

FLEXIBLE VOUCHER PROGRAM

SEC. 223. FLEXIBLE VOUCHER PROGRAM.

(a) AUTHORITY.—

(1) The Secretary is authorized to make grants to public housing agencies to provide tenant-based rental, project-based voucher, and homeownership housing assistance and to carry out activities related thereto in accordance with the provisions of this section.

(2) Beginning in fiscal year 2005 and thereafter, and subject to the availability of appropriations, each public housing agency receiving a grant under this section is authorized to provide tenant based rental, project-based voucher, and homeownership housing assistance to families served by such public housing agency during its previous fiscal year by the Housing Choice Voucher program authorized under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), including those families receiving enhanced voucher assistance authorized under section 8(t) of the Act.

(3) Any family that is receiving homeownership assistance under section 8(y) of the Act shall continue to receive such assistance subject to the terms and conditions of that Act, from amounts made available for assistance under this section.

(4) Any units covered by a housing assistance payments contract under the project-based voucher program or project-based certificate program under section 8 of the Act shall continue to receive assistance subject to the terms and conditions of that contract, from amounts made available for assistance under this section.

(b) DEFINITIONS.—For the purposes of this section:

(1) the term “public housing agency” or “PHA” shall mean any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) or “other entity,” which is authorized to engage in or assist in the development or operation of low-income housing. An “other entity” may be a private or nonprofit organization designated by the Secretary to administer the program where (i) no public housing agency has been organized, or (ii) the Secretary determines that a public housing agency is unable or unwilling to administer the program;

(2) the term “base administrative fee” shall mean the fee paid by the Secretary to a public housing agency for the administration

of programs under this section and the United States Housing Act of 1937, pursuant to subsection (m);

(3) the term “performance-based fee” shall mean a fee paid by the Secretary to a public housing agency, in addition to the base administrative fee, which shall reflect the public housing agency’s performance of administrative tasks, as measured by performance standards determined by the Secretary in accordance with subsection (c);

(4) the term “tenant-based rental housing assistance” means assistance that provides for the eligible family to select suitable housing within an administering public housing agency’s jurisdiction;

(5) the term “project-based voucher assistance” shall mean rental assistance that a public housing agency may attach to a specific property under subsection (e);

(6) the term “gross income” is the amount of income that includes income from all sources for each family member of the household, without deductions or exclusions, notwithstanding any other provision of law;

(7) the term “first-time homebuyer” means a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this section;

(8) the term “median income for the area” means the median family income for a jurisdiction, county or metropolitan area as determined by the Secretary, with adjustments for smaller and larger families.

(9) the term “family” means a person or group of persons, as determined by the public housing agency, approved to reside in a unit with assistance under this section.

(10) the term “household” means the family and any public housing agency-approved live-in aide.

(11) the term “Secretary” means the Secretary of the Department of Housing and Urban Development.

(c) PERFORMANCE.—

(1) PERFORMANCE STANDARDS.—The Secretary shall establish such performance standards for public housing agencies receiving grants under this section as the Secretary determines to be appropriate, including effective budget utilization, financial management, and the effectiveness of voucher assistance in helping families, including the elderly and disabled,

move toward independent living, economic self-sufficiency and homeownership.

(2) EVALUATION OF PERFORMANCE.—The Secretary shall develop a performance assessment system to measure, on at least an annual basis, the performance of each public housing agency. The Secretary may also require each public housing agency to provide general reporting on information that may include:

(A) the number of families and individuals receiving rental and homeownership housing assistance under the program, including the number of families with children, elderly families, and disabled families and for each household, general demographic information, and income levels relative to median income for the area;

(B) the average subsidy value of housing assistance received per family;

(C) amounts spent on administration; and

(D) other information on the use of federal assistance as the Secretary may prescribe.

(3) PERFORMANCE REPORTS.—The Secretary shall require performance reports of information gathered from the performance assessment system that will be made available to the public on at least an annual basis on the Internet.

(4) ALTERNATIVE ADMINISTRATION.—

(A) If any public housing agency receives a failing score for two consecutive public housing agency fiscal years under the performance assessment system, as described in subsection (c)(2), the Secretary shall determine how best to administer the grant, which may include administration of such grant by one or more other public housing agencies or other entities or extending the deadline for improvement if the Secretary determines that significant improvements have and will continue to be made.

