

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 1006 and 1007

[Docket No. FR-4668-F-03]

RIN 2577-AC27

### Housing Assistance for Native Hawaiians: Native Hawaiian Housing Block Grant Program and Loan Guarantees for Native Hawaiian Housing Program; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** This rule issues as final, and responds to public comments on, an interim rule published on June 13, 2002, to implement procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The Native Hawaiian Housing Block Grant program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands.

**DATES:** *Effective Date:* December 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 401-7914. (This is not a toll-free number.) Individuals with speech-or hearing-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 513 of the Hawaiian Homelands Homeownership Act of 2000, Subtitle B of Title V of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, approved December 27, 2000) (HHH Act) amends the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding a new "Title VIII—Housing Assistance for Native Hawaiians." Title VIII (the Act) establishes a program of block grant assistance to provide affordable housing for Native Hawaiians that is closely

modeled on the Indian Housing Block Grant (IHBG) program under NAHASDA. Section 514 of the HHH Act adds a new Section 184A to the Housing and Community Development Act of 1992 to authorize a new program of housing loan guarantees for Native Hawaiians based upon the Section 184 Loan Guarantee for Indian Housing program.

HUD published an interim rule on June 13, 2002 (67 FR 40774), to implement the Act at 24 CFR part 1006 as the Native Hawaiian Housing Block Grant (NHHBG) program, and to implement the Section 184A Native Hawaiian Housing Loan Guarantee program (Section 184A program) at 24 CFR part 1007. Public comment was also invited on the two new programs of housing assistance for Native Hawaiians. This rule issues as final, and responds to public comments received on, the June 13, 2002, interim rule.

#### II. Response to Public Comment on the Interim Rule

The public comment period on the June 13, 2002, interim rule closed on August 12, 2002. HUD received four comments on the interim rule. Comments were received from a nonprofit organization, a county agency, and two agencies of the state of Hawaii. The comments received are organized below in this section of the preamble to correspond to the rule section that is addressed by the comment. The HUD response follows each comment.

##### Section 1006.10 Definitions

*Comment:* The definition of "housing area" should be expanded to include lands outside the jurisdiction of the Department of Hawaiian Home Lands (DHHL), and lands other than the Hawaiian home lands (Hawaiian Home Lands) because there are many native Hawaiians who should qualify for assistance on the basis of income, but have not received a DHHL lease.

*HUD response:* The language of the definition of "housing area" in the rule is the same language that appears as the definition of "housing area" in section 801(5) of the Act, and HUD may not, by regulation, substantively change this statutory definition.

*Comment:* In the definition of "Native Hawaiian," DHHL's certification that an individual is a bona fide lessee should be included as acceptable evidence that an individual is a Native Hawaiian, along with genealogical records, verification by elders, and birth records.

*HUD response:* Section 1006.301 sets forth the statutory requirement that eligibility is limited to Native Hawaiian families who are eligible to reside on the

Hawaiian Home Lands. HUD agrees that an individual who is a bona fide homestead leaseholder satisfies the NHHBG program requirement that the family is eligible to reside on the Hawaiian Home Lands. The lease is sufficient to document the requirement.

##### Section 1006.101 Housing Plan Requirements

*Comment:* Since no federal funds were used in constructing past units on the Hawaiian Home Lands, DHHL should not be required to report on the condition or disposition of those dwellings.

*HUD response:* The housing plan requirements of §§ 1006.101(b)(vii) and (viii), which this comment addresses, are taken directly from the authorizing statute (see 25 U.S.C. 4223(c)(2)(D)(vii) and (viii)). In general, the statutory provisions for a housing plan require a more comprehensive approach that looks at the use of NHHBG funding not in isolation, but within the context of the overall housing needs of Native Hawaiians and the total resources available to address those needs. Therefore, even though no federal funds were used in the construction of past units, it is necessary to consider these existing resources to better utilize the new assistance. In addition, NHHBG funding may be used for the demolition or disposition of existing units, if the DHHL provides for this activity in its housing plan, even though the units were not constructed with federal funds.

