

# **Native American Housing Assistance and Self-Determination Act of 1996, P.L. 104-330 (25 U.S.C. 4101 - 4212)**

## ***as amended October 21, 1998 and December 27, 2000***

One Hundred Fourth Congress of the United States of America AT THE SECOND SESSION Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six An Act To provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE - This Act may be cited as the `Native American Housing Assistance and Self-Determination Act of 1996.

(b) TABLE OF CONTENTS - The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Congressional findings.
- Sec. 3. Administration through Office of Native American Programs.
- Sec. 4. Definitions.

### TITLE I -- BLOCK GRANTS AND GRANT REQUIREMENTS

- Sec. 101. Block grants.
- Sec. 102. Indian housing plans.
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- (Repealed)
- Sec. 207. Lease requirements and tenant selection.
- Sec. 208. Availability of records.
- Sec. 209. Noncompliance with affordable housing requirement.
- Sec. 210. Continued use of amounts for affordable housing.

### TITLE III -- ALLOCATION OF GRANT AMOUNTS

- Sec. 301. Annual allocation.
- Sec. 302. Allocation formula.

#### TITLE IV -- COMPLIANCE, AUDITS, AND REPORTS

- Sec. 401. Remedies for noncompliance.
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- Sec. 403. Monitoring of compliance.
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- Sec. 405. Review and audit by Secretary.
- Sec. 406. GAO audits.
- Sec. 407. Reports to Congress.
- Sec. 408. Public availability of information.

#### TITLE V -- TERMINATION OF ASSISTANCE FOR INDIAN TRIBES UNDER INCORPORATED PROGRAMS

- Sec. 501. Repeal of provisions relating to Indian housing assistance under United States Housing Act of 1937.
- Sec. 502. Termination of Indian housing assistance under United States Housing Act of 1937.
- Sec. 503. Termination of new commitments for rental assistance.
- Sec. 504. Termination of youth build program assistance.
- Sec. 505. Termination of HOME program assistance.
- Sec. 506. Termination of housing assistance for the homeless.
- Sec. 507. Savings provision.
- Sec. 508. Effective date.

#### TITLE VI -- FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES

- Sec. 601. Authority and requirements.
- Sec. 602. Security and repayment.
- Sec. 603. Payment of interest.
- Sec. 604. Training and information.
- Sec. 605. Limitations on amount of guarantees.
- Sec. 606. Effective date.

#### TITLE VII -- OTHER HOUSING ASSISTANCE FOR NATIVE AMERICANS

- Sec. 701. Loan guarantees for Indian housing.
- Sec. 702. 50-year leasehold interest in trust or restricted lands for housing purposes.
- Sec. 703. Training and technical assistance.
- Sec. 704. Public and Assisted Housing Drug Elimination Act of 1990.
- Sec. 705. Effective date.

#### TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

- Sec. 801. Definitions.
- Sec. 802. Block grants for affordable housing activities.
- Sec. 803. Housing plan.
- Sec. 804. Review of Plans.
- Sec. 805. Treatment of program income and labor standards.
- Sec. 806. Environmental review.
- Sec. 807. Regulations.
- Sec. 808. Effective date.
- Sec. 809. Affordable housing activities.

- Sec. 810. Eligible affordable housing activities.
- Sec. 811. Program requirements.
- Sec. 812. Types of investments.
- Sec. 813. Low-income requirement and income targeting.
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- Sec. 816. Annual allocation.
- Sec. 817. Allocation formula.
- Sec. 818. Remedies for noncompliance.
- Sec. 819. Monitoring of compliance.
- Sec. 820. Performance reports.
- Sec. 821. Review and audit by Secretary.
- Sec. 822. General Accounting Office audits.
- Sec. 823. Reports to Congress.
- Sec. 824. Authorization of appropriations.

## **SECTION 2. CONGRESSIONAL FINDINGS. [25 U.S.C. 4101]**

The Congress finds that -

(1) the Federal Government has a responsibility to promote the general welfare of the Nation -

(A) by using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(B) by working to ensure a thriving national economy and a strong private housing market; and

(C) by developing effective partnerships among the Federal Government, State, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities;

(2) there exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people;

(3) the Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people;

(4) the Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition;

(5) providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping tribes and their members to improve their housing conditions and socioeconomic status;

(6) the need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal Government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for tribes and their members; and

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93-638 (25 U.S.C. 450 et seq.)