(B) If, pursuant to subparagraph (A), grant amounts under this section are administered by one or more other public housing agencies or other entities, all provisions applicable to public housing agencies administering funds under this section shall be applicable to such other public housing agencies or other entities.

(d) ELIGIBLE FAMILIES.—

(1) INITIAL ELIGIBILITY.—To be eligible to receive rental and homeownership housing assistance under this section, a family that is not assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) shall have a gross income that does not exceed 80 percent of the median income for the area, as determined

by the Secretary, with adjustments for smaller or larger families, except that on an individual basis, the Secretary may establish income ceilings higher than 80 percent of the median for the area for elderly and disabled families. Further, to be eligible to receive rental and homeownership housing assistance under this section, all families must satisfy the following two requirements: (1) a family shall not own an interest in any residential property (including a primary home); and (2) a family shall not have assets exceeding an amount established by the Secretary.

(2) CONTINUED ELIGIBILITY.—Subject to paragraph (4), Continued eligibility for housing assistance pursuant to this section shall be determined in accordance with standards established by the public housing agency.

(3) PREFERENCES.—Each public housing agency receiving a grant pursuant to this section may establish a fair system for making housing assistance pursuant to this section available on behalf of eligible families that provides preference for such assistance to eligible families that meet the public housing agency's criteria for preferences. Notwithstanding any other provisions of law, a public housing agency may establish a preference for persons with a specific disability.

(3) REVIEW OF FAMILY INCOME.—Each public housing agency administering a housing assistance grant pursuant to this section shall, not less frequently than every other year, conduct a review of the family income of each family receiving such assistance to determine continued eligibility, except that the public housing agency shall review the income of elderly families not less frequently than every three years.

(5) CRIMINAL ACTIVITY AND ALCOHOL ABUSE.—The owner may terminate tenancy, and the PHA may deny or terminate assistance, if there is reasonable cause to believe that a family, or any guest or other person under the family's control, (A) commits or committed any criminal activity including violent criminal activity or drug related criminal activity including, but not limited to, manufacture or production of methamphetamine; (B) commits alcohol abuse (or pattern of abuse) that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents; (C) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime or attempt to commit a crime, or is violating a condition of probation or parole; or (D) is subject to a lifetime registration requirement under a State sex offender registration program.

(e) ELIGIBILITY ACTIVITIES.—

(1) Activities assisted under this section may include only:

(A) tenant-based rental housing assistance;
(B) project-based voucher assistance under paragraph (2);
(C) homeownership assistance for first-time homebuyers under paragraph (3);

(D) costs of administering grant amounts under this section, except that such costs shall not exceed 7 percent of total subsidy amounts;

(E) other activities or performance bonuses, as specified by the Secretary, in support of tenant-based rental housing, project-based voucher assistance, homeownership assistance, and self-sufficiency activities authorized under this section; and

(F) amounts to be used by the Secretary for purposes of program evaluation, management information systems, and technical assistance.

(2) PROJECT-BASED VOUCHER ASSISTANCE.—

(A) **IN GENERAL.**—A public housing agency may use amounts provided under this section to enter into a housing assistance payments contract with respect to eligible units for a period of time specified by the PHA in the contract.

(B) **PERCENTAGE LIMITATION.**—Not more than 20 percent of the funding made available to the public housing agency under this section may be attached to structures pursuant to this paragraph.

(C) **RESIDENT CHOICE.**—Each low-income family occupying a dwelling unit assisted under the contract may move from the housing at any time after the family has occupied the assisted dwelling unit for 12 months. Upon such a move, the public housing agency shall provide the low-income family with tenant-based rental assistance under this section or such other tenant-based rental assistance that is comparable. If such rental assistance is not immediately available to fulfill this requirement, the public housing agency must provide the family with the next voucher or other tenant-based rental assistance amounts that become available.

(D) **PAYMENT FOR VACANT UNITS.**—The public housing agency may, in its discretion, continue to provide assistance under the contract, for a reasonable period not exceeding 60 days, for a dwelling unit that becomes vacant, but only if (i) the vacancy was not the fault of the owner of the dwelling unit; and (ii) the owner takes every reasonable action to minimize the likelihood and extent of any such vacancy. Rental assistance may not be provided for a vacant unit after the expiration of such period.

