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Part II

Department of Housing and Urban Development

24 CFR Parts 1006 and 1007

**Housing Assistance for Native Hawaiians:
Native Hawaiian Housing Block Grant
Program and Loan Guarantees for Native
Hawaiian Housing; Interim Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 1006 and 1007

[Docket No. FR-4668-I-01]

RIN 2577-AC27

**Housing Assistance for Native
Hawaiians: Native Hawaiian Housing
Block Grant Program and Loan
Guarantees for Native Hawaiian
Housing; Interim Rule**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands.

DATES: *Effective Date:* July 15, 2002.

Comments Due Date: August 12, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401-7914. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Hawaiian Homelands Homeownership Act of 2000 (HHH Act) was enacted as both Title II of the Omnibus Indian Advancement Act (Public Law 106-568, 114 Stat. 2868, approved December 27,

2000) and Subtitle B of Title V of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569, 114 Stat. 2944, approved December 27, 2000). Because the Office of the Law Revision Counsel of the U.S. House of Representatives, which prepares and publishes the United States Code (U.S.C.), bases its codification of the HHH Act on Public Law 106-569, and for convenience of reference, the discussion of the HHH Act in this preamble will refer only to sections of Public Law 106-569.

The HHH Act consists of four sections. The first two sections, 511 and 512, provide the short title and the Congressional findings for the legislation, respectively. Section 513 of the HHH Act establishes a block grant program to provide housing assistance for Native Hawaiians (25 U.S.C. 4221 *et seq.*). Section 514 establishes a program of loan guarantees for Native Hawaiian Housing (12 U.S.C. 1715z-13b). This rule will implement these two new programs that address the housing needs of Native Hawaiians.

Section 513 of the HHH Act amends the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding to it a new "Title VIII—Housing Assistance for Native Hawaiians". Title VIII establishes a program of block grant assistance to provide affordable housing for Native Hawaiians that is closely modeled on the Indian Housing Block Grant (IHBG) Program under NAHASDA, which is implemented at 24 CFR part 1000. This rule will implement Title VIII of NAHASDA at 24 CFR part 1006 as the Native Hawaiian Housing Block Grant (NHHBG) Program.

Readers of this rule will encounter references to NAHASDA in the rule text, even though this program is exclusively for Native Hawaiians rather than Native Americans. That is because the single section 513 of the HHH Act adds sections 801 through 824, which authorize this NHHBG Program, as Title VIII of NAHASDA. To avoid possible confusion arising from references to NAHASDA, this rule uses the term "the Act" when referring to Title VIII of NAHASDA. Therefore, when it is necessary to cite an authorizing statutory section in section 1006 of this rule, the reference will be to a section of "the Act" rather than to Title VIII of NAHASDA. For example, the environmental requirements in § 1006.350 of this rule cite section 806 of the Act as their authority. Also because the NHHBG Program is authorized under the same statute as the IHBG Program, there are overlapping

requirements that apply to both programs, such as the definitions that appear in section 4 of NAHASDA. The *Definitions* section of this NHHBG rule, at § 1006.10, includes relevant definitions from section 4 of NAHASDA, although section 4 is not specifically identified as their source. The definitions provided by the Act are also listed in § 1006.10. The Act definitions have section 801 of NAHASDA, which lists the specific definitions applicable to the Native Hawaiian program, as their source.

As noted above, the NHHBG Program is modeled after the IHBG Program. In broad outline, the Department of Hawaiian Home Lands (DHHL) is required to submit annually to HUD a housing plan with a one-year and a five-year component in order to qualify for an annual grant, just as each Tribe or its tribally designated housing entity (TDHE) is required to submit an annual Indian Housing Plan. Grant funds are then made available to the DHHL by HUD to be used in accordance with the housing plan. In the IHBG Program, the total amount of funding made available annually is divided among Tribes according to an allocation formula under section 302 of NAHASDA. Section 817 of NAHASDA similarly provides for an allocation formula for Native Hawaiian funding. However, since the DHHL is the sole recipient of funds under this NHHBG Program, a formula to allocate funds is not necessary, and this rule does not include an allocation formula.

In other respects, 24 CFR part 1006 implemented by this interim rule closely follows Title VIII of NAHASDA with some clarifications added, such as specific references to cross-cutting requirements that are generally applicable to Federal assistance (*see*, for example, § 1006.370, Federal administrative requirements, and § 1006.375, Other Federal requirements), or an explicit statement of how a requirement applies in a particular situation (for example, the clarification in § 1006.345(a)(2) of how Davis-Bacon wage rates apply when NHHBG funds are used to assist homebuyers to acquire single family housing).

Not every section of Title VIII of NAHASDA or every requirement necessary for the full implementation of the NHHBG Program is addressed in this rule. Some provisions of the statute, such as the formula discussed above, do not require implementation. Another statutory provision not addressed in this rule is section 811(b)(1) of the Act. Section 811(b)(1) states: "The Director shall, using amounts of any grants

received under this title, reserve and use for operating under 810 such amounts as may be necessary to provide for the continued maintenance and efficient operation of *such* housing.” (Emphasis added.) HUD believes that this provision does not impose a requirement on the DHHL to provide operating assistance for housing assisted with NHHBG funds for several reasons. First, the language of section 811(b)(1) does not contain any reference to housing to which “such” housing refers. Second, unlike the Indian Housing Block Grant statute (at section 202(1) of NAHASDA), section 810—the eligible affordable housing activities section—does not expressly list operating assistance as an eligible activity. In addition, the statutory language for the Indian Housing Block Grant program upon which section 811(b)(1) is based (section 203(b) of NAHASDA), expressly imposes the requirement for continued maintenance and efficient operation of “such” housing on “housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937” in order to assure continued operating assistance for this housing after termination (pursuant to title V of NAHASDA) of operating assistance for low-rent Indian housing under the United States Housing Act of 1937. However, project-based rental assistance for rental housing assisted with NHHBG funds is eligible under section 810(5) as a model activity.

In addition, there are certain statutory provisions (such as section 802(d)(1), which requires HUD, by regulation, to authorize the DHHL to use a percentage of grant amounts for reasonable administrative and planning expenses) and additional non-statutory, discretionary requirements (such as additional program administration requirements) that must be implemented by proposed rulemaking to give interested parties an opportunity for public comment before they become effective. HUD intends to issue a

proposed rule to address such additional requirements. This interim rule implements the NHHBG program to a sufficient extent to permit HUD to make available to the DHHL the funds already appropriated for this significant program in an expeditious manner.

