

DEPARTMENT OF AGRICULTURE**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5021-N-01]

USDA Voucher Program

AGENCY: Office of Housing and Community Facilities Programs, USDA; Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice informs the public that the United States Department of Agriculture (USDA) is establishing a demonstration USDA Voucher Program, as authorized under section 542 of the Housing Act of 1949 (without regard to section 542(b)), to be administered by the United States Department of Housing and Urban Development (HUD), pursuant to an Inter Agency Agreement (IAA) between the two Departments, executed on March 1, 2006. This notice informs the public that USDA, acting under the IAA with HUD, shall make up to \$16 million available for this purpose, as appropriated under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006. The notice also sets forth the policies and procedures for use of these vouchers.

DATES: *Effective Date:* March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Laurence Anderson, Acting Deputy Administrator, Multi-family Housing, Rural Development, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, 20250 or David A. Vargas, Director, Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228, Washington, DC 20410-5000. Telephone number (202) 708-2815 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109-97, approved November 10, 2005) (FY2006 Appropriations Act), appropriates approximately \$16 million to the USDA for the USDA Voucher Program as authorized under section 542 of the

Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) (without regard to section 542(b)).

The FY 2006 Appropriations Act provides that the Secretary of the Department of Agriculture shall carry out a USDA voucher program as follows:

That such vouchers shall be available to any low-income family (including those not receiving rental assistance) residing in a property financed with a section 515 loan which has been prepaid after September 30, 2005: Provided further, [t]hat the amount of the voucher shall be the difference between comparable market rent for a section 515 unit and the tenant paid rent for such unit: Provided further, [t]hat funds made available for such vouchers shall be subject to the availability of annual appropriations: Provided further, [t]hat the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable for section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (including the ability to pay administrative costs related to delivery of the voucher funds).

In order to expedite the provision of voucher assistance to eligible families impacted by an owner's decision to prepay the section 515 loan and convert the property to market-rate housing, USDA and HUD entered into an IAA whereby HUD will: (1) Administer, on behalf of the USDA, all or a portion of the USDA voucher assistance appropriated for this purpose, (2) provide USDA voucher assistance to public housing agencies (PHAs), and (3) ensure that USDA voucher assistance is administered to the maximum extent practicable in accordance with HUD's Housing Choice Voucher Program regulations at 24 CFR part 982 and guidance, and consistent with the formula established by the FY2006 Appropriations Act.

This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a section 515 loan after September 30, 2005. Unless expressly stated in this notice or in subsequent directives, the requirements of the regulations at 24 CFR part 982 for the Housing Choice Voucher Program are applicable to the USDA vouchers provided under this notice. USDA vouchers authorized by the FY 2006 Appropriations Act and section 542 are exclusively tenant-based rental assistance. Consequently, the regulations at 24 CFR part 983 and all other directives pertaining to the project-based voucher program do not apply, nor do the homeownership voucher regulations at 24 CFR 982.625 through 982.643.

II. USDA Voucher Program Procedures

This section sets forth the design features of the USDA Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

USDA vouchers under this notice are administered in accordance with the Housing Choice Voucher Program regulations set forth at 24 CFR part 982 unless otherwise noted by this notice or subsequent program requirements and guidance. In the Housing Choice Voucher Program, HUD pays monthly rental subsidies so eligible families can afford decent, safe, and sanitary housing. The program is generally administered by state or local governmental entities called Public Housing Agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

The basic structure of the USDA voucher program is the same as the Housing Choice Voucher Program. Families select and lease units that meet program housing quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rental subsidy payments (housing assistance payments) directly to the owner on behalf of the family on a monthly basis. The family enters into a lease with the owner and pays the family rent to the owner in accordance with the lease. The housing assistance payments (HAP) contract between the PHA and the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the HAP contract with the owner terminates. Unless expressly noted below or in subsequent directives, all regulatory requirements, including compliance with the Fair Housing Act and other civil rights related requirements, and directives regarding the housing choice voucher tenant-based program are applicable to the USDA vouchers. The PHA's local discretionary policies adopted in the PHA administrative plan apply to USDA vouchers administered by the PHA, unless such local policy conflicts with the requirements of the USDA voucher program outlined below. The USDA voucher funding remains separate and distinct from the PHA's regular voucher program in terms of the source and use of the funding. The PHA may only provide USDA voucher assistance to eligible low-income families that were residing in section 515 properties on the date of the owner's prepayment of the loan to the extent that the PHA has funds available. The PHA may not use funds from the USDA voucher program

to assist families applying under its regular voucher program. Furthermore, PHAs may not use HUD's regular voucher funding to assist families applying to USDA's voucher program. The PHA is required to maintain records that allow for the easy identification of families receiving USDA vouchers. The PHA must report monthly leasing and expenditures for such families separately, as will be required under the Voucher Management System (VMS).

