial information from the quarterly call report required by the Federal Deposit Insurance Act, 12 USC Section 1817 et seq. The report shall be filed at the same time the quarterly call report is filed with the FDIC or the OTS, whichever is applicable, but not later than the date that the report is due to be filed with such entity. Every savings institution shall accompany its report to the Treasurer with a copy of the CCR report section of the institution's call report.

(b) Amended Reports. Every qualified public depository shall file with the Treasurer an amended report at any time the selected financial information on the amended quarterly call report is amended. Such amended report shall be filed at the same time it is filed with the FDIC or the OTS, whichever is applicable.

(c) Notwithstanding subparagraphs (2)(a) and (2)(b) above, the Treasurer may by written notice to all qualified public depositories suspend the requirement of filing the quarterly reports described in this rule. If the Treasurer suspends such requirement, the selected financial information otherwise required in the quarterly reports shall be obtained by the Treasurer from such other source as the Treasurer deems reliable.

(3) Annual Reports.

(a) Annual Reports Generally. Every qualified public depository shall file an annual report with the Treasurer. The annual report shall be filed on a form approved by the Board and shall contain a statement of all public deposits held for the credit of all public depositors at the close of business on the last business day in the calendar year. The statement shall be prepared by a person qualified to conduct audits. The annual report shall contain such other information approved by the Board on a form prescribed by the Treasurer.

(b) When Due. The annual report shall be filed not later than March 31 of each year and shall include the required information for the prior calendar year.

(c) Amended Report. Every qualified public depository shall file with the Treasurer an amended annual report if it determines that any information included on the annual report is inaccurate or incomplete. The amended report shall be filed within fifteen (15) business days of the time the qualified public depository determines that the prior report was inaccurate or incomplete.

(4) Change of Name, Address, Charter of the Institution, or Ownership.

(a) Report Contents. Every qualified public depository shall file with the Treasurer, on a form prescribed by him, a report of any change of name, address, charter or ownership of the institution.

(b) When Due. The report shall be filed within three (3) business days of such change.

(5) Confidential Information. It shall be the responsibility of each qualified public depository from which information or reports is required to inform the Treasurer of information that is confidential. The Treasurer shall design report forms so that any information which is confidential may be placed on separate sheets; only information which is confidential by State or Federal law may be so designated.

Authority: *T.C.A. §§9-4-508(7), 9-4-508(8), and 9-4-518(b).* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed August 30, 1996; effective December 27, 1996. Amendment filed October 30, 2001; effective February 28, 2002.*

(Rule 1700-4-1-.09, continued)

1700-4-1-.08 REPORTS AND PROCEDURES FOR TRUSTEE CUSTODIANS.

(1) Appointment of Trustee Custodians. Upon being designated as a qualified public depository, the qualified public depository shall appoint one or more trustee custodians from the deposit of eligible collateral by the qualified public depository. The appointment shall be made on a form provided by the Treasurer and shall be delivered to the Treasurer and accepted by him prior to the deposit of any collateral with the trustee custodian.

(2) Notification. The Treasurer shall notify the qualified public depository of the acceptance or denial of any appointment of a trustee custodian.

(3) Report Contents. Every trustee custodian shall submit a quarterly report to the Treasurer providing a description of eligible collateral securities deposited by the qualified public depository, including the par value of the eligible collateral, as well as other information requested by the Treasurer.

(4) When Due. The trustee custodian shall file the report with the Treasurer on a schedule as established by the Treasurer. The report shall include information as of the end of the scheduled quarter.

(5) Amended Reports. A trustee custodian shall submit to the Treasurer an amended report at any time that it determines the information on any prior report was incomplete or inaccurate. The amended report shall be filed not later than ten (10) business days after it determines that any prior report was inaccurate or incomplete.

Authority: *T.C.A. §§9-4-505 and 9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

~~**1700-4-1-.09 FEES.**~~

~~(1) Application Fee. The Board may establish an application fee which may include the cost of processing the application, or such other cost as the Board deems necessary or appropriate. The fee shall be submitted with the application. The Board may establish that all or a portion of the fee shall be refunded if the application is denied.~~

~~(2) Participation Fee.~~

~~(a) Calculation of Fees. The Treasurer shall annually certify to the Board the estimated amount required to cover the expenses of operating the collateral pool for the year next following. On the basis of such certification, the qualified public depositories shall bear a percentage of such operating expense based upon the following schedule:~~

~~1. If the qualified public depositories hold an aggregate of thirty percent (30%) or more of the sum total of deposits held in the State of Tennessee by banks and savings institutions, the percentage of the operating expense to be borne by the qualified public depositories shall be zero percent (0%).~~

~~2. If the qualified public depositories hold an aggregate of less than thirty percent (30%) of the sum total of deposits held in the State of Tennessee by banks and savings institutions, the percentage of the operating expense to be borne by the qualified public depositories shall equal one hundred percent (100%).~~

~~The sum total of deposits held in the State of Tennessee by banks and savings institutions, and the sum total of such deposits held by the qualified public depositories shall be determined from the most recent quarterly report published by Sheshunoff Information Services, Inc.~~

~~(b) Proration of Expense. The percentage of the operating expenses to be borne by the qualified public depositories shall be prorated among the qualified public depositories and shall be assessed quarterly against all qualified public depositories participating during the quarter in the~~

(Rule 1700-4-1-.09, continued)

~~collateral pool. The assessment for each qualified public depository shall be determined by multiplying the amount of the operating expenses to be borne by the qualified public depositories by the percentage of public deposits in the collateral pool held by the qualified public depository.~~

~~(c) Payment of Fee. The Treasurer shall notify each qualified public depository of the assessment as determined by the Board. The qualified public depository shall pay the fee within thirty (30) calendar days of the date of notice from the Treasurer.~~

~~(d) Increases in Fees. Notwithstanding subparagraph (a) above, if the Board determines, upon the recommendation of the Treasurer, that the resources available to the collateral pool are insufficient to operate the collateral pool program, the Board may increase the percentage to be borne by the qualified public depositories.~~

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Authority: *T.C.A. §9-4-508.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed August 30, 1996; effective December 27, 1996.*

1700-4-1-.10 WITHDRAWAL FROM COLLATERAL POOL PARTICIPATION.

(1) Voluntary Withdrawal.

(a) Voluntary Withdrawal Generally. A qualified public depository may withdraw from participation in the collateral pool by giving written notice to the State Treasurer, and to all public depositors having deposits at the qualified public depository. The notice shall provide an effective date of withdrawal which shall not be less than one hundred eighty (180) calendar days after the date the notice is received by the Treasurer.

(b) Contingent Liability of Withdrawing Qualified Public Depository. A qualified public depository shall be contingently liable for any loss to the pool as provided in the contingent liability agreement. To assure that an institution can meet its contingent liability, an institution shall continue to maintain pledged collateral in an amount established by the Board.

(c) Reports. The withdrawing qualified public depository shall continue to file monthly and annual reports with the Treasurer during the period in which the contingent liability agreement is in effect as well as the quarterly reports required under rule 1700-4-1-.07 unless the quarterly reports are suspended pursuant to subparagraph (2)(c) thereof.

(2) Mandatory Withdrawal from Collateral Pool.

(a) Mandatory Withdrawal Generally. A qualified public depository shall be required to withdraw upon the vote of a majority of the Board as provided in T.C.A. § 9-4-517.

(b) Contingent Liability of Withdrawing Qualified Public Depository. A qualified public depository shall be contingently liable for any loss to the pool as provided in the contingent liability agreement. To assure that an institution can meet its contingent liability, an institution shall continue to maintain pledged collateral in an amount established by the Board.

(c) Reports. The withdrawing qualified public depository shall continue to file monthly and annual reports with the Treasurer during the period in which the contingent liability agreement is in effect as well as the quarterly reports required under rule 1700-4-1-.07 unless the quarterly reports are suspended pursuant to subparagraph (2)(c) thereof.

(Rule 1700-4-1-.09, continued)

(3) Appeal. Any qualified public depository subject to mandatory withdrawal may appeal the decision of the Board by following the appeal procedure in rule 1700-4-1-.13.

Authority: *T.C.A. §§9-4-508(7), 9-4-516, and 9-4-517(c).* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992. Amendment filed October 30, 2001; effective February 28, 2002.*

1700-4-1-.11 REPORTS BY PUBLIC DEPOSITORS.

(1) Public Depositor Accounts. A public depositor shall insure that the name of the public depositor is on the account title, or certificate of deposit provided to the public depositor by the qualified public depository in a manner sufficient to disclose the identity of the public depositor.

(2) Annual Report. Not later than March 31 of each year, each public depositor shall file an annual report with the Treasurer on a form prescribed by him. The form shall contain the official name, address, and Federal tax identification number of the public entity and shall contain such other information determined by the Treasurer as necessary to enforce these rules or the provisions of the Act. A public entity established during the year shall furnish its official name, address, and Federal tax identification number to the Treasurer prior to making any public deposit.

Authority: *T.C.A. §§9-4-508 and 9-4-519.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

1700-4-1-.12 PAYMENT OF LOSSES.

(1) Priority for Multiple Losses. In the event a default or insolvency occurs to more than one qualified public depository, claims of public depositors shall have priority based on the date of the default or insolvency. Claims arising from a default or insolvency occurring earliest in time shall have priority over claims arising subsequently.

(2) Payment. The Treasurer shall establish the priority of claims arising from multiple defaults or insolvencies and pay public depositors based on the priority established.

Authority: *T.C.A. §§9-4-508 and 9-4-512.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

1700-4-1-.13 APPEAL OF DECISIONS.

(1) Admission and Collateral Pledge Level Determinations. An applicant or qualified public depository may appeal any final decision of the Board regarding its application for admission or collateral pledge level determination by filing written notice of appeal with the State Treasurer not later than thirty (30) calendar days after the final decision. An appeal of the Board decision shall be considered a contested case and shall follow the procedures for contested cases in T.C.A., Title 4, Chapter 5, Part 3.

(2) Cease and Desist, Suspensions and Withdrawal Determinations. Prior to the issuance of a cease and desist, suspension or mandatory withdrawal order, the Board shall advise the public depository of the facts which warrant the intended action and of the depository's right to request, within thirty (30) calendar days of receipt of such advice, a contested case hearing to show why the intended action is not warranted. Provided, however, the Board may, prior to affording an opportunity for such hearing, issue a cease and desist order, suspend or require mandatory withdrawal of a public depository if the Board finds that the safety of public deposits imperatively requires such action and incorporates a finding to that effect in its order.

Authority: *T.C.A. §§ -4-508 and 9-4-509.* ***Administrative History:*** *Original rule filed April 30, 1992; effective July 30, 1992.*

* 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)
Greg Gonzales	X				
Mickie Hodge	X				
David H. Lillard, Jr.	X				
David Neely	X				
DeWayne Olive	X				
Bob Rial	X				
Hugh Queener	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Collateral Pool Board on May 8, 2015, 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.

RHONDA J. MYERS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: 6/3/15

Signature: Alison Cleaves

Name of Officer: Alison Cleaves

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 6-3-15

Notary Public Signature: Rhonda J. Myers

My commission expires on: 3-7-17

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

6/11/2015
Date

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PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 6/23/15

Effective on: 9/21/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Water well licensing and well construction standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-10-106(1)
EFFECTIVE DATES:	September 17, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule does the following: 1. Relocates rules concerning the duties of the Ground Water Management Board to a rule chapter section that concerns the Board's duties; 2. Specifies that five credit hours of training, rather than three credit hours, will be required for license renewal; 3. Establishes 10 feet as the minimum distance requirement from house to sewer line, in cases where the line is tight; 4. Removes driller map number coordinate as an accepted means of denoting a well location so that all such locations must be reported by latitude and longitudinal coordinates; 5. Establishes standards for closing existing wells for which no well construction report is on file and/or those that are partially filled or obstructed; 6. Clarifies that water used in the drilling or construction process does not have to be treated with chlorine if the water is obtained on site from a direct connection to a public supply equipped with a proper cross connection device; and 7. Clarifies proper protective measures geothermal wells.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: In regards to the proposed amendment to subparagraph (1)(b) of Rule 0400-45-09-.06, a commenter was of the opinion that treatment installers should not be allowed to modify pump equipment or pump systems due to warranties and a lack of general knowledge in the operation of the pumping system.

Response: The department agrees and the proposed amendment to subparagraph (1)(b) of Rule 0400-45- 09-.06 has been deleted.

Comment: In regards to the proposed amendment to subparagraph (2)(c) of Rule 0400-45-09-.15, a commenter was of the opinion that the rules concerning the location of water wells should not be changed, wells should still be located using the current driller grid map overlay. Even if the county maps are not going to be made anymore, a state inspector should still be able to locate any well using the current system as county roads maps rarely change. If new roads were to be built, the inspector could easily contact the driller for directions to the site. Every well driller is already comfortable with the current procedure for locating wells.

Response: The department understands that the driller grid map is the way that most drillers are comfortable with, but the maps are no longer accurate and will no longer be published by the Tennessee Department of Transportation in a way where the staff can use a standard grid. So, therefore, a new system of locational information gathering is required. Also, in order to serve the drilling community and the citizens of the State, the information provided by the water well professional is entered into a database that will not accept the old driller map grid numbers and requires a latitude and longitude.

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.

(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.

There are approximately 300 water well drilling businesses in Tennessee.