Because the statutes authorizing the IHBG Program and the NHHBG Program are nearly identical, the requirements in the proposed rule HUD will issue for the NHHBG Program will closely follow the requirements of the IHBG rule at 24 CFR part 1000. During the interim period before the requirements of the NHHBG proposed rule are implemented in a final rule, HUD will allow the DHHL to undertake activities authorized by the Act and awaiting implementation through the proposed rule upon the DHHL’s written agreement to follow the relevant requirements in part 1000. For example, the DHHL would be permitted to invest NHHBG funds, as authorized by section 812(b) of the Act, before the effective date of the rule implementing section 812(b), upon agreeing in writing to follow the requirements of 24 CFR 1000.58, which governs the investment of IHBG funds. If the DHHL chooses to exercise this option, HUD will advise the public through notice published in the **Federal Register**.

Section 514 of the HHH Act adds a new section 184A to the Housing and Community Development Act of 1992 to authorize a new program of housing loan guarantees for Native Hawaiians. Just as the NHHBG Program under section 513 of the HHH Act is closely modelled on the IHBG Program under NAHASDA, the Section 184A Loan Guarantee for Native Hawaiian Housing Program is based upon the Section 184 Loan Guarantee for Indian Housing Program, which is implemented at 24 CFR part 1005. This rule proposes to implement the Native Hawaiian Housing Loan Guarantee Program at 24 CFR part 1007 in accordance with the basic statutory requirements provided for Section 184A with the discretionary aspects, such as identifying eligible collateral, following the requirements

adopted in the Indian Housing Loan Guarantee Program.

Findings and Certifications

Justification for Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest”. The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. Prior public procedure is contrary to the public interest in that it will unduly delay the availability of funding already appropriated to address the pressing housing needs of Native Hawaiians. In addition, prior public procedure is unnecessary because the interim rule closely follows the statutory requirements for the programs to be implemented, and any subsequent adjustments and additions to the rule, including provisions resulting from the public comment that is here requested, can be timely implemented through proposed rulemaking, if necessary, without disrupting program implementation.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting and Recordkeeping Burden:

Section reference	Number of respondents	Annual time for freq. of requirement	Est. avg. requirement (hrs.)	Est. annual burden (hrs.)
1007.50	250	1	0.18	46
1007.75	3	1	1.00	3
Total Reporting and Recordkeeping Burden (Hours)	49

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public

and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4668) and must be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 4244, Washington, DC 20410.

Additional information on these information collection requirements may be obtained from the Reports Liaison Officer.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been 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. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this interim rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order, although not an economically significant regulatory action under the Order. Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel,

Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects

24 CFR Part 1006

Community development block grants, Grant programs—housing and community development, Grant programs—Native Hawaiians, Low and moderate income housing, Native Hawaiians, Reporting and recordkeeping requirements.

24 CFR Part 1007

Loan programs—Native Hawaiians, Native Hawaiians, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.873 for the Native Hawaiian Housing Block Grant Program, and 14.874 for the Loan Guarantees for Native Hawaiian Housing Program.

Accordingly, chapter IX of title 24 of the Code of Federal Regulations is amended by adding new parts 1006 and 1007 as follows:

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

Subpart A—General

Sec.

1006.1 Applicability.

1006.10 Definitions.

1006.20 Grants for affordable housing activities.

1006.30 Waivers.

Subpart B—Housing Plan

1006.101 Housing plan requirements.

1006.110 Review of plans.

Subpart C—Eligible Activities

1006.201 Eligible affordable housing activities.

1006.205 Development.

1006.210 Housing services.

1006.215 Housing management services.

1006.220 Crime prevention and safety activities.

1006.225 Model activities.

1006.230 Administrative and planning costs.

1006.235 Types of investments.

Subpart D—Program Requirements

1006.301 Eligible families.

1006.305 Low-income requirement and income targeting.

1006.310 Rent and lease—purchase limitations.

1006.315 Lease requirements.

1006.320 Tenant or homebuyer selection.

1006.325 Maintenance, management and efficient operation.

1006.330 Insurance coverage.

1006.335 Use of nonprofit organizations and public-private partnerships.

1006.340 Treatment of program income.

1006.345 Labor standards.

1006.350 Environmental review.

1006.355 Nondiscrimination requirements.

1006.360 Conflict of interest.

1006.365 Program administration responsibilities.

1006.370 Federal administrative requirements.

1006.375 Other Federal requirements.

Subpart E—Monitoring and Accountability

1006.401 Monitoring of compliance.

1006.410 Performance reports.

1006.420 Review of DHHL's performance.

1006.430 Corrective and remedial action.

1006.440 Remedies for noncompliance.

Authority: 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d).

Subpart A—General

§ 1006.1 Applicability.

The requirements and procedure of this part apply to grants under the Native Hawaiian Housing Block Grant (NHHBG) Program, authorized by the Hawaiian Homelands Homeownership Act of 2000 (HHH Act), which adds Title VIII—Housing Assistance For Native Hawaiians (25 U.S.C. 4221 *et seq.*), to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*).

§ 1006.10 Definitions.

The following definitions apply in this part:

Act means title VIII of NAHASDA, as amended.

Adjusted income means the annual income that remains after excluding the following amounts:

(1) *Youths, students, and persons with disabilities*. \$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household):

- (i) Who is under 18 years of age; or
- (ii) Who is:

- (A) 18 years of age or older; and
- (B) A person with disabilities or a full-time student.

(2) *Elderly and disabled families*. \$400 for an elderly or disabled family.

(3) *Medical and attendant expenses*. The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of:

(i) Medical expenses, in the case of an elderly or disabled family; and

(ii) Reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(4) *Child care expenses*. Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(5) *Earned income of minors*. The amount of any earned income of any member of the family who is less than 18 years of age.

(6) *Travel expenses*. Excessive travel expenses, not to exceed \$25 per family per week, for employment—or education-related travel.

(7) *Other amounts*. Such other amounts as may be provided in the housing plan for Native Hawaiians.

Affordable Housing means housing that complies with the requirements of the Act and this part. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

Assistant Secretary means HUD's Assistant Secretary for Public and Indian Housing.

Department of Hawaiian Home Lands (DHHL) means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (HHCA 1920) (42 Stat. 108 *et seq.*).