##### Section 1006.201 Eligible Affordable Housing Activities

*Comment:* Because there are currently no NAHASDA (more specifically, NHHBG) assisted units on the Hawaiian Home Lands, NHHBG funds cannot be used in existing communities. DHHL would like to enable existing communities to use NAHASDA funds for model activities, resident management and crime and safety activities.

*HUD response:* The eligible activities in section 810 of the Act are "affordable housing" activities. Subsection (b)(1) covers development of affordable housing, subsection (b)(2) covers housing-related services for affordable housing, subsection (b)(3) covers management services for affordable housing, subsection (b)(4) covers crime prevention and safety measures to protect residents of affordable housing, and subsection (b)(5) covers model housing activities. Subpart C of the regulations reflects the statutory language. "Affordable housing" is housing that complies with the requirements for affordable housing in

the statute and regulations. Notwithstanding the fact that the housing in existing communities was not developed with NHHBG funds, NHHBG funds may be used to assist existing communities if the existing housing complies with the requirements for affordable housing. HUD notes that under both section 813(b) of the Act (25 U.S.C. 4232(b)) and, § 1006.305(d) of the regulations, housing assisted with NHHBG funds pursuant to the exception to low-income requirement at section 809(a)(2)(B) of the Act (25 U.S.C. 4228(a)(2)(B)), and § 1006.301(b) of the regulations, shall be considered affordable housing for purposes of the Act.

#### *Section 1006.220 Crime Prevention and Safety Activities*

*Comment:* DHHL would like to provide services within existing communities, even if there are no NAHASDA-assisted units within the communities at the present time.

*HUD response:* HUD's response to the comment on § 1006.201 addresses this issue.

#### *Section 1006.225 Model Activities*

*Comment:* DHHL would like to provide services within existing communities, even if there are no NAHASDA-assisted units within the communities at the present time.

*HUD response:* HUD's response to the comment on § 1006.201 addresses this issue.

#### *Eligible Activities (Subpart C Generally)*

*Comment:* In the case of activities such as site improvements or development of utilities that benefit the whole community, "all units in a project should be considered as Eligible Low-Income Families" if the families in the project are existing residents and any of the following:

(a) The median income of the Hawaiian Home Lands area in which the project is located is less than 80 percent of the median income of the state of Hawaii (based on the most recent U.S. Census data available); or

(b) The project has a poverty rate of at least 20 percent; or

(c) The project is located in a low-income area of the U.S. Treasury Department's Community Development Financial Institutions (CDFI) Fund Online Help Desk Maps.

There should be criteria to qualify whole communities as low-income because where there are existing residents, the effort to certify individual families as low-income becomes an imposition on the residents and burdensome to the DHHL. The rule

should not serve as a disincentive to provide affordable housing activities in existing communities.

*HUD response:* The authorizing statute permits exceptions to the low-income requirement and allows NHHBG funds to be used for housing activities under model programs that are designed to carry out the purposes of title VIII of the Act. The use of NHHBG funds under the low-income exception and for model activities both require HUD approval. HUD encourages the submission of specific planned model activities and requests for exemptions for review with conformity to the Act's requirements.

*Comment:* The rule restricts the use of funds to communities in which there are existing NAHASDA-assisted units, and prevents DHHL from strengthening or enabling existing communities with NAHASDA funds. [Note: Although the comment spoke of "NAHASDA-assisted units" and "NAHASDA funds" it is clear that NHHBG assistance is the intended subject.]

*HUD response:* HUD's response to the comment on § 1006.201 addresses this issue.

*Comment:* There may be a need to improve off-site infrastructure to access DHHL property through non-DHHL properties. The current rule appears to preclude such projects. Expanding the definition of "housing area" would allow funding of off-site infrastructure improvements.

*HUD response:* Under section 810(b)(1) of the Act, the development of affordable housing may include both site improvements and the development of utilities and utility services. Site improvements must be on the site of the affordable housing. The affordable housing must be located on a "housing area" which is defined by section 801(5) of the Act to mean an area of the Hawaiian Home Lands with respect to which the DHHL is authorized to provide assistance for affordable housing under the Act. Although the affordable housing must be located on the Hawaiian Home Lands, the utilities need not necessarily be located there. However, the utilities must be for the affordable housing.