(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 changes will require the locational data placed on the existing reports to be entered in a different format. In order to comply with the reporting requirements for latitude and longitude the drilling company can supply this information in several ways, the driller could use a Global Positional System (GPS), these are readily available at a reasonable cost (several smart phones have free apps that will show your location), there are several free computer mapping programs that provide the information and the driller can always use a topographical map and determine the location of the well.

(3) A statement of the probable effect on impacted small businesses and consumers.

These changes will require the locational data placed on the existing reports to be entered in a different format.

(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.

The current method of using the driller grid maps is no longer accurate and these maps will no longer be published by the Tennessee Department of Transportation in a way where the department or the well drillers can use a standard grid. Therefore, a new system of locational information gathering is required and the information provided by the water well professional is entered into a database that will not accept the old driller map grid numbers and requires a latitude and longitude. The information required by the new method is available to the well drillers at little or no cost.

(5) A comparison of the proposed rule with any federal or state counterparts.

Not applicable.

(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.

All the businesses subject to this rule chapter are small businesses and exempting them would negate the protection of public health and the environment benefits compliance with these regulations provide. The location information is necessary to facilitate proper inspection of wells and to provide useful information to the citizens of Tennessee.

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)

The department does not anticipate any impact on local governments from these rules.

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Phone: 615-741-2650
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For Department of State Use Only

Sequence Number: 06-15-15
Rule ID(s): 5965
File Date: 6/19/15
Effective Date: 9/17/15

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:	Environment and Conservation
Division:	Water Resources
Contact Person:	Anna Rollins
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0159
Email:	anna.rollins@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**
0400-45-09	Water Well Licensing Regulations and Well Construction Standards
Rule Number	**Rule Title**
0400-45-09-.05	Examinations
0400-45-09-.06	Licenses
0400-45-09-.10	Well Construction Standards
0400-45-09-.15	Data and Records Required
0400-45-09-.16	Well Abandonment
0400-45-09-.17	Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Amendments

Chapter 0400-45-09
Water Well Licensing Regulations and Well Construction Standards

Paragraph (8) of Rule 0400-45-09-.05 Examinations is amended by deleting it in its entirety and substituting instead the following:

(8) Interviews of applicants will be conducted in accordance with paragraph (2) of Rule 0400-45-10-.05. ~~before at least three members of the Board. Questioning by individual Board members to the quality and quantity of the applicant's experience will include, but not be limited to, the following:~~

~~(a) Where and when it was obtained;~~

~~(b) Types of equipment used;~~

~~(c) What was the applicant's level of responsibility;~~

~~(d) Familiarity of the applicant with addressing problems such as:~~

~~1. Construction techniques used in each type well drilled for each license applied for.~~

~~2. Operation of drilling equipment used in drilling wells or boreholes.~~

~~3. Installation techniques and principles of operation for pumps and or water treatment devices.~~

~~(e) Knowledge of State well construction standards; and~~

~~(f) Responsibilities of licensees to the well owner and the Department.~~

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Subparagraph (i) of paragraph (1) of Rule 0400-45-09-.06 Licenses is amended by deleting it in its entirety and substituting instead the following:

(i) In order to renew any license or combination of licenses, the licensee shall submit to the Commissioner satisfactory proof of the required credit hours of training approved by the Board of Ground Water Management or Director completed during the previous license year. ~~Three (3)~~ Five (5) credit hours will be required to renew any license for the license period beginning August 1~~, 2004 and ending~~ through July 31~~, 2005. Five (5) credit hours will be required for all applicants who wish to renew a license or combination of licenses for all license years after July 31, 2005~~ of the following year. First year license holders not previously licensed for any installer or driller category will not be required to obtain continuing education credits for their first year of renewal. Second and subsequent year license holders will be required to obtain continuing education credits thereafter to renew a license or combination of licenses.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (2) of Rule 0400-45-09-.10 Well Construction Standards is amended by deleting it in its entirety and substituting instead the following:

(d) New wells shall not be located closer than ten (10) feet from a property line. New wells located from ten (10) feet to twenty-five (25) feet from a property line shall require a minimum of thirty-five (35) feet of casing installed below land surface with impervious material such as cement grout or bentonite chips, tablets or bentonite grout backfilled in the annular space to a depth of thirty-five feet.

TABLE A
MINIMUM DISTANCES TO SEPARATE WATER WELLS
FROM POTENTIAL SOURCES OF CONTAMINATION

SOURCES OF CONTAMINATION	MINIMUM DISTANCES
Animal pens or feed lots	100 feet
Leaching Pits; sewage lagoons	200 feet
Pit Privys	75 feet
Sewer lines	50 feet
Sludge and septage disposal sites	100 feet
Septic tanks and drain fields	50 feet
House to septic tank connections, if the line is tight	10 feet
House to sewer line, if the line is tight	10 feet

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (2) of Rule 0400-45-09-.15 Data and Records Required is amended by deleting it in its entirety and substituting instead the following:

(c) The location of the well as denoted by ~~driller map number coordinate or~~ the latitude and ~~longitude~~ longitudinal coordinates of the well in degrees, minutes and seconds. The accuracy of the coordinates must be to the nearest second of the location;

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Rule 0400-45-09-.16 Well Abandonment is amended by adding paragraph (9) to read as follows:

(9) Well Abandonment-Existing Wells with Obstructions

(a) Existing wells required to be closed for which no well construction report is on file and/or those that are partially filled or obstructed with soil, rock, construction debris or other materials must be cleaned out inside the well down to a minimum depth of twenty-five (25) feet below land surface to allow for proper sealing of the upper terminus of the well.

1. If the well does not open up and remains filled below twenty-five (25) feet, the well shall be backfilled and sealed from twenty-five (25) feet to land surface with a cement grout or bentonite as defined in subparagraph (2)(c) of this rule.

2. If the well opens up below twenty-five (25) feet while cleaning, the well shall be backfilled from its lowermost open depth to twenty-five (25) feet below land surface with either cement grout, bentonite, clean crushed stone one-half (½) inch diameter or less, well cuttings, puddled clay, sand or a combined mixture of any of these materials. Cement grout or bentonite as defined in subparagraph (2)(c) of this rule shall be used to backfill the well from twenty-five (25) feet to land surface.

(b) If the grading or elevation changes are expected at the site, native soil or crushed rock can be used to backfill the well from land surface to two (2) feet below land surface.

(c) The driller will be required to file a well closure report with the Department within sixty (60) days of the completion of the well abandonment.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (2) of Rule 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes is amended by deleting it in its entirety and substituting instead the following:

(b) ~~All water~~ Water used in the drilling or construction process shall be treated with enough chlorine

product to retain a free chlorine residual of at least two (2) parts per million unless the water is obtained on site from a direct connection to a public supply equipped with a proper cross connection protection device.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (3) of Rule 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes is amended by deleting it in its entirety and substituting instead the following:

(d) The driller shall take all steps necessary to maintain safety around the borehole until the closed loop is installed and grouted in the borehole. Each ungrouted borehole or loop shall have a protective cover, or sand bag placed over the open borehole. The closed loop u-bend or dropline pipe shall be placed into the borehole to its proper depth and grouted in place within ~~three (3)~~ five (5) days of drilling each borehole unless the u-bend dropline pipe has been installed to its maximum depth with a dedicated tremie pipeline. Each u-bend dropline pipe opening shall be taped or crimped or covered at land surface after installation of the loop. All Closed Loop Geothermal Boreholes shall be grouted in-place within fifteen (15) days of being drilled.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes is amended by adding subparagraphs (g) through (j) to read as follows:

(g) All drilled boreholes must be drilled to a minimum of four (4) inches in diameter or larger to allow for installation of the loop and tremi pipe unless prior approval has been granted by the Department. Well depths shall not exceed five hundred (500) feet unless prior approval has been granted by the Department.

(h) Geothermal systems consisting of five (5) boreholes or greater shall not be located within well head protection areas unless prior approval has been granted by the Department in writing. The driller must contact the Department to determine if a site is located within a well head protection area designated by the Department. The Director may set any conditions deemed necessary to protect the well head protection area.

(i) A licensed geothermal driller or loop installer may request a variance from the Director to convert an existing water well into a closed loop geothermal well. A geothermal report is required within sixty (60) days upon completion of conversion if approved by the Department. There is no Notice of Intent or fee required for this conversion. The Director may approve or disapprove any request for conversion and set additional conditions as deemed necessary by the Director to protect the ground water resource.

(j) A licensed geothermal well driller may request a variance from the Department to convert a geothermal borehole at a geothermal system to a water well. A Notice of Intent fee and specific water well driller report for the converted well is required within sixty (60) days upon completion of converson if approved by the Department. The Department may approve or disapprove any request for conversion and set additional conditions as deemed necessary by the Department to protect the ground water resource.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Part 3 of subparagraph (b) of paragraph (4) of Rule 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes is amended by deleting it in its entirety and substituting instead the following:

3. The location of the system as denoted by ~~driller map number coordinate or~~ latitude and ~~longitude~~ longitudinal coordinates of the center of the system, ~~and~~ a diagram of the closed loop geothermal boreholes, ~~showing each location~~ and identification of other wells on the property and the location of the septic ~~tanks~~ tank, field lines or ~~sewers~~ sewer lines on the property. The accuracy of the coordinates must be to the nearest second of the location;

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

Part 6 of subparagraph (b) of paragraph (4) of Rule 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes is amended by deleting it in its entirety and substituting instead the following:

6. Reserved ~~Closed loop geothermal borings and underground lines associated with heat transfer to geothermal boreholes are required to have detectable underground tape placed above the boring or heat transfer lines within eighteen inches of land surface to denote the subsurface location of the installations~~;

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 02/26/2015, 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: 12/11/14

Rulemaking Hearing(s) Conducted on: (add more dates). 02/09/15

CAROL L. GRICE
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: 2-26-15

Signature: [signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: 2-26-15

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

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

April 16, 2015

Date

Department of State Use Only

Filed with the Department of State on: 6/19/15

Effective on: 9/17/15

Tre Hargett

Tre Hargett
Secretary of State

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1693

G.O.C. STAFF RULE ABSTRACT

BOARD**:**	Board of Communication Disorders and Sciences
SUBJECT:	General rules governing hearing instrument specialists; Fees
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-17-203
EFFECTIVE DATES:	September 16, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule deletes the $175.00 fee for the hearing instrument specialist written examination. Tenn. Code Ann., Section 63-17-203(10) authorizes the council for licensing hearing instrument specialists to contract with testing organizations for hearing instrument specialist examinations. According to the Board, the written examination fee will be paid to the administrator of the examination rather than to the Board.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments, either written or oral.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

(1) The extent to which the rule or rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

This rule amendment establishes clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

This rule amendment does not establish flexible compliance and/or reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

This rule amendment does not consolidate or simplify compliance or reporting requirements for small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

This rule amendment does not create unnecessary barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Council for Licensing Hearing Instrument Specialists.

Rulemaking hearing date: 06/26/2014

1. **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, and/or directly benefit from the proposed rule:**

   Those applicants wishing to sit for the Hearing Instrument Specialists exam will be affected by and will directly benefit from this proposed rule amendment.

2. **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:**

   The proposed rule amendment will not affect reporting, recordkeeping and other administrative costs.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   This proposed rule amendment will most directly impact the applicant and will not have much effect on businesses and consumers.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

   There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule amendment.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: None.

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.**

   This rule amendment does not provide for the exemption of 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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

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: 06-12-15
Rule ID(s): 5963
File Date: 6/18/15
Effective Date: 9/16/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Communications Disorders and Sciences
Division:	Council for Hearing Instrument Specialists
Contact Person:	Hannah Lanford
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37234
Phone:	(615) 741-1611
Email:	Hannah.Lanford@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**
1370-02	General Rules Governing Hearing Instrument Specialists
Rule Number	**Rule Title**
1370-02-.06	Fees

(Rule 1370-02-.05, continued)
2000. Amendment filed March 17, 2006; effective May 31, 2006. Amendment filed June 29, 2007; effective September 12, 2007.

1370-02-.06 FEES.

(1) The fees authorized by the Tennessee Council for Hearing Instrument Specialists Act (*T.C.A. §§63-17-201, et seq.*) and other applicable statutes are established as follows:

(a) Application Fee - A nonrefundable fee to be paid by all applicants. It must be paid to the Council each time an application for licensure is filed, or a license is reactivated. This fee includes the Initial License Fee and /or the fee for Licensure by Reciprocity.

(b) Council Operations Fee - A non-refundable fee to be paid by each hearing instrument specialist. This fee shall be paid by the last day in the licensee's birth month in the non-renewal year. This fee shall be effective for two (2) renewal cycles for each licensee. This fee shall expire at midnight on December 31, 2016.

(c) Duplicate License or Duplicate Certificate Fee - A nonrefundable fee to be paid when an individual requests a replacement for a lost/destroyed "artistically designed" license or a lost/destroyed renewal certificate.

(d) Examination (and Retake) Fee – A fee to be paid prior to each time an examination, or any component of an examination, is taken or retaken. The Examination (and Retake) Fee is nonrefundable if the examination, or any component of an examination, is taken or retaken. If the Examination (and Retake) Fee is paid but the examination or examination component(s) are not taken or retaken, the Examination (and Retake) Fee, except for twenty-five dollars ($25.00), shall be refunded if the applicant submits a refund request within thirty (30) days from when the examination that the applicant was scheduled to take was administered.