(3) HOMEOWNERSHIP ASSISTANCE FOR FIRST-TIME HOMEBUYERS.—

(A) IN GENERAL.—A public housing agency may provide tenant based assistance under this section to assist a first-time homebuyer that purchases an eligible unit with their monthly homeownership expenses.

(B) FAMILY ELIGIBILITY.—In order to receive homeownership assistance under this section, the family must qualify as a first time homebuyer, participate in a homeownership counseling program provided by the agency, and meet any other initial or continuing requirements established by the public housing agency.

(C) DOWNPAYMENT ASSISTANCE.—A public agency may, in lieu of providing monthly assistance payments under this paragraph, provide assistance for the family in the form of a single onetime grant to be used only as a contribution toward the downpayment and reasonable closing costs required in connection with the purchase of a dwelling unit. The amount of a one-time downpayment grant may not exceed \$10,000.

(f) AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), any monthly assistance payment for a family receiving housing assistance pursuant to this section shall be determined by the public housing agency administering such assistance.

(2) MINIMUM RENTAL AMOUNT.—Public housing agencies shall establish a minimum monthly rental amount to be paid by the family.

(3) RENT REASONABLENESS.—The rent for dwelling units assisted under this section shall be reasonable and appropriate in comparison with rents charged for dwelling units of a modest nature in the private, unassisted local market. Public housing agencies shall review rents not less than annually to ensure that they meet this rent reasonableness standard.

(4) MAXIMUM SUBSIDY.—Public housing agencies shall establish maximum subsidy levels for housing assistance under this section that are reasonable and appropriate for the market area.

(g) AUTHORIZATION, ALLOCATION AND DISTRIBUTION OF FUNDS.—

(1) For purposes of administering the program under this section, and subject to appropriations, the Secretary shall allocate available amounts as follows:

(A) ALLOCATIONS FOR FISCAL YEAR 2005.—For

Fiscal Year 2005, each public housing agency may receive an amount proportionate to its annual 2004 Housing Choice Voucher funding for Housing assistance and administrative expenses, adjusted for inflation and subject to validation.

(B) ADJUSTMENTS TO ANNUAL GRANT AMOUNTS IN SUBSEQUENT FISCAL YEARS.—

(i) The Secretary shall, by regulation issued not later than 18 months after the date of enactment of this section, establish a formula to allocate and award any new, incremental grant funding which is made available by Congress under this section and for the purpose of reallocating, any unutilized amounts made available under this section.

(ii) In establishing the formula, the Secretary shall consider factors reflecting the need of low-income families in the jurisdictions of the public housing agencies administering the grants, including the following factors:

(I) the number of families receiving housing assistance under this section;

(II) the extent of poverty;

(III) the cost of housing;

(IV) the performance of PHAs in administering grant amounts under this section; and

(V) other objectively measurable conditions as the Secretary may specify.

(4) The Secretary is authorized to allocate additional amounts made available from appropriations to public housing agencies for tenant-protection assistance as authorized by section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)). Such assistance to a family shall be for one year. Thereafter, these amounts shall be included in the public housing agencies' subsequent grant for the flexible voucher program. After the one-year period, section 8(t) shall not apply to these amounts and any vouchers issued to the family shall be subject to the provisions of this section.

(5) There are authorized to be appropriated such sums as may be necessary for carrying out this subsection each of fiscal years 2005 through 2010.

(h) ENVIRONMENTAL REVIEW.—

Activities authorized under this Act are categorically excluded from the National Environmental Protection Act.

(i) INSPECTION OF UNITS.—

(1) IN GENERAL.—The Secretary shall require, with respect to Any dwelling unit assisted pursuant to this section, that the public housing agency administering housing assistance inspect each unit within 60 days of the initial assistance payment made to determine that the dwelling unit meets the housing quality standards under paragraph (2). Such dwelling unit must meet such standards in order to receive continued assistance payments.

(2) HOUSING QUALITY STANDARDS.—All dwelling units assisted by a public housing agency under this section shall, at the discretion of the public housing agency, meet either applicable State and local housing quality standards and code requirements or the housing quality standards established by the Secretary.

