

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

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

- (1) When the PBV Rule Applies. Many parts of the PBV Program follow the Tenant-Based Voucher Rule codified at 24 C.F.R. 982 and, therefore, much of this Administrative Plan will also apply to the PBV Program, except as outlined under 24 C.F.R. 983.2 and this section.
- (2) Provisions under 24 C.F.R. 982 and this Administrative Plan that Do Not Apply to the PBV Program.
 - (a) Provisions on the issuance or use of a voucher;
 - (b) Provisions on portability;
 - (c) Provision on the following special housing types: Shared housing, manufactured home space rental, and the homeownership option;
 - (d) Subpart D of part 982: paragraph (e)(2) of 24 C.F.R. 982.158;
 - (e) Subpart E of part 982: paragraph (e) of 24 C.F.R. 982.201, paragraph (b)(2) of 24 C.F.R. 982.202, and paragraph (d) of 24 C.F.R. 982.204;
 - (f) Subpart G of part 982, with the following exceptions:
 1. Section 982.310 (owner termination of tenancy) applies to the PBV Program, but to the extent that those provisions differ from 983.257, the provisions of 983.257 govern; and
 2. Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from 983.256(g), the provisions of 983.256(g) govern; and
 3. Section 982.316 (live-in aide) applies to the PBV Program;
 - (g) Subpart H of part 982;
 - (h) In subpart I of part 982: 24 C.F.R. 982.401; paragraphs (a)(3), (c), and (d) of 24 C.F.R. 982.402; 24 C.F.R. 982.403; 24 C.F.R. 982.404; paragraphs (a), (b), (d), (i) and (j) of 24 C.F.R. 982.405; paragraphs (a), (e), and (f) of 24 C.F.R. 982.406; and 24 C.F.R. 982.407;
 - (i) In subpart J of part 982: paragraphs (a), (b)(3), (b)(4) and (c) of Section 982.451 and Section 982.455.
 - (j) Subpart K of Part 982, except the following provisions apply to the PBV Program:
 1. Section 982.503, paragraphs (a)(10 and (d)(1) – (4) do apply (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

2. Section 982.516 (family income and composition; regular and interim examinations); and
 3. Section 982.517 (utility allowance schedule); except that 24 C.F.R. 982.517(d) does not apply; and
- (k) In subpart M of part 982: Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and provisions concerning shared housing (Sections 982.615 through 982.618), manufactured home space rental (Sections 982.622 through 982.624), and the homeownership option (Sections 982.625 through 982.641).

(3) Maximum Number of PBV Units Allowed Under THDA's PBV Program and Exceptions.

- (a) THDA may select owner proposals to provide project-based assistance for up to twenty (20) percent of its authorized voucher units. THDA is not required to reduce its number of PBV units selected under an Agreement or Housing Assistance Payment (HAP) contract if its amount of authorized units is subsequently reduced.
- (b) The following types of units are not subject to the Twenty (20) Percent PBV Program Cap.
 1. RAD. Units committed to RAD PBV are excluded from the numerator and denominator when calculating the number of voucher units that can be project-based. This exception applies regardless of the effective date of the HAP contract.
 2. HUD-VASH PBV. HUD has awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding. These PBV units supported by HUD-VASH vouchers do not count against the PBV program cap as long as the vouchers remain under the PBV HAP contract at the designated project and they, therefore, are excluded from the numerator and denominator when calculating the number of voucher units that can be project-based. However, all other HUD-VASH vouchers, including non-set-aside HUD-VASH vouchers are subject to the project-based cap limit.
 3. Units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy, including LIHTC. Units must be covered under a PBV HAP contract, effective on or after April 18, 2017.
- (c) THDA may project-base an additional ten (10) percent of its authorized units if the additional units meet one of the exceptions below. THDA does not need to meet the 20 percent maximum units before it designates eligible units for the ten (10) percent exception.
 1. Homeless. The units are specifically made available to house individuals and families who meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) included in 24 C.F.R. 578.3.

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

history of incarceration or detention for criminal activity, and a history of unstable employment;

2. **Veteran.** The units are specifically made available to house families that are comprised of or include a veteran. A veteran is a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. 38 U.S.C. 101(2). HUD-awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding are already excluded from the program cap and are not to be included under this ten (10) percent exception category.
 3. **Supportive Housing to Persons with Disabilities or to Elderly Persons.** The units provide supportive housing to persons with disabilities or to elderly persons, as defined in 24 C.F.R. 5.403. Supportive housing means the project makes a range of services reasonably available to all of the families in the project that are receiving PBV assistance and the services are (i) tailored to the needs of the residents occupying such housing; (ii) voluntary; and (iii) are continuous for as long as the family is in need of the service. Such services may include (but are not limited to): meal service adequate to meet nutritional need; housekeeping aid; personal assistance; transportation services; health-related services; case management; child care; educational and employment services; job training; counseling; peer support; life skills training; or other services that meet the above criteria. Such services need not be provided by the owner or on-site, as long as they can be made reasonably available through a service provider. Such services must be made available to a household within one hundred twenty (120) days of the household's request for services. The disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit, but the member of the family may choose not to participate in the service.
 4. **Area Where Vouchers are Difficult to Use.** The units are located in an area where vouchers are difficult to use as defined by 24 C.F.R. 983.3.
 5. **Replacement Units.** The units replace, on a different site, the units listed in 24 C.F.R. 983.59(b)(1) and (2) for which THDA had authority under 24 C.F.R. 983.59 to commit PBV assistance on the original site without the units counting toward the program cap or project cap. The units are eligible under this category only if THDA has not committed and will not commit PBV assistance to the original site pursuant to the normally applicable exclusions of those units under 24 C.F.R. 983.59. If THDA subsequently plans to commit PBV assistance to units on the original site, those proposed units count toward and must comply with the twenty (20) percent maximum or increased cap of this section, as applicable, and the project cap requirements of 24 C.F.R. 983.54.
 6. **Units Exclusively for Certain Eligible Youth.** The units are exclusively made available to eligible youth as described in Section 8(x)(2) of the U.S. Housing Act and if the units exclusively made available to eligible youth use Family Unification Program ("FUP") assistance that is normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act, THDA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth).
- (d) **Higher Project Cap.** THDA may provide PBV assistance to the greater of twenty-five (25) units or forty (40) percent of the number of units in the project if the project is located in an area where vouchers are difficult to use, defined as: i) a census tract with a poverty rate of twenty (20) percent or less as determined by HUD; ii) a zip code area where the rental vacancy rate is less than four (4) percent as determined by HUD; iii) a zip code area where 90 percent of the Small Area FMR is more than one hundred ten (110) percent of the metropolitan area or county FMR.
- (e) **Exceptions to the Project Cap.** A project is not limited to a single exception category but may include any of the categories below.

