

outline the key requirements for the study: a definition for the terms “survivor of a severe form of trafficking” and “survivor of trafficking,”<sup>21</sup> the requirements for coordination<sup>22</sup> and consultation<sup>23</sup> while conducting the study, and the contents of the study.<sup>24</sup> Lastly, section 606 of VAWA 2022 provides that not later than September 15, 2023, the Secretary shall submit a report containing the contents of the study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, as well as making the report publicly available.

**Implementation:** Section 606 of VAWA 2022 was effective upon enactment of VAWA 2022. No regulatory action is needed to implement this provision. HUD began work on the study in Spring 2022, including conducting the required consultations with stakeholders, and expects to complete the report on schedule.

#### IV. Solicitation of Comment

In this document, HUD has highlighted certain issues for which comment is specifically sought but welcomes comment on any aspect of this document.

**Marcia L. Fudge,**

Secretary.

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**BILLING CODE 4210–67–P**

<sup>21</sup> Section 606 applies the same meaning given to the respective terms as in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

<sup>22</sup> The Secretary shall coordinate with: (i) the Interagency Task Force to Monitor and Combat Trafficking established under section 105 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103), (ii) the United States Advisory Council on Human Trafficking, (iii) the Secretary of Health and Human Services; and (iv) the Attorney General.

<sup>23</sup> The Secretary shall consult with: (i) the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States; (ii) survivors of trafficking; (iii) direct service providers, including—(I) organizations serving runaway and homeless youth; (II) organizations serving survivors of trafficking through community-based programs; and (III) organizations providing housing services to survivors of trafficking—and (iv) housing and homelessness assistance providers, including recipients of grants under (I) the Continuum of Care program authorized under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381 *et seq.*) and (II) the Emergency Solutions Grants program authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*).

<sup>24</sup> See section 606(b)(3).

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 1006

[Docket No. FR–6273–P–01]

RIN 2577–AD13

### Implementing Rental Housing Assistance for the Native Hawaiian Housing Block Grant Program

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

**ACTION:** Proposed rule.

**SUMMARY:** Through this notice of proposed rulemaking, the Department of Housing and Urban Development (HUD) is proposing to amend its regulations covering rental housing assistance for the Native Hawaiian Housing Block Grant (NHHBG) program, consistent with the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). HUD proposes to clarify and improve consistency with NAHASDA’s statutory requirements and HUD’s Indian Housing Block Grant program regulations. This proposed rule would also help make affordable housing opportunities, in the form of NHHBG-assisted rental housing, more available to eligible Native Hawaiian families.

**DATES:** *Comment Due Date:* March 6, 2023.

**ADDRESSES:** There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the proposed rule.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Public Comments.* HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Claudine Allen, Lead Native Hawaiian Program Specialist, Office of Native American Programs, HUD Honolulu Field Office, 1003 Bishop Street, Suite 2100, Honolulu, HI 96813; telephone number 808–457–4674 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Hawaiian Homelands Homeownership Act of 2000 (HHH Act) was enacted as both title II of the Omnibus Indian Advancement Act (Pub. L. 106–568, 114 Stat. 2868, approved December 27, 2000) and subtitle B of title V of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000). Section 513 of the HHH Act, Public Law 106–569, amended the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding to it a new “Title VIII—Housing Assistance for Native Hawaiians”. Title VIII established the Native Hawaiian

Housing Block Grant (NHHBG) program to provide block grant assistance for affordable housing for eligible Native Hawaiians,<sup>1</sup> and section 810 provides statutory authority for NHHBG rental housing assistance.

In accordance with title VIII of NAHASDA, the NHHBG program must primarily benefit low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. Native Hawaiian families eligible to reside on the Hawaiian Home Lands experience more significant housing challenges compared to Native Hawaiian households overall, including other Hawaii residents and Native Hawaiians already residing on the Hawaiian Home Lands.