Director means the Director of the Department of Hawaiian Home Lands.

Drug-Related Criminal Activity means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or

use a controlled substance (as such term is defined in section 102 of the Controlled Substances Act).

Elderly families; near-elderly families means:

(1) *In general*. The term “elderly family” or “near-elderly family” means a family whose head (or his or her spouse), or whose sole member, is:

- (i) For an elderly family, an elderly person; or
- (ii) For a near-elderly family, a near-elderly person.

(2) *Certain families included*. The term “elderly family” or “near-elderly family” includes:

- (i) Two or more elderly persons or near-elderly persons, as the case may be, living together; and
- (ii) One or more persons described in paragraph (2)(i) of this definition living with one or more persons determined under the housing plan to be essential to their care or well-being.

Elderly person means an individual who is at least 62 years of age.

Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the DHHL.

Hawaiian Home Lands means lands that:

(1) Have the status as Hawaiian home lands under section 204 of the HHCA 1920 (42 Stat. 110); or

(2) Are acquired pursuant to the HHCA 1920.

Homebuyer payment means the payment of a family purchasing a home pursuant to a long-term lease purchase agreement.

Housing area means an area of Hawaiian Home Lands with respect to which the DHHL is authorized to provide assistance for affordable housing under the Act and this part.

Housing plan means a plan developed by the DHHL pursuant to the Act and this part, particularly § 1006.101.

HUD means the Department of Housing and Urban Development.

Low-income family means a family whose income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of HUD or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

Median income means, with respect to an area that is a housing area, the greater of:

(1) The median income for the housing area, which shall be determined by HUD; or

(2) The median income for the State of Hawaii.

Native Hawaiian means any individual who is:

- (1) A citizen of the United States; and
- (2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

- (i) Genealogical records;
- (ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or
- (iii) Birth records of the State of Hawaii.

Native Hawaiian Housing Block Grant (NHHBG) Funds means funds made available under the Act, plus program income.

Near-elderly person means an individual who is at least 55 years of age and less than 62 years of age.

Nonprofit means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

Secretary means the Secretary of Housing and Urban Development.

Tenant-based rental assistance means a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that:

- (1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and
- (2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the DHHL or project owner before occupancy.

§ 1006.20 Grants for affordable housing activities.

(a) *Annual grant*. Each fiscal year, HUD will make a grant (to the extent that amounts are made available) under the Act to the DHHL to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, if:

- (1) The Director has submitted to HUD a housing plan for that fiscal year; and

(2) HUD has determined that the housing plan complies with the requirements of § 1006.101.

(b) *Waiver.* HUD may waive housing plan requirements if HUD finds that the DHHL has not complied or cannot comply with those requirements due to circumstances beyond the control of the DHHL.

§ 1006.30 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

Subpart B—Housing Plan

§ 1006.101 Housing plan requirements.

The DHHL must submit a housing plan for each Federal Fiscal Year grant. The housing plan has two components, a five-year plan and a one-year plan, as follows:

(a) *Five-year plan.* Each housing plan must contain, for the 5-year period beginning with the fiscal year for which the plan is first submitted, the following information:

(1) *Mission statement.* A general statement of the mission of the DHHL to serve the needs of the low-income Native Hawaiian families eligible to live on the Hawaiian Home Lands to be served by the DHHL;

(2) *Goals and objectives.* A statement of the goals and objectives of the DHHL to enable the DHHL to serve the needs identified in paragraph (a)(1), of this section during the 5-year period; and

(3) *Activities plans.* An overview of the activities planned during the 5-year period including an analysis of the manner in which the activities will enable the DHHL to meet its mission, goals, and objectives.

(b) *One-year plan.* The housing plan must contain the following information for the fiscal year for which the assistance under the Act is to be made available:

(1) *Goals and objectives.* A statement of the goals and objectives to be accomplished by the DHHL with its annual grant allocation that are measurable in a quantitative way.

(2) *Statement of needs.* A statement of the housing needs of the low-income families served by the DHHL and the means by which those needs will be addressed during the period covered by the plan, including:

(i) A description of the estimated housing needs and the need for assistance for the low-income families

to be served by the DHHL, including a description of the manner in which the geographical distribution of assistance is consistent with:

(A) The geographical needs of those families; and

(B) Needs for various categories of housing assistance; and

(ii) A description of the estimated housing needs for all families to be served by the DHHL.

(3) *Financial resources.* An operating budget for the DHHL that includes an identification and a description of:

(i) The NHHBG funds and other financial resources reasonably available to the DHHL to carry out eligible activities, including an explanation of the manner in which NHHBG funds will be used to leverage additional resources; and

(ii) Eligible activities to be undertaken and their projected cost, including administrative expenses.

(4) *Affordable housing resources.* A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including:

(i) A description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources and private market housing;

(ii) The effect of the characteristics identified under paragraph (b)(4)(i) of this section, on the DHHL's decision to use the NHHBG for:

(A) Rental assistance;

(B) The production of new units;

(C) The acquisition of existing units;

or

(D) The rehabilitation of units;

(iii) A description of the structure, coordination, and means of cooperation between the DHHL and any other governmental entities in the development, submission, or implementation of the housing plan, including a description of:

(A) The involvement of private, public, and nonprofit organizations and institutions;

(B) The use of loan guarantees under section 184A of the Housing and Community Development Act of 1992; and

(C) Other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

(iv) A description of the manner in which the plan will address the needs identified pursuant to paragraph (b)(2) of this section;

(v) A description of:

(A) Any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(v)(A) of this section;

(vi) A description of:

(A) Any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of housing to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(vi)(A) of this section;

(vii) A description of:

(A) All other existing or anticipated housing assistance provided by the DHHL during the period covered by the plan, including transitional housing; homeless housing; college housing; and supportive services housing; and

(B) The requirements and assistance available under such programs; (viii) A description of:

(A) Any housing to be demolished or disposed of;

(B) A timetable for that demolition or disposition;

(C) A financial analysis of the proposed demolition/disposition; and

(D) Any additional information HUD may request with respect to that demolition or disposition.