# TITLE VIII--HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

## **Sec. 801. DEFINITIONS.**

In this title:

(1) DEPARTMENT OF HAWAIIAN HOME LANDS; DEPARTMENT- The term 'Department of Hawaiian Home Lands' or 'Department' 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.).

(2) DIRECTOR- The term 'Director' means the Director of the Department of Hawaiian Home Lands.

(3) ELDERLY FAMILIES; NEAR-ELDERLY FAMILIES-

(A) 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.

(B) 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 maybe, living together; and

(ii) one or more persons described in clause (i) living with one or more persons determined under the housing plan to be essential to their care or well-being.

(4) HAWAIIAN HOME LANDS- The term 'Hawaiian Home Lands' means lands that--

(A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(B) are acquired pursuant to that Act.

(5) HOUSING AREA- The term 'housing area' means an area of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this Act.

(6) HOUSING ENTITY- The term 'housing entity' means the Department of Hawaiian Home Lands.

(7) HOUSING PLAN- The term 'housing plan' means a plan developed by the Department of Hawaiian Home Lands.

(8) MEDIAN INCOME- The term 'median income' means, with respect to an area that is a Hawaiian housing area, the greater of--

(A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or

(B) the median income for the State of Hawaii.

(9) NATIVE HAWAIIAN- The term 'Native Hawaiian' means any individual who is--

(A) a citizen of the United States; and

(B) 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.

## **Sec. 802. BLOCK GRANTS FOR AFFORDABLE HOUSING ACTIVITIES.**

(a) GRANT AUTHORITY- For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this title) make a grant under this title to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands.

(b) PLAN REQUIREMENT-

(1) IN GENERAL- The Secretary may make a grant under this title to the Department of Hawaiian Home Lands for a fiscal year only if--

(A) the Director has submitted to the Secretary a housing plan for that fiscal year; and

(B) the Secretary has determined under section 804 that the housing plan complies with the requirements of section 803.

(2) WAIVER- The Secretary may waive the applicability of the requirements under paragraph (1), in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with those requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

(c) USE OF AFFORDABLE HOUSING ACTIVITIES UNDER PLAN- Except as provided in subsection (e), amounts provided under a grant under this section may be used only for affordable housing activities under this title that are consistent with a housing plan approved under section 804.

(d) ADMINISTRATIVE EXPENSES-

(1) IN GENERAL- The Secretary shall, by regulation, authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts received under this title for any reasonable administrative and planning expenses of the Department relating to carrying out this title and activities assisted with those amounts.

(2) ADMINISTRATIVE AND PLANNING EXPENSES- The administrative and planning expenses referred to in paragraph (1) include--

(A) costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this title; and

(B) expenses incurred in preparing a housing plan under section 803.

(e) PUBLIC-PRIVATE PARTNERSHIPS- The Director shall make all reasonable efforts, consistent with the purposes of this title, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing housing plan that has been approved by the Secretary under section 803.

### **Sec. 803. HOUSING PLAN.**

(a) PLAN SUBMISSION- The Secretary shall--

(1) require the Director to submit a housing plan under this section for each fiscal year; and

(2) provide for the review of each plan submitted under paragraph (1).

(b) 5-YEAR PLAN- Each housing plan under this section shall--

(1) be in a form prescribed by the Secretary; and

(2) contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

(A) MISSION STATEMENT- A general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department.

(B) GOALS AND OBJECTIVES- A statement of the goals and objectives of the Department of Hawaiian Home Lands to enable the Department to serve the needs identified in subparagraph (A) during the period.

(C) ACTIVITIES PLANS- An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

(c) 1-YEAR PLAN- A housing plan under this section shall--

(1) be in a form prescribed by the Secretary; and

(2) contain the following information relating to the fiscal year for which the assistance under this title is to be made available:

(A) GOALS AND OBJECTIVES- A statement of the goals and objectives to be accomplished during the period covered by the plan.