(e) Late Renewal Fee - a nonrefundable fee to be paid when licensee fails to timely renew his license. This is an additional fee which must be submitted along with the Licensure Renewal Fee (Biennial) and the State Regulatory Fee.

(f) Licensure Renewal Fee (Biennial) - A nonrefundable fee to be paid by all license and certificate holders prior to issuance of the "artistically designed" license on a biennial renewal basis. This fee also applies to individuals who reactivate a retired or lapsed certificate or license.

(g) State Regulatory Fee - To be paid by all individuals at the time of application and with all renewal applications.

(h) Written Endorsement/Verification Fee - A nonrefundable fee paid for each certification, verification, or endorsement of a licensee's record for any purpose.

(2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Council for Licensing Hearing Instrument Specialists.

(3) Fee Schedule

(Rule 1370-02-.06, continued)

(a) Hearing Instrument Specialists

	Type Fee	Amount
1.	Application Fee	$ 450.00
2.	Duplicate License or Duplicate Certificate Fee	$ 25.00
3.	Written Endorsement/Verification Fee	$ 20.00
4.	Examination Fees	
	~~(i) Written - 1st attempt~~	~~$ 175.00~~
	~~(ii) Written - Retake~~	~~$ 175.00~~
	(i)~~(iii)~~ Practical - 1st attempt	$ 175.00
	(ii)~~(iv)~~ Practical - Retake	$ 125.00
5.	Late Renewal Fee	$ 150.00
6.	Licensure Renewal Fee (Biennial)	$ 700.00
7.	State Regulatory Fee (Biennial)	$ 10.00
8.	Council Operations Fee (Paid in the non-renewal year)	$ 300.00

(b) Apprentice Hearing Instrument Specialist

	Type Fee	Amount
1.	Application Fee	$ 125.00
2.	Examination and Retake Fee	$ 125.00
3.	State Regulatory Fee	$ 10.00

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-17-105, 63-17-201, 63-17-203, 63-17-210 and 63-17-215.* ***Administrative History:*** *For Administrative History prior to November, 1987 see page 1. Repeal and new rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.06 filed December 28, 1999; effective March 12, 2000. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 17, 2003; effective July 1, 2003. Amendment filed June 29, 2007; effective September 12, 2007. Amendments filed April 29, 2011; to have been effective July 28, 2011.The Government Operations Committee stayed for 60 days the amendments; new effective Date September 25, 2011. Withdrawal of amendments 1370-02-.06(3)(a)1 through 7 and 1370-02-,06(3)(b) filed September 22, 2011; effective September 25, 2011. Amendments 1370-02-.06(3)(a)1 through 8 and 1370-02-.06(3)(b) were originally filed April 29, 2011 and were to have been effective July 28, 2011. However the Government Operations Committee stayed the rule for 60 days, and it was to become effective September 25, 2011.*

* 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)
Thomas Stewart	X				
Randy Williams	X				
Dr. Frederick Rayne	X				
Jerry L. Hall	X				
Lordy Dell Smith	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Council of Hearing Instrument Specialists (board/commission/ other authority) on 06/26/2014 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Valerie Matlock	X				
Lynne F. Burgess-Harmon	X				
Mary Velvet Buehler	X				
Dr. Kimberly Vinson	X				
Julie Anne Crosby	X				
Terri M. Flynn	X				
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communication Disorders and Sciences (board/commission/ other authority) on 05/05/2015 (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: *02/10/14 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/26/14 (mm/dd/yy)*

Date: 06/10/15

Signature:

Name of Officer: Hannah Lanford

Title of Officer: Assistant General Counsel, Department of Health

Subscribed and sworn to before me on: 6-10-15

Notary Public Signature:

My commission expires on: SUZANNE MECHKOWSKI NOTARY PUBLIC STATE OF TENNESSEE SUMNER COUNTY MY COMMISSION EXPIRES APRIL 18, 2017

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
6/15/2015
Date

Department of State Use Only

Filed with the Department of State on: 6/18/15

Effective on: 9/16/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Labor and Workforce Development
DIVISION:	Workers' Compensation
SUBJECT:	Workers' compensation appeals
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 50-6-217 and 50-6-233(c)
EFFECTIVE DATES:	September 20, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule revises and clarifies the process for filing appeals in workers' compensation cases.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC COMMENTS AND RESPONSES

Comment: Three business days from the time that the appeal is filed is not enough time, in my opinion, to get a transcript and prepare an adequate brief regarding an interlocutory appeal. In fact, most of the time periods in here are too short, and, therefore, unrealistic.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-,02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: I understood that the Division was going to tape-record the hearings {or at least provide the judges a tape recorder). I agree 3 days is quite short for an adequate statement, even for interlocutory issues. I assume the Division thinks this is a step up from the old RFA admin review, where there was no transcript and no separate appellant/appellee briefing deadlines. Any reason why these couldn't be extended to submit interlocutory briefs after the transcript is in?

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

Comment: It's interesting that the position statement has to be filed in 3 business days of the filing of the notice of appeal but the transcript doesn't have to be filed until within 10 calendar days of the filing of the notice of appeal. No attorney wants to submit a position statement without a reference to the transcript. To meet these deadlines an attorney would have to order a transcript in every case before the order is even entered just to make sure they're ready to appeal.

Response: The Division agrees that three business days from the time the appeal is filed is not enough time to prepare a position statement in an interlocutory appeal. Rule 0800-02-22-.02(1) has been revised to provide that position statements must be filed within five business days of the expiration of the time to file a transcript or statement of the evidence. A party opposing the appeal shall file a response, if any, within five business days of the filing of the appellant's position statement.

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.

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: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

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: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or 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 are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

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: Exempting small businesses could frustrate the small business owners' access to the services provided by the Division's Appeals Board which would be counter-productive.

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)

These proposed rules will have little, if any, impact on local governments.

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Sequence Number: 06-17-15
Rule ID(s): 5967
File Date: 6/22/15
Effective 9/20/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205.

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive, 1-B, Nashville, TN
Zip:	37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X 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)

Repeal

Chapter Number	**Chapter Title**
0800-02-22	Board of Workers' Compensation Appeals
Rule Number	**Rule Title**
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeal of Workers' Compensation Cases Filed Against the State

New

Chapter Number	**Chapter Title**
0800-02-22	Workers' Compensation Appeals Board
Rule Number	**Rule Title**
0800-02-22-.01	Filing of Notice of Appeal
0800-02-22-.02	Appeal of an Interlocutory Order
0800-02-22-.03	Appeal of a Compensation Order
0800-02-22-.04	Oral Argument; Costs on Appeal; Settlement During Appeal
0800-02-22-.05	Appeal of Workers' Compensation Cases Filed Against the State

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 0800-02-22
Board of Workers' Compensation Appeals/Workers' Compensation Appeals Board

Chapter 0800-02-22 Board of Workers' Compensation Appeals is repealed by deleting Rules 0800-02-22-.01, 0800-02-22-.02, and 0800-02-22-.03 in their entirety and by replacing them with new rules that shall read as follows:

~~CHAPTER 0800-02-22~~
~~BOARD OF WORKERS' COMPENSATION APPEALS~~

~~0800-02-22-.01 FILING THE REQUEST FOR APPEAL.~~

~~(1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:~~

~~(a) Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or~~

~~(b) Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.~~

~~(2) A copy of the request for appeal must be served upon the opposing party.~~

~~(3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming or reversing the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.~~

~~(4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:~~

~~(a) Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.~~

~~(b) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.~~

~~(c) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.~~

(5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.

(6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.

Rule 0800-02-22-.02 DOCKETING APPEAL, FILING BRIEFS AND RENDERING DECISION.

(1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.

(2) After the record is received by the board, the appeal shall be docketed and assigned to an appeals board judge for review. A docketing notice shall be sent to all parties.

(3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.

(4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:

(a) Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or

(b) Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).

(5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.

(6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.

(7) Interlocutory orders.

(a) If the board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the opinion affirming the order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to T.C.A. § 50-6-118.

(b) Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.

(8) Compensation orders.

(a) If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.

~~(b) If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.~~

~~Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, and 106. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

~~Rule 0800-02-22-.03 APPEAL OF WORKERS' COMPENSATION CASES FILED AGAINST THE STATE.~~

~~The board of workers' compensation appeals is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.~~

~~Authority: T.C.A. §§ 4-3-1409, 9-8-307, and 9-8-402. Administrative History: Original rule filed April 1, 2014; effective June 30, 2014.~~

Chapter 0800-02-22
Workers' Compensation Appeals Board

Rule 0800-02-22-.01 Filing of Notice of Appeal

(1) Any party may appeal any order of a workers' compensation judge by filing a notice of appeal, on a form approved by the Division, with the clerk of the court of workers' compensation claims, in accordance with Rule 0800-02-21-.02(14). Pursuant to Tennessee Code Annotated section 50-6-217(a)(1), the notice of appeal must be filed:

(a) Within seven (7) business days of the date an interlocutory order was entered by the workers' compensation judge; or

(b) Within thirty (30) calendar days of the date a compensation order was entered by the workers' compensation judge.

(2) The appealing party shall serve a copy of the Notice of Appeal upon the opposing party or parties by any means as set forth in Rule 0800-02-21-.09.

(3) Any notice of appeal that is not received by the clerk within the time provided by paragraph (1) shall be dismissed.

(4) A notice of appeal of a compensation order that is not timely filed will not toll the time limit for filing an appeal to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-225(a)(1) and Rule 4(a) of the Tennessee Rules of Appellate Procedure.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.02 Appeal of an Interlocutory Order

(1) If the appellant elects to file a position statement in support of an interlocutory appeal, the appellant shall file such position statement with the clerk of the court of workers' compensation claims within five (5) business days of the expiration of the time to file a transcript or statement of the evidence, specifying the issues presented for review and including any argument in support thereof. A party opposing the appeal shall file a response, if any, with the clerk of the court of workers' compensation claims within five (5) business days of the filing of the appellant's position statement.

(2) The parties, having the responsibility to ensure a complete record on appeal, may have a transcript prepared by a licensed court reporter and file it with the clerk of the court of workers'

compensation claims within ten (10) calendar days of the filing of the notice of appeal. Alternatively, the parties may file a statement of the evidence within ten (10) calendar days of the filing of the notice of appeal. The statement of the evidence must be approved by the judge before the record is submitted to the clerk of the appeals board. The clerk of the workers' compensation appeals board shall docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims and send a docketing notice to all parties.

(3) Within seven (7) business days of the receipt of the record on appeal by the clerk of the workers' compensation appeals board, the appeals board shall review the record and enter an order affirming, reversing, or modifying and remanding the interlocutory order of the workers' compensation judge. The order of the workers' compensation appeals board shall not be subject to further appeal.

(a) If the appeals board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the order affirming the interlocutory order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to Tennessee Code Annotated section 50-6-118.

(b) Following the issuance of a decision affirming, reversing, or modifying and remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by Tennessee Code Annotated section 50-6-239 and by these rules.

Authority: T.C.A. § 4-3-1409; T.C.A. §50-6-118; T.C.A. § 50-6-217; T.C.A. § 50-6-225: T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.03 Appeal of a Compensation Order

(1) Upon the filing of a notice of appeal of a compensation order, within fifteen (15) calendar days, the party that filed the notice of appeal shall file with the clerk of the court of workers' compensation claims a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. The appealing party shall serve a copy of this transcript or notice upon the opposing party or parties. The party may file a statement of the evidence in lieu of a transcript.

(2) Upon receipt of the transcript of the proceedings, statement of the evidence, or notice that no transcript will be filed, the clerk of the court of workers' compensation claims shall forward a copy of the notice of appeal and the transcript or statement of the evidence, if any, or notice that no transcript will be filed, to the workers' compensation judge that issued the order.

(3) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript, or statement of the evidence, if any, or the notice that no transcript will be provided, the workers' compensation judge shall review the record in its entirety to ensure that it is complete and that it accurately reflects the proceedings at the hearing, and shall compile the contents of the record and forward the record to the clerk of the court of workers' compensation claims.

(4) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record or proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge shall issue an order compelling the party who filed the notice of appeal to file a transcript, a statement of the evidence, or take such other action as is necessary for the trial judge to certify the record.

(5) Upon receipt of the record, the clerk of the workers' compensation appeals board shall docket the appeal and shall send a docketing notice to all parties. The clerk of the appeals board shall forward the record to the appeals board for review.

(6) The party who filed the notice of appeal shall have fifteen (15) calendar days after the issuance of the docketing notice provided in paragraph (5) to submit a brief to the appeals board for

consideration. Any opposing party shall have fifteen (15) calendar days after the filing of the appellant's brief to file a brief in response. No reply briefs shall be filed. Briefs shall comply with the Practice and Procedure Guidelines of the Workers' Compensation Appeals Board.

(7) Within forty-five (45) calendar days after the period for the filing of briefs ends, the board shall issue its decision affirming, reversing or modifying the order of the workers' compensation judge and shall remand the case for further proceedings.

(a) If the appeals board reverses or modifies and remands the case following an appeal of a compensation order, the clerk of the court of workers' compensation claims shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling any hearing, if necessary. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.

(b) If the appeals board affirms and certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to Tennessee Code Annotated section 50-6-225 shall begin to run on the date the order is certified as final by the appeals board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days after the decision of the appeals board is filed and any benefits provided through the compensation order shall be paid within five (5) business days after the compensation order becomes final.