On June 13, 2002, HUD published an interim rule (“interim rule”) adding a new 24 CFR part 1006 to implement the block grant assistance program for Native Hawaiians. 67 FR 40773. HUD modeled the NHHBG regulations after the Indian Housing Block Grant (IHBG) regulations implemented at 24 CFR part 1000 because the NHHBG and IHBG programs are authorized under the same statute and have overlapping requirements that apply to both programs.<sup>2</sup>

The interim rule established program requirements pertaining to homeownership and rental assistance authorized under section 810 of title VIII of NAHASDA.<sup>3</sup> The new 24 CFR part 1006 as implemented by the interim rule closely followed the statute with some differences for clarification. Part 1006 established requirements such as: applicability, definitions, and waivers; what the Department of Hawaiian Home Lands (DHHL) must include in its housing plan that it must submit to HUD for each Federal fiscal year grant; eligible program activities,

including development, housing services, housing management services, crime prevention and safety activities and model activities; requirements related to income eligibility and compliance with applicable Federal laws; and reporting, performance reviews, and how to address and remedy noncompliance. HUD has not comprehensively reviewed or amended 24 CFR part 1006 since this interim rulemaking.

Prior to fiscal year 2020, the DHHL, the sole recipient of the NHHBG, used NHHBG funds primarily for homeownership housing assistance. In 2019, Hawaii’s governor approved administrative rules allowing the DHHL to expand residential lease offerings to include rental housing.<sup>4</sup> HUD received feedback from the DHHL about the DHHL’s rental housing projects currently in development. HUD then reviewed its regulations and determined they do not adequately explain how NHHBG funds may be used for rental assistance and could be revised to provide additional details to better support a fully successful rental housing program administered by the DHHL. This review has prompted HUD’s proposal to amend NHHBG program regulations in this notice of proposed rulemaking.

Two of HUD’s proposals require further background discussion. First, NAHASDA requires HUD to establish certain program requirements for both IHBG and NHHBG. On July 26, 2007, HUD amended the IHBG regulations at 24 CFR part 1000 to reflect these requirements. 72 FR 41211. Pursuant to authority in section 404(c) of NAHASDA, HUD revised § 1000.514 to require IHBG recipients to submit Annual Performance Reports within 90 days, instead of 60 days, of the end of their program year. HUD did not make a corresponding change to the NHHBG provision in § 1006.410, *Performance reports*.

Second, HUD has identified one provision, § 1006.101, *Housing plan requirements*, where HUD has flexibility to implement regulatory requirements different than those in the IHBG framework due to differences in underlying statutory language for the NHHBG and IHBG programs. Under section 803 of NAHASDA, 25 U.S.C. 4223, the DHHL must submit a housing plan “each fiscal year;” and no deadline is specified. Section 1006.101 currently requires submission of a housing plan

“for each Federal Fiscal Year grant.” The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411) (NAHASDA Reauthorization Act) amended, *inter alia*, statutory requirements for submission of housing plans under the IHBG program; the amended statute requires submission no later than 75 days before the beginning of a program year.<sup>5</sup> However, the NAHASDA Reauthorization Act did not amend statutory provisions governing the NHHBG program.<sup>6</sup> Accordingly, HUD published a final rule in the **Federal Register** on December 3, 2012, 77 FR 71513, that revised IHBG program regulations at 24 CFR part 1000 to conform to new statutory requirements, including 24 CFR 1000.214 governing the deadline for submission of Indian housing plans under the IHBG program. HUD did not amend any NHHBG regulations in that final rule.

## II. This Proposed Rule

Given the need to clarify the rental assistance provisions in HUD’s current NHHBG regulations and because HUD has not comprehensively reviewed or amended 24 CFR part 1006 in over 20 years, HUD is proposing to amend its regulations to clarify how the funding recipient may use NHHBG program funds for rental housing assistance, as authorized by title VIII of NAHASDA. These changes should relieve burden on the funding recipient in implementing rental assistance, directly help low-income Native Hawaiian families who need rental assistance, and clarify the tools available for HUD to monitor and enforce program requirements. This proposed rule would help make affordable housing opportunities, in the form of NHHBG-assisted rental housing, more available to Native Hawaiian families who are not ready for or do not desire homeownership housing, and who otherwise may be experiencing overcrowded conditions, lack of affordability, and/or homelessness.

HUD is proposing in this rulemaking to amend 24 CFR part 1006 to ensure compliance with the NHHBG program’s statutory requirements; promote consistency between NHHBG and IHBG program regulations where the programs’ statutory requirements overlap or where inconsistencies exist between the NHHBG and IHBG regulatory frameworks; and add details that would improve the NHHBG

<sup>1</sup> Section 513 of the HHH Act adds sections 801 through 824, which authorize this NHHBG program, as title VIII of NAHASDA. Although NAHASDA may be referenced throughout this proposed rule, NHHBG serves Native Hawaiians specifically.