1. Units exclusively for elderly families, as defined in 24 CFR 5.403 do not count against the Project Cap.
 - (i) Elderly Family, thereunder, means a family whose head (including co-head), spouse, or sole member is a person who is at least sixty-two (62) years of age. It may include two or more persons who are at least sixty-two (62) years of age living together, or one or more persons who are at least sixty-two (62) years of age living with one or more live-in aides.
 - (ii) It is not necessary that the entire project or buildings within the project be designated as elderly in order for the exception to apply. Under the PBV Program, projects are not "designated" as elderly as is the case in other programs, such as the Public Housing or Section 202 Elderly Programs.
 - (iii) The owner must identify under the HAP contract, however, the particular number of units that are exclusively made available for elderly families.
 - (iv) As each unit turns over, THDA may amend the HAP contract to transfer the exception status from one unit to another, provided it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 24 CFR 983.207(a).
 - (v) As provided under 24 CFR 983.262(e), THDA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death or long-term or permanent hospitalization or nursing care of the elderly family member), the elderly family member no longer resides in the unit. See Section 0770-01-05-.26(2)(d) of this Administrative Plan for rules regarding Absences from Unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family, unless it is possible to transfer the exception status to another unit as described in the paragraph above.
2. Units Exclusively for Certain Eligible Youth. The units are exclusively made available to eligible youth as described in Section 8(x)(2) of the U.S. Housing Act and if the units exclusively made available to eligible youth use Family Unification Program ("FUP") assistance that is normally available for eligible families and youth described in Section 8 (x)(2) of the U.S. Housing Act, THDA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth).
3. Supportive Services. Units are made exclusively available to households eligible for supportive services. Supportive Services must be made reasonably available to all of the families in the project that are receiving PBV assistance, but the family does not need to participate in the services as a condition of living in the excepted unit. The services should be designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. Such services may include (but are not limited to): meal service adequate to meet nutritional need; housekeeping aid; personal assistance; transportation services; health-related services; case management; child care; educational and employment services; job training; counseling; peer support; life skills training; or other services that meet the above criteria THDA's Family Self Sufficiency Program also qualifies as a Supportive Service. Such services need not be provided by the owner or on-site, as long as they can be made reasonably available through a service provider. Such services must be made available to a household within one hundred twenty (120) days of the household's request for services.

(4) Units Excluded from the Program Cap and the Project Cap.

- (a) Exclusion of Existing or Rehabilitated Units. Excluded units must, in the five (5) years prior to the request for proposals (RFP) or the proposal or project selection date in the case of selection without

RFP, fall into one of the following categories provided that the units are removed from all categories prior to the effective date of the HAP contract.

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

- (b) Analysis of Impact. Prior to selection, THDA must perform an analysis of the impact if project-basing fifty (50) percent or more of THDA's authorized voucher units. The analysis should consider the ability of THDA to meet the needs of the community across its tenant-based and project-based voucher portfolio, including the impact on, among others; families on the waiting list and eligible PBV families that wish to move. The analysis performed by THDA must be available as part of the public record.
- (c) Selection Based on Previous Competition. THDA will utilize its other state and federal housing assistance, community development, and supportive service programs, including, but not limited to, its Tennessee Housing Trust Fund programs, Housing Trust Fund Program, HOME Program, and the Low-Income Housing Tax Credit Program (THDA Programs) to select projects for PBV assistance that (i) assist families in Tennessee's rural and distressed counties (as defined under the THDA Program it was initially awarded under), (ii) provide permanent supportive housing within THDA's HCV service area, or (iii) otherwise serve THDA's priorities outlined in its Annual Plan. THDA may either contact specific owners directly, whose projects fit the criteria THDA is seeking, to inform them of available PBV assistance, or it may send an email blast to owners under the programs above, notifying them of an offering of PBV assistance, in order for the owners to submit applications for such assistance. Before any round of selection based on a previous competition, THDA will also post its current selection criteria and the number of units it is seeking to project base to www.THDA.org. To be eligible for selection, a project must have been selected:
1. By THDA;
 2. Competitively under one of its housing assistance programs;
 3. Within the last three (3) years of the PBV selection date; and
 4. Without any consideration as to whether the project would receive PBV assistance.
- (d) Selection Based on Requests for PBV Proposals via Public Notice.
1. THDA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
 2. Public notice will be given per publication in a local newspaper of general circulation, on THDA's website and phone system, or other suitable means and will specify the deadline for submission. The Request for Proposal will specify the details of the selection criteria.
 3. THDA will draft detailed application and selection information before any request and will provide such at the request of any interested parties.
- (e) Before THDA makes a selection based on a previous competition or issues a Request for PBV Proposals, it will provide the following to its HUD field office for review:
1. The total amount of authorized units:
 2. The percentage of authorized units available to be project-based; and
 3. The total amount of authorized units THDA is planning to project-base pursuant to the selection or request.
- (f) All PBV proposals must comply with HUD program regulations and requirements, including a determination that the property is eligible housing (24 C.F.R. 983.53 and 983.54), complies with the cap on the number of PBV units per project (24 C.F.R. 983.56), and meets the site selection standards (24 C.F.R. 983.57).
- (g) THDA will provide written notice to the party that submitted a selected proposal and public notice of such selection within fourteen (14) calendar days of such selection.