(B) STATEMENT OF NEEDS- A statement of the housing needs of the low-income families served by the Department 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 Department, including a description of the manner in which the geographical distribution of assistance is consistent with--

(I) the geographical needs of those families; and

(II) needs for various categories of housing assistance; and

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

(C) FINANCIAL RESOURCES- An operating budget for the Department of Hawaiian Home Lands, in a form prescribed by the Secretary, that includes--

- (i) an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of this title, including an explanation of the manner in which amounts made available will be used to leverage additional resources; and
- (ii) the uses to which the resources described in clause (i) will be committed, including--
  - (I) eligible and required affordable housing activities; and
  - (II) administrative expenses.
- (D) 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, private market housing;
  - (ii) the manner in which the characteristics referred to in clause (i) influence the decision of the Department of Hawaiian Home Lands to use grant amounts to be provided under this title for--
    - (I) rental assistance;
    - (II) the production of new units;
    - (III) the acquisition of existing units; or
    - (IV) the rehabilitation of units;
  - (iii) a description of the structure, coordination, and means of cooperation between the Department of Hawaiian Home Lands and any other governmental entities in the development, submission, or implementation of housing plans, including a description of--
    - (I) the involvement of private, public, and nonprofit organizations and institutions;
    - (II) the use of loan guarantees under section 184A of the Housing and Community Development Act of 1992; and
    - (III) 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 subparagraph (C);
    - (v) a description of--
      - (I) any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and
      - (II) the requirements and assistance available under the programs referred to in subclause (I);
    - (vi) a description of--
      - (I) any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan; and
      - (II) the requirements and assistance available under the programs referred to in subclause (I);
    - (vii) a description of--
      - (I) all other existing or anticipated housing assistance provided by the Department of Hawaiian Home Lands during the period covered by the plan, including--
        - (aa) transitional housing;
        - (bb) homeless housing;
        - (cc) college housing; and
        - (dd) supportive services housing; and
      - (II) the requirements and assistance available under such programs;
    - (viii)
      - (I) a description of any housing to be demolished or disposed of;
      - (II) a timetable for that demolition or disposition; and
      - (III) any other information required by the Secretary with respect to that demolition or disposition;
    - (ix) a description of the manner in which the Department of Hawaiian Home Lands 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 Department of Hawaiian Home Lands to--
      - (I) promote the safety of residents of the affordable housing;
      - (II) facilitate the undertaking of crime prevention measures;

- (III) allow resident input and involvement, including the establishment of resident organizations; and
  - (IV) allow for the coordination of crime prevention activities between the Department 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.
- (E) CERTIFICATION OF COMPLIANCE- Evidence of compliance that shall include, as appropriate--
- (i) a certification that the Department of Hawaiian Home Lands will comply with--
    - (I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or with title VIII of the Act popularly known as the 'Civil Rights Act of 1968' (42 U.S.C. 3601 et seq.) in carrying out this title, to the extent that such title is applicable; and
    - (II) other applicable Federal statutes;
    - (ii) a certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this title, in compliance with such requirements as may be established by the Secretary;
    - (iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this title;
    - (iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this title; and
    - (v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this title.
- (d) APPLICABILITY OF CIVIL RIGHTS STATUTES-
- (1) IN GENERAL- 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 title VIII of the Act popularly known as the 'Civil Rights Act of 1968' (42 U.S.C. 3601 et seq.) apply to assistance provided under this title, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under this title--
    - (A) to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or
    - (B) to an eligible family on the basis that the family is a Native Hawaiian family.
  - (2) CIVIL RIGHTS- Program eligibility under this title 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.
- (e) USE OF NONPROFIT ORGANIZATIONS- As a condition of receiving grant amounts under this title, the Department of Hawaiian Home Lands shall, 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 those grant amounts.

## **Sec. 804. REVIEW OF PLANS.**

- (a) REVIEW AND NOTICE-
  - (1) REVIEW-
    - (A) IN GENERAL- The Secretary shall conduct a review of a housing plan submitted to the Secretary under section 803 to ensure that the plan complies with the requirements of that section.
    - (B) LIMITATION- The Secretary shall have the discretion to review a plan referred to in subparagraph (A) only to the extent that the Secretary considers that the review is necessary.
  - (2) NOTICE-
    - (A) IN GENERAL- Not later than 60 days after receiving a plan under section 803, the Secretary shall notify the Director of the Department of Hawaiian Home Lands whether the plan complies with the requirements under that section.
    - (B) EFFECT OF FAILURE OF SECRETARY TO TAKE ACTION- For purposes of this title, if the Secretary does not notify the Director, as required under this subsection and subsection (b), upon the expiration of the 60-day period described in subparagraph (A)--