(3) RE-INSPECTIONS.—Each public housing agency administering housing assistance under this section shall determine that all occupied dwelling units assisted by such public housing agency pursuant to this section are maintained in accordance with the standards described under paragraph (2). Every dwelling unit assisted by the public housing agency shall be inspected when it is first leased, pursuant to paragraph (1). Thereafter, each public housing agency shall annually inspect at least 25 percent of its units.

(4) CORRECTIVE ACTIONS.—No further assistance payment may be made pursuant to this section for a dwelling unit which fails to meet the standards under paragraph (2).

(j) PORTABILITY.—

(1) IN GENERAL.—Any family receiving assistance for at least 12 months under this section or under section (8)(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) that has not transferred any such assistance to a receiving public housing agency within the previous twelve months may receive assistance to lease an eligible dwelling unit if the dwelling unit to which the family moves is within any area in which a program is being administered under this section.

(2) PROCEDURES.—The Secretary may establish procedures to Implement the requirements of this section.

(k) COMPLIANCE.—

(1) COMPLIANCE MONITORING.—The Secretary shall make such

Reviews and audits as may be necessary or appropriate to determine whether the public housing agency has carried out those activities and objectives, including all things that have been certified to, in accordance with the requirements of this section and other applicable laws, whether it has the continuing capacity to undertake these activities in a timely and effective manner, and whether it has met the performance standards established by the Secretary pursuant to subsection (c)(1).

(2) COMPLIANCE ACTIONS.—In addition to any other actions Authorized under this or any other applicable laws, if the Secretary finds that a public housing agency receiving a grant under this section has failed to comply with any provision of this section, including any performance standard established by the Secretary pursuant to this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary may:

(A) terminate grant payments under this section to the public housing agency and provide for alternative administration of such grant amounts;

(B) withhold from the public housing agency amounts from the total allocation that would otherwise be available to the public housing agency under this section;

(C) reduce the amount of future grants to the public housing agency by an amount equal to the amount of such grants that were not expended in accordance with this section;

(D) limit the availability of grant amounts provided to the public housing agency to programs and activities under this section not affected by such failure to comply;

(E) withhold from the public housing agency other amounts allocated for the public housing agency under other programs administered by the Secretary;

(F) require such changes in public housing agency policy, consistent with other provisions of this section, as determined necessary to ensure compliance;

(G) refer the matter to the Attorney General of the United States for such relief as may be appropriate, including an action to recover the amount of assistance furnished under this section which was not used in accordance with it; or

(H) order other corrective action with respect to the public housing agency.

(l) ADMINISTRATIVE FEES, PERFORMANCE-BASED FEES, AND INCENTIVE BONUSES.—

(1) IN GENERAL.—The Secretary shall establish a base administrative fee, a performance-based fee, and incentive bonuses for public housing agencies administering assistance under this section. A public housing agency may earn additional administrative fees based on its performance in administering programs under this section.

(2) BASE ADMINISTRATIVE FEE.—The base administrative fee for all public housing agencies shall not exceed 7 percent of the total subsidy amount made to the public housing agency under this section.

(3) PERFORMANCE-BASED FEES.—

(A) The amount of the performance-based fees paid to a public housing agency shall reflect the public housing agency's performance of administrative tasks, as measured by performance standards determined by the Secretary.

(B) The Secretary shall establish the method for determining performance-based fees on an annual basis and shall have the authority to modify the method and fee levels from time to time.

(4) INCENTIVE BONUSES.—

(A) The Secretary may provide incentive bonuses to public housing agencies.

(B) The Secretary shall establish the method for determining incentive bonuses and shall have the authority to determine, and modify from time to time: (i) the method and standards for determining incentive bonuses; and (ii) bonus levels, based on public housing agency performance as measured by the standards determined by the Secretary.

(m) IMPLEMENTATION.—

(1) INTERIM IMPLEMENTATION.—Notwithstanding any other Provision of law, the Secretary shall publish a notice in the Federal Register not later than 180 days after enactment of this Act describing the immediate implementation of this program on an interim basis.

(2) FINAL IMPLEMENTATION.—For the purposes of final Implementation of this program, the Secretary shall issue a proposed rule and, not later than 18 months after enactment, the Secretary shall issue a final rule implementing the program.

(n) CONDITIONS.—This section shall not be construed to limit the ability of a public housing agency to condition the assistance provided

under this section in accordance with all applicable statues.