- (h) THDA will make documentation available for public inspection regarding the basis for the selection of a PBV proposal.
- (6) Eligible Housing Types. THDA may attach PBV assistance to units in existing housing or in newly constructed or rehabilitated housing developed under in accordance with an Agreement, as defined under 24 C.F.R. 983.3.
- (a) Existing Housing. A housing unit is considered an existing unit for purposes of the PBV Program if, at the time of notice of selection, the units substantially comply with housing quality standards (HQS) subject to the National Standards for the Physical Inspection of Real Estate (NSPIRE), which THDA defines as units with no life-threatening violations that will pass HQS within twelve (12) months of the HAP contract execution date.
1. Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the Agreement to Enter into a Housing Assistance Payment Contract (AHAP) do not subsequently qualify as existing housing.
 2. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.
- (7) Ineligible Units. THDA may not attach or pay PBV assistance for units in the following types of housing:
- (a) Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family;
 - (b) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
 - (c) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, THDA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
 - (d) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
 - (e) Manufactured homes. Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located;
 - (f) Transitional Housing. Housing where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within twenty-four (24) months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in twenty-four (24) months and cannot be extended;
 - (g) Owner-occupied units. THDA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program;
 - (h) Ineligible families. Before THDA selects a specific unit to which assistance is to be attached, it must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. THDA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program;
 - (i) Units for which commencement of construction or rehabilitation occurred prior to Agreement to Enter into a Housing Assistance Payment Contract (AHAP). THDA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced, as defined in 24 C.F.R. 983.152, after proposal submission and prior to execution of an AHAP; and

- (j) Units in Subsidized Housing. THDA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:
1. A public housing dwelling unit;
 2. A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
 3. A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
 4. A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
 5. A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
 6. A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
 7. A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
 8. Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
 9. Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
 10. A Section 101 rent supplement project (12 U.S.C. 1701s);
 11. A unit subsidized with any form of tenant-based rental assistance (as defined at 24 C.F.R. 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);
 12. A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by THDA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

(8) Site Selection Standards.

- (a) THDA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless it has determined that project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.
- (b) In determining whether a proposed PBV development will be selected, THDA must consider the following:
 1. Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
 2. Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
 3. Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

4. Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
 5. Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
 6. If the poverty rate in the area where the proposed PBV development will be located is greater than twenty (20) percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;
 7. Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.
 8. Whether the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD's implementing regulations at 24 C.F.R. part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629); and HUD's implementing regulations at 24 C.F.R. parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 C.F.R., 1959–1963 Comp., p. 652) and HUD's implementing regulations at 24 C.F.R. part 107. The site must meet the section 504 site selection requirements described in 24 C.F.R. 8.4(b)(5).
 9. Whether the site meets HQS site standards at 24 C.F.R. 982.401(l).
- (c) Existing and Rehabilitated Housing Site and Neighborhood Standards. A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:
1. Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)
 2. Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
 3. Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
 4. Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.
 5. Be free of disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.
 6. The site and neighborhood may not be subject to serious adverse environmental conditions natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.
- (d) New Construction Site and Neighborhood Standards. A site for newly constructed housing must meet the following site and neighborhood standards:

1. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
2. The site must not be located in an area of minority concentration, except as otherwise permitted below, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
3. A project may be located in an area of minority concentration only if:
 - (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
 - (ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see below for further guidance on this criterion).
 - (iii) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Instead, application of this standard should produce a reasonable distribution of assisted units each year, which, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
 - (iv) Units may be considered "comparable opportunities" if they have the same household type (elderly, disabled, family, large family); tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
 - (v) Application of the sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:
 - (I) A significant number of assisted housing units are available outside areas of minority concentration.
 - (II) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten (10) years, relative to the racial mix of the eligible population.
 - (III) There are racially integrated neighborhoods in the locality.
 - (IV) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
 - (V) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
 - (VI) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
 - (VII) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

- (vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- 4. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- 5. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- 6. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- 7. Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

(9) Environmental Review.

- (a) HUD Environmental Regulations. Activities under the PBV Program are subject to HUD environmental regulations at 24 C.F.R. 50 and 58.
- (b) Existing Housing. No Environmental Review is required to be undertaken before THDA enters into a HAP contract for existing housing, unless: 1) an Environmental Review is required by law or regulation relating to funding other than PBV HAP; 2) the project or proposal was selected in accordance with the site selection standards at 24 C.F.R. 983.55 in effect before June 6, 2024.
- (c) New Construction/Rehabilitation. An Environmental Review is required for new construction or rehabilitated projects. THDA may not enter into an Agreement or HAP contract with an owner, and the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities, until one of the following occurs:
 - 1. THDA has completed the environmental review and HUD has approved the environmental certification and HUD has given a release of funds, as defined in 24 C.F.R. 983.3(b);
 - 2. THDA has determined that the project to be assisted is exempt under 24 C.F.R. 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 C.F.R. 58.35(b); or
 - 3. HUD has performed an environmental review under 24 C.F.R. part 50 and has notified the PHA in writing of environmental approval of the site.
 - 4. HUD will not approve the release of funds for PBV assistance if the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before THDA submits and HUD approves its request for release of funds (where such submission is required).

- (d) Mitigating Measures. THDA must require the owner to carry out mitigating measures required by HUD as a result of the environmental review.

(10) Relocation Requirements.

- (a) Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [42 U.S.C. 4201-4655] and implementing regulations at 49 C.F.R. part 24.
- (b) The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. THDA may not use voucher program funds to cover relocation costs, except that THDA may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law.
 - 1. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 C.F.R. 982.155 and other official HUD issuances.
- (c) The acquisition of real property for a PBV project is subject to the URA and 49 C.F.R. part 24, subpart B. It is the responsibility of THDA to ensure the owner complies with these requirements.

(11) Housing Quality Standards (HQS). On May 11, 2023, HUD published the “Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE). These requirements are outlined in Chapter 0770-01-05-.23 of this Administrative Plan and any differences between the HCV Program and the PBV Program are outlined here.

- (a) Lead-based paint requirements. The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 C.F.R. part 35, subparts A, B, H, and R, apply to the PBV program.
- (b) Enforcement. 24 C.F.R. 982 and 983 do not create any right of the family or any party, other than HUD or THDA, to require enforcement of HQS requirements or to assert any claim against HUD or THDA for damages, injunction, or other relief for alleged failure to enforce HQS.
- (c) Additional THDA quality and design requirements. This section establishes the minimum federal housing quality standards for PBV housing. However, THDA also requires adherence to its Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units for PBV units, which must be specified in the Agreement.
- (d) Housing Accessibility for Persons with Disabilities.
 - 1. Program Accessibility. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. part 8. THDA will ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 C.F.R. part 8, subpart C.
 - 2. Design and Construction. Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 C.F.R. 100.205, as applicable.
- (e) Inspections.
 - 1. Pre-Selection Inspection.