(8) Immediately upon the issuance of a decision on any appeal, the clerk of the workers' compensation appeals board shall forward a copy of the decision to the parties by regular or electronic mail and to the clerk of the court of workers' compensation claims.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.04 Oral Argument, Costs on Appeal, Settlement During Appeal

(1) The appeals board shall base its decision on a review of the record and the briefs or responses of the parties, if any. Evidence not contained in the record submitted to the clerk of the workers' compensation appeals board shall not be considered on appeal. No oral argument shall be allowed unless otherwise directed by the workers' compensation appeals board either upon its own motion or upon motion of a party. Any motion for oral argument filed by a party must state with specificity the reason or reasons the decision-making process would be aided by oral argument. Oral argument may be conducted telephonically, by video conference, or in person, at the direction of the appeals board.

(2) No request to rehear or reconsider the decision of the appeals board may be filed by any party.

(3) Costs on appeal may be assessed as ordered by the appeals board.

(4) If the parties agree to settle the claim following the filing of the notice of appeal, the parties shall file a joint motion requesting the appeal be held in abeyance and the case be remanded to the workers' compensation judge to consider approval of the settlement. If the settlement is approved within thirty (30) calendar days of the filing of the order remanding the case, the parties shall file a joint motion seeking to dismiss the appeal. The motion shall provide for the assessment of costs on appeal and shall be accompanied by a copy of the order approving the settlement. If the proposed settlement is not approved within thirty (30) calendar days of the filing of the order remanding the case, the appeal shall proceed in accordance with any further order of the appeals board.

(5) Once a notice of appeal has been filed with the state supreme court, the appeals board no longer has jurisdiction to rule on any issue. The clerk of the appeals board may not accept for filing any motion or other paper sought to be filed by any party following the filing of a notice of appeal to the state supreme court, unless and until the case is remanded to the workers' compensation trial court.

(6) When it appears to the appeals board that an appeal was frivolous or taken solely for delay, the appeals board may, either upon motion of a party or of its own motion, award expenses, including reasonable attorney's fees, incurred by the appellee as a result of the appeal.

Authority: T.C.A. § 4-3-1409; T.C.A. § 50-6-217; T.C.A. § 50-6-225; T.C.A. § 50-6-233; T.C.A. § 50-6-237.

Rule 0800-02-22-.05 Appeal of Workers' Compensation Cases Filed Against the State

The workers' compensation appeals board is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402; T.C.A. § 50-6-217; T.C.A. § 50-6-233; T.C.A. § 50-6-237.
Administrative History: Original rule filed April 1, 2014; effective June 30, 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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 4/22/2015 (*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: 4/22/15

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

SHARA HAMLETT
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY

Subscribed and sworn to before me on: April 22, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 2016

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

6/11/2015
Date

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Filed with the Department of State on: 6/22/15

Effective on: 9/20/15

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Labor and Workforce Development
DIVISION:	Workers' Compensation
SUBJECT:	Utilization review
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 50-6-124 and 50-6-233(c)
EFFECTIVE DATES:	September 28, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Division, the proposed rule allows the Division's Medical Director to issue a utilization review appeal determination without the necessity of the issuance of an order from a workers' compensation specialist. The role of the workers' compensation specialist was eliminated from the Workers' Compensation Law governing work injuries suffered on or after July 1, 2014, as part of the Workers' Compensation Reform Act of 2013.

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.

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: The rule will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.

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: There is no additional record keeping requirement or administrative cost associated with these rule changes.

3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have any impact on consumers or 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 are no less burdensome methods to achieve the purposes and objectives of these rules.

5. Comparison of the proposed rule with any federal or state counterparts: None.

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: None.

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 proposed rule will have little, if any, impact on these entities.

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For Department of State Use Only

Sequence Number: 06-27-15
Rule ID(s): 5976
File Date: 6/30/15
Effective Date: 9/28/15

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:	Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive Side 1-B, Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0179
Email:	troy.haley@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**
0800-02-06	General Rules of the Workers' Compensation Program – Utilization Review
Rule Number	**Rule Title**
0800-02-06-.07	Appeals of Utilization Review Decisions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Amendments

Chapter 0800-02-06-.07
Appeals of Utilization Review Decisions

Rule 800-02-06-.07 Appeals of Utilization Review Decisions is amended as follows:

(3) If the determination of the Division is an approval of part or all of the recommended treatment, then the Medical Director shall issue a determination that specifies the treatment(s) that is/are medically necessary. ~~a workers' compensation specialist shall issue an order for medical benefits.~~ The penalty provisions of T.C.A. §§ 50-6-118 and 50-6-124 shall apply to determinations issued pursuant to this subsection (3). ~~The penalty provisions of T.C.A. § 50-6-238(d) shall apply to orders issued pursuant to this subsection (3).~~

Authority: T.C.A. §§ 50-6-102, 50-6-118, 50-6-124, 50-6-126, 50-6-204, 50-6-233, and 50-6-238.

* 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 June 5, 2015 (*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: June 5, 2015

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

DARLENE CARVER MCDONALD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: June 5, 2015

Notary Public Signature: Darlene Carver McDonald

My commission expires on: May 8, 2017

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

6/24/2015
Date

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Filed with the Department of State on: 6/30/15

Effective on: 9/28/15

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY**:**	Tennessee Housing Development Agency Board of Directors
SUBJECT:	Housing choice voucher program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 13-23-115(18)
EFFECTIVE DATES:	September 2, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Agency, the rulemaking hearing rule incorporates all requirements governing the program, providing greater clarity and detail in program administration.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

1. Rulemaking Hearing, October 31, 2014

   No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing and no written comments were received.

2. Rulemaking Hearing, November 14, 2014

   No members of the public attended the rulemaking hearing. No oral comments were received 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 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.

(If applicable, insert Regulatory Flexibility Addendum 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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

1. These rule amendments are not expected to have any impact on local governments.

RULES
OF
TENNESSEE HOUSING DEVELOPMENT AGENCY
SECTION 8 RENTAL ASSISTANCE PROGRAM

CHAPTER 0770-1-5
HOUSING CHOICE VOUCHER PROGRAM

TABLE OF CONTENTS

0770-1-5-.01	General
0770-1-5-.02	Objectives
0770-1-5-.03	Definitions
0770-1-5-.04	Administrative Plan
0770-1-5-.05	Forms
0770-1-5-.06	Program Eligibility
0770-1-5-.07	Application Process
0770-1-5-.08	Selection of Unit
0770-1-5-.09	Tenancy
0770-1-5-.10	Termination of Assistance—Recipient Factors
0770-1-5-.11	Termination of Payments to Owner
0770-1-5-.12	Program Reduction or Termination
0770-1-5-.13	Repealed
0770-1-5-.14	Repealed
0770-1-5-.15	Repealed
0770-1-5-.16	Repealed
0770-1-5-.17	Repealed
0770-1-5-.18	Repealed
0770-1-5-.19	Repealed
0770-1-5-.20	Repealed
0770-1-5-.21	Repealed
0770-1-5-.22	Repealed
0770-1-5-.23	Repealed
0770-1-5-.24	Repealed
0770-1-5-.24	Repealed
0770-1-5-.26	Repealed
0770-1-5-.27	Repealed
0770-1-5-.28	Repealed
0770-1-5-.29	Repealed
0770-1-5-.30	Repealed
0770-1-5-.31	Repealed
0770-1-5-.32	Repealed
0770-1-5-.33	Repealed
0770-1-5-.34	Repealed

0770-1-5-.01 GENERAL. These regulations prescribe the policies, procedures and authorization for administering the Housing Choice Voucher Program under the U.S. Housing Act of 1937.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.02 OBJECTIVES. The program is designed to assist low-income households in obtaining decent, safe and sanitary rental housing.

Authority: *T.C.A. §13-23-115 (13), (14) and (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 28, 2004; effective December 12, 2004.*

0770-1-5-.03 DEFINITIONS.

(1) Administrative Plan. A document prepared by the Agency as required by federal law. The Administrative Plan implements federal law governing the Program.

(2) Agency. The Tennessee Housing Development Agency created by T.C.A. 13-23-101 et. seq.

(3) Annual Contributions Contract (ACC). The contract entered into between HUD and the Agency through which the Agency receives federal funding to provide program benefits, establishes the relationship between HUD and the Agency and defines the duties and responsibilities of both parties.

(Rule 0770-1-5-.03, continued)

(4) Applicant. Any person or household that applies for a voucher.

(5) Federal Funding. Money paid by the federal government to the Agency or to other entities at the Agency's request in relation to the Housing Choice Voucher Program.

(6) Federal Program Requirements. Includes all applicable federal law related to the Housing Choice Voucher Program, including 42 U.S.C. 1437, 24 C.F.R. Part 982 and any subsequent or additional handbooks or guidance provided by HUD.

(7) Household. One or more persons living in the same unit or applying together for a single unit.

(8) Housing Assistance Payments Contract (HAP). A contract entered into between the Agency and the Owner that provides for payment of that portion of the rent for a unit the Program will pay the Owner on behalf of the Recipient so long as the Program Requirements are met.

(9) Housing Choice Voucher Program (Program). A program created by the U.S. Housing Act of 1937, as amended. The Program provides Recipients a voucher which pays a portion of the Recipient's rent, subject to compliance with all Program Requirements.

(10) Housing Quality Standards (HQS). Standards established by HUD that define the minimum acceptable condition for a housing unit participating in the Program.

(11) HUD. The U. S. Department of Housing and Urban Development. The federal agency responsible for implementing the statutory provisions creating the Housing Choice Voucher Program.

(12) Lease. An agreement signed between the Owner and the Recipient defining the duties and obligations of each party to the other.

(13) Owner. The person or entity that owns the unit rented by the Recipient under the Housing Choice Voucher Program, or the authorized agent for that person or entity.

(14) Preference. A circumstance or category of Applicants or Recipients that may be provided special treatment under the Program.

(15) Program Requirements. Federal Program Requirements, the Administrative Plan and these rules.

(16) Recipient. Any person or household that receives assistance through this program.

(17) Unit. The apartment or other approved living quarters of a household.

(18) Voucher. A document issued by the Agency to a family selected for admission to the Program. This document describes the Program and the procedures for Agency approval of a unit selected by the Recipient. The Voucher also states the obligations of the Recipient under the 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 28, 2004; effective December 12, 2004.*

0770-1-5-.04 ADMINISTRATIVE PLAN.

(1) Pursuant to 24 C.F.R. 982.54, the Agency shall prepare an Administrative Plan.

(Rule 0770-1-5-.04, continued)

(2) The Agency shall administer the Program in compliance with the Administrative Plan and shall update the Administrative Plan as necessary and as required by Federal Program Requirements to assure continued Federal Funding for the 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 28, 2004; effective December 12, 2004.*

0770-1-5-.05 FORMS. The Agency shall use and/or create such forms as may be necessary for the making and processing of applications and for performance of its obligations under the ACC and Program Requirements.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.06 PROGRAM ELIGIBILITY.

(1) Applicants and Recipients shall be eligible to receive housing assistance through the Agency under the Program only in accordance with Program Requirements. From time to time, the Agency may limit eligibility in its Administrative Plan in accordance with Federal Program Requirements, and the ACC. The Agency shall establish appropriate methods in the Administrative Plan to effectuate the selection of Applicants to receive Vouchers in accordance with Program Requirements.

(2) The Agency shall verify income eligibility of Applicants and Recipients by utilizing such methods and forms as may be provided for and/or required by the Program Requirements. Applicants shall not be eligible for the Program if income is greater than the maximum allowable income for the Program.

(3) An Applicant shall not receive a Voucher unless all eligibility requirements established in the ACC and Administrative Plan are met, no legal impediment exists that would exclude the Applicant, and the Agency has a Voucher available.

(4) Recipients shall continue to receive assistance under the Program subject to all Program Requirements.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.07 APPLICATION PROCESS.

(1) Each Applicant shall complete all application documents and provide all requested documentation prior to consideration for assistance under the program.

(2) The Agency may, in its discretion, accept preliminary applications where no Vouchers are currently available. The Agency shall include in the Administrative Plan the procedure for accepting preliminary applications and maintaining a waiting list that complies with Program Requirements.

(3) Prior to issuing a Voucher, the Agency shall verify Applicant income, Applicant composition, value of assets, factors allowing a preference, status of full-time students and any other factors relating to eligibility determinations as required by the Program Requirements.

(4) The Agency shall determine, at its discretion, the verification methods used. The Agency shall seek independent written or oral third party verification when feasible. If independent written or oral third party verification is not feasible, review of documentation, Applicant certification and any other means the Agency determines shall satisfy the verification requirement may be utilized.

(Rule 0770-1-5-.07, continued)

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 28, 2004; effective December 12, 2004.*

0770-1-5-.08 SELECTION OF UNIT.

(1) The Agency has no obligation to find a unit for any Recipient. The Recipient is responsible for locating a unit that suits the Recipient's needs and meets all Program Requirements, including, but not limited to, the time limits for selection of a unit.

(2) Once a unit is selected and the Owner agrees to rent to the Recipient, the Agency must inspect the unit for compliance with Housing Quality Standards.

(3) If the unit passes the Housing Quality Standards inspection, the Owner and the Agency may enter into a HAP contract.

(4) Subsequent to approval of the unit by the Agency, and the Owner and Agency executing a HAP contract, the Owner and Recipient shall execute a lease that complies with all Program Requirements, state and federal law.

(5) The Agency shall provide the Owner and Recipient with information concerning their respective obligations in relation to the Housing Quality Standards and the 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 28, 2004; effective December 12, 2004.*

0770-1-5-.09 TENANCY.