(ix) A description of the manner in which the DHHL will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) A description of the requirements established by the DHHL to:

(A) Promote the safety of residents of the affordable housing;

(B) Facilitate the undertaking of crime prevention measures;

(C) Allow resident input and involvement, including the establishment of resident organizations; and

(D) Allow for the coordination of crime prevention activities between the DHHL and local law enforcement officials; and

(xi) A description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(5) *Certifications of compliance.* The DHHL must certify that it:

(i) Will comply with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and with the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent applicable as described in § 1006.355, in carrying out the Native Hawaiian Housing Block Grant Program; and

(B) Other applicable Federal statutes;
 (ii) Will require adequate insurance coverage for housing units that are owned and operated or assisted with NHHBG funds, in compliance with the requirements of § 1006.330;

(iii) Has policies in effect and available for review by HUD and the public governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part;

(iv) Has policies in effect and available for review by HUD and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with NHHBG funds; and

(v) Has policies in effect and available for review by HUD and the public governing the management and maintenance of rental and lease-purchase housing assisted with NHHBG funds.

(c) *Updates to plan.* (1) *In general.* Subject to paragraph (c)(2) of this section, after the housing plan has been submitted for a fiscal year, the DHHL may comply with the provisions of this section for any succeeding fiscal year with respect to information included for the 5-year period under paragraph (a) of this section by submitting only such information regarding such changes as may be necessary to update the plan previously submitted and by submitting information for the 1-year period under paragraph (b) of this section.

(2) *Complete plans.* The DHHL shall submit a complete plan under this section not later than 4 years after submitting an initial plan, and not less frequently than every 4 years thereafter.

(d) *Amendments to plan.* The DHHL must submit any amendment to the one-year housing plan for HUD review before undertaking any new activities that are not addressed in the current plan. The amendment must include a description of the new activity and a revised budget reflecting the changes. HUD will review the revised plan and will notify DHHL within 30 days whether the amendment complies with applicable requirements.

§ 1006.110 Review of plans.

(a) *Review.* (1) *In general.* Within 60 days of receipt of the housing plan, HUD will conduct a limited review to ensure that the contents of the plan comply with the requirements of § 1006.101, are consistent with information and data available to HUD, and are not prohibited by or inconsistent with any provision of the

Act and this part or any other applicable law.

(2) *Limitation.* HUD will review the housing plan only to the extent that HUD considers that the review is necessary.

(3) *Incomplete plans.* If HUD determines that any of the required certifications are not included in the housing plan, the plan shall be considered to be incomplete. HUD may also consider a housing plan to be incomplete if it does not address all of the requirements of § 1006.101, and the DHHL has not requested a waiver of the missing requirement.

(b) *Notice.* (1) *In general.* Not later than 60 days after receiving the housing plan, HUD will notify the DHHL whether or not the plan complies with applicable requirements.

(2) *Notice of reasons for determination of noncompliance.* If HUD determines that the contents of the housing plan do not comply with the requirements of § 1006.101, or are not consistent with information and data available to HUD, or are prohibited by or inconsistent with any provision of the Act and this part or any other applicable law, HUD will specify in the notice under paragraph (b)(1) of this section:

(i) The reasons for noncompliance; and

(ii) Any modifications necessary for the plan to be in compliance.

(3) *Effect of HUD's failure to take action.* If HUD does not notify the DHHL, upon the expiration of the 60-day period described in paragraph (a)(1) of this section, the plan shall be considered to have been determined to comply with the requirements under § 1006.101 and the DHHL shall be considered to have been notified of compliance.

Subpart C—Eligible Activities

§ 1006.201 Eligible affordable housing activities.

Eligible affordable housing activities are development, housing services, housing management services, crime prevention and safety activities and model activities. NHHBG funds may only be used for eligible activities that are consistent with the DHHL's housing plan.

§ 1006.205 Development.

(a) NHHBG funds may be used for the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing for homeownership or rental, which may include:

(1) Real property acquisition;

(2) Acquisition of affordable housing;
 (3) Financing acquisition of affordable housing by homebuyers through:

(i) Down payment assistance;
 (ii) Closing costs assistance;
 (iii) Direct lending; and
 (iv) Interest subsidies or other financial assistance

(4) New construction of affordable housing;

(5) Reconstruction of affordable housing;

(6) Moderate rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and
 (iii) Energy-related improvements;

(7) Substantial rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and
 (iii) Energy-related improvements;

(8) Site improvement, including recreational areas and playgrounds for use by residents of affordable housing and on-site streets and sidewalks;

(9) The development of utilities and utility services;

(10) Conversion;

(11) Demolition;

(12) Administration and planning;

and

(13) Other related activities, such as environmental review and architectural and engineering plans for the affordable housing project.

(b) *Multi-unit projects.* NHHBG funds may be used to assist one or more housing units in a multi-unit project. Only the actual NHHBG eligible development costs of the assisted units may be charged to the NHHBG Program. If the assisted and unassisted units are not comparable, the actual costs may be determined based upon a method of cost allocation. If the assisted and unassisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the NHHBG-assisted units can be determined by pro-rating the total NHHBG eligible development costs of the project so that the proportion of the total development costs charged to the NHHBG Program does not exceed the proportion of the NHHBG-assisted units in the project.

§ 1006.210 Housing services.

NHHBG funds may be used for the provision of housing-related services for affordable housing, including:

(a) Housing counseling in connection with rental or homeownership assistance;

(b) The establishment and support of resident organizations and resident management corporations;

(c) Energy auditing;

(d) Activities related to the provisions of self-sufficiency and other services;

(e) Homelessness prevention activities, which may include short term subsidies to defray rent and utility bills of an eligible family;

(f) Payments to prevent foreclosure on a home;

(g) Tenant-based rental assistance, which may include security deposits and/or first month's rent; and

(h) Other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to the Act and this part.

§ 1006.215 Housing management services.

NHHBG funds may be used for the provision of management services for affordable housing, including:

(a) The preparation of work specifications;

(b) Loan processing;

(c) Inspections;

(d) Tenant selection;

(e) Management of tenant-based rental assistance; and

(f) Management of affordable housing projects.

§ 1006.220 Crime prevention and safety activities.

NHHBG funds may be used for the provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime, including the costs of:

(a) Physical improvements for affordable housing to enhance security, such as, fences, monitors, locks, and additional lighting;

(b) Security personnel for affordable housing; and

(c) Equipment for patrols.

§ 1006.225 Model activities.

NHHBG funds may be used for housing activities under model programs that are:

(a) Designed to carry out the purposes of the Act and this part; and

(b) Specifically approved by HUD as appropriate for those purposes.