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

*Comment:* For rental and rent-to-own units, each entering family must qualify as low-income. For homeownership, only the initial family must qualify as low-income.

*HUD response:* The regulatory requirements reflect the statutory requirements at section 813(a) of the Act (25 U.S.C. 4232(a)).

*Comment:* Because the monthly maximum rent or lease-purchase payment may not exceed 30 percent of a low-income family's income, this cap may preclude the establishment of flat rents or lease-purchase payments based on operational costs or market factors.

*HUD response:* The 30 percent of income requirement is statutory (25 U.S.C. 4230(a)(2), section 811(a) of the Act) and applies "in the case of any low-income family." Where a family that is not low-income is assisted, if permitted under the exception discussed earlier in this preamble, the 30 percent of income requirement does not apply. (See § 1006.310(c).)

#### *Section 1006.315 Lease Requirements*

*Comment:* Currently DHHL will take action against the lessee only if the illegal activity is conducted on the leased premises.

*HUD response:* The regulation allows this flexibility, and provides, at § 1006.315(f), that "the DHHL, owner, or manager may terminate the tenancy." (Emphasis added.) Termination is discretionary, not mandatory.

#### *Section 1006.320 Tenant or Homebuyer Selection*

*Comment:* DHHL plans to use current state administrative rules, which govern the awarding of leases to applicants on the waiting lists for Hawaiian Home Lands with the addition of the NAHASDA income requirement for this purpose.

*HUD response:* The policies and criteria adopted by the DHHL as required by the Act, must be available for review by HUD, and the housing plan submitted annually by the DHHL must contain a certification that the DHHL has such policies in effect. HUD will bring any concerns it may have with respect to such policies to the DHHL's attention upon conducting such reviews.

#### *Section 1006.330 Insurance Coverage*

*Comment:* Would HUD be required to be named as an additional insured on homeowner units funded by the Act or does the insurance requirement apply only on rental units purchased or constructed by DHHL with NAHASDA funds and owned and managed by DHHL?

*HUD response:* The insurance requirement is intended to preserve the NHHBG investment in affordable housing and not to provide any compensation to HUD. HUD is not named as an additional insured on any units, but the DHHL must require the owner of any rental or homeownership unit assisted with more than \$5,000 of

NHHBG funds to obtain insurance sufficient to cover the replacement cost of the unit.

*Section 1006.335 Use of Nonprofit Organizations and Public-Private Partnerships*

*Comment:* Because of the limited number of experienced nonprofit developers in Hawaii, the requirement to work with nonprofits to the extent practicable may serve as an obstacle to the development of affordable housing.

*HUD response:* The DHHL is in the best position to determine the extent to which it is practicable to work with nonprofits. This requirement is not intended to hinder the DHHL's affordable housing efforts.

*Section 1006.340 Treatment of Program Income*

*Comment:* New grant funds should be accessible even if there is available program income remaining, because it may be impracticable to exhaust all program income first.

*HUD response:* The requirement to disburse program income first in § 1006.340(b)(3) merely repeats the governmentwide requirements of Office of Management and Budget (OMB) Circular A-102, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," which has been adopted by HUD at 24 CFR part 85. It is not necessary to exhaust all program income first as the comment states. Under 24 CFR 1006.340(c), if the total amount of program income received in a single year does not exceed \$25,000, then the amount is not considered program income and is not subject to the requirement that it be disbursed before disbursing additional NHHBG funds. Program income would not have to be disbursed unless and until it is determined that the \$25,000 threshold has been crossed. The requirement is intended to avoid the stockpiling and non-use of program income.

*Section 1006.345 Labor Standards*

*Comment:* DHHL partners with nonprofits that use self-help and volunteer labor to bring down housing costs for low-income families. These efforts would be hampered by a wage requirement.

*HUD response:* Volunteer labor is specifically exempted, under the conditions specified in section 805(b)(2) of the Act (25 U.S.C. 4225(b)(2)), and § 1006.345(d) of the regulations, from the wage requirement.