- (i) the plan shall be considered to have been determined to comply with the requirements under section 803; and
- (ii) the Director shall be considered to have been notified of compliance.
- (b) NOTICE OF REASONS FOR DETERMINATION OF NONCOMPLIANCE- If the Secretary determines that a plan submitted under section 803 does not comply with the requirements of that section, the Secretary shall specify in the notice under subsection (a)--
  - (1) the reasons for noncompliance; and
  - (2) any modifications necessary for the plan to meet the requirements of section 803.
- (c) REVIEW-
  - (1) IN GENERAL- After the Director submits a housing plan under section 803, or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make a determination under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan--
    - (A) set forth the information required by section 803 to be contained in the housing plan;
    - (B) are consistent with information and data available to the Secretary; and
    - (C) are not prohibited by or inconsistent with any provision of this Act or any other applicable law.
  - (2) INCOMPLETE PLANS- If the Secretary determines under this subsection that any of the appropriate certifications required under section 803(c)(2)(E) are not included in a plan, the plan shall be considered to be incomplete.
- (d) UPDATES TO PLAN-
  - (1) IN GENERAL- Subject to paragraph (2), after a plan under section 803 has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of that section for any succeeding fiscal year (with respect to information included for the 5-year period under section 803(b) or for the 1-year period under section 803(c)) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.
  - (2) COMPLETE PLANS- The Director shall submit a complete plan under section 803 not later than 4 years after submitting an initial plan under that section, and not less frequently than every 4 years thereafter.
- (e) EFFECTIVE DATE- This section and section 803 shall take effect on the date provided by the Secretary pursuant to section 807(a) to provide for timely submission and review of the housing plan as necessary for the provision of assistance under this title for fiscal year 2000.

## **Sec. 805. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.**

- (a) PROGRAM INCOME-
  - (1) AUTHORITY TO RETAIN- The Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under this title if--
    - (A) that income was realized after the initial disbursement of the grant amounts received by the Department; and
    - (B) the Director agrees to use the program income for affordable housing activities in accordance with the provisions of this title.
  - (2) PROHIBITION OF REDUCTION OF GRANT- The Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on--
    - (A) whether the Department retains program income under paragraph (1); or
    - (B) the amount of any such program income retained.
  - (3) EXCLUSION OF AMOUNTS- The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the Department.
- (b) LABOR STANDARDS-
  - (1) IN GENERAL- Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain--
    - (A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved; and
    - (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the 'Davis-Bacon Act' (46 Stat. 1494, chapter 411; 40 U.S.C.

276a et seq.) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) EXCEPTIONS- Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

## **Sec. 806. ENVIRONMENTAL REVIEW.**

(a) IN GENERAL-

(1) RELEASE OF FUNDS-

(A) IN GENERAL- The Secretary may carry out the alternative environmental protection procedures described in subparagraph (B) in order to ensure--

(i) that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this title; and

(ii) to the public undiminished protection of the environment.

(B) ALTERNATIVE ENVIRONMENTAL PROTECTION PROCEDURE- In lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the Department of Hawaiian Home Lands if the Director assumes all of the responsibilities for environmental review, decision making, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

(2) REGULATIONS-

(A) IN GENERAL- The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

(B) CONTENTS- The regulations issued under this paragraph shall--

(i) provide for the monitoring of the environmental reviews performed under this section;

(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

(3) EFFECT ON ASSUMED RESPONSIBILITY- The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts with respect to any specific release of funds.

(b) PROCEDURE-

(1) IN GENERAL- The Secretary shall authorize the release of funds subject to the procedures under this section only if, not less than 15 days before that approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c).

(2) EFFECT OF APPROVAL- The approval of the Secretary of a certification described in paragraph (1) shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and such other provisions of law as the regulations of the Secretary specify to the extent that those responsibilities relate to the releases of funds for projects that are covered by that certification.

(c) CERTIFICATION- A certification under the procedures under this section shall--

(1) be in a form acceptable to the Secretary;

(2) be executed by the Director;

(3) specify that the Department of Hawaiian Home Lands has fully carried out its responsibilities as described under subsection (a); and

(4) specify that the Director--

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply by reason of subsection (a); and

(B) is authorized and consents on behalf of the Department of Hawaiian Home Lands and the Director to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director.

## **Sec. 807. REGULATIONS.**

The Secretary shall issue final regulations necessary to carry out this title not later than October 1, 2000.

