

Secretary for Office of Native American Programs, or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(b) Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

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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

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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.

Annual income has one or more of the following meanings, as determined by the Department of Hawaiian Home Lands:

(1) "Annual income" as defined for HUD's Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of net family assets); or

(2) The definition of income as used by the U.S. Census Bureau. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

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.

Income means the term "income" as defined in Section 4(9) of NAHASDA.

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.

NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

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.

Person with a disability, as further explained in 28 CFR 35.108, is defined as follows:

(1) Definition of person with a disability. "Person with a disability" means a person who:

- (i) Has a physical or mental impairment which substantially limits one or more major life activities;
- (ii) Has a record of having such an impairment;
- (iii) Is regarded as having such an impairment;
- (iv) Has a disability as defined in section 223 of the Social Security Act; or
- (v) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

(2) Definition of physical or mental impairment. For the purposes of this definition, the term "physical or mental impairment" means:

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

- (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

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(3) *Nonexhaustive list of physical and mental impairments.* For the purposes of this definition, the term “physical or mental impairment” includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(4) *Nonexhaustive list of major life activities.* For the purposes of this definition, the term “major life activities” includes, but is not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Project-based rental assistance means rental assistance provided through an agreement for use of a DHHL property or a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain the rental assistance if they move from the project.

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 secu-

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rity 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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9760, Feb. 12, 2024]

§ 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 each year prior to the start of its fiscal year. 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;

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(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 5-year period of the plan previously submitted. Information for the 1-year period under paragraph (b) of this section must be submitted each fiscal year.

(2) *Complete plans.* The DHHL shall submit a complete plan that includes a new five-year 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 that was reviewed by HUD and found to be in compliance with section 803 of NAHASDA and this part. 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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9761, Feb. 12, 2024]

§ 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. Affordable housing activities under this part are activities conducted in accordance with subpart D of this part to develop, operate, maintain, or support housing for rental or homeownership; or provide services with respect to affordable housing through the activities described in this subpart. NHHBG funds may only be used for eligible activities that are consistent with the DHHL's housing plan.

[89 FR 9761, Feb. 12, 2024]

§ 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;

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(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 and rehabilitation of utilities, necessary infrastructure, 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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9761, Feb. 12, 2024]

§ 1006.210 Housing services.

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

(a) Housing counseling, as defined in § 5.100, in connection with rental or homeownership assistance must be carried out in accordance with 24 CFR 5.111;

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(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) 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.

[67 FR 40776, June 13, 2002, as amended at 81 FR 90660, Dec. 14, 2016; 89 FR 9761, Feb. 12, 2024]

§ 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;
(f) The costs of operation and maintenance of units occupied by NHHBG eligible families; and
(g) Management of affordable housing projects.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9761, Feb. 12, 2024]

§ 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.

§ 1006.227 Tenant-based or project-based rental assistance.

NHHBG funds may be used for the provision of tenant-based rental assistance, which may include security deposits and first month's rent, and project-based rental assistance.

(a) Rental assistance must comply with the requirements of this part and be provided to eligible families.

(b) Rental assistance may be provided to eligible families both on and off the Hawaiian Home Lands provided such use is consistent with the applicable appropriations acts governing the use of the NHHBG funds.

[89 FR 9761, Feb. 12, 2024]

§ 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 a 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

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§§ 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 2 CFR part 200, subpart E.

(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, 1006.375, and 1006.377 of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs, at the discretion of the DHHL.

[67 FR 40776, June 13, 2002, as amended at 80 FR 75945, Dec. 7, 2015; 89 FR 9761, Feb. 12, 2024]

§ 1006.235 Types of investments and forms of assistance.

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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9761, Feb. 12, 2024]

Subpart D—Program Requirements

§ 1006.301 Eligible families.

(a) *General.* 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,

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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, which may include assistance in conjunction with 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. DHHL must determine and document the need for housing for each family that cannot reasonably be met without such assistance.

(2) *HUD approval.* HUD approval is required, except as provided in paragraph (b)(3)(i) of this section, if the DHHL plans to use grant amounts provided under the Act for assistance in accordance with paragraph (b)(1) of this section. HUD approval shall be obtained by DHHL submitting proposals in its housing plan, by amendment of the housing plan, or by special request to HUD at any time.

(3) *Limitations.* (i) DHHL may use up to 10 percent of the amount planned in its Housing Plan for its fiscal year for families whose income is 81 to 100 percent of the median income without HUD approval. HUD approval is required if DHHL plans to use more than 10 percent of the amount planned for its fiscal year for such assistance or to provide housing for families with income over 100 percent of median income.

(ii) Non-low-income families cannot receive the same benefits provided low-income Native Hawaiian families. The amount of assistance non-low-income families may receive will be determined by DHHL as established in its written policies.