- (i) Inspection of Site. THDA must examine the proposed site before the proposal selection date.
- 2. Turnover Inspections. THDA will approve assisted tenancy of a unit prior to the HQS inspection if the property has passed an alternative inspection (inspections of housing assisted under HOME, LIHTC, or other inspections performed by HUD) within the past 24 months. THDA must conduct an initial inspection of the unit, within fifteen (15) days of receiving the Request for Tenancy Approval (RTA). THDA may not provide HAP until the unit fully complies with the HQS.
 - (i) If the unit passes the initial HQS inspection, THDA will pay HAP retroactively to the effective date of the lease.
 - (ii) If the unit fails the initial HQS inspection, life-threatening deficiencies must be corrected within 24 hours of receiving the inspection results. Non-life-threatening deficiencies must be corrected within 30 calendar days.
 - 1. If the deficiencies are corrected, THDA will pay HAP retroactively to the effective date of the lease.
 - 2. If the deficiencies are not corrected, within timeframe established, THDA must abate the HAP, in accordance with this Administrative Plan.
- 3. Periodic Inspections.
 - (i) At least biennially, during the term of the HAP contract, THDA must inspect a random sample, consisting of at least twenty (20) percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this inspection requirement.
 - (ii) If more than twenty (20) percent of the sample of inspected contract units in a building fail the initial inspection, then THDA must reinspect one hundred (100) percent of the contract units in the building.
- 4. Other Inspections.
 - (i) THDA must inspect contract units whenever needed to determine that the contract units comply with HQS, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. THDA must take into account complaints and any other information coming to its attention in scheduling inspections.
 - (ii) THDA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS. (Family HQS obligations are specified in 24 C.F.R. 982.404(b).)
 - (iii) In conducting quality control of HQS inspections, THDA must include a representative sample of both tenant-based and project-based units.

(12) Requirements for Rehabilitated and Newly Constructed Units.

- (a) Agreement to Enter Into HAP Contract ("Agreement"). THDA must enter into an Agreement with the owner at such time as the subsidy layering review is complete, the environmental review is complete and THDA has received approval, and if construction or rehabilitation has not commenced after proposal submission. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing. Additional Agreement requirements include the following:
 - 1. The Agreement must be in the form required by HUD headquarters (see 24 C.F.R. 982.162).

2. In the Agreement the owner agrees to develop the contract units to comply with HQS, and THDA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, THDA will enter into a HAP contract with the owner for the contract units.
3. The Agreement Must Describe the Housing. At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program: (i) Site; (ii) Location of contract units on site; (iii) Number of contract units by area (size) and number of bedrooms and bathrooms; (iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner; (v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant; (vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 C.F.R. 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement; (vii) Estimated initial rents to owner for the contract units; (viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by THDA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications; (ix) HQS; and (x) THDA Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units.
4. Conduct of Development Work.
 - (i) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing. The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.
 - (ii) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 C.F.R. part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.
 - (iii) Equal Employment Opportunity. The owner must comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 C.F.R., 1964–1965 Comp., p. 339), 11625 (3 C.F.R., 1971–1975 Comp., p. 616), 12432 (3 C.F.R., 1983 Comp., p. 198) and 12138 (3 C.F.R., 1977 Comp., p. 393).
 - (iv) Eligibility to Participate in Federal Programs and Activities. The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.
 - (v) Disclosure of Conflict of Interest. The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.
 - (vi) Completion of Housing Deadline. The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the following required evidence of completion.
 - (I) Minimum Submission. At a minimum, the owner must submit the following evidence of completion to THDA in the form and manner required by the THDA: (i) Owner

certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and (ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

(II) Additional Documentation. Owners must submit a certificate of occupancy or certificate of completion, as applicable.

(b) Broadband Infrastructure. Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 C.F.R. 5.100, of a building with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 C.F.R. 5.100, except where the owner determines and documents the determination that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(c) THDA Determination of Completion and Acceptance of Completed Units. When THDA has received owner notice that the housing is completed, THDA must:

1. Inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and THDA's Minimum Design Standards Rehabilitation and New Construction Single Family and Multi-Family Housing Units.
2. Determine if the owner has submitted all required evidence of completion.
3. If the work has not been completed in accordance with the Agreement, THDA must not enter into the HAP contract.

(13)HAP Contract.

(a) Execution of HAP Contract.

1. Newly Constructed or Rehabilitated Housing. If THDA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, THDA must submit the HAP contract for execution by the owner and must then execute the HAP contract prior to the effective date.
2. Existing Housing. In the case of existing housing, the HAP contract must be executed once all contract units have passed inspection and prior to the effective date of the PBV HAP-C.

(b) The HAP contract must specify:

1. The total number of contract units by number of bedrooms;
2. Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
3. Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
4. Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

5. Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 C.F.R. part 8;
7. The HAP contract term;
8. The number of units in any project that will exceed the twenty-five (25) percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
9. The initial rent to owner (for the first twelve (12) months of the HAP contract term).

(c) Term of the HAP Contract.

1. Twenty (20)-year Initial Term. THDA may enter into a HAP contract with an owner for an initial term of up to 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than twenty (20) years.
2. Extension of Term. THDA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to twenty (20) years if THDA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed twenty (20) years. THDA may provide for multiple extensions; however, in no circumstance may such extensions exceed twenty (20) years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than twenty four (24) months prior to the expiration of the previous extension contract, THDA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term will not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.
3. Termination by THDA - Insufficient Funding.
 - (i) The HAP contract must provide that the term of the THDA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by THDA in accordance with HUD instructions. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.
 - (ii) If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, THDA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by THDA shall be implemented in accordance with HUD instructions.
4. Termination by Owner - Reduction Below Initial Rent. The owner may terminate the HAP contract, upon notice to THDA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 C.F.R. 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance under THDA's HCV Program.

(d) Statutory Notice Requirements for Contract Termination or Expiration. Notices required hereunder must be provided in the form prescribed by HUD.

1. Not less than one (1) year before termination of a PBV HAP contract, the owner must notify THDA and assisted tenants of the termination.

2. For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.
3. If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.
4. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

(e) Amendment to HAP contract to Add or Substitute Contract Units.

1. Amendment to Substitute Contract Units. At the discretion of THDA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, THDA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.
2. Amendment to Add Contract Units. At the discretion of THDA and provided that the total number of units in a project that will receive PBV assistance will not exceed the greater of twenty-five (25) units or twenty-five (25) percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.
3. Staged Completion of Contract Units. Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

(f) Removal of Unit from HAP Contract.

1. Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract one hundred eighty (180) days following the last housing assistance payment on behalf of the family.
2. If the project is fully assisted, THDA may reinstate the unit removed to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, THDA may substitute a different unit for the unit removed to the HAP contract when the first eligible substitute becomes available. A reinstatement or substitution of units under the HAP contract, in accordance with this section, must be permissible under 24 C.F.R. 983.207. The anniversary and expiration dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. THDA must refer eligible families to the owner in accordance with the THDA's selection policies

(14) Owner Responsibilities. The owner is responsible for performing all of the owner responsibilities under the Agreement, the HAP contract, Owner Responsibilities under 24 C.F.R. 982.452, and Chapter 0770-01-05.24 of this Administrative Plan.