## **Sec. 808. EFFECTIVE DATE.**

Except as otherwise expressly provided in this title, this title shall take effect on the date of the enactment of the Native American Housing Assistance and Self-Determination Amendments of 2000.

## **Sec. 809. AFFORDABLE HOUSING ACTIVITIES.**

(a) NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES-

(1) PRIMARY OBJECTIVE- The national objectives of this title are--

(A) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;

(B) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;

(C) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State, and local activities to further economic and community development;

(D) to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and

(E) to--

(i) promote the development of private capital markets; and

(ii) allow the markets referred to in clause (i) to operate and grow, thereby benefiting Native Hawaiian communities.

(2) ELIGIBLE FAMILIES-

(A) IN GENERAL- Except as provided under subparagraph (B), assistance for eligible housing activities under this title shall be limited to low-income Native Hawaiian families.

(B) EXCEPTION TO LOW-INCOME REQUIREMENT-

(i) IN GENERAL- The Director may provide assistance for homeownership activities under--

(I) section 810(b);

(II) model activities under section 810(f); or

(III) loan guarantee activities under section 184A of the Housing and Community Development Act of 1992 to Native Hawaiian families who are not low-income families, to the extent that the Secretary approves the activities under that section to address a need for housing for those families that cannot be reasonably met without that assistance.

(ii) LIMITATIONS- The Secretary shall establish limitations on the amount of assistance that may be provided under this title for activities for families that are not low-income families.

(C) OTHER FAMILIES- Notwithstanding paragraph (1), the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this title to a family that is not composed of Native Hawaiians if--

(i) the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

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

(D) PREFERENCE-

(i) IN GENERAL- A housing plan submitted under section 803 may authorize a preference, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under this title to be provided, to the extent practicable, to families that are eligible to reside on the Hawaiian Home Lands.

(ii) APPLICATION- In any case in which a housing plan provides for preference described in clause (i), the Director shall ensure that housing activities that are assisted with grant amounts under this title are subject to that preference.

(E) USE OF NONPROFIT ORGANIZATIONS- As a condition of receiving grant amounts under this title, the Department of Hawaiian Home Lands, shall 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 those grant amounts.

### **Sec. 810. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.**

(a) IN GENERAL- Affordable housing activities under this section are activities conducted in accordance with the requirements of section 811 to--

(1) develop or to support affordable housing for rental or homeownership; or

(2) provide housing services with respect to affordable housing, through the activities described in subsection (b).

(b) ACTIVITIES- The activities described in this subsection are the following:

(1) DEVELOPMENT- The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include--

(A) real property acquisition;

(B) site improvement;

(C) the development of utilities and utility services;

(D) conversion;

(E) demolition;

(F) financing;

(G) administration and planning; and

(H) other related activities.

(2) HOUSING SERVICES- 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; and

(E) other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section.

(3) HOUSING MANAGEMENT SERVICES- 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.

(4) CRIME PREVENTION AND SAFETY ACTIVITIES- The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(5) MODEL ACTIVITIES- Housing activities under model programs that are--

(A) designed to carry out the purposes of this title; and

(B) specifically approved by the Secretary as appropriate for the purpose referred to in subparagraph (A).

### **Sec. 811. PROGRAM REQUIREMENTS.**

(a) RENTS-

(1) ESTABLISHMENT- Subject to paragraph (2), as a condition to receiving grant amounts under this title, the Director shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this title, including methods by which such rents and homebuyer payments are determined.

(2) MAXIMUM RENT- In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this title, the monthly rent or homebuyer payment (as applicable) for that dwelling unit may not exceed 30 percent of the monthly adjusted income of that family.

(b) MAINTENANCE AND EFFICIENT OPERATION-

- (1) IN GENERAL- The Director shall, using amounts of any grants received under this title, reserve and use for operating under section 810 such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.
- (2) DISPOSAL OF CERTAIN HOUSING- This subsection may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.
- (c) INSURANCE COVERAGE- As a condition to receiving grant amounts under this title, the Director shall require adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this title.
- (d) ELIGIBILITY FOR ADMISSION- As a condition to receiving grant amounts under this title, the Director shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this title.
- (e) MANAGEMENT AND MAINTENANCE- As a condition to receiving grant amounts under this title, the Director shall develop policies governing the management and maintenance of housing assisted with grant amounts under this title.

