

(b) Factors for determination of need

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

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

(c) Other factors for consideration

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

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

(d) Effective date

This section shall take effect on December 27, 2000.

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

Editorial Notes

CODIFICATION

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

§ 4237. Remedies for noncompliance**(a) Actions by Secretary affecting grant amounts****(1) In general**

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

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

(2) Actions

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

(b) Noncompliance because of a technical incapacity

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

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

(c) Referral for civil action**(1) Authority**

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

(2) Civil action

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

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

(d) Review**(1) In general**

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

- (A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and
- (B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) Procedure**(A) In general**

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

(B) Objections

No objection to the action of the Secretary shall be considered by the court unless the

Department has registered the objection before the Secretary.

(3) Disposition

(A) Court proceedings

(i) Jurisdiction of court

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

(ii) Findings of fact

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

(iii) Addition

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

(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.

(Pub. L. 104-330, title VIII, § 818, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2891, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2985.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), was in the original "this Act", meaning Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, known as the Native American Housing Assistance and Self-Determination Act of 1996. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 818 of Pub. L. 104-330. This section is based on the text of section 818 of Pub. L. 104-330, as added by Pub. L. 106-569, § 513.

§ 4238. 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 subchapter.

(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 subchapter 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 subchapter to assess compliance with the requirements of this subchapter.

(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 4239 of this title; 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 subchapter.

(Pub. L. 104-330, title VIII, § 819, as added Pub. L. 106-568, title II, § 203, Dec. 27, 2000, 114 Stat. 2893, and Pub. L. 106-569, title V, § 513, Dec. 27, 2000, 114 Stat. 2987.)

Editorial Notes

CODIFICATION

Pub. L. 106-568, § 203, and Pub. L. 106-569, § 513, enacted identical sections 819 of Pub. L. 104-330. This section is