(iii) The requirements set forth in paragraphs 3(i) and (ii) of this section do not apply to other families who are non-low income that DHHL has determined to be essential under paragraph (c) 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 a Native Hawaiian family without HUD approval 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.

[89 FR 9761, Feb. 12, 2024]

§ 1006.305 Low-income requirement and income targeting.

(a) *In general.* Housing qualifies as affordable housing for purposes of the Act and this part, provided that the family occupying the unit is low-income at the following times:

(1) In the case of rental housing, at the time of the family's initial occupancy of such unit;

(2) In the case of housing for homeownership, at the time of purchase. When DHHL enters into a loan contract with the family for NHHBG assistance to purchase or construct a homeownership unit, the time of purchase means the time that loan contract is executed;

(3) In the case of owner-occupied housing units, at the time the family receives NHHBG assistance;

(4) In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the lease-purchase agreement is signed; and

(5) In the case of emergency assistance to prevent homelessness or foreclosure, at the time the family receives NHHBG assistance.

(b) *Affordability requirements.* NHHBG-assisted rental and homeownership 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 au-

thorized 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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9762, Feb. 12, 2024]

§ 1006.306 Income verification for receipt of NHHBG assistance.

(a) *Initial determination of eligibility.* DHHL must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. DHHL is required to maintain the documentation on which the determination of eligibility is based.

(b) *Periodic verification.* DHHL may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with DHHL's written policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by DHHL.

[89 FR 9762, Feb. 12, 2024]

§ 1006.307 Non-low-income families.

A family that was low-income at the times described in § 1006.305 but subsequently becomes a non-low-income family may continue to participate in the program in accordance with DHHL's admission and occupancy policies. The 10 percent limitation in § 1006.301(b)(3)(i) in this part shall not apply to such families. Such families may be made subject to the additional requirements in § 1006.301(b)(3)(ii) of this part based on those policies.

[89 FR 9762, Feb. 12, 2024]

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§ 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.

(1) *Maximum and minimum rent.* The maximum monthly tenant rent payment for a low-income family may not exceed 30 percent of the family's monthly adjusted income. DHHL may also decide to compute rental or homebuyer payments on any lesser percentage of the adjusted income of the family. The Act does not set minimum rent or homebuyer payments; however, DHHL may do so.

(2) *Flat or income-adjusted rent.* Flat rent means the tenant's rent payment is set at a specific dollar amount or specific percent of market rent. Income-adjusted rent means the tenant's rent payment varies based on the tenant's income (*i.e.*, 30 percent of monthly adjusted income). DHHL may charge flat or income-adjusted rents, provided the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

(3) *Utilities.* Utilities may be considered a part of rent or homebuyer payments if DHHL decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 811(a)(1) of NAHASDA. DHHL may define rents and homebuyer payments to exclude utilities.

(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 (*i.e.*, homebuyer 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),

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are not subject to the requirement that homebuyer payments may not exceed 30 percent of the monthly adjusted income of that family.

(d) *Applicability.* 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.

[89 FR 9762, Feb. 12, 2024]

§ 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;

(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;

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and from payments of interest earned on investment of NHHBG funds pursuant to section 812(b) of the Act.

(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 2 CFR 200.305.

(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.

[67 FR 40776, June 13, 2002, as amended at 80 FR 75945, Dec. 7, 2015; 89 FR 9763, Feb. 12, 2024]

§ 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

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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, decision-making, 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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9763, Feb. 12, 2024]

§ 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, or excluded from program eligibility because of actual or perceived sexual orientation, gender identity, or marital status. 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.

(d) The equal access to HUD-assisted or -insured housing requirements in 24 CFR 5.105(a)(2).

[67 FR 40776, June 13, 2002, as amended at 81 FR 80993, Nov. 17, 2016]

§ 1006.360 Conflict of interest.

In the procurement of property and services by the DHHL and contractors, the conflict of interest provisions in 2 CFR 200.317 (for DHHL) and 2 CFR 200.318 (for subrecipients).

[67 FR 40776, June 13, 2002, as amended at 80 FR 75945, Dec. 7, 2015]

§ 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 2 CFR part 200, subpart D, for purposes of administering all or part of the NHHBG program for the DHHL.

[67 FR 40776, June 13, 2002, as amended at 80 FR 75945, Dec. 7, 2015]

§ 1006.370 Uniform administrative, requirements, cost principles, and audit requirements for Federal awards.

(a) The DHHL and subrecipients receiving NHHBG funds shall comply with the requirements and standards of 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards".

(b)(1) With respect to the applicability of cost principles, all items of cost listed in 2 CFR part 200, subpart E, 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 2 CFR part 200, subpart E, and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.

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(ii) Fines, penalties, damages, and other settlements are unallowable costs to the NHHBG program.

(iii) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).