### **Sec. 812. TYPES OF INVESTMENTS.**

- (a) IN GENERAL- Subject to section 811 and an applicable housing plan approved under section 803, the Director shall have--
- (1) the discretion to use grant amounts for affordable housing activities through the use of--
- (A) equity investments;
  - (B) interest-bearing loans or advances;
  - (C) non-interest bearing loans or advances;
  - (D) interest subsidies;
  - (E) the leveraging of private investments; or
  - (F) any other form of assistance that the Secretary determines to be consistent with the purposes of this title; and
- (2) the right to establish the terms of assistance provided with funds referred to in paragraph (1).
- (b) INVESTMENTS- The Director may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations, as approved by the Secretary.

### **Sec. 813. LOW-INCOME REQUIREMENT AND INCOME TARGETING.**

- (a) IN GENERAL- Housing shall qualify for affordable housing for purposes of this title only if--
- (1) each dwelling unit in the housing--
- (A) 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
  - (B) 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; and
- (2) each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for--
- (A) the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership; or
  - (B) such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this title, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if that action--
- (i) recognizes any contractual or legal rights of any public agency, nonprofit sponsor, or other person or entity to take an action that would--
  - (I) avoid termination of low-income affordability, in the case of foreclosure; or
  - (II) transfer ownership in lieu of foreclosure; and
  - (ii) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

(b) EXCEPTION- Notwithstanding subsection (a), housing assistance pursuant to section 809(a)(2)(B) shall be considered affordable housing for purposes of this title.

### **Sec. 814. LEASE REQUIREMENTS AND TENANT SELECTION.**

(a) LEASES- 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 grant amounts provided under this title, the Director, owner, or manager shall use leases that--

(1) do not contain unreasonable terms and conditions;

(2) require the Director, owner, or manager to maintain the housing in compliance with applicable housing codes and quality standards;

(3) require the Director, 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;

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

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

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

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

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

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

(b) TENANT OR HOMEBUYER SELECTION- As a condition to receiving grant amounts under this title, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that--

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

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

(3) provide for--

(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 803; and

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

### **Sec. 815. REPAYMENT.**

If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this title and, at any time during the useful life of the housing, the housing does not comply with the requirement under section 813(a)(2), the Secretary shall--

(1) reduce future grant payments on behalf of the Department by an amount equal to the grant amounts used for that housing (under the authority of section 819(a)(2)); or

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

### **Sec. 816. ANNUAL ALLOCATION.**

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this title for the fiscal year, in accordance with the formula established pursuant to section 817 to the Department of Hawaiian Home Lands if the Department complies with the requirements under this title for a grant under this title.

## **Sec. 817. ALLOCATION FORMULA.**

(a) ESTABLISHMENT- The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on the date of the enactment of the Hawaiian Homelands Homeownership Act of 2000, in the manner provided under section 807, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this title in accordance with the requirements of this section.

(b) FACTORS FOR DETERMINATION OF NEED- The formula under subsection (a) shall be based on factors that reflect the needs for assistance for affordable housing activities, including--

- (1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;
- (2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and
- (3) any other objectively measurable conditions that the Secretary and the Director may specify.

(c) OTHER FACTORS FOR CONSIDERATION- In establishing the formula under subsection (a), the Secretary shall consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including--

- (1) geographic distribution within Hawaiian Home Lands; and
- (2) technical capacity.

(d) EFFECTIVE DATE- This section shall take effect on the date of the enactment of the Hawaiian Homelands Homeownership Act of 2000.

## **Sec. 818. REMEDIES FOR NONCOMPLIANCE.**

(a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS-

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

- (A) terminate payments under this title to the Department;
- (B) reduce payments under this title to the Department by an amount equal to the amount of such payments that were not expended in accordance with this title; or
- (C) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

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

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

- (1) is not a pattern or practice of activities constituting willful noncompliance; and
- (2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

(c) REFERRAL FOR CIVIL ACTION-

(1) AUTHORITY- In lieu of, or in addition to, any action that the Secretary may take under subsection (a), if the Secretary has reason to believe that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of this title, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

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

- (A) to recover the amount of the assistance furnished under this title that was not expended in accordance with this title; or
- (B) for mandatory or injunctive relief.