1. Family Eligibility

In order to be eligible for a USDA voucher under this notice, a family must be residing in the section 515 project on the date of the prepayment of the section 515 loan. Furthermore, the date of the prepayment must be after September 30, 2005, and the voucher funds obligated to the family before October 1, 2006. USDA will determine if the family is a low-income family on the date of the prepayment and, if the family wants to participate in the USDA voucher program, USDA will provide such determination to HUD. In turn, HUD will provide this information to the PHA that will administer the USDA vouchers. A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area. If USDA makes a determination that the tenant is ineligible based on income, USDA will provide the administrative appeal rights.

A family currently assisted under a Section 8 project-based contract on the date of the section 515 loan prepayment also qualifies for an enhanced voucher under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) on the date that the owner opts-out of or does not renew the section 8 project-based contract. If the Section 8 project-based contract ends on the same day as the date of the prepayment, a family receiving Section 8 project-based assistance will inform USDA if the family chooses to either receive an enhanced voucher under section 8(t) or a USDA voucher.

A family that is already receiving enhanced voucher or regular voucher assistance on the date of the section 515 loan prepayment (for example, a family previously assisted under a Section 8 project-based contract where the contract expired and the owner chose not to renew prior to the loan prepayment) may continue to receive enhanced or regular voucher assistance or may choose to be converted to USDA voucher assistance under this notice.

Once the family has chosen to participate in the USDA voucher program instead of in the HUD voucher

program, the family may not opt to switch forms of assistance.

Tenants receiving USDA rental assistance payments on the date of prepayment who decline a USDA voucher and move to another USDA financed multi-family housing complex may request that USDA transfer their rental assistance payments to the new project.

By agreeing to administer the USDA vouchers, the PHA is not relinquishing its authority to screen potentially eligible families or deny assistance on any grounds allowed under 24 CFR 982.552 and 982.553. The PHA must provide a family with an opportunity for an informal review if it denies the family admission to the USDA voucher program in accordance with 24 CFR 982.552 and 982.553. While the decision to deny assistance rests with the PHA, PHAs are encouraged to provide an otherwise eligible family with the opportunity to enter into a repayment agreement if the sole reason for the denial is that the family owes the PHA or another PHA rent or other amounts in connection with public housing or Section 8.

A family provided with a USDA voucher is not admitted to the PHA's regular voucher program and is not subject to local preferences or waiting list requirements. Families provided with USDA voucher assistance are not subject to the income targeting requirements of the tenant-based voucher program at 24 CFR 982.201(e)(2), and their admission is not counted in determining whether the PHA is complying with the income targeting requirements.

2. Initial Lease Term

The initial lease term must be for one year.

3. Inspection of Units and Unit Approval

Housing Choice Voucher Program housing quality standard (HQS) requirements apply to the USDA voucher program.

The PHA must inspect the unit and ensure that the unit meets the housing quality standards of the program at 24 CFR 982.401. Under no circumstances may the PHA make USDA voucher rental payments for any period of time prior to the date that the PHA physically inspects the unit and determines the unit meets the housing quality standards. The PHA may not make any exceptions to the normal housing quality standards used by the PHA and must conduct a complete HQS inspection of the unit.

Upon notification of a prepayment by USDA, HUD will determine if there is a PHA that has jurisdiction and that is willing and able to administer the USDA vouchers. HUD will provide the necessary funding to the selected PHA. Before approving a family's assisted tenancy or executing a Housing Assistance Payments Contract, the PHA must determine that the following conditions are met: (1) The unit is eligible; (2) the unit has been inspected by the PHA and passes the housing quality standards inspection; and (3) the lease includes the HUD tenancy addendum.