§ 1006.230 Administrative and planning costs.

Up to such amount as HUD may authorize, or such other limit as may be specified by statute, of each grant received under the Act may be used for any reasonable administrative and planning expenses of the DHHL relating to carrying out the Act and this part and

activities assisted with NHHBG funds, including:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the DHHL's staff. In charging costs to this category the DHHL may either include the entire salary, wages, and related costs allocable to the NHHBG Program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The DHHL may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving NHHBG funds;

(iii) Monitoring NHHBG-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

(v) Coordinating the resolution of audit and monitoring findings;

(vi) Evaluating program results against stated objectives; and

(vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vi) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out a project or service, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (*e.g.*, housing counseling); and staff and

overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 1006.205 or service costs under §§ 1006.210 or 1006.215, at the discretion of the DHHL.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with NHHBG funds.

(d) *Indirect costs.* Indirect costs may be charged to the NHHBG Program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122 as applicable.

(e) *Preparation of the housing plan and reports.* Preparation of the housing plan under § 1006.101 and performance reports under § 1006.410. Preparation includes the costs of public hearings, consultations, and publication.

(f) *Other Federal requirements.* Costs of complying with the Federal requirements in §§ 1006.370 and 1006.375 of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs, at the discretion of the DHHL.

§ 1006.235 Types of investments.

Subject to the requirements of this part and to the DHHL's housing plan, the DHHL has the discretion to use NHHBG funds for affordable housing activities in the form of equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, the leveraging of private investments, and other forms of assistance that HUD determines to be consistent with the purposes of the Act. The DHHL has the right to establish the terms of assistance provided with NHHBG funds.

Subpart D—Program Requirements

§ 1006.301 Eligible families.

(a) Assistance for eligible housing activities under the Act and this part is limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, except as provided under paragraphs (b) and (c), of this section.

(b) *Exception to low-income requirement.* (1) *Other Native Hawaiian families.* The DHHL may provide

assistance for homeownership activities and through loan guarantee activities to Native Hawaiian families who are not low-income families, as approved by HUD, to address a need for housing for those families that cannot be reasonably met without that assistance.

(2) *Limitations.* HUD approval is required if the DHHL plans to use its annual grant amount for assistance in accordance with paragraph (b)(1), of this section.

(c) *Other families.* The DHHL may provide housing or NHHBG assistance to a family that is not low-income and is not composed of Native Hawaiians if the DHHL documents that:

(1) The presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(2) The need for housing for the family cannot be reasonably met without the assistance.

(d) *Written policies.* The DHHL must develop, follow, and have available for review by HUD written policies governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part.

§ 1006.305 Low-income requirement and income targeting.

(a) *In general.* Housing qualifies as affordable housing for purposes of the Act and this part only if each dwelling unit in the housing:

(1) In the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(2) In the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase, or is an owner-occupied unit in which the family is low-income at the time it receives NHHBG assistance.

(b) NHHBG-assisted rental units must meet the affordability requirements for the remaining useful life of the property, as determined by HUD, or such other period as HUD determines in accordance with section 813(a)(2)(B) of the Act.

(c) *Enforceable agreements.* (1) The DHHL, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this part.

(2) The agreements referred to in paragraph (c)(1) of this section shall provide for:

(i) To the extent allowable by Federal and State law, the enforcement of the

provisions of the Act and this part by the DHHL and HUD; and

(ii) Remedies for breach of the provisions of the Act and this part.

(d) *Exception.* Notwithstanding the requirements of this section, housing assisted with NHHBG funds pursuant to § 1006.301(b) shall be considered affordable housing for purposes of the Act and this part.

§ 1006.310 Rent and lease-purchase limitations.

(a) *Rents.* The DHHL must develop and follow written policies governing rents for rental housing units assisted with NHHBG funds, including methods by which rents are determined. The maximum monthly rent for a low-income family may not exceed 30 percent of the family's monthly adjusted income.

(b) *Lease-purchase.* If DHHL assists low-income families to become homeowners of rental housing through a long-term lease (i.e. 10 or more years) with an option to purchase the housing, DHHL must develop and follow written policies governing lease-purchase payments for rental housing units assisted with NHHBG funds, including methods by which payments are determined. The maximum monthly payment for a low-income family may not exceed 30 percent of the family's monthly adjusted income.

(c) *Exception for certain homeownership payments.*

Homeownership payments for families who are not low-income, as permitted under § 1006.301(b), are not subject to the requirement that homebuyer payments may not exceed 30 percent of the monthly adjusted income of that family.

(d) Low-income families who receive homeownership assistance other than lease-purchase assistance are not subject to the limitations in paragraphs (a) and (b) of this section.

§ 1006.315 Lease requirements.

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with NHHBG funds, the DHHL, owner, or manager must use leases that:

(a) Do not contain unreasonable terms and conditions;

(b) Require the DHHL, owner, or manager to maintain the housing in compliance with applicable local housing codes and quality standards;

(c) Require the DHHL, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(d) 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;

(e) Require that the DHHL, 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

(f) Provide that the DHHL, 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:

(1) Threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the DHHL, owner, or manager;

(2) 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

(3) Involves criminal activity (including drug-related criminal activity) on or off the premises.

§ 1006.320 Tenant or homebuyer selection.

As a condition to receiving grant amounts under the Act, the DHHL must adopt and use written tenant and homebuyer selection policies and criteria that:

(a) Are consistent with the purpose of providing housing for low-income families;

(b) Are reasonably related to program eligibility and the ability of the tenant or homebuyer assistance applicant to perform the obligations of the lease; and

(c) Provide for:

(1) The selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the housing plan; and

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

§ 1006.325 Maintenance, management and efficient operation.

(a) *Written policies.* The DHHL must develop and enforce policies governing the management and maintenance of rental housing assisted with NHHBG funds.

(b) *Disposal of housing.* This section may not be construed to prevent the DHHL, or any entity funded by the DHHL, from demolishing or disposing of housing, pursuant to regulations established by HUD.

§ 1006.330 Insurance coverage.

(a) *In general.* As a condition to receiving NHHBG funds, the DHHL must require adequate insurance coverage for housing units that are owned or operated or assisted with more than \$5,000 of NHHBG funds, including a loan of more than \$5,000 that includes payback provisions.

(b) *Adequate insurance.* Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount to cover replacement cost.