(a) Owner Certification. By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract, the following statements are true:

1. All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
2. The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.
3. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by THDA, and the lease is in accordance with the HAP contract and HUD requirements.
4. To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
5. The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
6. The amount of the housing assistance payment is the correct amount due under the HAP contract.
7. The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
8. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
9. The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
10. Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

(b) Continuing Condition of Contract Units.

1. Owner Maintenance and Operation.
 - (i) The owner must maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. These requirements are outlined in Chapter 0770-01-05-.23 of this Administrative Plan and any differences between the HCV Program and the PBV Program are outlined herein.
 - (ii) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with THDA and in the lease with each assisted family.
2. Remedies for HQS Violation.
 - (i) THDA must vigorously enforce the owner's obligation to maintain contract units in accordance with HQS. THDA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.
 - (ii) If THDA determines that a contract unit is not in accordance with HQS (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

3. Maintenance and Replacement - Owner's Standard Practice. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

(15) Selection of Tenants.

(a) Who May Receive PBV assistance?

1. THDA may select families who are participants in THDA's HCV Program and families who have applied for admission to such Program.
2. Except for HCV Program participants (determined eligible at original admission to the voucher program), THDA may only select families determined eligible for admission at commencement of PBV assistance.
3. The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 C.F.R. part 5, subpart L, apply to admission to the project-based program.
4. THDA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

(b) Protection of In-Place Families.

1. The term "in-place family" means a family residing in a proposed contract unit on the proposal or project selection date.
2. To minimize displacement of in-place families, if an in-place family is determined to be eligible prior to the placement of the family's unit on the HAP Contract, the in-place family must be placed on the PBV waiting list (if the family is not already on the list) and given an absolute selection preference. If the PHA's waiting list for PBV assistance is not a project-specific waiting list, THDA must refer the family to the applicable project owner for an appropriate-sized PBV unit in the specific project.
3. If the in-place family is a tenant-based voucher participant, program eligibility is not redetermined. However, THDA must determine that the total tenant payment for the family is less than the gross rent for the unit, such that the unit will be eligible for a monthly HAP and THDA may deny or terminate assistance for the grounds specified in 24 C.F.R. 982.552 and 982.553.

(c) Selection from the Waiting List.

1. THDA will allow owner-maintained PBV waiting lists for PBV projects. The owner may maintain a single waiting list across multiple projects owned by the owner.
2. For any newly established owner-maintained waiting lists, THDA must first offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.
3. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list.
4. THDA will identify in the Administrative Plan the names of the projects that have owner-maintained waiting lists once awarded. [To be determined]

5. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list.
6. THDA will monitor owner-maintained waiting lists in accordance with the Section Eight Management Assessment Program (SEMAP) – Selection from the Waiting list. THDA will ensure the owner's waiting list policies are in compliance with fair housing requirements and the THDA Administrative Plan.
7. At least biennially, THDA will pull a quality control sample for each owner-maintained waiting list, based on the SEMAP guidelines in 24 C.F.R. 985.3, drawn separately for applicants reaching the top of the owner-maintained waiting list and for admissions, documentation shows that at least ninety-eight (98) percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection.
 - (a) The owner must develop and submit a written owner waiting list policy to the THDA for approval. The owner's waiting list policy must include policies and procedures concerning waiting list management and selection of applicants from the projects waiting list including any admission preferences, procedures for removing applicant names from the waiting list and procedures for closing and reopening the waiting list. The owner must receive approval from THDA of its owner waiting list policy in accordance with the process established in THDA's Administrative Plan. The owners' waiting list policy must be incorporated in THDA's Administrative Plan.
 - (b) The owner must receive approval from THDA for any preferences that will be applicable to the project. THDA will approve such preferences as part of its approval of the owner's waiting list policy. Each project may have a different set of preferences. Preferences must be consistent with THDA Plan and listed in the owners waiting list policy.
 - (c) The owner is responsible for opening and closing the waiting list, including providing public notice when the owner opens the waiting list in accordance with 24 C.F.R. 982.205. If the owner -maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 C.F.R. 982.206 and the owner waiting list policy.
 - (d) The applicant may apply directly at the project, or the applicant may request that THDA refer the applicant to the owner for placement on the project's waiting list. THDA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.
 - (e) Applicants already on THDA's waiting list must be permitted to place their names on the project's waiting lists.
 - (f) At the discretion of THDA, the owner may make preliminary eligibility determinations for purposes of placing the family on the waiting list, and preference eligibility determinations. THDA may choose to make this determination rather than delegating it to the owner.
 - (g) If THDA delegated the preliminary eligibility and preference determination to the owner, the owner is responsible for notifying the family of the owner's determination not to place the applicant on the waiting list and a determination that the family is not eligible for a preference. THDA is then responsible for conducting the informal review.
 - (h) Once an owner selects the family from the waiting lists, the owner refers the family to THDA who then determines the family's final program eligibility. The owner may not offer a unit to the family until THDA determines that the family is eligible for the program.

- (i) All HCV waiting list administration requirements that apply to the PBV program apply to owner-maintained waiting lists.
 - (j) THDA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with the program requirements, including but not limited to non-discrimination and equal opportunity requirements under the authorities cited at 24 C.F.R. 5.105(a). The owner is responsible for maintaining complete and accurate records as described in 24 C.F.R. 982.158. The owner must give THDA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management as described in 24 C.F.R. 982.158(c). HUD may undertake an investigation to determine whether the PHA or owner is in violation of authorities and, if unable to reach a voluntary resolution to correct the violation, take enforcement action against either the owner or THDA or both.
8. No less than seventy-five (75) percent of the families admitted to THDA's HCV and PBV Programs during THDA's fiscal year from THDA's waiting list shall be extremely low-income families based on area median income. The income-targeting requirements at 24 C.F.R. 982.201(b)(2) apply to the total of admissions to THDA's HCV and PBV Programs during THDA's fiscal year from THDA's waiting list (including owner-maintained PBV waiting lists) for such programs.
 9. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, THDA must first refer families who require such accessibility features to the owner (see 24 C.F.R. 8.26 and 100.202).
- (d) **Preference for Services Offered.** In selecting families, THDA may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 C.F.R. 982.207(b)(3) continues to apply.
1. **Preference Limits.**
 - (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
 - (ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
 - (iii) For whom such services cannot be provided in a non-segregated setting.
 2. Disabled residents must not be required to accept the particular services offered at the project.
 3. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.
- (e) **Offer of PBV Assistance.**
1. If a family refuses THDA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the THDA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by THDA.
 2. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:
 - i. If a central PBV waiting list is used, the family may be rejected after one offer of assistance without good cause before the family is removed from the PBV waiting list. If the owner

rejects the family, the family will be allowed one more referral to a different project before being removed from the list.