(iv) Organization costs (2 CFR 200.455).

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. The Executive Pay Schedule may be obtained by <https://www.opm.gov/policy-data-overview/pay-leave/salaries-wages>.

[80 FR 75945, Dec. 7, 2015]

§ 1006.375 Other Federal requirements.

(a) *Lead-based paint.* The following subparts of HUD's lead-based paint regulations at 24 CFR 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 (§§35.80 through 35.98) for disclosures of known lead-based paint hazards upon sale or lease of residential property;

(2) Subpart B (§§35.100 through 35.175) for general lead-based paint requirements and definitions;

(3) Subpart H (§§35.700 through 35.830) for project-based rental assistance;

(4) Subpart J (§§35.900 through 35.940) for rehabilitation;

(5) Subpart K (§§35.1000 through 35.1020) for acquisition, leasing, support services, or operation;

(6) Subpart M (§§35.1200 through 35.1225) for tenant-based rental assistance; and

(7) Subpart R (§§35.1300 through 35.1355) for methods and standards for lead-based paint hazard evaluation and Reduction activities.

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing

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regulations in 2 CFR part 2429 apply to the use of assistance under this part.

(c) *Audits.* The DHHL must comply with the requirements of the Single Audit Act and 2 CFR part 200, subpart F, with the audit report providing a schedule of expenditures for each grant. A copy of each audit must be submitted to the Federal Audit Clearinghouse.

(d) *Housing counseling.* Housing counseling, as defined in §5.100, that is funded with or provided in connection with NHHBG funds must be carried out in accordance with 24 CFR 5.111.

(e) *Section 3.* Requirements under Section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 75 apply.

(f) *Debarment and suspension.* The nonprocurement, debarment, and suspension requirements at 2 CFR part 2424 are applicable.

[89 FR 9763, Feb. 12, 2024]

§ 1006.377 Other Federal requirements: Displacement, Relocation, and Acquisition.

The following relocation and real property acquisition policies are applicable to programs developed or operated under the Act and this part:

(a) *Real property acquisition requirements.* The acquisition of real property for an assisted activity is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (URA) and the requirements of 49 CFR part 24, subpart B.

(b) *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, non-profit organizations, and farms) as a result of a project assisted under the Act and this part.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the URA and the requirements of 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C.

3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. For a displaced person with a disability, a unit is not a comparable replacement dwelling under the URA unless it is free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such a displaced person in accordance with the definition of "Decent, safe, and sanitary dwelling" at 49 CFR 24.2. Furthermore, the unit must also meet the requirements of section 504 of the Rehabilitation Act (29 U.S.C. 794) as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(d) *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 in accordance with URA requirements of 49 CFR 24.10.

(e) *Responsibility of DHHL.* (1) The DHHL shall certify that it will comply with the URA requirements of 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.

(2) 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.

(3) DHHL must provide proper and timely distribution of notices to residents in accordance with the URA regulations. This includes the General Information Notice (GIN), the Notice of Relocation Eligibility, the Notice to Owner, and the 90-Day Notice. All notices must be sent in accordance with 49 CFR 24.203 and 24.102. Notices of Relocation Eligibility are typically triggered by the Initiation of Negotiation (ION).

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

(f) *Definition of displaced person.* (1) 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:

(i) 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;

(ii) Any person, including a person who moves before the date the housing plan is submitted to HUD, that the DHHL determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project;

(iii) 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:

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

(B) Thirty percent of gross household income.

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

(A) 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;

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(B) The tenant-occupant is required to temporarily relocate for more than one year; or

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

(v) 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:

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

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

(2) Notwithstanding the provisions of this section for the definition of "Displaced Person," a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) 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;

(ii) The person meets the definition of "persons not displaced" as defined in 49 CFR 24.2; or

(iii) 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 in accordance with 49 CFR 24.2.

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

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced from a dwelling as a direct result of acquisition, rehabilitation, or demolition of the real property, the term Initiation of Negotiations (ION) date means the execution

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of the written agreement covering the acquisition, rehabilitation, or demolition (See 49 CFR 24.2).

[89 FR 9763, Feb. 12, 2024]

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 90 days of the end of the DHHL's fiscal year, describing the conclusions of the review.

(3) DHHL may submit a written request for an extension of the deadline. HUD will establish a new date for submission if the extension is granted.

(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.

[67 FR 40776, June 13, 2002, as amended at 89 FR 9764, Feb. 12, 2024]

§ 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, including their retention under 2 CFR 200.333, noting that the NHHBG Annual Performance Report is the program's final expenditure report;

(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) *Failure to maintain records*. 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.

[67 FR 40776, June 13, 2002, as amended at 80 FR 75945, Dec. 7, 2015; 89 FR 9764, Feb. 12, 2024]

§ 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:

§ 1006.440

- (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

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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

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