<sup>2</sup> 67 FR 40773; see Native American Housing Assistance and Self-Determination Act of 1996 [hereinafter NAHASDA] sections 810–811, 25 U.S.C. 4229–30. There are also differences between the statutory authorities governing the IHBG and NHHBG programs. In 2008, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411) (NAHASDA Reauthorization Act), made several changes to, *inter alia*, statutory requirements governing HUD’s IHBG program, and implemented statutory changes to NAHASDA made by several laws enacted between 1998 and 2005. See 77 FR 71513. The NAHASDA Reauthorization Act did not amend statutory provisions governing block grant assistance for Native Hawaiians. See Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, Public Law 110–411, 122 Stat. 4319–35.

<sup>3</sup> NAHASDA section 810(a), 25 U.S.C. 4229(a).

<sup>4</sup> Dep’t of Haw. Home Lands, Adoption of Chapter 10–7 Hawaii Administrative Rules (2019), [https://dhhl.hawaii.gov/wp-content/uploads/2020/02/HAR-Ch-10-7\\_Eff-Aug-17-2019-1.pdf](https://dhhl.hawaii.gov/wp-content/uploads/2020/02/HAR-Ch-10-7_Eff-Aug-17-2019-1.pdf).

<sup>5</sup> NAHASDA Reauthorization Act section 102 (amending section 102 of NAHASDA, 25 U.S.C. 4112).

<sup>6</sup> See generally NAHASDA Reauthorization Act of 2008, Public Law 110–411, 122 Stat. 4319–35.

regulatory framework governing rental assistance.

#### *Section 1006.10, Definitions*

HUD is proposing to add definitions in § 1006.10 for each of the reasons identified in the most immediately preceding paragraph.

HUD is proposing to add a definition for “Annual income” that matches the definition in § 1000.10. This term is currently used in part 1006 but does not have a specific definition. The proposed definition would allow for discretion by the Department of Hawaiian Home Lands to use the Section 8 programs definition in 24 CFR part 5, the definition of income as used by the U.S. Census Bureau, or adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

HUD is proposing to add definitions for “Homeless family” and “Person with a Disability”. These terms are currently used in part 1006 but do not have specific definitions. HUD’s proposed definition for “Person with a Disability” is consistent with the definition of person with a disability in HUD’s regulations for section 504 of the Rehabilitation Act of 1973 in 24 CFR 8.3, as amended by the Americans with Disabilities Act (ADA) Amendments Act of 2008, see 42 U.S.C. 12102(3)(B). The provisions and rules of construction in 28 CFR 35.108 are necessary when applying the definition of “Person with a Disability” in this proposed rule.

HUD is proposing to add a definition for “Income” that clarifies this term has the meaning provided in the definition of “Income” in section 4(9) of NAHASDA. The statute defines “Income” as income from all sources of each member of the household, as determined according to criteria determined by HUD, and provides for three categories of amounts that may not be considered income: amounts not actually received by the family, certain amounts received under the Social Security Act, and amounts received for certain disability compensation or as dependency and indemnity compensation received by veterans or their surviving family members.

HUD is proposing to add a definition for “NAHASDA” that provides the full title, Native American Housing Assistance and Self-Determination Act of 1996, and United States Code citation, 25 U.S.C. 4101 *et seq.*

HUD is proposing to add a definition for “Project-based rental assistance” since HUD is proposing to add project-based rental assistance requirements in

new § 1006.227, *Tenant-based or project-based rental assistance*. The definition would provide that project-based rental assistance means rental assistance provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. The definition would also provide that program participants would not retain rental assistance if they move from the project.

#### *Section 1006.101, Housing Plan Requirements*

In this proposed rule, HUD is proposing to amend § 1006.101 by revising the introductory text of § 1006.101 to clarify that the DHHL must submit a housing plan before the start of its fiscal year. This is consistent with NHHBG statutory requirements and provides a clear deadline.