(1) After a unit is selected and approved and a HAP contract and lease have been executed, the Agency shall continue to perform such compliance obligations as may be required under the Program Requirements including, but not limited to, monitoring Housing Quality Standards, processing complaints by the parties, processing monthly payments under the HAP contract in accordance with Program Requirements and such other functions as may be required under the Program Requirements.

(2) Recipients must provide all requested documentation and otherwise cooperate with the Agency in the administration of the Program as provided in the Program Requirements. Failure by a Recipient to cooperate with the Agency in administering Program Requirements or otherwise violating Program Requirements may be grounds for termination of assistance under the Program as determined under the Program Requirements.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.10 TERMINATION OF ASSISTANCE — RECIPIENT FACTORS. A Recipient shall continue to receive assistance until such time as the Recipient no longer qualifies under the Program Requirements. The Agency shall comply with all Program Requirements concerning termination of assistance and shall provide in the Administrative Plan when termination may occur and the procedures the Agency shall follow in terminating assistance.

(Rule 0770-1-5-.10, continued)

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 28, 2004; effective December 12, 2004.*

0770-1-5-.11 TERMINATION OF PAYMENTS TO OWNER. The Agency shall continue to make payments to the Owner under the HAP and ACC so long as the Recipient is lawfully occupying the unit, and remains eligible for Program assistance, and the Owner complies with the HAP contract. The Administrative Plan shall provide when termination may occur and the procedures the Agency shall follow in terminating payments to an Owner.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.12 PROGRAM REDUCTION OR TERMINATION.

(1) Should Federal Funding for this Program be reduced or eliminated, or should the Agency no longer participate in the Program, the Agency shall have no obligation to continue the Program or provide assistance to Recipients.

(2) If the Agency no longer participates in the Program, it shall take such actions as are feasible to assist transition of Recipients.

(3) Should Federal Funding be reduced, the Agency shall apply its eligibility criteria to determine which Recipients shall continue to receive assistance based on available Federal Funding for the Program. Once all Federal Funding is expended, any Recipients for whom no remaining Federal Funding exists shall no longer receive assistance.

(4) Should Federal Funding be eliminated, the Agency shall notify all Owners and Recipients of the effective date of Program termination.

(5) The Agency's obligation to provide Housing Choice Vouchers and HAP payments associated therewith is dependent upon receipt of Federal Funding. The Agency is obligated only to provide payments to the extent such Federal Funding is received, and only in accordance with Program Requirements.

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 28, 2004; effective December 12, 2004.*

0770-1-5-.13 REPEALED.

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

0770-1-5-.14 REPEALED.

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

0770-1-5-.15 REPEALED.

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

0770-1-5-.16 REPEALED.

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

0770-1-5-.17 REPEALED.

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

0770-1-5-.18 REPEALED.

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

0770-1-5-.19 REPEALED.

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

0770-1-5-.20 REPEALED.

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

0770-1-5-.21 REPEALED.

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

0770-1-5-.22 REPEALED.

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

0770-1-5-.23 REPEALED.

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

0770-1-5-.24 REPEALED.

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

0770-1-5-.25 REPEALED.

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

0770-1-5-.26 REPEALED.

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

0770-1-5-.27 REPEALED.

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

0770-1-5-.28 REPEALED.

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

0770-1-5-.29 REPEALED.

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

0770-1-5-.30 REPEALED.

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

0770-1-5-.31 REPEALED.

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

0770-1-5-.32 REPEALED.

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

0770-1-5-.33 REPEALED.

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

0770-1-5-34 REPEALED.

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

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Sequence Number: 06-05-15
Rule ID(s): 5960
File Date: 6/4/15
Effective Date: 9/2/15

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
Address:	502 Deaderick Street, 3rd Floor, Nashville, TN
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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**
0770-01-05	Housing Choice Voucher Program
Rule Number	**Rule Title**
0770-01-05-.01	General
0770-01-05-.02	Administrative Plan Purpose
0770-01-05-.03	Objective Of The Program
0770-01-05-.04	Basic Structure Of The Program
0770-01-05-.05	Conflict Of Interest
0770-01-05-.06	Application Process
0770-01-05-.07	Notice Of Address Change
0770-01-05-.08	Special, Non-Waiting List Admission
0770-01-05-.09	Prohibited Selection Criteria
0770-01-05-.10	Eligibility Requirements
0770-01-05-.11	Family Composition
0770-01-05-.12	Income Limits
0770-01-05-.13	Citizenship
0770-01-05-.14	Social Security Number Provision
0770-01-05-.15	Student Status
0770-01-05-.16	Other Eligibility Criteria

Chapter Number	Chapter Title
0770-01-05	Housing Choice Voucher Program-continued
Rule Number	**Rule Title**
0770-01-05-.17	Eligibility Process
0770-01-05-.18	Verification Process
0770-01-05-.19	Income And Asset Determination
0770-01-05-.20	Obligations Of Participants
0770-01-05-.21	Determination Of Eligibility
0770-01-05-.22	Lease-Up Process
0770-01-05-.23	Housing Quality Standards - Initial
0770-01-05-.24	Owner Responsibilities
0770-01-05-.25	Moving/Portability
0770-01-05-.26	Annual And Interim Activities
0770-01-05-.27	Terminations
0770-01-05-.28	Complaints, Conferences, Appeals
0770-01-05-.29	Notice And Mailings Rules
0770-01-05-.30	Fair Housing, Disability, And VAWA
0770-01-05-.31	Requests For Information Rules
0770-01-05-.32	Resident Advisory Board
0770-01-05-.33	Special Housing
0770-01-05-.34	Homeownership Voucher Option

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 0770-01-05, Housing Choice Voucher Program Rules, is amended by deleting it in its entirety and substituting the following so that as amended it shall read:

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

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

0770-01-05-.04 Basic Structure of the Program.

(1) HUD pays rental subsidies through the HCV Program so that decent, safe, and sanitary housing is affordable for eligible families. HUD provides housing assistance funds and administration funds to public housing agencies (PHAs), state or local government entities like the THDA, which generally administer the program.

(2) Families select and rent suitable units subject to the PHA's approval of the unit and tenancy, the unit meeting program housing quality standards (HQS), and the reasonableness of the rent.

(3) A unit may be located anywhere in the United States, in the jurisdiction of a PHA that runs a voucher program.

(4) Upon the PHA's approval of the unit and tenancy, the PHA enters into a housing assistance payment (HAP) contract with the owner of the unit to make rental subsidy payments on the family's behalf. The amount of the subsidy is determined by a formula.

(5) If the family moves out of the leased unit, the HAP contract between the PHA and owner terminates. However, the family may receive continued assistance and move to another unit if the family is in compliance with the requirements of the program.

(6) Housing Choice Voucher Program Process. The process consists of the Application Process (see §0770-01-05-.06), Eligibility Requirements (see §0770-01-05-.10), Verification Process (see §0770-01-05-.18), Determination of Eligibility (see §0770-01-05.21), Lease-up Process (see §0770-01-05.-22), Moving/Portability (see §0770-01-05-.25), Annual Activities (see §0770-01-05-.26(1)), Interim Activities (see §0770-01-05-.26(2), Terminations (see §0770-01-05-.27), and Case Conferences and Appeals (see §0770-01-05-.28).

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

(g) 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.

(h) 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 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) 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.

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.

(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.

(iv) Closed Enrollment. Even during periods of closed enrollment, when the acceptance of pre-applications has been suspended, the THDA will accept a handwritten pre-application form from an applicant that claims a natural disaster local preference according to the above procedures and the following:

(I) If the THDA receives the third-party verification within fourteen (14) calendar days of the date the pre-application is submitted and a subsidy

voucher is available, the Applicant must complete a Personal Declaration and eligibility will be determined.

(II) If the THDA receives the third-party verification within 14 calendar days of the date the pre-application is submitted and a subsidy voucher is not available, the applicant will be placed on the waiting list by preference and date of the pre-application until a voucher is available for a maximum of six (6) months from the date of the displacement event.

(III) When the THDA is going to call in applicants from any particular 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.

(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.

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.

(i) 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.

(j) Staff Responsibility for Waiting Lists. Any manipulation of a waiting list by a THDA employee, other than defined by this Administrative Plan, may result in the termination of the employee.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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-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 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 aid 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.

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.

3. A relative may serve as a live-in aid as long as they qualify according to the above requirements.

4. If the person does not qualify as a live-in aid, 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.

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.

(2) 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.

(3) 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.

(4) 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

3. 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:

   (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. 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. 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.

(b) 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.

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.

5. Other Criminal Activity, as defined by the THDA. Any criminal activity that the THDA determines threatens the health, safety, or right to peaceful enjoyment of the community or neighborhood of the applicant household.

(e) After the initial eligibility process, if the THDA discovers through the verification process or from a report from a third party that a household member has been convicted for drug-related, alcohol-related, violent-criminal activity or other criminal activity that meets the THDA's criteria for termination of assistance, the THDA may directly verify the information with a local law enforcement agency or in some cases, if local information is not available, may process another criminal background search.

(f) Appeal/Dispute Procedures. Applicants have the right to appeal and dispute any finding of a criminal record obtained by the THDA through the informal review process by providing documentation that contradicts the criminal background screening. See §0770-01-05-.31.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

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.

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.

(6) 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.

(b) Additions to Household Composition. Requests to add additional household members, which are received at any time after the date and time of the eligibility briefing/interview appointment, but before the HAP contract has been executed by the THDA, will be denied, unless the addition is due to birth, adoption, court-awarded custody, return of a minor or disabled child to the household, or a new spouse. Any other additions will not be permitted until the family has been assisted for twelve (12) months.

(c) Reductions in Household Composition. Notifications of a reduction in household composition, which are received at any time after the date and time of the eligibility briefing/interview appointment, but before the HAP contract has been executed, will be processed and any changes in income calculated.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

(III) A record of each attempt to contact the third-party source, including no-answer calls and all successful contacts with the source, will be documented in the participant's file on the Verification Tracking form to ensure that all reasonable attempts are made to receive the highest level of verification. For third-party oral verification, the name and title of the person contacted, the date and time of the conversation or attempt, the telephone number used, and any information provided orally will be

documented. A THDA staff member will fill out the appropriate verification form with the information provided and will make a note in the file. The staff member may choose to review tenant-provided documents if any question of the information exists.

(ii) If the deadlines for submission are not met, the THDA will use the information from the participant's self-certification, in particular the Personal Declaration, on a provisional basis. If the THDA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the THDA will conduct an interim reexamination to adjust the figures used for the reexamination. The household will not be held responsible for late third-party information, but they will be responsible for repaying HAP and UAP due to underreporting.

(iii) The THDA will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification, 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.

(iv) The THDA will also determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification and when there is a service charge for verifying an asset or expense and the household has original documents or copies of original documents that provide the necessary information.

4. Self-Certification. When information cannot be verified by a UIV source, computer-generated documents from a third party source, or third party methods, household members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the THDA, unless the information is clearly certified on the Personal Declaration. The information contained in the Personal Declaration is considered a self-certification. The household may be asked to provide a separate handwritten statement in some cases. The self-certification must be written in the household member's handwriting and signed by the household member whose information or status is being verified.

(i) In a case where the head of household cannot or will not provide the contact information for persons providing regular family 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.

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.

(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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.

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.

l. 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);

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Parts 5 and 982.

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.

(2) 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.

(3) 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) 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

(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.

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.

(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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

(d) Suspension of Voucher Term. 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.

(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.

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.

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.

(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.

4. 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.

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.

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.

(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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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) 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.

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.

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.

(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.

(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.

(c) 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).

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) 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. 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.

(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.

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.

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.

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.

(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.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

4. The THDA does not interfere with the owner-tenant relationship, except to ensure compliance with HCV Program.

5. Rents may be adjusted annually.

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.

(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.

(c) Late Fees. If the check 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.

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.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

0770-01-05-.25 Moving/Portability (24 CFR 982.314). 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.

(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.

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.

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. 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.

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.

   (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.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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) calendar days prior to the annual date.

(i) If the THDA does not receive the executed new lease and addendum no less than 30 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 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.

(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.

(ii) 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.

(c) 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.

(iii) 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.

(iv) 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.

(d) 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.

(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. 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. 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. 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.

(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) 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) 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) 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.

(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 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.

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. 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. 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. 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. 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. 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. Move without Notice. In order to relocate or port, the household must follow the procedures outlined in the Plan. If the household moves without the proper notice, assistance will be terminated. The same evidence may be used to establish a move

without notice, which is used to prove an unauthorized vacancy and permanent absence. Households are ineligible to relocate or port when a landlord has given proper notice of serious or repeated lease violations.

Authority: T.C.A. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

0770-01-05-.27 Terminations (24 CFR 982.552(b), 982.310, 982.455, and 982.314).

(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;

(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;

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).

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.

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

      (VII) 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).

4. 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.

(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.

5. 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.

(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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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.

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.

1. The RAM will respond to all complaints within no more than seven (7) business 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.

(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.

(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.

(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.

(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.

(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

(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.

(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) 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.

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.

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) 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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

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).

(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.

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. 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. 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. 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. 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.

(d) 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).

(e) 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.

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.

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:

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.

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 Eldery 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.

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)).

(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.

(i) Exceptions. An exception to the four (4) 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)).

(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.

(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. §13-23-104, T.C.A. §13-23-115(18), 42 USC §§1437, and 24 CFR, Part 982.