- ii. If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.

- iii. Good cause is defined as:

- (A) The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
- (B) The unit has HQS deficiencies;
- (C) The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and
- (D) The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

- 3. THDA may not take any of the following actions against an applicant solely because the applied for, received, or refused an offer of PBV assistance:

- i. Refuse to list the applicant on THDA's waiting list for tenant-based assistance or any other available PBV waiting list. However, the THDA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.
- ii. Deny any admission preference for which the applicant is currently qualified;
- iii. Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under THDA's selection policy;
- iv. Remove the applicant from the waiting list for the tenant-based voucher assistance.

(f) Information THDA is Required to Provide a Family Accepted for the PBV Program.

- 1. Oral Briefing. When a family accepts an offer of PBV assistance, THDA must give the family an oral briefing. The briefing must include a description of how the program works and family and owner responsibilities and family right to move. Briefings are conducted virtually.
- 2. THDA will take appropriate steps to ensure effective communication with limited English proficient speakers and must provide information on the reasonable accommodation process.
- 3. Information Packet. THDA must give the family a packet that includes information on the following subjects:
 - (i) How the PHA determines the total tenant payment for a family;
 - (ii) Family obligations under the program; and
 - (iii) Information on Federal, State and local equal opportunity laws, the contract information for the Section 504 coordinator, a copy of the housing discrimination complaint form and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;
 - (iv) THDA subsidy standards, including when THDA will consider granting exceptions to the standards as allowed and when exceptions are required as a reasonable accommodation for

a person with disabilities under Section 504, the Fair Housing Act or the Americans with Disabilities Act; and

(v) Family right to move

4. Statement of Family Responsibility – THDA and family must sign the statement of family responsibility form.
5. Providing Information for Persons with Limited English Proficiency. THDA will take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with obligations and procedures contained in Title VI of the Civil Rights Act of 1964, and HUD's implementing regulation at 24 C.F.R. part 1, Executive Order 13166 and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority. See Section 0770-01-05-.30(2) of this Administrative Plan.

(g) Owner Selection of Tenants.

1. During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by THDA from THDA's waiting list.
2. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.
3. An owner must notify, within thirty (30) days, in writing any rejected applicant of the grounds for any rejection.
4. The owner must comply with 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). This applies to tenant screening as well.
5. Size of unit. The contract unit leased to each family must be appropriate for the size of the family under THDA's subsidy standards. See Section 0770-01-05-.21(3) of this Administrative Plan.
6. Tenant Screenings.
 - (i) THDA Responsibility. THDA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy.
 - (ii) Owner Responsibility. The owner is responsible for screening and selection of the family on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:
 - (I) Payment of rent and utility bills;
 - (II) Caring for a unit and premises;
 - (III) Respecting the rights of other residents to the peaceful enjoyment of their housing;
 - (IV) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others (Refer to HUD's Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction, dated April 4, 2016).; and

- (V) Compliance with other essential conditions of tenancy;
- (iii) Providing Tenant Information to Owner. THDA must give the family a description of THDA's policy on providing information to owners and such policy must give the same type of information to all owners regarding families.
 - (I) THDA must give the owner the family's current and prior address (as shown in THDA records) and the name and address (if known to THDA) of the landlord at the family's current and any prior address.

7. Vacancies.

(i) Filling Vacant Units.

- (I) THDA and the owner must make reasonable good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy in accordance with 24 C.F.R. 983.157(e) (5) are not subject to this requirement.
 - a. If an owner-maintained waiting list is used, the owner must promptly notify THDA of any vacancy or expected vacancy in a contract unit and refer the family to THDA for final eligibility determination. THDA must make every reasonable effort to make such final eligibility determination within thirty (30) calendar days. THDA will not pay a vacancy payment for contract unit subject to an owner-maintained waiting list.
 - b. If a THDA-maintained waiting list is used, the owner must promptly notify THDA of any vacancy or expected vacancy in a contract unit and THDA must, after receiving the owner notice, make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within thirty (30) calendar days. THDA will pay a vacancy payment for contract unit subject to a THDA-maintained waiting list. See Section 0770-01-05-.37(19) of this Administrative Plan for rules regarding Vacancy Payments.

The owner must lease vacant contract units only to families determined eligible by THDA .

- (ii) Reducing the Number of Contract Units. If any contract units have been vacant for a period of one hundred twenty (120) or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of THDA to fill such vacancies), THDA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

(16) Lease.

- (a) Tenant's Legal Capacity. The tenant must have legal capacity to enter a lease under state and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) Form of the Lease.

- 1. The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.
- 2. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a THDA model lease.

3. In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD. The terms of the tenancy addendum shall prevail over other provisions of the lease.
4. THDA may review the owner's lease form to determine if the lease complies with state and local law. THDA may decline to approve the tenancy if THDA determines that the lease does not comply with state or local law.

(c) Required Information. The lease must specify all of the following:

1. The names of the owner and the tenant;
2. The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
3. The term of the lease (initial term and any provision for renewal);
4. The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
5. A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
6. The amount of any charges for food, furniture, or supportive services.

(d) Tenancy Addendum. The tenancy addendum in the lease shall state the program tenancy requirements and the composition of the household as approved by THDA (names of family members and any THDA-approved live-in aide).

(e) Amendment/Change to the Lease.

1. If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give THDA a copy of all such changes.
2. The owner must notify THDA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by THDA and in accordance with the terms of the lease relating to its amendment. THDA must redetermine reasonable rent, in accordance with § 983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent must be used in calculation of rent to owner from the effective date of the change.

(f) Term of Lease.

1. The initial lease term must be for at least one year.
2. The lease must provide for automatic renewal after the initial term of the lease. The lease may provide for automatic renewal for successive definite terms (e.g., month-to-month or year-to-year) or for automatic indefinite extension of the lease term.
3. The term of the lease terminates if any of the following occurs:
 - (i) The owner terminates the lease for good cause;
 - (ii) The tenant terminates the lease;
 - (iii) The owner and the tenant agree to terminate the lease;
 - (iv) THDA terminates the HAP contract; or

(v) THDA terminates assistance for the family.