*Section 1007.1 Purpose*

*Comment:* The purpose section of the regulations states that HUD understands homestead leases have unique legal status; therefore, HUD is aware that homestead leases are not alienable.

*HUD response:* Section 208(6) of the Hawaiian Homes Commission Act (HHCA) provides that:

The lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the state or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans, or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

The HHCA specifically permits the lessee of a homestead lease to pledge the lessee's interest in the tract or improvements, which provides a sufficient basis for mortgage lending to proceed in the unique circumstances of the Hawaiian Home Lands. As a practical matter, the federal government's insurance or guarantee of the loan, rather than the value of the property, provides the actual financial security for a lender to an individual Native Hawaiian borrower in these transactions. Under the HHCA, general leases are clearly alienable.

HUD notes that nearly all of the comments submitted on the Section 184A program address issues of loans to individual, Native Hawaiian borrowers who hold homestead leases, the same group of borrowers directly served by the existing Federal Housing Administration (FHA) Section 247 mortgage insurance program. Because of the unique status of Hawaiian Home Lands, the Section 247 program focuses on loans to individual, Native Hawaiian borrowers. This focus is exemplified by one of the principal purposes of the HHCA, "Preventing alienation of the fee title to the lands set aside under this Act so that these lands will always be held in trust for continued use by native Hawaiians in perpetuity," HHCA § 101(b)(3)). This focus raises a number of difficulties in implementation, among them, issues concerning the security offered for a loan, and valuation of, foreclosure on, and sale after foreclosure of the security. However, the use of

Section 184A loan guarantees is not limited to individual homebuyers, and HUD wishes to emphasize the significant difference between the new Section 184A program and the Section 247 program.

The Section 184A program does not merely duplicate the Section 247 program, which focuses exclusively on loans to individual native Hawaiian families holding homestead leases. For reasons of efficiency and ease of administration, and to capitalize on familiarity in order to promote acceptance by the lending industry, HUD intends to administer both the Section 184A and Section 247 programs in a consistent manner with respect to individual, Native Hawaiian borrowers, who are eligible under either program. But to fully implement, and derive the maximum benefit from, the Section 184A program, HUD has concluded that it will emphasize and strongly encourage the use of the Section 184A program in ways that do not duplicate the Section 247 program.

The conclusion for not having the Section 184A program duplicate the Section 247 program comes from HUD's consideration of the broader range of eligible borrowers under the Section 184A program statute, the flexibility permitted for eligible collateral, and the larger scale of the activities that may be undertaken with the greater amount of guaranteed funds available to a borrower. HUD, therefore, strongly encourages the use of Section 184A loan guarantees by the institutional borrowers (DHHL, Office of Hawaiian Affairs, experienced nonprofits) specifically made eligible under the statute. These institutional borrowers may negotiate with lenders for larger loans, up to the limits HUD is authorized to guarantee, to obtain financing for large-scale, integrated infrastructure, homeownership development projects on the Hawaiian Home Lands. Section 184A allows this type of community-wide, rather than single home, development and, to the fullest extent possible, HUD encourages the use of the program for such projects.

Under such a project, for example, the DHHL could develop and pay for the cost of a number of homes and supporting infrastructure, using a combination of NHHBG funds and Section 184A guaranteed loan proceeds. The loan collateral could be any bonds or notes the DHHL is authorized to issue. The grant funds could cover the infrastructure costs, and the loan proceeds could cover the cost of the homes. If the DHHL chooses to provide direct financing to a Native Hawaiian leaseholder for one of these homes, the

transaction would require no additional source of funding; the DHHL could offer a loan at the minimum rate necessary to cover its repayment of the Section 184A loan; and any payments made by the leaseholder would be a direct offset of the cost of developing the home. HUD would not have to guarantee or insure these loans. Because the infrastructure was paid for by grant funds, the leaseholder/borrower is not paying back these costs, only the loan guarantee costs of the home. Even if there were a number of successive defaults on a home, the home could be offered at a discounted price or shorter term to each successive leaseholder, since the DHHL is seeking only to recover its costs and repay its loans, not to make a profit. Any gap in cash flow while a defaulting leaseholder is evicted and a new leaseholder takes over would be limited to the monthly payments as they come due and not to the entire cost of the home.