* 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)
Brian Bills	x				
Phil Baggett	x				
John Baker	x				
Phil Chamberlain	x				
Dorothy Cleaves				x	
Kendra Cooke				x	
Ron Jones				x	
Benjie Shuler	x				
Mike Stevens				x	
Ashleigh Roberts	x				
Greg Turner for Commissioner Larry Martin	x				
Keith Boring for Secretary Tre Hargett	x				
Treasurer David Lillard	x				
Ann Butterworth for Comptroller Justin Wilson	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 Board of Directors (board/commission/ other authority) on November 18, 2014, 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: *09/25/2014*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/31/2014 and 11/14/2014*

DEBORAH S. SANDERS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Date: 12/01/2014

Signature:

Name of Officer: Bruce Balcom

Title of Officer: Assistant Chief Legal Counsel

Subscribed and sworn to before me on: 12/01/2014

Notary Public Signature: Deborah S. Sanders

My commission expires on: 09/11/2017

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

5/14/2015

Date

Department of State Use Only

Filed with the Department of State on: 6/4/15

Effective on: 9/2/15

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

SUBJECT: Use of university property

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 49-9-209

EFFECTIVE DATES: August 25, 2015 through June 30, 2016

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule provides that University of Tennessee property is dedicated to the advancement of the University's principal missions of teaching, research, and service. The rule allows the University, like a private owner of property, to preserve the property under its control for the uses to which it is dedicated.

The key changes to the rule are as follows:

- The rule describes the categories of persons generally authorized to use University property. The changes to the rule clarify the extent to which authorized users may use University property.
- The rule has been amended to set guidelines for the issuance of "no-trespass notices," which are written directives requiring a person to leave or not enter all or part of University property.
- The rule has been amended to add provisions regulating the use of unmanned aircraft on University property.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

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Division of Publications
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Sequence Number: 05-15-15
Rule ID(s): 5954
File Date: 5/21/15
Effective Date: 8/25/15

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:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
X New
X 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)

Repeal

Chapter Number	**Chapter Title**
1720-01-02	Use of University Property
Rule Number	**Rule Title**
1720-01-02-.01	Dedication of University Property
1720-01-02-.02	Authorized Users
1720-01-02-.03	Use of University Property for Free Expression Activities

New

Chapter Number	**Chapter Title**
1720-01-02	Use of University Property
Rule Number	**Rule Title**
1720-01-02-.01	Dedication of University Property
1720-01-02-.02	Definitions
1720-01-02-.03	Authorized Users and Permissible Uses
1720-01-02-.04	Use of University Property for Free Expression Activities
1720-01-02-.05	No-Trespass Notices
1720-01-02-.06	Use of Unmanned Aircraft

RULES
OF
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-01-02
USE OF UNIVERSITY PROPERTY

TABLE OF CONTENTS

1720-01-02-.01 Dedication of University Property
1720-01-02-.02 Definitions
1720-01-02-.03 Authorized Users and Permissible Uses
1720-01-02-.04 Use of University Property for Free Expression Activities
1720-01-02-.05 No-Trespass Notices
1720-01-02-.06 Use of Unmanned Aircraft

1720-01-02-.01 DEDICATION OF UNIVERSITY PROPERTY. The University of Tennessee ("University") dedicates its property exclusively to the advancement of the University's principal missions of teaching, research, and service. The University regulates its property to preserve it for the advancement of the University's principal missions.

1720-01-02-.02 DEFINITIONS

(1) The term "University property" means all land, grounds, structures, and any other physical property owned, controlled, or operated by the University of Tennessee.

(2) The term "University unit" means any academic, administrative, or auxiliary department or division of the University or any other official entity of the University, functioning through University employees acting within the scope of their University employment.

(3) ~~For purposes of this Section .06, t~~The term "unmanned aircraft" means a device that is used or is intended to be used for flight in the air without an individual in or on the device (e.g., drone, model aircraft).

1720-01-02-.0~~3~~2 AUTHORIZED USERS AND PERMISSIBLE USES.

(1) ~~The following persons or groups may use University property, subject to Section .02(2); other University rules, policies, or procedures adopted by a University campus, center, or institute,; and federal, state, and local laws:~~The use of University property is limited to the following persons, subject to Section .03(2) and Section .05:

(a) University students;

(b) University employees;

(c) Members of the Board of Trustees;

(d) Government officials acting in their official capacities;

(e) A person or entity invited by a University unit, including but not limited to, a person or entity who has a contract to provide services to the University, provided that the use of University property shall not exceed the scope of the University unit's invitation~~A person or entity invited by the University, including, but not~~

~~limited to, a University contractor~~;

(f) A person who has been invited by a University student, ~~a~~ student organization, or ~~an~~ employee in his/her personal capacity, to join the student, student organization, or employee in the use of University property (e.g., friends and family), but not including the use of University property for free expression activities, provided that the use of University property shall not exceed the scope of the invitation;

(g) A non-affiliated person using University property for free expression activities pursuant to Chapter 1720-01-12 (Use of University Property by Non-Affiliated Persons for Free Expression Activities);

(h) Volunteers of the University, as defined by University policy, within the scope of their volunteer work;

(i) Prospective students visiting University property and persons accompanying prospective students for purposes reasonably necessary to evaluate the University as an educational institution;

(j) Alumni visiting University property and persons accompanying alumni;

(k) A person who has a right of access to University property under Tennessee Code Annotated § 8-50-1001 or any other statutory provisions permitting access to University property;

(l) Any person or entity engaged in one of the following uses of University property:

1. The use of University property for the purpose of attending a University activity or event that is open to attendance by the members of the general public at a designated place and time (e.g., athletic contests, plays, lectures, concerts);

2. The use of University-owned streets, or University-owned sidewalks bordering University-owned streets, as thoroughfares while traveling from one location to another location;

3. The use of University property that is open to the general public (e.g., campus bookstore, library, museum);

4. The use of University property consistent with the terms of a lease agreement with the University; or

5. The use of University property for a purpose relating to obtaining medical treatment from the University.

(2) The use of University property shall be consistent with the University's principal missions of teaching, research, and service. A person using University property shall not:

(a) block or substantially impede vehicular, bicycle, pedestrian, or other traffic;

(b) block or substantially impede entrances or exits to University property;

(c) substantially disrupt or interfere with University operations, events, or activities;

(d) substantially disrupt or interfere with the ability of a student to sleep or study in a University residence hall between the hours of 10:00 p.m. and 6:00 a.m. during an academic term;

(e) substantially disrupt or interfere with the ability of a student to study in a University library;

(f) violate a federal, state, or local law, rule, regulation, or ordinance;

(g) violate University rules, policies, or procedures;

(h) engage in speech that is obscene; is defamatory; consists of fighting words; communicates an objectively serious expression of intent to commit an act of unlawful violence to a particular individual or group; or is directed to inciting or producing imminent lawless action and is likely to incite or produce such action;

(i) engage in camping in violation of Tennessee law, the Equal Access to Public Property Act of 2012, unless the area on which camping occurs has been specifically designated by the University as available for camping;

(j) unreasonably threaten the health or safety of another person; or

(k) damage or deface University property, including, but not limited to, grass, shrubs, trees, or other landscaping.

(3) Nothing in Section .03(2) shall be construed to prohibit a use of University property that has been expressly authorized by the University (e.g., a construction project that temporarily interferes with the use of a street);

1720-01-02-.043 USE OF UNIVERSITY PROPERTY FOR FREE EXPRESSION ACTIVITIES. Chapter 1720-01-12 (Use of University Property by Non-Affiliated Persons for Free Expression Activities) governs the use of University property for free expression activities by persons who are not affiliated with the University. To the extent of any conflict between this Chapter and Chapter 1720-01-12, Chapter 1720-01-12 shall control.

1720-01-02-.05 NO-TRESPASS NOTICES.

(1) A No-Trespass Notice ("Notice") is a written directive requiring a person to leave and/or not enter all or part of University property.

(2) The following persons are authorized to issue a Notice:

(a) The President of the University;

(b) The chief executive officer of a University campus or institute (e.g., Chancellor);

(c) The chief academic officer of a University campus or institute;

(d) The chief business officer of a University campus or institute;

(e) The chief human resources officer of a University campus or institute;

(f) The chief student affairs officer of a University campus or institute; and

(g) Sworn law enforcement officers employed by the University.

(3) A University official authorized under Section .05(2) may issue a Notice to:

(a) a person who is not authorized to use University property under Section .03(1), and who has refused to leave University property, or a specified part of University property, within a reasonable time after the person has received an oral request to leave by a University official;

(b) a person who has engaged in a use of University property that is prohibited by Section .03(2), and who has refused to cease the prohibited conduct within a reasonable time after receiving an oral request to do so from a University official;

(c) a person who, in the good faith judgment of the University official issuing the Notice, poses an unreasonable threat to the health, safety, or welfare of a person(s) affiliated with the University while on University property;

(d) a person who, in the good faith judgment of the University official issuing the Notice, has engaged in conduct that substantially disrupts or interferes with University operations, events, or activities, or is likely to cause such a disruption or interference;

(e) a University student who has been suspended or expelled from the University in accordance with the University's student conduct rules, policies, or procedures, and the suspension or expulsion has not been lifted;

(f) a University employee who, in accordance with the University's employment policies and procedures, has been temporarily suspended, has been placed on administrative leave, or whose employment is being terminated; or

(g) a person who is a former employee or volunteer whose employment or volunteer status was terminated by the University for misconduct in accordance with University rules, policies, or procedures, or who resigned in lieu of termination.

(4) A Notice must specify: the reason for the Notice; the geographical scope of the restriction; the duration of the restriction, which may be for an indefinite period; the potential consequences of a violation of the Notice; and the process for appealing the issuance of the

Notice. The scope and duration of the restriction imposed must be proportional to the underlying misconduct. In appropriate circumstances, with respect to conduct on University property, a Notice also may prohibit a person from contacting or being within a certain distance from a person affiliated with the University.

(5) Appeals

(a) A non-affiliated person to whom a Notice has been issued may appeal the decision to the University official who issued the Notice.

(b) A non-affiliated person must submit the appeal in writing. The written appeal must be received by the University official who issued the Notice within twenty (20) calendar days of the date on which the Notice was provided to the non-affiliated person. A Notice mailed (or e-mailed) to a non-affiliated person shall be deemed to have been provided on the date on which it was mailed (or e-mailed). The written appeal should include the person's reason for being on University property, the person's future need to be on University property, and any other information the person wishes the University official who issued the Notice to consider.

(c) Upon receipt of a written appeal, the University official who issued the Notice will consult as needed with other University officials to verify the non-affiliated person's need for access to University property, to gather additional information or advice, or to review the impact that granting the appeal may have on persons affiliated with the University.

(d) Within twenty (20) calendar days of the receipt of an appeal submitted in accordance with this Chapter, the University official who issued the Notice will sustain, rescind or modify the Notice in a written decision that will be mailed to the address provided by the non-affiliated person. The decision of the University official who issued the Notice is final and not appealable within the University.

(e) The restrictions set forth in the Notice will remain in effect while an appeal of the Notice is pending.

(f) Other University rules, policies and procedures, rather than this Section .05(5), shall govern appeals filed by University students or employees.

(6) The University employee who issued a Notice may rescind or modify the Notice at any time. Notification of any such rescission or modification shall be provided to the person to whom the Notice was issued.

(7) The issuance of a Notice for conduct relating to free expression activities shall be consistent with Chapter 1720-01-12 (Use of University Property by Non-Affiliated Persons for Free Expression Activities).

(8) Failure to comply with a Notice may result in issuance of a citation or an arrest for trespassing pursuant to applicable state criminal trespass statutes or local ordinances. Nothing in this Section .05 shall limit or be construed to limit the exercise of the statutory

authority of sworn law enforcement officers of a campus police department to arrest in accordance with the laws of this state or local ordinances. Nor shall anything in this Section .05 limit or be construed to limit the authority of sworn law enforcement officers of a campus police department to issue an oral request instructing a person to leave and/or not enter all or part of University property.

(9) Nothing in this Section .05 shall limit or be construed to limit the ability of a University official to issue a lawful directive to an employee whom he/she supervises not to enter certain parts of University property.

(10) For purposes of this Section .05, the term "non-affiliated person" means any person who is not a University student, student organization, employee, or volunteer.

1720-01-02-.06 USE OF UNMANNED AIRCRAFT.

(1) The purpose of the restrictions in this Section .06 is to ensure the safe and orderly use of unmanned aircraft on, at, inside, or above University property.

(2) Unmanned aircraft shall not be used:

(a) By a person who is not authorized to use University property under Section .03;

(b) At a time, in a place, or in a manner prohibited under Section .03;

(c) Inside University buildings or facilities;

(d) On or above University-owned streets or University-owned sidewalks;

(e) Above a human being who is either not directly participating in the operation of the unmanned aircraft or not located under a covered structure that can provide reasonable protection from a falling unmanned aircraft;

(f) On or above a University campus within four hours prior to the scheduled kickoff time of an intercollegiate football game on that campus, during the game, or within two hours after the conclusion of the game;

(g) Outside the hours of official sunrise and sunset; or

(h) In a manner that violates federal or state law, including, without limitation, regulations issued by the Federal Aviation Administration.

(3) This Section .06 does not apply to unmanned aircraft used by a University unit, including faculty conducting research using unmanned aircraft, or a person or entity with whom the University has contracted to operate an unmanned aircraft; provided, however, that unmanned aircraft shall be used in accordance with federal and state law, including, without limitation, regulations issued by the Federal Aviation Administration.