(d) REVIEW-

(1) IN GENERAL- If the Director receives notice under subsection (a) of the termination, reduction, or limitation of payments under this Act, the Director-

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

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

(2) PROCEDURE-

(A) IN GENERAL- The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

(B) OBJECTIONS- No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

(3) DISPOSITION-

(A) COURT PROCEEDINGS-

(i) JURISDICTION OF COURT- The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

(ii) FINDINGS OF FACT- If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

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

(B) SECRETARY-

(i) IN GENERAL- The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court--

(I) may--

(aa) modify the findings of fact of the Secretary; or

(bb) make new findings; and

(II) shall file--

(aa) such modified or new findings; and

(bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

(ii) FINDINGS- The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are--

(I) supported by substantial evidence on the record; and

(II) considered as a whole.

(4) FINALITY-

(A) IN GENERAL- Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court--

(i) the jurisdiction of the court shall be exclusive; and

(ii) the judgment of the court shall be final.

(B) REVIEW BY SUPREME COURT- A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification, as provided in section 1254 of title 28, United States Code.

## **Sec. 819. MONITORING OF COMPLIANCE.**

(a) ENFORCEABLE AGREEMENTS-

(1) IN GENERAL- The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this title.

(2) MEASURES- The measures referred to in paragraph (1) shall provide for--

(A) to the extent allowable by Federal and State law, the enforcement of the provisions of this title by the Department and the Secretary; and

(B) remedies for breach of the provisions referred to in paragraph (1).

(b) PERIODIC MONITORING-

- (1) IN GENERAL- Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this title to assess compliance with the requirements of this title.
- (2) REVIEW- Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.
- (3) RESULTS- The results of each review under paragraph (1) shall be--
  - (A) included in a performance report of the Director submitted to the Secretary under section 820; and
  - (B) made available to the public.
- (c) PERFORMANCE MEASURES- The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this title.

## **Sec. 820. PERFORMANCE REPORTS.**

- (a) REQUIREMENT- For each fiscal year, the Director shall--
  - (1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 803; and
  - (2) submit a report to the Secretary (in a form acceptable to the Secretary) 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 Department of Hawaiian Home Lands for that fiscal year;
  - (2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;
  - (3) indicate the programmatic accomplishments of the Department; and
  - (4) describe the manner in which the Department would change its housing plan submitted under section 803 as a result of its experiences.
- (c) SUBMISSIONS- The Secretary shall--
  - (1) establish a date for submission of each report under this section;
  - (2) review each such report; and
  - (3) with respect to each such report, make recommendations as the Secretary considers appropriate to carry out the purposes of this title.
- (d) PUBLIC AVAILABILITY-
  - (1) COMMENTS BY BENEFICIARIES- In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).
  - (2) SUMMARY OF COMMENTS- The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

## **Sec. 821. REVIEW AND AUDIT BY SECRETARY.**

- (a) ANNUAL REVIEW-
  - (1) IN GENERAL- The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether--
    - (A) the Director has--
      - (i) carried out eligible activities under this title in a timely manner;
      - (ii) carried out and made certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws; and
      - (iii) a continuing capacity to carry out the eligible activities in a timely manner;
    - (B) the Director has complied with the housing plan submitted by the Director under section 803; and
    - (C) the performance reports of the Department under section 821 are accurate.
  - (2) ONSITE VISITS- Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.
  - (b) REPORT BY SECRETARY- The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the

Department.(c) EFFECT OF REVIEWS- The Secretary may make appropriate adjustments in the amount of annual grants under this title in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

### **Sec. 822. GENERAL ACCOUNTING OFFICE AUDITS.**

To the extent that the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under this title relate to amounts provided under this title, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General. The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

### **Sec. 823. REPORTS TO CONGRESS.**

(a) IN GENERAL- Not later than 90 days after the conclusion of each fiscal year in which assistance under this title is made available, the Secretary shall submit to Congress a report that contains—

- (1) a description of the progress made in accomplishing the objectives of this title;
- (2) a summary of the use of funds available under this title during the preceding fiscal year; and
- (3) a description of the aggregate outstanding loan guarantees under section 184A of the Housing and Community Development Act of 1992.

(b) RELATED REPORTS- The Secretary may require the Director to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to prepare the report required under subsection (a).

### **Sec. 824. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this title such sums as may be necessary for each of fiscal years 2000, 2001, 2002, 2003, and 2004.