HUD is also proposing to amend § 1006.101 by making technical revisions to the introductory text to clarify that the housing plan has two components, a five-year plan and a one-year plan. HUD also proposes clarifying amendments to paragraphs (c) and (d). HUD is proposing to revise paragraph (c)(1) to clarify that the five-year plan may be changed as necessary to update it after its initial submission, but the information for the one-year plan must be submitted annually. HUD proposes revising paragraph (c)(2) to clarify that complete plans must include a new five-year plan. Paragraph (d) currently requires that, before undertaking new activities not addressed in a current one-year housing plan, the DHHL must submit to HUD for review any amendment to the plan. HUD proposes to revise this paragraph to clarify that the current one-year plan must have been reviewed by HUD and determined to comply with section 803 of NAHASDA.

#### *Section 1006.201, Eligible Affordable Housing Activities*

HUD is proposing to amend § 1006.201 by adding language that clarifies that eligible affordable housing activities may include those conducted in accordance with subpart D of part 1006 and that develop, operate, maintain, or support housing for rental or homeownership, or provide services with respect to affordable housing through the activities described in subpart C of part 1006. This added language improves consistency between § 1006.201 and statutory language.<sup>7</sup>

<sup>7</sup> 25 U.S.C. 4229(a).

#### *Section 1006.210, Housing Services*

HUD is proposing to amend § 1006.210 by removing existing paragraph (g) and redesignating existing paragraph (h) as new paragraph (g). HUD proposes to move the existing language in § 1006.210(g) to a new section, § 1006.227, *Tenant-based or project-based rental assistance*, paragraph (a)—HUD is adding new § 1006.227 that provides that NHHBG funds may be used for the provision of tenant-based (and project-based) rental assistance, and that provides further details about how funds may be used for such purposes. Existing § 1006.210(g) speaks to these details, so HUD proposes moving this language to the new section to eliminate redundancy and to efficiently organize HUD’s regulations on the use of funds for tenant-based rental assistance.

#### *Section 1006.227, Tenant-Based or Project-Based Rental Assistance*

HUD is proposing to add § 1006.227 that describes in detail how NHHBG funds may be used for tenant-based rental assistance and project-based rental assistance. HUD proposes to model this new section off § 1000.103 to maintain consistency between IHBG and NHHBG regulations. However, HUD proposes slightly different language from § 1000.103 to conform to NHHBG statutory requirements. Paragraph (a) of § 1006.227 would explicitly authorize use of NHHBG funds for tenant-based rental assistance, which may include security deposits and first month’s rent, and project-based rental assistance. Paragraph (a)(1) of this section would clarify that rental assistance must comply with the requirements of part 1006 and be provided to eligible families. In paragraph (a)(2), HUD proposes to incorporate statutory flexibility providing that DHHL “may” use NHHBG funds for rental assistance for eligible Native Hawaiian families “both on and off the Hawaiian Home Lands,”<sup>8</sup> when appropriations acts enacted by Congress authorize such use by the DHHL.

#### *Section 1006.301, Eligible Families*

HUD is proposing to amend § 1006.301 by adding new paragraphs (b)(3) and (b)(3)(i) through (iii) to implement limitations on uses of NHHBG assistance for non-low-income families pursuant to section 809(a)(2)(B)(ii) of NAHASDA. HUD proposes to implement a 10-percent limitation on the use, if any, of the

<sup>8</sup> Public Law 115–141; Public Law 116–6; Public Law 116–94; Public Law 116–260; Public Law 117–103 (emphasis added).

amount specified in a housing plan for families whose income is 81 to 100 percent of the median income; specify when the recipient, the DHHL, must seek HUD's approval; and set out related requirements. New paragraph (b)(3)(iii) would state that the limitations in the preceding paragraphs (b)(3)(i) and (ii) do not apply to other families who are non-low income that the DHHL has determined to be essential under § 1006.301(c).

HUD is proposing to further amend § 1006.301 by revising paragraph (b)(2) to add a sentence at the end of the paragraph clarifying that the DHHL must obtain HUD approval by submitting proposals in its housing plan, by amendment of the housing plan, or by special request to HUD at any time, where the DHHL would provide homeownership assistance to Native Hawaiian families who are not low-income under § 1006.301(b)(1). This revision would improve consistency with the IHBG program regulation at § 1000.108.

HUD is also proposing to amend § 1006.301 by revising language in paragraph (b)(1) to clarify that the DHHL may provide homeownership assistance in conjunction with loan guarantee activities. Section 1006.301(b)(1) currently states the DHHL may provide homeownership assistance *through* loan guarantee activities, but such assistance is not provided through loan guarantee activities alone.