* 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 Bill Haslam				x	
Commissioner Julius Johnson	x				
Commissioner Candice McQueen				x	
Dr. Joe DiPietro				x	
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.	x				
Jalen Blue (non-voting)					
Shannon Brown	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
Dr. William E. Evans	x				
J. Brian Ferguson	x				
John N. Foy	x				
Crawford Gallimore	x				
Dr. David Golden (non-voting)					
Vicky B. Gregg				x	
Raja J. Jubran	x				
Brad A. Lampley	x				
Bonnie E. Lynch	x				
James L. Murphy, III	x				
Sharon J. Miller Pryse	x				
Rhedona Rose	x				
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				
Dr. Thaddeus A. Wilson	x				

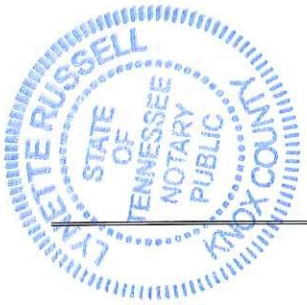
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 02/26/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a 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 first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 04/30/2015

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel



Subscribed and sworn to before me on: April 30, 2015

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

5/15/2015
Date

Department of State Use Only

Filed with the Department of State on: 5/27/15

Effective on: 8/25/15

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

BOARD:	State Board of Education
SUBJECT:	Child nutrition programs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 49-1-302 and 49-6-2303
EFFECTIVE DATES:	August 24, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The State Board of Education is authorized to promulgate rules with regard to child nutrition programs in Tennessee pursuant to Tenn. Code Ann. § 49-6-2303. Current state rules governing nutrition programs cover grades PreK-8. High schools are governed by federal rules promulgated by the U.S. Department of Agriculture. New federal nutrition program rules promulgated in 2010 pursuant to the Healthy, Hunger-Free Kids Act of 2010 will take effect at the beginning of the 2014-15 school year. This Rule adopts the federal rules, 7 CFR Parts 210 and 220, for all grades, allowing all Tennessee child nutrition programs to use the same guidance document in order to lessen confusion and create more consistency across grade spans. Additionally, the new federal rules allow states to set up "special exemptions for infrequent school-sponsored fundraisers." This Rule adopts thirty (30) days as the special exemption.

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.

Not applicable.

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 will have no impact on local governments.

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Sequence Number: 05-13-15
Rule ID(s): 6952
File Date: 05/26/15
Effective Date: 08/24/15

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 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.

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:	Angela C. Sanders
Address:	1st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
_X_ 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**
0520-01-06	Child Nutrition Programs
Rule Number	**Rule Title**
0520-01-06-.01	General Regulations
0520-01-06-.04	Special Exemptions for Infrequent School-Sponsored Fundraisers

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

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS

TABLE OF CONTENTS

0520-01-06-.01	General Regulations	0520-01-06-.04	~~Minimum Nutritional Standards for Individual Food Items Sold or Offered for Sale to Pupils in Grades Pre-Kindergarten through Eight (Pre-K-8)~~ Special Exemptions for Infrequent School-Sponsored Fundraisers
0520-01-06-.02	Schools Eligible to Receive Federal Assistance for Child Nutrition Programs		
0520-01-06-.03	Minimum Requirements for Each Participating School		

0520-01-06-.01 GENERAL REGULATIONS

~~The State Board of Education adopts the current Compilation of Federal Regulations (CFR) which govern child nutrition programs.~~
The State Board of Education adopts by reference the Compilation of Federal Regulations at 7 C.F.R. Parts 210 and 220 in their entirety unless otherwise provided herein as the policies and procedures for administration of nutrition programs and services in the state.

0520-01-06-.02 SCHOOLS ELIGIBLE TO RECEIVE FEDERAL ASSISTANCE FOR CHILD NUTRITION PROGRAMS

(1) The State Department of Education shall determine which schools are eligible to participate in the national school lunch, school breakfast, and other food service programs based upon an application submitted by the local board of education.

(2) The State Department of Education shall enter into a USDA approved standard form of agreement with the appropriate local board of education. The agreement shall cover the operation of the national school lunch program, school breakfast program, and any other applicable child nutrition programs. This agreement shall contain all of the conditions prescribed in the federal-state agreement. The State Department of Education shall not reimburse a school in the absence of an agreement nor permit retroactive agreements.

0520-01-06-.03 MINIMUM REQUIREMENTS FOR EACH PARTICIPATING SCHOOL

Facilities and equipment for the storage, preparation, and serving of food shall be maintained by the local school system.

0520-01-06-.04 ~~MINIMUM NUTRITIONAL STANDARDS FOR INDIVIDUAL FOOD ITEMS SOLD OR OFFERED FOR SALE TO PUPILS IN GRADES PRE-KINDERGARTEN THROUGH EIGHT (PRE-K-8)~~ SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS

LEAs may make special exemptions for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers shall take place on no more than thirty (30) days within a school

year per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the thirty (30) days limit is not exceeded.

~~(1) Introduction.~~

~~The federal Child Nutrition Reauthorization Act, which applies to all schools that participate in the federal school lunch program, requires every school to adopt a wellness plan by June 30, 2006. As a component of a locally adopted wellness program, these nutritional guidelines are minimal and local boards of education may adopt more stringent guidelines.~~

~~Each local board of education shall develop and implement a district policy that, at a minimum, ensures compliance with these rules and designates a person responsible for oversight. The person designated as responsible for district compliance shall register with the state department of education.~~

~~Within one year of the revision of the Dietary Guidelines for Americans (DGA), the State Board of Education, in consultation and cooperation with the Department of Education and the Department of Health, shall review these rules.~~

~~(2) Definitions.~~

~~(a) School day: Starting 45 minutes before the beginning of the official school day and continuing until 30 minutes after the end of the official school day.~~

~~(b) Low calorie beverage (includes flavored, sweetened, and non-caffeinated water): A flavored, non-carbonated beverage that does not contain additional caloric sweeteners and does not contain more than 15 calories per serving.~~

~~(c) Beverage serving: One serving of beverage that does not exceed 8 fluid ounces, except non-flavored, non-carbonated, non-caffeinated water.~~

~~(d) Foods and beverages of minimal nutritional value: Those foods the United States Department of Agriculture (USDA) School Food and Nutrition Service defines as foods and beverages of minimal nutritional value including but not limited to: soda, gum, hard candies, marshmallow candies, licorice and candy coated popcorn.~~

~~(3) Nutritional Quality Standards~~

~~These standards are developed for foods and beverages sold or offered for sale during the school day in schools that include students in grades Pre-kindergarten through 8. These standards apply to food items sold or offered for sale during the school day including but not limited to school stores items, fund raising items, a la carte items, vending machine items, snack bars items, etc. These standards do not apply to foods served as a federally reimbursable meal to pupils. However, it is strongly recommended that schools meet these standards in federally reimbursable meals.~~

~~(a) Beverages that can be offered for sale in schools include the following:~~

~~1. Fluid milk that is flavored or unflavored; is reduced fat, low fat, or skim/non-fat; and meets state and local standards for pasteurized fluid milk and/or USDA approved alternative dairy beverages;*~~

~~2. Beverages that are 100% fruit and vegetable juices;~~

~~3. Water that is non-flavored, non-sweetened, and non-carbonated; and~~

4. Low calorie beverages (includes flavored, sweetened, and non-caffeinated water) that are flavored, non-carbonated beverages, containing no additional caloric sweeteners and no more than 15 calories per serving.

* There are no USDA approved alternative dairy beverages at this time. Public Law 108-265 (Child Nutrition Program Reauthorization) authorizes the Secretary of Agriculture to establish nutritionally equivalent non-dairy beverages by July 1, 2005.

(b) A food item that can be sold individually includes food that meets the following standards:

1. Calories from total fat must be at or below 35%, excluding nuts, seeds, and nut butters. This is determined by dividing the calories from total fat by the total calories and multiplying by 100. If calories from fat are not available, multiply the grams of fat by 9 to equal calories from fat

2. Calories from saturated fat must be at or below 10%. This is determined by dividing the calories from saturated fat by the total calories and multiplying by 100. If calories from saturated fat are not available, multiply the grams of saturated fat by 9 to equal calories from saturated fat.

3. Calories from sugar must be at or below 35% by weight. This is determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This includes both naturally occurring and added sugars. This limit does not include fruits and vegetables as defined below.

4. Chips, cereals, crackers, French fries, baked goods, and other snack items may contain no more than 230 mg. of sodium per serving; pastas, meats, and soups may contain no more than 480 mg. of sodium per serving; and pizza, sandwiches, and main dishes may contain no more than 600 mg. of sodium.

(c) Fruits and Non-Fried Vegetables that can be sold individually include the following:

1. Fruits and vegetables may be fresh, frozen, canned or dried, and they must be found in the Food Buying Guide for Child Nutrition Programs. (http://schoolmeals.nal.usda.gov/FBG/2003FBG/%20Section%202.pdf).

2. Examples of products that cannot be sold as a fruit or vegetable include:

(i) Snack-type foods made from vegetables or fruits, such as potato chips and banana chips;

(ii) Pickle relish, jam, and jelly; and

(iii) Tomato catsup and chili sauce.

3. Fruits and non-fried vegetables are exempt from portion-size limits.

(d) Limit on portion sizes of foods and beverages sold individually are the following:

1. One and one-quarter ounces for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, or jerky;

2. One ounce for cookies;

3. Two ounces for cereal bars, granola bars, pastries, muffins, doughnuts, bagels and other bakery items;

4. Four fluid ounces for frozen desserts, including, but not limited to, low-fat or fat-free ice cream;

5. One ounce pure cheese that is lowfat or fat free containing 3.5 grams or less of fat.

6. Eight ounces for non-frozen yogurt; and

7. Eight fluid ounces for beverages, excluding non-flavored water;

(e) The portion size of a la carte entrees and side dishes, including potatoes, shall not be greater than the size of comparable portions offered as part of school meals. Fruits and non-fried vegetables are exempt from portion-size limits.

(f) Individual food items that are part of a day's reimbursable school lunch or part of the reimbursable school breakfast program may be sold on that day for that meal as an a la carte item. All other school a la carte items are not to exceed the State Board of Education's standards for foods sold individually.

(4) Implementation.

(a) Schools serving pre-kindergarten through grade 5, shall implement these rules no later than one (1) year after the original effective date of these rules. This does not apply to high schools in which pre-kindergarten children are the only students in the building below grade 9.

(b) Schools serving grades 6, 7, or 8 shall implement at least 50% of the nutritional quality standards set forth above no later than one (1) year after the original effective date of these rules and shall implement all of the nutritional quality standards within the following year. Schools that serve grades 6, 7, or 8 and also serve higher grade levels must meet the standards.

(5) Evaluation of Effectiveness

Each local board of education shall monitor implementation of these rules and shall evaluate the effectiveness thereof. School systems shall include a wide range of constituency groups in planning and implementing the evaluation and shall consider measures such as:

(a) Participation rates in school meal programs;

(b) Student satisfaction surveys to monitor the effects of consumption of healthy snacks on children's health, behavior, and school performance and to monitor satisfaction with snack choices;

(c) Parent satisfaction surveys to monitor the effects of consumption of healthy snacks on children's health, behavior, and school performance and to monitor satisfaction with snack choices;

(d) Frequency and types of health problems noted on school nurse logs;

(e) Frequency and types of mental health and behavioral problems noted on counselor logs;

(f) Incidence of student behavior infractions;

~~(g) Teacher surveys of students' classroom behavior, attention span, and memory; and~~

~~(h) Test scores.~~

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-06
CHILD NUTRITION PROGRAMS

TABLE OF CONTENTS

0520-01-06-.01	General Regulations	0520-01-06-.04	~~Minimum Nutritional Standards for Individual Food Items Sold or Offered for Sale to Pupils in Grades Pre-Kindergarten through Eight (Pre-K-8)~~ Special Exemptions for Infrequent School-Sponsored Fundraisers
0520-01-06-.02	Schools Eligible to Receive Federal Assistance for Child Nutrition Programs		
0520-01-06-.03	Minimum Requirements for Each Participating School		

0520-01-06-.01 GENERAL REGULATIONS

~~The State Board of Education adopts the current Compilation of Federal Regulations (CFR) which govern child nutrition programs.~~
The State Board of Education adopts by reference the Compilation of Federal Regulations at 7 C.F.R. Parts 210 and 220 in their entirety unless otherwise provided herein as the policies and procedures for administration of nutrition programs and services in the state.

0520-01-06-.02 SCHOOLS ELIGIBLE TO RECEIVE FEDERAL ASSISTANCE FOR CHILD NUTRITION PROGRAMS

(1) The State Department of Education shall determine which schools are eligible to participate in the national school lunch, school breakfast, and other food service programs based upon an application submitted by the local board of education.

(2) The State Department of Education shall enter into a USDA approved standard form of agreement with the appropriate local board of education. The agreement shall cover the operation of the national school lunch program, school breakfast program, and any other applicable child nutrition programs. This agreement shall contain all of the conditions prescribed in the federal-state agreement. The State Department of Education shall not reimburse a school in the absence of an agreement nor permit retroactive agreements.

0520-01-06-.03 MINIMUM REQUIREMENTS FOR EACH PARTICIPATING SCHOOL

Facilities and equipment for the storage, preparation, and serving of food shall be maintained by the local school system.