(c) *Loss covered.* The DHHL must provide for or require insurance in adequate amounts to indemnify against loss from fire, weather, and liability claims for all housing units owned, operated or assisted by the DHHL. NHHBG funds may only be used to purchase insurance for low-income homeowners and only in amounts sufficient to protect against the loss of the NHHBG funds at risk in the property. The cost of such insurance may not include coverage for a resident's personal property.

(d) *Exception.* The DHHL shall not require insurance if the assistance is in an amount less than \$5000.

(e) *Contractor's coverage.* The DHHL shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the DHHL in the contract.

§ 1006.335 Use of nonprofit organizations and public-private partnerships.

(a) *Nonprofit organizations.* The DHHL must, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with NHHBG funds.

(b) *Public-private partnerships.* The DHHL must make all reasonable efforts to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing its housing plan.

§ 1006.340 Treatment of program income.

(a) *Defined.* Program income is income realized from the use of NHHBG funds. If gross income is used to pay costs incurred that are essential or incidental to generating the income, these costs may be deducted from gross income to determine program income. Program income includes income from fees for services performed; from the use or rental of real or personal property acquired or assisted with NHHBG funds; from the sale of property acquired or

assisted with NHHBG funds; from payments of principal and interest on loans made with NHHBG funds; and from payments of interest earned on investment of NHHBG funds pursuant to § 1006.235.

(b) *Authority to retain.* The DHHL may retain any program income that is realized from any NHHBG funds if:

(1) That income was realized after the initial disbursement of the NHHBG funds received by the DHHL; and

(2) The DHHL agrees to use the program income for affordable housing activities in accordance with the provisions of the Act and this part; and

(3) The DHHL disburses program income before disbursing additional NHHBG funds in accordance with 24 CFR part 85.

(c) *Exclusion of amounts.* If the amount of income received in a single fiscal year by the DHHL, which would otherwise be considered program income, does not exceed \$25,000, such funds may be retained but will not be considered program income.

§ 1006.345 Labor standards.

(a) *Davis-Bacon wage rates.* (1) As described in section 805(b) of the Act, contracts and agreements for assistance, sale or lease under this part must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NHHBG assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NHHBG assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 805(b) of the Act also mandates that contracts and agreements for assistance, sale or lease under the Act require that prevailing wages determined or adopted (subsequent to a determination under applicable State or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the

Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) *Other laws and issuances.* The DHHL, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, and other applicable Federal laws and regulations pertaining to labor standards.

§ 1006.350 Environmental review.

(a) In order to ensure that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of NHHBG funds, HUD will provide for the release of funds for specific projects to the DHHL if the Director of the DHHL assumes all of the responsibilities for environmental review, decisionmaking, and action under NEPA and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) that would apply to HUD were HUD to undertake those projects as Federal projects.

(b) An environmental review does not have to be completed before a HUD finding of compliance for the housing plan or amendments to the housing plan submitted by the DHHL.

(c) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 806(b) and 806(c) of the Act, except as authorized by 24 CFR part 58.

(d) As set forth in section 806(a)(2)(B) of the Act and 24 CFR 58.77, HUD will:

(1) Provide for the monitoring of environmental reviews performed by the DHHL under this section;

(2) At its discretion, facilitate training for the performance of such reviews by the DHHL; and,

(3) At its discretion, provide for the suspension or termination of the assumption of responsibilities under this section based upon a finding of substantial failure of the DHHL to execute responsibilities under this section.

§ 1006.355 Nondiscrimination requirements.

Program eligibility under the Act and this part may be restricted to Native

Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability. The following nondiscrimination requirements are applicable to the use of NHHBG funds:

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146;

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8; and

(c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent that nothing in their requirements concerning discrimination on the basis of race shall be construed to prevent the provision of NHHBG assistance:

(1) To the DHHL on the basis that the DHHL served Native Hawaiians; or

(2) To an eligible family on the basis that the family is a Native Hawaiian family.

§ 1006.360 Conflict of interest.

In the procurement of property and services by the DHHL and contractors, the conflict of interest provisions in 24 CFR 85.36 or 24 CFR 84.42 apply.

§ 1006.365 Program administration responsibilities.

(a) *Responsibilities.* The DHHL is responsible for managing the day-to-day operations of the NHHBG Program, ensuring that NHHBG funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of contractors does not relieve the DHHL of this responsibility.

(b) *Agreements with contractors.* The DHHL may enter into agreements with private contractors selected under the provisions of 24 CFR 85.36 for purposes of administering all or part of the NHHBG program for the DHHL.

§ 1006.370 Federal administrative requirements.

(a) *Governmental entities.* The DHHL and any governmental contractor receiving NHHBG funds shall comply with the requirements and standards of OMB Circular No. A–87, “Cost Principles for State, Local and Indian Tribal Governments,” and with 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.”

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–

122, “Cost Principles for Non-profit Organizations,” and the requirements of 24 CFR part 84, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” apply to contractors receiving NHHBG funds that are non-profit organizations that are not governmental contractors.

(c)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A–87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the NHHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with NHHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

(d) OMB Circulars referenced in this part may be obtained from www.whitehouse.gov/omb/circulars/index.html; telephone; (202) 395–3080.

§ 1006.375 Other Federal requirements.

(a) *Lead-based paint.* The following subparts of HUD's lead-based paint regulations at part 35, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), apply to the use of assistance under this part:

(1) Subpart A, “Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property”;

(2) Subpart B, “General Lead-Based Paint Requirements and Definitions for All Programs”;

(3) Subpart H, “Project-Based Rental Assistance”;

(4) Subpart J, “Rehabilitation”;

(5) Subpart K, “Acquisition, Leasing, Support Services, or Operation”;

(6) Subpart M, “Tenant-Based Rental Assistance”; and

(7) Subpart R, “Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities”.

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply to the use of assistance under this part.

(c) *Displacement and relocation.* The following relocation and real property acquisition policies are applicable to programs developed or operated under the Act and this part:

(1) *Real property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(2) *Minimize displacement.* Consistent with the other goals and objectives of the Act and this part, the DHHL shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under the Act and this part.

(3) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (d)(7) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(4) *Appeals to the DHHL.* A person who disagrees with the DHHL's determination concerning whether the person qualifies as a “displaced person,” or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the DHHL.