Finally, HUD proposes to revise paragraph (b)(2) to make technical changes, such as the addition of a cross reference, that conform to HUD's proposed addition of new paragraph (b)(3) and subordinate paragraphs (b)(3)(i) through (iii).

#### *Section 1006.305, Low-Income Requirement and Income Targeting*

HUD is proposing to amend § 1006.305 by revising existing paragraph (a) and existing paragraphs (a)(1) and (2) and adding new paragraphs (a)(3) through (5). HUD proposes these changes to reflect the typical timeline for families entering programs offered by the DHHL, the typical timeline for constructing housing, and the possibility of fluctuating incomes over time.

HUD's proposed revision to paragraph (a) would provide that housing qualifies as affordable housing for purposes of NAHASDA and part 1006 provided that the family occupying the housing unit is low-income at the times described in paragraphs (a)(1) through (5).

HUD proposes removing language in paragraph (a)(1) referring to occupancy by a low-income family to avoid

redundancy with new language proposed in paragraph (a).

HUD proposes removing the last clause of paragraph (a)(2), "or is an owner-occupied unit in which the family is low-income at the time it receives NHHBG assistance" and adding it as a new paragraph (a)(3). HUD also proposes to add a sentence to the end of paragraph (a)(2) providing that when the DHHL enters into a loan contract with the family for assistance to purchase or construct a homeownership unit, the time of purchase means the time that loan contract is executed.

HUD proposes adding paragraphs (a)(3) through (5) to further clarify when housing qualifies as affordable housing: under paragraph (a)(3), in the case of owner-occupied housing units, at the time the family receives NHHBG assistance; under paragraph (a)(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 under paragraph (a)(5), in the case of emergency assistance to prevent homelessness or foreclosure, at the time the family receives NHHBG assistance.

#### *Section 1006.306, Income Verification for Receipt of NHHBG Assistance*

HUD is proposing to add § 1006.306 to incorporate for the NHHBG program requirements for initial determination of income eligibility and periodic reverification. These requirements are already implemented for the IHBG program in § 1000.128, and HUD's proposed addition of these requirements in § 1006.306 would ensure compliance with NAHASDA and improve consistency between IHBG and NHHBG program regulations.

#### *Section 1006.307, Non-Low-Income Families*

HUD is proposing to add § 1006.307 to clarify that 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 the DHHL's admission and occupancy policies. HUD proposes to model this new section off the IHBG program regulation in § 1000.110(a) to improve consistency between NHHBG and IHBG program regulations. Section 1006.307 would exempt these families from the limitations HUD proposes to add at § 1006.301(b)(3)(i), and would permit the DHHL to apply the additional requirements HUD proposes to add in § 1006.301(b)(3)(ii) based on the DHHL's policies.

#### *Section 1006.310, Rent and Lease-Purchase Limitations*

HUD is proposing to amend § 1006.310 by adding details about maximum and minimum rents limitations, flat or income-adjusted rent, and utilities, to maintain consistency with IHBG program regulations at §§ 1000.124 and 1000.126. HUD proposes to move the last sentence in § 1006.310(a), which states the maximum monthly rent for a low-income family may not exceed 30 percent of the family's monthly adjusted income, to new paragraph (a)(1). New paragraph (a)(1) would further provide that the DHHL may compute payments based on any lesser percentage of the family's adjusted income, and while the Act does not set minimum tenant rent or homebuyer payments, the DHHL may do so. HUD proposes to add paragraph (a)(2) about flat or income-adjusted rent. Paragraph (a)(2) would provide that 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% of monthly adjusted income), and the 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. New paragraph (a)(3) would permit the DHHL to include utilities as part of rent or homebuyer payments if the DHHL has defined rent or homebuyer payments as such in its written policies.

#### *Section 1006.375, Other Federal Requirements*

HUD is proposing to amend § 1006.375 by removing paragraph (c), *Displacement and relocation*, and redesignating existing paragraphs (d) and (e) as paragraphs (c) and (d). HUD is proposing to add paragraph (c)'s language and requirements with minor technical changes to new § 1006.377. HUD is further proposing to amend § 1006.375 by adding new paragraph (e), *Section 3*, to clarify that requirements under section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 75 apply to the NHHBG program; and by adding new paragraph (f), *Debarment and suspension*, to clarify that the nonprocurement debarment and suspension requirements at 2 CFR part 2424 apply to the NHHBG program.