(g) Lease provisions governing absence from the unit. The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by THDA policy. See Section 0770-01-05-.26(2)(d) of this Administrative Plan for rules regarding Absences from Unit.

(h) Security Deposits

1. The owner may collect a security deposit from the tenant.
2. THDA prohibits the owner from charging assisted tenants security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.
3. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease.
4. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant, in accordance with state law.
5. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, THDA has no liability or responsibility for payment of any amount owed by the family to the owner.

(17) Owner Termination of Tenancy and Eviction.

- (a) In general. 24 C.F.R. 982.310 applies with the exception that 982.310(d)(1)(iii) and (iv) do not apply to the PBV Program. In the PBV program, "good cause" does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose. 24 C.F.R. 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.
- (b) If a family resides in a project-based unit excepted from the twenty-five (25) percent per-project cap on project-basing because of participation in a Family Self-Sufficiency ("FSS") or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

(18) Family Right to Move.

- (a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate, with a copy to THDA, in accordance with the lease. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.
- (b) If the family has elected to terminate the lease in this manner, THDA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the HCV Program or other comparable tenant-based rental assistance.
- (c) Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact THDA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If HCV or other comparable tenant-based rental assistance is not

immediately available upon termination of the family's lease of a PBV unit, THDA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

- (d) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 C.F.R. part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. THDA may not terminate assistance if the family, with or without prior notification to THDA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.
- (e) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 C.F.R. part 5, subpart L, THDA will offer the victim the opportunity for continued tenant-based rental assistance.

(19) Continuation of Housing Assistance Payment ("HAP").

- (a) Zero HAP. Housing assistance payments will continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within one hundred eighty (180) days following the date of the last housing assistance payment by THDA. After the one hundred eighty (180)-day period, the unit shall be removed from the HAP contract pursuant to 24 C.F.R. 983.211.
- (b) Overcrowded, Under-Occupied, Accessible Units. If THDA determines, according to its subsidy standards, that a family is occupying a wrong-size unit or a unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, THDA, within thirty (30) days, must notify the family and the owner of this determination, and within sixty (60) days from the PHA determination, offer the family continued housing assistance. THDA's offer of continued assistance in another unit under (i) project-based voucher assistance in an appropriate-size unit (in the same project or in another project) or (ii) tenant-based rental assistance under the HCV program. If no continued housing assistance is available, THDA must remove the wrong size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher. THDA may reinstate a unit removed to the HAP contract after the family vacates the property.

(20) Amount of Rent to Owner. The amount of the initial and redetermined rent to owner is determined hereunder and in accordance with 24 C.F.R. 983.302. THDA will utilize Small Area Fair Market Rents for the PBV program.

- (a) Initial Rents. The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.
- (b) Amount of Rent to Owner. Except for certain tax credit units, the rent to owner must not exceed the lowest of:
 - 1. An amount determined by THDA, not to exceed one hundred ten (110) percent of the applicable fair market rent or Small Area FMR's (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;
 - 2. The reasonable rent; or

3. The rent requested by the owner.
- (c) Rent to Owner for Certain Tax Credit Units. This paragraph (c) applies if a contract unit receives a low-income housing tax credit ("LIHTC") under the Internal Revenue Code of 1986 (see 26 U.S.C. 42); the contract unit is not located in a qualified census tract; in the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and the tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section. For LIHTC units, the rent to owner must not exceed the lowest of:
1. The tax credit rent minus any utility allowance;
 2. The reasonable rent; or
 3. The rent requested by the owner.
 4. The "tax credit rent" is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., additional assistance such as tenant-based voucher assistance).
 5. A "qualified census tract" is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least fifty (50) percent of households have an income of less than sixty (60) percent of Area Median Gross Income ("AMGI") or where the poverty rate is at least twenty-five (25) percent and where the census tract is designated as a qualified census tract by HUD.
- (d) Rent to Owner for Other Tax Credit Units. Except in the case of a tax-credit unit above, the rent to owner for all other tax credit units may be determined by THDA pursuant to paragraph (b) of this section.
- (e) Reasonable Rent. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. THDA has elected to not reduce rents below the initial rent to owner.
1. How to Determine Reasonable Rent.
 - (i) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.
 - (ii) In determining the reasonable rent, THDA must consider factors that affect market rent, such as:
 - (I) The location, quality, size, unit type, and age of the contract unit; and
 - (II) (Amenities, housing services, maintenance, and utilities to be provided by the owner.
 - (iii) Comparable Analysis.
 - (I) For each unit, THDA's comparability analysis must use at least three (3) comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.
 - (II) THDA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.
 - (III) The comparability analysis may be performed by THDA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any

THDA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

2. Redetermination. THDA must redetermine the reasonable rent:
 - (i) Whenever there is a ten (10) percent decrease in the published FMR in effect sixty (60) days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one (1) year before the contract anniversary.
 - (ii) Whenever THDA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
 - (iii) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and
 - (iv) Whenever there is any other change that may substantially affect the reasonable rent.
 3. Owner Certification of Comparability. By accepting each monthly housing assistance payment from THDA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give THDA information it requests on rents charged by the owner for other units in the premises or elsewhere.
- (f) Use of Fair Market Rents ("FMRs") and Utility Allowance Schedule in Determining the Amount of Rent to Owner.
1. Amounts Used.
 - (i) Determination of Initial Rent (at beginning of HAP contract term). When determining the initial rent to owner, THDA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, THDA may use the amounts in effect at any time during the thirty (30)-day period immediately before the beginning date of the HAP contract.
 - (ii) Redetermination of Rent to Owner. When redetermining the rent to owner, THDA shall use the most recently published FMR and THDA utility allowance schedule in effect at the time of redetermination. At its discretion, THDA may use the amounts in effect at any time during the thirty (30)-day period immediately before the redetermination date.
 2. Exception Payment Standard and THDA Utility Allowance Schedule.
 - (i) Any HUD-approved exception payment standard amount under 24 C.F.R. 982.503(c) applies to both the HCV and PBV Programs. HUD will not approve a different exception payment standard amount for use in the PBV program.
 - (ii) THDA may not establish or apply different utility allowance amounts for the PBV Program. The same utility allowance schedule applies to both Programs.
 - (iii) Utility reimbursement payments will be paid directly to the tenant.
- (g) Redetermination of Rent to Owner.
1. THDA must redetermine the rent to owner:
 - (i) Upon the owner's request; or
 - (ii) When there is a ten (10) percent decrease in the published FMR.
 2. Rent Increase.