Once these conditions are met, the PHA may approve the unit for leasing. While the PHA must use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term (see 24 CFR 982.305(c)). If the HAP contract is executed during this period, the PHA will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. However, under no circumstances may the PHA make payments to the owner before the HAP contract is executed. Furthermore, any HAP contract executed after the 60-day period is void and the PHA may not pay any housing assistance payment to the owner for that period. If 60 days have passed from the beginning of the approved lease term, the PHA must re-approve the unit and the family and owner must enter into a new lease agreement in order for USDA voucher rental payments to commence on behalf of the family.

In establishing the effective date of the voucher HAP contracts, the PHA may not execute a housing voucher contract that is effective prior to the section 515 loan prepayment.

4. Subsidy Calculations for USDA Vouchers

The monthly housing assistance payment for the USDA voucher family for the initial year of assistance is the difference between comparable market rent for the family's former section 515 unit and the tenant contribution on the date of the prepayment. USDA will determine the voucher amount and provide the amount to HUD. The tenant can appeal USDA's determination of the voucher amount through USDA's administrative appeal process. Since the USDA voucher amount will be based on the comparable market rent, the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the

tenant chooses to stay in-place. Also, in no event may the USDA voucher subsidy payment exceed the actual tenant lease rent. The tenant is required to notify USDA directly if the tenant's income increases above the income amount stated in the tenant's letter. USDA will then determine whether the tenant still qualifies as a low income tenant. If not, the tenant will no longer be eligible to participate in the program; however, the tenant will be given the opportunity to appeal this determination through USDA's appeal process. The PHA must terminate the family's participation in the USDA voucher program when notified to do so by USDA.

5. Mobility and Portability of USDA Vouchers

An eligible family who is issued a USDA voucher may elect to use the assistance in the same project or may choose to move from the property. Upon issuance of the voucher, the family also may move outside of the jurisdiction of the administering PHA. The provisions of 24 CFR 925.355 do not apply.

If the PHA with jurisdiction over the area to which the family wishes to move is unwilling to administer the USDA voucher, USDA will administer the assistance directly in the jurisdiction to which the family wishes to move.

The initial search period (i.e., term) of the voucher must be at least 60 calendar days. At its discretion, the PHA may grant a family one or more extensions of the initial search period of up to an additional 60 days. If the family needs and requests an extension of the initial USDA voucher search period as a reasonable accommodation to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher search period. The maximum voucher search period for any family participating in the USDA voucher program is 120 days. The PHA may not provide for the suspension of the initial or any extended search period of the voucher.

6. Term of Funding for USDA Vouchers

It is anticipated that this USDA voucher program will provide voucher assistance for one year, subject to the availability of appropriations to the USDA and transfer of such funding to HUD. At such time that the last USDA voucher Annual Contributions Contract (ACC) funding increment expires, HUD will recall any unspent USDA voucher funding from the PHA.

7. Applicability of Other Requirements

(a) In general, the following provisions of 24 CFR part 982 do not

apply to assistance under the USDA voucher program:

(i) Any provisions concerning the reasonableness of the rent and PHA determination of the reasonableness of the rent.

(ii) Any provisions concerning the absorption of the family by the receiving PHA under the portability procedures.

(iii) Any provisions related to the term of the lease or a participant family's subsequent move with continued assistance.

(vi) Any provisions related to the verification and calculation of family income, the use of the payment standard, and the calculation of the housing assistance payment.

(b) The following provisions of 24 CFR part 982 do not apply to the USDA voucher program:

(i) § 982.1 Programs: purpose and structure.

(ii) § 982.101 Allocation of funding.

(iii) § 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

(iv) § 982.160 HUD determination to administer a local program.

(v) § 982.201 Eligibility and targeting.

(vi) § 982.202 How applicants are selected: General Requirements.

(vii) § 982.204 Waiting list: Administration of waiting list.

(viii) § 982.205 Waiting list: Different programs.

(ix) § 982.206 Waiting list: Opening and closing; public notice.

(x) § 982.207 Waiting list: Local preferences in admission to program.

(xi) § 982.303 Term of Voucher.

(xii) § 982.314 Move with continued tenant-based assistance.

(xiii) § 982.317 Lease-purchase agreements.