*Section 1006.377, Other Federal Requirements: Displacement, Relocation, and Acquisition*

HUD is proposing to add § 1006.377 which would contain only the existing displacement and relocation requirements in current § 1006.375(c) with minor technical changes to cross references. HUD proposes this change for structural reorganization and readability. Existing § 1006.375(c) is lengthy and includes definitions relevant only to displacement and relocation requirements. Additionally, HUD is proposing to amend new § 1006.377(c) by adding sentences at the end of paragraph (c) that describe civil rights requirements included in 24 CFR 576.408(c)(1): that a displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*); 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; and, for a displaced person with a disability, a unit will not be considered a comparable replacement dwelling under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) unless it is free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person in accordance with 49 CFR 24.2(a)(8)(vii) and the unit meets the requirements of section 504 of the Rehabilitation Act (29 U.S.C. 794).

*Section 1006.410, Performance Reports*

HUD is proposing to amend § 1006.410 by revising paragraph (a)(2) to require the DHHL to submit a performance report within 90 days, instead of 60 days, of the end of the DHHL's fiscal year. HUD is also proposing to add a new paragraph (a)(3) that states the DHHL may request an extension and that HUD will provide a new date for submission if HUD grants the extension. Both changes would improve consistency between the IHBG requirements at § 1000.514 and the NHHBG requirements.

*Technical Changes for Compliance With NAHASDA and Consistency With IHBG*

HUD is proposing to make minor technical revisions to several provisions to conform to statutory requirements and increase consistency with IHBG regulations. These provisions and revisions are:

- In § 1006.205, HUD is proposing to add language to paragraph (a)(9) so that

it conforms to language in section 202 of NAHASDA and is more consistent with § 1000.102.

- In § 1006.215, HUD is proposing to add paragraph (f) so it conforms to language in section 202 of NAHASDA and is more consistent with § 1000.102.

- In § 1006.235, HUD is proposing to revise the title to read *Types of investments and forms of assistance*, to maintain consistency with section 812 of NAHASDA.

- In § 1006.340, HUD is proposing to revise the cross reference at the end of paragraph (a) to cite to statutory requirements, "Section 812(b) of NAHASDA", instead of regulatory requirements, "§ 1006.235".

- In §§ 1006.230, 1006.350, 1006.410, and 1006.420, HUD is also proposing minor technical amendments.

### III. Findings and Certifications

*Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. HUD is proposing changes to NHHBG program requirements and regulations, such as clarifying that NHHBG funds can be used for certain affordable housing activities including project-based rental assistance, permitting rental assistance to be provided off the Hawaiian Home Lands when Congress authorizes such use through appropriations acts, and adding or changing requirements for low-income and non-low-income families. However, there is no significant impact because DHHL is the sole recipient of NHHBG funds. This proposed rule was not subject to OMB review. This proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not an economically significant regulatory action.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rulemaking proposes to amend HUD regulations to implement rental housing assistance for the NHHBG program, consistent with title VIII of NAHASDA. These amendments impose no significant economic impact on a substantial number of small entities, and there is only a singular recipient of funding. Therefore, the undersigned certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. The FONSI is also available through the Federal eRulemaking Portal at <https://www.regulations.gov>.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This proposed rule does not have federalism implications and would not impose

substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

### List of Subjects

#### 24 CFR Part 1006

Community development block grants; Grant programs—housing and community development; Grant programs—Indians; Hawaiian natives; Low and moderate income housing; Reporting and recordkeeping requirements.

For the reasons described in the preamble, the Department of Housing and Urban Development proposes to amend 24 CFR part 1006, as set forth below:

### PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

#### ■ 1. Revise the authority citation for part 1006 to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701x–1; 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d), Pub. L. 115–141, Pub. L. 116–6, Pub. L. 116–94, Pub. L. 116–260, Pub. L. 117–103.

#### ■ 2. In § 1006.10, add in alphabetical order the definitions for “Annual income,” “Homeless family,” “Income,” “NAHASDA,” “Person with a Disability,” and “Project-based rental assistance,” to read as follows:

##### § 1006.10 Definitions.

*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.

\* \* \* \* \*

*Homeless family* means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the DHHL.

