

(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(5) require that the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(6) provide that the Director, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Department, owner, or manager;

(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(C) is criminal activity (including drug-related criminal activity) on or off the premises.

#### **(b) Tenant or homebuyer selection**

As a condition to receiving grant amounts under this subchapter, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that—

(1) are consistent with the purpose of providing housing for low-income families;

(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

(3) provide for—

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 4223 of this title; and

(B) the prompt notification in writing of any rejected applicant of the grounds for that rejection.

(Pub. L. 104-330, title VIII, §814, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2889, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2983.)

#### CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 814 of Pub. L. 104-330. This section is based on the text of section 814 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

#### **§ 4234. Repayment**

If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this subchapter and, at any time during the useful life of the housing, the housing does not comply with the requirement under section 4232(a)(2) of this title, the Secretary shall—

(1) reduce future grant payments on behalf of the Department by an amount equal to the

grant amounts used for that housing (under the authority of section 4238(a)(2) of this title); or

(2) require repayment to the Secretary of any amount equal to those grant amounts.

(Pub. L. 104-330, title VIII, §815, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2984.)

#### CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 815 of Pub. L. 104-330. This section is based on the text of section 815 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

#### **§ 4235. Annual allocation**

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this subchapter for the fiscal year, in accordance with the formula established pursuant to section 4236 of this title to the Department of Hawaiian Home Lands if the Department complies with the requirements under this subchapter for a grant under this subchapter.

(Pub. L. 104-330, title VIII, §816, as added Pub. L. 106-568, title II, §203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, §513, Dec. 27, 2000, 114 Stat. 2984.)

#### CODIFICATION

Pub. L. 106-568, §203, and Pub. L. 106-569, §513, enacted identical sections 816 of Pub. L. 104-330. This section is based on the text of section 816 of Pub. L. 104-330, as added by Pub. L. 106-569, §513.

#### **§ 4236. Allocation formula**

##### **(a) Establishment**

The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on December 27, 2000, in the manner provided under section 4227 of this title, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this subchapter in accordance with the requirements of this section.

##### **(b) Factors for determination of need**

The formula under subsection (a) shall be based on factors that reflect the needs for assistance for affordable housing activities, including—

(1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;

(2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and

(3) any other objectively measurable conditions that the Secretary and the Director may specify.

##### **(c) Other factors for consideration**

In establishing the formula under subsection (a), the Secretary shall consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including—

(1) geographic distribution within Hawaiian Home Lands; and

(2) technical capacity.

**(d) Effective date**

This section shall take effect on December 27, 2000.

(Pub. L. 104-330, title VIII, § 817, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2890, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2984.)

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted substantially identical sections 817 of Pub. L. 104-330. This section is based on the text of section 817 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

**§ 4237. Remedies for noncompliance**

**(a) Actions by Secretary affecting grant amounts**

**(1) In general**

Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this subchapter, the Secretary shall—

(A) terminate payments under this subchapter to the Department;

(B) reduce payments under this subchapter to the Department by an amount equal to the amount of such payments that were not expended in accordance with this subchapter; or

(C) limit the availability of payments under this subchapter to programs, projects, or activities not affected by such failure to comply.

**(2) Actions**

If the Secretary takes an action under subparagraph (A), (B), or (C) of paragraph (1), the Secretary shall continue that action until the Secretary determines that the failure by the Department to comply with the provision has been remedied by the Department and the Department is in compliance with that provision.

**(b) Noncompliance because of a technical incapacity**

The Secretary may provide technical assistance for the Department, either directly or indirectly, that is designed to increase the capability and capacity of the Director of the Department to administer assistance provided under this subchapter in compliance with the requirements under this subchapter if the Secretary makes a finding under subsection (a), but determines that the failure of the Department to comply substantially with the provisions of this subchapter—

(1) is not a pattern or practice of activities constituting willful noncompliance; and

(2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

**(c) Referral for civil action**

**(1) Authority**

In lieu of, or in addition to, any action that the Secretary may take under subsection (a), if the Secretary has reason to believe that the Department of Hawaiian Home Lands has

failed to comply substantially with any provision of this subchapter, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

**(2) Civil action**

Upon receiving a referral under paragraph (1), the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action—

(A) to recover the amount of the assistance furnished under this subchapter that was not expended in accordance with this subchapter; or

(B) for mandatory or injunctive relief.

**(d) Review**

**(1) In general**

If the Director receives notice under subsection (a) of the termination, reduction, or limitation of payments under this chapter, the Director—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

**(2) Procedure**

**(A) In general**

The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28.

**(B) Objections**

No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

**(3) Disposition**

**(A) Court proceedings**

**(i) Jurisdiction of court**

The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

**(ii) Findings of fact**

If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

**(iii) Addition**

The court may order evidence, in addition to the evidence submitted for review under this subsection, to be taken by the Secretary, and to be made part of the record.