(xiv) § 982.353 Where family can lease a unit with tenant-based assistance.

(xv) § 982.455 Automatic termination of HAP contract.

(xvi) Subpart K Rent and Housing Assistance Payment (with the exception of § 982.521).

(xvii) Subpart M and the regulations of §§ 982.601 through 982.643.

III. The Funding Process

This section sets forth the process for providing allocations of vouchers to PHAs to prevent the displacement of eligible low-income families who are impacted by an owner's decision to prepay the Section 515 loan and convert the property to market-rate housing. This section describes the funding process, the calculation of the initial budget authority, and the special fee and on-going administrative fee that will be provided to the PHA to cover the costs of administering the USDA

voucher on behalf of the eligible families.

USDA is responsible for informing the tenants of the affected property of the prepayment and that the tenants may be eligible for USDA voucher assistance as a result.

The Director of the Office of Public Housing in the HUD field office will determine the appropriate PHA to administer the USDA voucher assistance and will invite the PHA to administer the USDA vouchers. If there is no PHA able or willing to administer the rural housing vouchers, USDA will administer the USDA voucher assistance directly. Upon PHA acceptance of the invitation, the HUD field office shall provide the PHA with the information on the project. The HUD field office will identify the PHA to the HUD Housing Voucher Finance Division. USDA shall work with both the HUD field office and the PHA to ensure that the PHA has timely access to the project, the families, and any relevant records that will assist the PHA in expediting the determination of family eligibility and the issuance of vouchers.

HUD Headquarters will calculate the budget authority as described below and assign the budget authority for the USDA voucher assistance to the Financial Management Center (FMC). The HUD field office shall transmit the approval letter to the PHA with a copy to the FMC. Upon receiving the approval letter from the HUD field office and the budget authority from HUD Headquarters, the FMC shall reserve and contract the USDA voucher funds based on the amount of the voucher provided the families by USDA, the ongoing and administrative fee determined by HUD, and the one-time special fee of \$250 per unit. The FMC will then prepare and send ACC documents and the ACC transmittal letter to the PHA with a copy of the letter to the HUD field office.

The PHA will determine family eligibility (except for income eligibility) and issue vouchers. The family will decide whether to stay in place or move. Upon selecting a unit, the family must submit the request for tenancy approval to the PHA, at which time the PHA will inspect the unit. Once the unit is approved, the PHA shall execute the HAP contract with the owner.

After completing the initial lease-up of units, the PHA shall determine if the actual HAP costs will exceed the initial funding amount provided under the funding increment. On the rare occasion such an adjustment is necessary, the PHA must immediately contact the applicable HUD financial analyst at the FMC and provide a spreadsheet

demonstrating the actual costs of the vouchers.

IV. On-going Administrative Fee and Special Fee

HUD will provide the PHA with a fee for the on-going administration of the USDA voucher out of the USDA appropriation. The fee will be calculated in the same manner as the administrative fee for units the PHA receives under the regular housing voucher program. The administrative fee is calculated by multiplying the established per unit cost administrative fee for the PHA's housing voucher program by the number of families residing in the section 515 project on the effective date of the prepayment multiplied by 12 months.

In order to avoid or at least minimize any adverse impact of the section 515 loan prepayment on the affected families, the administering PHA must complete a number of tasks within a relatively short amount of time. These tasks include completing and submitting the funding application; determining each individual family's eligibility; and conducting housing quality standards inspections on potential units.

Depending on the number of residents affected by the action, PHAs may have to utilize additional staff, staff time, and PHA resources to promptly process and

assist all eligible families. Given the time sensitive nature of the issuance of USDA vouchers and the leasing of units by eligible families, subject to the availability of funds, PHAs will receive a one-time special fee in recognition of the additional costs associated with the administration of these vouchers. The amount of the fee is \$250 per unit for the total number of occupied units on the effective date of the prepayment.

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Under 24 CFR 50.19(b)(3), (5) and (11), activities

assisted under this notice are categorically excluded from environmental review under the National Environmental Policy Act of 1969 and are not subject to compliance with related environmental laws and authorities.

Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: March 14, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Russell T. Davis,

Administrator, Housing and Community Facilities Programs, U.S. Department of Agriculture.

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