- (i) THDA may not make any rent increase other than an increase in the rent to owner as determined pursuant to 24 C.F.R. 983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program).
- (ii) The owner must request an increase in the rent to owner, in writing along with documentation of justification for the increase, sixty (60) calendar days prior to the annual anniversary of the HAP contract.
- (iii) THDA may not approve, and the owner may not receive, any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

3. Rent Decrease.

- (i) If there is a decrease in the rent to owner, as established in accordance with 24 C.F.R. 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.
- (ii) Rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:
 - (I) To correct errors in calculations in accordance with HUD requirements;
 - (II) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 C.F.R. 983.55; or
 - (III) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

4. Notice of Rent Redetermination. Rent to owner is redetermined by written notice by the THDA to the owner specifying the amount of the redetermined rent (as determined in accordance with 24 C.F.R. 983.301 and 983.302). The THDA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

5. Contract Year and Annual Anniversary of the HAP Contract.

- (i) The contract year is the period of twelve (12) calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.
- (ii) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of twelve (12) calendar months from the annual anniversary of the HAP contract.
- (iii) If contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

(h) How Other Subsidy Effects Rent to Owner.

- 1. General. In addition to the rent limits established in accordance with 24 C.F.R. 983.301 and 24 C.F.R. 982.302, the following restrictions apply to certain units.

2. HOME. For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 C.F.R. 92.252).
3. Subsidized Projects.
 - (i) This paragraph applies to any contract units in any of the following types of federally subsidized project:
 - (I) An insured or non-insured Section 236 project;
 - (II) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
 - (III) A Section 221(d)(3) below market interest rate (BMIR) project;
 - (IV) A Section 515 project of the Rural Housing Service;
 - (V) Any other type of federally subsidized project specified by HUD.
 - (ii) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program.
4. Combining Subsidy – Subsidy Layering Review. Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See 24 C.F.R. 983.55.
 - (i) Subsidy Layering Requirements. THDA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 C.F.R. 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.
 - (ii) When Subsidy Layering Review is Conducted. THDA may not enter into an Agreement or HAP contract until HUD or THDA, as applicable, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.
 - (iii) Owner Certification. The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.
5. Other Subsidy: Rent Reduction. To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, THDA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.
6. Prohibition of other Subsidy. For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see 24 C.F.R. 983.54.
 - (i) Effect of Rent Control and other Rent Limits. In addition to the limitation to one hundred ten (110) percent of the FMR in 983.301(b)(1), the rent reasonableness limit under 24 C.F.R. 983.301(b)(2) and 983.303, the rental determination provisions of 24 C.F.R. 983.301(f), the special limitations for tax credit units under 24 C.F.R. 983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

(21) Payment to Owner.

(a) When Payments are Made.

1. During the term of the HAP contract, THDA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.
2. Except for discretionary vacancy payments in accordance with 24 C.F.R. 983.352, THDA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) Monthly Payment. Each month, THDA shall make a housing assistance payment to the owner for each contract unit that complies with HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) Calculating Amount of Payment. The monthly housing assistance payment by THDA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) Prompt Payment. The housing assistance payment by THDA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and THDA agree on a later date.

(e) Owner Compliance with Contract. To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

(22) Vacancy Payments.

(a) Payment for move-out month. If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if THDA determines that the vacancy is the owner's fault.

(b) THDA will provide vacancy payments to the owner of a contract unit subject to an owner-maintained waiting list for a period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

1. The vacancy payment to the owner for each month of the maximum two-month period will be half of the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

(c) THDA will make vacancy payments to the owner only if:

1. The owner gives THDA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);
2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy;
4. The owner provides any additional information required and requested by THDA to verify that the owner is entitled to the vacancy payment; and

5. The owner submits a request for vacancy payments in the form and manner required by THDA and provides any information or substantiation required by THDA to determine the amount of any vacancy payment.

(23) Tenant Paid Rent.

(a) THDA Determination.

1. The tenant rent is the portion of the rent to owner paid by the family. THDA determines the tenant rent in accordance with HUD requirements.
2. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) Tenant Payment to Owner.

1. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).
2. The amount of the tenant rent as determined by THDA and is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.
3. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by THDA. The owner must immediately return any excess payment to the tenant.
4. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of THDA's housing assistance payment.

(c) Limit of THDA Responsibility.

1. THDA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. THDA is not responsible for paying the tenant rent, or for paying any other claim by the owner.
2. THDA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. THDA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) Utility Reimbursement.

1. If the amount of the utility allowance exceeds the total tenant payment, THDA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero (0).
2. THDA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.
3. If THDA chooses to pay the utility supplier directly, THDA must notify the family of the amount paid to the utility supplier.

(24) Other Fees and Charges by Owner.

(a) Meals and Supportive Services.

1. Except as provided below, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.
 2. In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.
- (b) Other Charges by Owner. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Authority: T.C.A. §§ 13-23-104 and 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R. 982 and 983.

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

Comments were submitted at the public hearing by attendees both in-person and via video conference. We also received written comments after the public hearing. Verification of the public hearing and the comments with responses is attached.

Regulatory Flexibility Addendum

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

This rule does not have any impact on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The proposed rules do not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

THDA has chosen to take a percentage of its authorized units under its Consolidated Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD) and attach the funding to specific units (project-base the units) instead of using it for tenant-based vouchers under its Housing Choice Voucher (HCV) Program. This action requires for THDA to promulgate rules regarding the administration of the newly onboarded program, the Project-Based Voucher (PBV) Program.

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

T.C.A. § 13-23-104, 13-23-115(18), 42 U.S.C. § 1437, and 24 C.F.R., Parts 5 and 983. These rules outline the state and federal guidelines and authority for THDA to administer its programs

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

People who are directly affected by the proposed rules are property managers, tenants, development housing specialists.

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

None

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

No fiscal impact.

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

Jeboria Scott, Director of Rental Assistance and Charity Williams, Assistant Chief Legal Counsel

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

Jeboria Scott, Director of Rental Assistance; Pasquel McLeod, Assistant Director of Rental Assistance; and Charity Williams, Assistant Chief Legal Counsel

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

502 Deaderick Street, Nashville, TN 37243; jscott@tha.org, pmcleod@thda.org, cwilliams@thda.org; 615-815-2200.

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

The PBV Program is a critical component of THDA's efforts to provide decent, safe, and affordable housing options to low-income families and individuals within our community. Established in 1998, the PBV Program allows for the allocation of housing vouchers to specific housing developments, thereby ensuring a stable and sustainable source of affordable housing units for eligible participants.