0520-01-06-.04 ~~MINIMUM NUTRITIONAL STANDARDS FOR INDIVIDUAL FOOD ITEMS SOLD OR OFFERED FOR SALE TO PUPILS IN GRADES PRE-KINDERGARTEN THROUGH EIGHT (PRE-K-8)~~ SPECIAL EXEMPTIONS FOR INFREQUENT SCHOOL-SPONSORED FUNDRAISERS

LEAs may make special exemptions for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers shall take place on no more than thirty (30) days within a school

year per school site. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service. The principal of the school shall ensure that the thirty (30) days limit is not exceeded.

~~(1) Introduction.~~

~~The federal Child Nutrition Reauthorization Act, which applies to all schools that participate in the federal school lunch program, requires every school to adopt a wellness plan by June 30, 2006. As a component of a locally adopted wellness program, these nutritional guidelines are minimal and local boards of education may adopt more stringent guidelines.~~

~~Each local board of education shall develop and implement a district policy that, at a minimum, ensures compliance with these rules and designates a person responsible for oversight. The person designated as responsible for district compliance shall register with the state department of education.~~

~~Within one year of the revision of the Dietary Guidelines for Americans (DGA), the State Board of Education, in consultation and cooperation with the Department of Education and the Department of Health, shall review these rules.~~

~~(2) Definitions.~~

~~(a) School day: Starting 45 minutes before the beginning of the official school day and continuing until 30 minutes after the end of the official school day.~~

~~(b) Low calorie beverage (includes flavored, sweetened, and non-caffeinated water): A flavored, non-carbonated beverage that does not contain additional caloric sweeteners and does not contain more than 15 calories per serving.~~

~~(c) Beverage serving: One serving of beverage that does not exceed 8 fluid ounces, except non-flavored, non-carbonated, non-caffeinated water.~~

~~(d) Foods and beverages of minimal nutritional value: Those foods the United States Department of Agriculture (USDA) School Food and Nutrition Service defines as foods and beverages of minimal nutritional value including but not limited to: soda, gum, hard candies, marshmallow candies, licorice and candy coated popcorn.~~

~~(3) Nutritional Quality Standards~~

~~These standards are developed for foods and beverages sold or offered for sale during the school day in schools that include students in grades Pre-kindergarten through 8. These standards apply to food items sold or offered for sale during the school day including but not limited to school stores items, fund raising items, a la carte items, vending machine items, snack bars items, etc. These standards do not apply to foods served as a federally reimbursable meal to pupils. However, it is strongly recommended that schools meet these standards in federally reimbursable meals.~~

~~(a) Beverages that can be offered for sale in schools include the following:~~

~~1. Fluid milk that is flavored or unflavored; is reduced fat, low fat, or skim/non-fat; and meets state and local standards for pasteurized fluid milk and/or USDA approved alternative dairy beverages;*~~

~~2. Beverages that are 100% fruit and vegetable juices;~~

~~3. Water that is non-flavored, non-sweetened, and non-carbonated; and~~

4. Low calorie beverages (includes flavored, sweetened, and non-caffeinated water) that are flavored, non-carbonated beverages, containing no additional caloric sweeteners and no more than 15 calories per serving.

* There are no USDA approved alternative dairy beverages at this time. Public Law 108-265 (Child Nutrition Program Reauthorization) authorizes the Secretary of Agriculture to establish nutritionally equivalent non-dairy beverages by July 1, 2005.

(b) A food item that can be sold individually includes food that meets the following standards:

1. Calories from total fat must be at or below 35%, excluding nuts, seeds, and nut butters. This is determined by dividing the calories from total fat by the total calories and multiplying by 100. If calories from fat are not available, multiply the grams of fat by 9 to equal calories from fat

2. Calories from saturated fat must be at or below 10%. This is determined by dividing the calories from saturated fat by the total calories and multiplying by 100. If calories from saturated fat are not available, multiply the grams of saturated fat by 9 to equal calories from saturated fat.

3. Calories from sugar must be at or below 35% by weight. This is determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This includes both naturally occurring and added sugars. This limit does not include fruits and vegetables as defined below.

4. Chips, cereals, crackers, French fries, baked goods, and other snack items may contain no more than 230 mg. of sodium per serving; pastas, meats, and soups may contain no more than 480 mg. of sodium per serving; and pizza, sandwiches, and main dishes may contain no more than 600 mg. of sodium.

(c) Fruits and Non-Fried Vegetables that can be sold individually include the following:

1. Fruits and vegetables may be fresh, frozen, canned or dried, and they must be found in the Food Buying Guide for Child Nutrition Programs. (http://schoolmeals.nal.usda.gov/FBG/2003FBG/%20Section%202.pdf).

2. Examples of products that cannot be sold as a fruit or vegetable include:

(i) Snack-type foods made from vegetables or fruits, such as potato chips and banana chips;

(ii) Pickle relish, jam, and jelly; and

(iii) Tomato catsup and chili sauce.

3. Fruits and non-fried vegetables are exempt from portion-size limits.

(d) Limit on portion sizes of foods and beverages sold individually are the following:

1. One and one-quarter ounces for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, or jerky;

2. One ounce for cookies;

3. Two ounces for cereal bars, granola bars, pastries, muffins, doughnuts, bagels and other bakery items;

4. Four fluid ounces for frozen desserts, including, but not limited to, low-fat or fat-free ice cream;

5. One ounce pure cheese that is lowfat or fat free containing 3.5 grams or less of fat.

6. Eight ounces for non-frozen yogurt; and

7. Eight fluid ounces for beverages, excluding non-flavored water;

(e) The portion size of a la carte entrees and side dishes, including potatoes, shall not be greater than the size of comparable portions offered as part of school meals. Fruits and non-fried vegetables are exempt from portion-size limits.

(f) Individual food items that are part of a day's reimbursable school lunch or part of the reimbursable school breakfast program may be sold on that day for that meal as an a la carte item. All other school a la carte items are not to exceed the State Board of Education's standards for foods sold individually.

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(b) Schools serving grades 6, 7, or 8 shall implement at least 50% of the nutritional quality standards set forth above no later than one (1) year after the original effective date of these rules and shall implement all of the nutritional quality standards within the following year. Schools that serve grades 6, 7, or 8 and also serve higher grade levels must meet the standards.

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(c) Parent satisfaction surveys to monitor the effects of consumption of healthy snacks on children's health, behavior, and school performance and to monitor satisfaction with snack choices;

(d) Frequency and types of health problems noted on school nurse logs;

(e) Frequency and types of mental health and behavioral problems noted on counselor logs;

(f) Incidence of student behavior infractions;

~~(g) Teacher surveys of students' classroom behavior, attention span, and memory; and~~

~~(h) Test scores.~~

* 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)
Chancey	X				
Edwards	X				
Hartrgrove	X				
Johnson	X				
Pearre	X				
Roberts	X				
Rolston	X				
Sloyan	X				
Tucker	X				
Student Member	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/25/2014, 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: 4/7/15

Signature:

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

Subscribed and sworn to before me on: 4/7/15

Notary Public Signature: Phyllis E. Childress

My commission expires on:

PHYLLIS E. CHILDRESS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES:
January 9, 2016

State Board of Education Rules
Chapter 0520-01-06 – Child Nutrition Programs
Rule 0520-01-06-.01 – General Regulations
Rule 0520-01-06-.04 -- Special Exemptions for Infrequent School-Sponsored Fundraisers

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

5/15/2015
Date

Department of State Use Only

Filed with the Department of State on: 05/26/15

Effective on: 08/24/15

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	Long-term care programs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 71-5-105 and 71-5-109
EFFECTIVE DATES:	September 24, 2015 through June 30, 2016
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule authorize an enrollee who is a dependent of a military service member who is a legal resident of this state, but has left the state temporarily due to the service member's military assignment out-of-state, to re-enroll into a Home and Community based Services Waiver upon return to this state, so long as all eligibility conditions are met.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments received on these rules.

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.

The rules are not anticipated to have an effect 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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-25-15
Rule ID(s): 5974
File Date: 06-26-15
Effective Date: 9-24-15

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 Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@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**
1200-13-01	TennCare Long-Term Care Programs
Rule Number	**Rule Title**
1200-13-01-.25	Tennessee's Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled Under Section 1915(c) of the Social Security Act (Statewide MR Waiver)
1200-13-01-.28	Home and Community Based Services Waiver for Persons with Mental Retardation Under Section 1915(c) of the Social Security Act (Arlington MR Waiver)
1200-13-01-.29	Tennessee's Self-Determination Waiver Under Section 1915(c) of the Social Security Act (Self-Determination MR Waiver Program)

RULES

OF

TENNESSEE DEPARTMENT OF FINANCE

AND ADMINISTRATION

BUREAU OF TENNCARE

CHAPTER 1200-13-01

TENNCARE LONG-TERM CARE PROGRAMS

1200-13-01-.25 TENNESSEE'S HOME AND COMMUNITY BASED SERVICES WAIVER FOR THE MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED UNDER SECTION 1915 (c) OF THE SOCIAL SECURITY ACT (STATEWIDE MR WAIVER).

(6) Disenrollment.

(a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.

(b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:

1. The Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled is terminated.

2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.

3. An Enrollee moves out of the State of Tennessee~~.~~; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.

5. The Enrollee's medical or behavioral needs become such that the health, safety, and welfare of the Enrollee cannot be assured through the provision of Waiver Services.

6. The home or home environment of the Enrollee becomes unsafe to the extent that it would reasonably be expected that Waiver Services could not be provided without significant risk of harm or injury to the Enrollee or to individuals who provide covered services to the Enrollee.

7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.

8. The health, safety, and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.

9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.

1200-13-01-.28 HOME AND COMMUNITY BASED SERVICES WAIVER FOR PERSONS WITH MENTAL RETARDATION UNDER SECTION 1915(c) OF THE SOCIAL SECURITY ACT (ARLINGTON MR WAIVER).

(6) Disenrollment.

(a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.

(b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:

1. The Home and Community Based Services Waiver for Persons with Mental Retardation is terminated.

2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.

3. An Enrollee moves out of the State of ~~Tennessee.~~; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.

5. The Enrollee's medical or behavioral needs become such that the health, safety, and welfare of the Enrollee cannot be assured through the provision of Waiver Services.

6. The home or home environment of the Enrollee becomes unsafe to the extent that it would reasonably be expected that Waiver Services could not be provided without significant risk of harm or injury to the Enrollee or to individuals who provide covered services to the Enrollee.

7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the

Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.

8. The health, safety and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.

9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.

1200-13-01-.29 TENNESSEE'S SELF-DETERMINATION WAIVER UNDER SECTION 1915(c) OF THE SOCIAL SECURITY ACT (SELF-DETERMINATION MR WAIVER PROGRAM).

(7) Disenrollment.

(a) Voluntary disenrollment of an Enrollee from the Waiver may occur at any time upon written notice from the Enrollee or the Enrollee's guardian or conservator to the Operational Administrative Agency. Prior to disenrollment the Operational Administrative Agency shall provide reasonable assistance to the Enrollee in locating appropriate alternative placement.

(b) An Enrollee may be involuntarily disenrolled from the Waiver for any of the following reasons:

1. The Tennessee Self-Determination Waiver Program is terminated.

2. An Enrollee becomes ineligible for Medicaid or is found to be erroneously enrolled in the Waiver.

3. An Enrollee moves out of the State of Tennessee~~.~~; provided however, that when the Enrollee is the dependent of a military service member who is a legal resident of the state, but has left the state temporarily due to the military service member's military assignment out of state, such dependent may re-enroll in the Waiver upon return to the State, so long as all conditions of eligibility are met.

4. The condition of the Enrollee improves such that the Enrollee no longer requires the level of care provided by the Waiver.

5. The Enrollee's medical or behavioral needs become such that the health, safety and welfare of the Enrollee cannot be assured through the provision of Waiver Services.

6. The home or home environment of the Enrollee becomes unsafe to the extent that it would reasonably be expected that Waiver Services could not be provided without significant risk of harm or injury to the Enrollee or to individuals who provide covered services to the Enrollee.

7. The Enrollee or the Enrollee's guardian or conservator refuses to abide by the Plan of Care or related Waiver policies, resulting in the inability of the Operational Administrative Agency to ensure quality care or the health and safety of the Enrollee.

8. The health, safety and welfare of the Enrollee cannot be assured due to the lack of an approved Safety Plan.

9. The Enrollee was transferred to a hospital, NF, ICF/MR, Assisted Living Facility, and/or Home for the Aged and has resided there for a continuous period exceeding one hundred twenty (120) days, if such period began prior to March 1, 2010, or a period exceeding ninety (90) days if such period begins on or after March 1, 2010.

10. The cost for all Covered Waiver services, including Emergency Assistance services, has reached the Waiver limit of $36,000 per year per Enrollee and the State cannot assure the health and safety of the Enrollee.

GW10215079

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 06/01/2015 (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: 03/30/15

Rulemaking Hearing(s) Conducted on: (add more dates). 05/22/15

Date: 6/1/2015

Signature:

Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare
Tennessee Department of Finance and Administration

KATHY CROCKARELL
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 6/1/15

Notary Public Signature: Kathy Crockarell

My commission expires on: 1/8/19

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

6/24/2015
Date

Department of State Use Only

Filed with the Department of State on: 6/26/15

Effective on: 9/24/15

Tre Hargett
Secretary of State

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