(5) *Responsibility of DHHL.* (i) The DHHL shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The DHHL shall ensure such compliance notwithstanding any third party's contractual obligation to the DHHL to comply with the provisions in this section.

(ii) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the DHHL from any other source.

(iii) The DHHL shall maintain records in sufficient detail to demonstrate compliance with this section.

(6) *Definition of displaced person.* (i) For purposes of this section, the term “displaced person” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of

rehabilitation, demolition, or acquisition for a project assisted under the Act. The term “displaced person” includes, but is not limited to:

(A) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of a housing plan that is later approved;

(B) Any person, including a person who moves before the date described in paragraph (d)(7)(i)(A) of this section, that the DHHL determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project;

(C) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after execution of the agreement between the DHHL and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant-occupant’s monthly rent and estimated average monthly utility costs before the agreement; or

(2) 30 percent of gross household income.

(D) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(1) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(2) Other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(1) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(2) Other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:

(A) The person moved into the property after the submission of the housing plan to HUD, but before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” or for any assistance provided under this section as a result of the project;

(B) The person is ineligible under 49 CFR 24.2(g)(2); or

(C) The DHHL determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(iii) The DHHL may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(7) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

(d) *Audits.* The DHHL must comply with the requirements of the Single Audit Act and OMB Circular A-133, with the audit report providing a schedule of expenditures for each grant. A copy of each audit must be submitted to HUD concurrent with submittal to the Audit Clearinghouse.

Subpart E—Monitoring and Accountability

§ 1006.401 Monitoring of compliance.

(a) *Periodic reviews and monitoring.* At least annually, the DHHL must review the activities conducted and housing assisted with NHHBG funds to assess compliance with the requirements of the Act and this part. This review must encompass and incorporate the results of the monitoring by the DHHL of all contractors involved in the administration of NHHBG activities.

(b) *Review.* Each review under paragraph (a) of this section must include on-site inspection of housing to determine compliance with applicable requirements.

(c) *Results.* The results of each review under paragraph (a) of this section must be:

(1) Included in a performance report of the DHHL submitted to HUD under § 1006.410; and

(2) Made available to the public.

§ 1006.410 Performance reports.

(a) *Requirement.* For each fiscal year, the DHHL must:

(1) Review the progress the DHHL has made during that fiscal year in achieving goals stated in its housing plan; and

(2) Submit a report in a form acceptable to HUD, within 60 days of the end of the DHHL’s fiscal year, to HUD describing the conclusions of the review.

(b) *Content.* Each report submitted under this section for a fiscal year shall:

(1) Describe the use of grant amounts provided to the DHHL for that fiscal year;

(2) Assess the relationship of the use referred to in paragraph (b)(1), of this section, to the goals identified in its housing plan;

(3) Indicate the programmatic accomplishments of the DHHL; and

(4) Describe the manner in which the DHHL would change its housing plan as a result of its experiences administering the grant under the Act.

(c) *Public availability.* (1) *Comments by Native Hawaiians.* In preparing a report under this section, the DHHL shall make the report publicly available to Native Hawaiians who are eligible to reside on the Hawaiian Home Lands and give a sufficient amount of time to permit them to comment on that report, in such manner and at such time as the DHHL may determine, before it is submitted to HUD.

(2) *Summary of comments.* The report under this section must include a summary of any comments received by the DHHL from beneficiaries under paragraph (c)(1) of this section, regarding the program to carry out the housing plan.

(d) *HUD review.* HUD will:

(1) Review each report submitted under the Act and this part; and

(2) With respect to each such report, make recommendations as HUD considers appropriate to carry out the purposes of the Act.

§ 1006.420 Review of DHHL’s performance.

(a) *Objective.* HUD will, at least annually, review DHHL’s performance to determine whether the DHHL has:

(1) Carried out eligible activities in a timely manner;

(2) Carried out and made certifications in accordance with the requirements and the primary objectives of the Act and this part and with other applicable laws;

(3) A continuing capacity to carry out the eligible activities in a timely manner;

(4) Complied with its housing plan; and

(5) Submitted accurate performance reports.

(b) *Basis for review.* In reviewing DHHL's performance, HUD will consider all available evidence, which may include, but not be limited to, the following:

(1) The DHHL's housing plan and any amendments thereto;

(2) Reports prepared by the DHHL;

(3) Records maintained by the DHHL;

(4) Results of HUD's monitoring of the DHHL's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

(c) The DHHL's failure to maintain records may result in a finding that the DHHL failed to meet the applicable requirement to which the record pertains.

§ 1006.430 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of a performance review, HUD determines that the DHHL has not:

(1) Complied with the requirements of the Act and this part and other applicable laws and regulations, including the environmental responsibilities assumed under § 1006.350;

(2) Carried out its activities substantially as described in its housing plan;

(3) Made substantial progress in carrying out its program and achieving its quantifiable goals as described in its housing plan; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the DHHL of the performance problem(s), describing the corrective actions that HUD believes should be

taken, establishing a completion date for corrective actions, and notifying the DHHL that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the DHHL to submit progress schedules for completing activities or complying with the requirements of the Act and this part;

(3) Recommend that the DHHL suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the DHHL redirect funds from affected activities to other eligible activities;

(5) Recommend that the DHHL reimburse its program account or line of credit under the Act in the amount improperly expended and reprogram the use of the funds; and

(6) Recommend that the DHHL obtain appropriate technical assistance using existing grant funds or other available resources to overcome the performance problem(s).

§ 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, 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 to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

Sec.

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Authority: 12 U.S.C. 1715z-13b; 42 U.S.C. 3535(d).

§ 1007.1 Purpose.

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the

Hawaiian Home Lands or as a result of a lack of access to private financial markets.

§ 1007.5 Definitions.

The following definitions apply in this part:

Department of Hawaiian Home Lands (DHHL) means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 *et seq.*).

Eligible entity means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

Family means one or more persons maintaining a household, and includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, or a single person.

Guarantee Fund means the Native Hawaiian Housing Loan Guarantee Fund under this part.

Hawaiian Home Lands means lands that:

(1) Have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(2) Are acquired pursuant to that Act. *HUD* means the Department of Housing and Urban Development.

Native Hawaiian means any individual who is:

(1) A citizen of the United States; and
(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;
(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or
(iii) Birth records of the State of Hawaii.

Native Hawaiian family means a family with at least one member who is a Native Hawaiian.