\* \* \* \* \*

*Income* means the term “income” as defined in section 4(9) of NAHASDA.

\* \* \* \* \*

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

\* \* \* \* \*

*Person with a Disability* means a person who, as further explained in 28 CFR 35.108—

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of having such an impairment;

(3) Is regarded as having such an impairment;

(4) Has a disability as defined in section 223 of the Social Security Act; or

(5) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

(6) 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.

(7) 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.

(8) 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 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.

#### ■ 3. In § 1006.101, revise the introductory text paragraph and paragraphs (c) and (d) to read as follows.

##### § 1006.101 Housing plans 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:

\* \* \* \* \*

(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.

■ 4. Revise § 1006.201 to read as follows:

**§ 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.

■ 5. In § 1006.205, revise paragraph (a)(9) to read as follows:

**§ 1006.205 Development.**

(a) \* \* \*

(9) The development and rehabilitation of utilities, necessary infrastructure, and utility services;

\* \* \* \* \*

**§ 1006.210 [Amended]**

■ 6. In § 1006.210, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

■ 7. In § 1006.215, revise paragraph (e), redesignate paragraph (f) as paragraph (g), and add new paragraph (f) to read as follow:

**§ 1006.215 Housing management services.**

\* \* \* \* \*

(e) Management of tenant-based rental assistance;

(f) The costs of operation and maintenance of units developed with NHHBG funds; and

\* \* \* \* \*

■ 8. Add § 1006.227 to read as follows:

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

(a) 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.

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

(2) 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.

(b) [Reserved].

**§ 1006.230 [Amended]**

■ 9. In § 1006.230, paragraph (d), remove the citation "2 CFR part 200, subpart E." and add in its place the citation "2 CFR part 200, subpart E.", and in paragraph (f), remove the text "§§ 1006.370 and 1006.375 of this part" and add in its place the text "§§ 1006.370, 1006.375, and 1006.377".

**§ 1006.235 [Amended]**

■ 10. In § 1006.235, revise the section heading to read "§ 1006.235 Types of investments and forms of assistance."

■ 11. Revise § 1006.301 to read as follows:

**§ 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, 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 (b)(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 § 1006.301(c).

(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.

■ 12. In § 1006.305, revise paragraphs (a) and (b) to read as follows:

**§ 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.

\* \* \* \* \*

■ 13. Add § 1006.306 to read as follows:

**§ 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.

■ 14. Add § 1006.307 to read as follows:

**§ 1006.307 Non-low-income families.**

(a) 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.

(b) [Reserved]

■ 15. Revise § 1006.310 to read as follows:

**§ 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% 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), 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.

**§ 1006.340 [Amended]**

■ 16. In § 1006.340, paragraph (a), remove the citation “§ 1006.235” and add in its place the citation “section 812(b) of NAHASDA”.

**§ 1006.350 [Amended]**

■ 17. In § 1006.350, paragraph (a), remove the word “decisionmaking” and add in its place the word “decision-making”.

■ 18. Revise § 1006.375 to read as follows:

**§ 1006.375 Other Federal requirements.**

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

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

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

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

(4) Subpart J, “Rehabilitation”;

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

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

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

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

■ 19. Add § 1006.377 to read as follows:

**§ 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 (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, nonprofit 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 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 displaced person in accordance with 49 CFR 24.2(a)(8)(vii) and the unit meets the requirements of section 504 of the Rehabilitation Act (29 U.S.C. 794).

(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) 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) 30 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 either:

(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; or

(B) 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 is ineligible under 49 CFR 24.2(a)(9)(ii); 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.

(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" means the execution of the written agreement covering the acquisition, rehabilitation, or demolition (*See* 49 CFR 24.2(a)(15)).

■ 20. In § 1006.410, revise paragraph (a)(2), add paragraph (a)(3), and revise paragraph (c)(1) to read as follows:

**§ 1006.410 Performance reports.**

(a) \* \* \*

(2) Submit a report in a form acceptable to HUD, within 90 days of the end of the DHHL's fiscal year, to HUD 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.

\* \* \* \* \*

(c) \* \* \*

(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.

\* \* \* \* \*

**§ 1006.420 [Amended]**

■ 21. In § 1006.420, paragraph (c), add the paragraph heading “*Failure to maintain records.*” before the words

“The DHHL’s failure to maintain records”.

**Dominique Blom,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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