Office of Hawaiian Affairs means the entity of that name established under the constitution of the State of Hawaii.

§ 1007.10 Eligible borrowers.

A loan guaranteed under this part may only be made to the following borrowers:

(a) A Native Hawaiian family;
(b) The Department of Hawaiian Home Lands;
(c) The Office of Hawaiian Affairs; or

(d) A private, nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

§ 1007.15 Eligible uses.

(a) *In general.* A loan guaranteed under this part may only be used to construct, acquire, or rehabilitate eligible housing.

(b) *Construction advances.* Advances made by the lender during construction are eligible if:

(1) The mortgagee and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

§ 1007.20 Eligible housing.

(a) A loan guaranteed under this part may only be made for one to four-family dwellings that are standard housing, in accordance with paragraph (b), of this section. The housing must be located on Hawaiian Home Lands for which a housing plan that provides for the use of loan guarantees under this part has been submitted and approved under part 1006 of this chapter.

(b) Standard housing must meet housing safety and quality standards that:

(1) Provide sufficient flexibility to permit the use of various designs and materials; and

(2) Require each dwelling unit to:
(i) Be decent, safe, sanitary, and modest in size and design;

(ii) Conform with applicable general construction standards for the region in which the housing is located;

(iii) Contain a plumbing system that:
(A) Uses a properly installed system of piping;

(B) Includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and

(C) Uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) Contain an electrical system using wiring and equipment properly

installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

(v) Be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that HUD, upon request of the DHHL may waive the size requirements under this paragraph; and

(vi) Conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act (12 U.S.C.A. 1735f-4), unless HUD determines that the requirements are not applicable.

(c) The relevant requirements of 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 part 35, subparts A, B, and R of this title and §§ 200.805 and 200.810 of this title apply to housing eligible for a loan guaranteed under this part.

§ 1007.25 Eligible lenders.

(a) *In general.* To qualify for a guarantee under this part, a loan shall be made only by a lender meeting qualifications established in this part and approved by HUD, including any lender described in paragraph (b), of this section, except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the DHHL from amounts borrowed from the United States shall not be eligible for a guarantee under this part.

(b) *Approval.* The following lenders shall be considered to be lenders that have been approved by HUD:

(1) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C.A. 1707 *et seq.*);

(2) Any lender that makes housing loans under chapter 37 of title 38, United States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code;

(3) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C.A. 1441 *et seq.*);

(4) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government; and

(5) Any other lender approved by HUD under this part.

§ 1007.30 Security for loan.

(a) *In general.* A loan guaranteed under section 184A of the Housing and Community Development Act of 1992 and this part may be secured by any collateral authorized under and not prohibited by Federal or State law and determined by the lender and approved by HUD to be sufficient to cover the amount of the loan. Eligible collateral may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to any restrictions against alienation applicable to Hawaiian Home Lands;

(2) A security interest in non-Hawaiian Home Lands property;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Hawaiian Home Lands property interest as collateral.* If a property interest in Hawaiian Home Lands is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under section 184A of the Housing and Community Development Act of 1992 must be on a form approved by both the DHHL and HUD.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring the DHHL's consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by HUD through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgage other than HUD must obtain the DHHL's consent before obtaining title through a foreclosure sale. The DHHL's consent must be obtained on any subsequent transfer from the purchaser, including HUD, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by HUD.

(3) *Liquidation.* The lender or HUD shall only pursue liquidation after offering to transfer the account to another eligible Native Hawaiian family or the DHHL. The lender or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Native Hawaiian family or the DHHL.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by a Hawaiian Home Lands property, the

DHHL must notify HUD that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the DHHL may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP).

Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration.

§ 1007.35 Loan terms.

To be eligible for guarantee under this part, the loan shall:

(a) Be made for a term not exceeding 30 years;

(b) Bear interest (exclusive of the guarantee fee under § 1007.55 and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by HUD to be reasonable, but not to exceed the rate generally charged in the area (as determined by HUD) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(c) Involve a principal obligation not exceeding:

(1) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); or

(2) The amount approved by HUD under this section; and

(d) Involve a payment on account of the property:

(1) In cash or its equivalent; or

(2) Through the value of any improvements, appraised in accordance with generally accepted practices and procedures.

§ 1007.40 Environmental requirements.

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

§ 1007.45 Applicability of civil rights statutes.

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

§ 1007.50 Certificate of guarantee.

(a) *Approval process.* (1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect.* (1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the

original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

§ 1007.55 Guarantee fee.

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§ 1007.60 Liability under guarantee.

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

§ 1007.65 Transfer and assumption.

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

§ 1007.70 Disqualification of lenders and civil money penalties.

(a) *In general.* (1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

- (i) Has failed:
 - (A) To maintain adequate accounting records;
 - (B) To service adequately loans guaranteed under this section; or
 - (C) To exercise proper credit or underwriting judgment; or
- (ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section

apply to the holder of a guarantee certificate, HUD may:

- (i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;
- (ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and
- (iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations.* (1) *In general.* HUD may impose a civil monetary penalty on a lender or holder of a guarantee certificate if HUD determines that the holder or lender has intentionally failed:

- (i) To maintain adequate accounting records;
- (ii) To adequately service loans guaranteed under this section; or
- (iii) To exercise proper credit or underwriting judgment.

(2) *Penalties.* A civil monetary penalty imposed under this section shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f-1) with respect to mortgagees and lenders under that Act.

(c) *Payment on loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, if a loan was made in good faith, HUD may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this section.

§ 1007.75 Payment under guarantee.

(a) *Lender options.* (1) *Notification.* If a borrower on a loan guaranteed under this part defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to HUD.

(2) *Payment.* Upon providing the notice required under paragraph (a)(1), of this section, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to HUD). Upon a final order by the court authorizing foreclosure and submission to HUD of a claim for payment under the guarantee, HUD will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined under § 1007.60) plus reasonable fees and expenses as approved by HUD. HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(ii) *No foreclosure.* Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(2)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to HUD a request to assign the obligation and security interest to HUD in return for payment of the claim under the guarantee. HUD may accept assignment of the loan if HUD determines that the assignment is in the best interest of the United States. Upon assignment, HUD will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under § 1007.60). HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(b) *Requirements.* Before any payment under a guarantee is made under paragraph (a) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. HUD will then take such action to collect as HUD determines to be appropriate.

Dated: May 28, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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