The use of Section 184A loan guarantees as described above may proceed under the rule at 24 CFR part 1007 as currently written. HUD is planning in a separate rule to propose minimum financial viability and development capacity and experience requirements to determine what nonprofits are eligible for guarantees, but this should not prevent planning of Section 184A development projects from proceeding. HUD welcomes the opportunity to work with the eligible institutional borrowers to develop viable projects on a case-by-case basis. The result of using the Section 184A program for this larger-scale development is anticipated to be an increase in the production of affordable housing units on a more financially sound basis, while avoiding many of the difficulties pointed out in the public comments, which focus on issues related to individual borrowers. To the extent Section 184A loan guarantees are sought for individual borrowers, the existing FHA Section 247 program model will be followed.

#### Section 1007.20 Eligible Housing

*Comment:* The FHA Section 247 program accepts the building codes of the various counties, and the Section 184A program should accept the same requirements.

*HUD response:* A new paragraph (d) is being added to § 1007.20 to provide that housing that meets the minimum property standards for Section 247 mortgage insurance is deemed to meet the required housing safety and quality standards.

#### Section 1007.30 Security for Loan

*Comment:* Under § 1007.30(a), only the dwelling for which the loan is used is collateral for the loan.

*HUD response:* Where the borrower is an individual, Native Hawaiian holder of a homestead lease, the lessee's interest must always be included as collateral for the loan. This is consistent with Section 208(6) of the HHCA, and with the FHA Section 247 mortgage insurance program. Where the borrower is an entity other than an eligible Native Hawaiian family, "any collateral authorized under and not prohibited by federal or state law," as provided by § 1007.30(a), may be used.

*Comment:* Under § 1007.30(b), which addresses Hawaiian Home Lands property interest as collateral, all homestead leases are inalienable.

*HUD response:* As noted earlier, HUD is aware of the restrictions preventing alienation of the fee title to the lands set aside as Hawaiian Home Lands and recognizes the limitations on disposition of a homestead lease that has been mortgaged pursuant to section 208(6) of the HHCA. However, HUD also notes the specific authority to "mortgage or pledge the lessee's interest in the tract or improvements thereon."

*Comment:* Under § 1007.30(b)(1), which addresses approved leases, leases have evolved over the years, and DHHL would not want to be required to amend older leases.

*HUD response:* HUD is uncertain of the circumstances under which an older lease would be at issue in a Section 184A loan guarantee transaction, since refinancing is not an eligible activity. The statute for the Section 184 loan guarantee program was amended to specifically authorize refinancing, and such specific authorization is not present in Section 184A. Nevertheless, should a request for a Section 184A loan guarantee present itself in the context of an older lease, HUD must reserve the right to approve the lease in order to protect its, and the public's, financial interest, as it is obliged to do in all of its programs.

*Comment:* Under § 1007.30(b)(2), which addresses assumption or sale of leasehold, title can only be transferred to another native Hawaiian; neither HUD nor the mortgagee can hold title.

*HUD response:* HUD agrees with this comment, and plans to amend this section in a separate proposed rule. As a practical matter, the provisions of this paragraph with respect to obtaining title to the leasehold interest cannot be executed, although the provisions requiring the DHHL's consent before any assumption of a lease, and HUD's

approval before the lessor may terminate the lease while the mortgage is guaranteed or held by HUD, remain valid.

*Comment:* Under § 1007.30(b)(3), which addresses liquidation, only DHHL can cancel or award a lease.

*HUD response:* The HUD response to the comment under § 1007.30(b)(2) addresses this issue.

*Comment:* Under § 1007.30(b)(4), which addresses eviction procedures, the DHHL's Administrative Rules and Hawaii Revised Statutes provide procedures for "contested case hearings" to allow lessees due process before a lease can be cancelled, which lengthens the process time. A more realistic time requirement than 60 days is 180 days to a year.

*HUD response:* HUD does not intend to impose unrealistic requirements. In response to this comment, the last sentence of § 1007.30(b)(4), which contains this requirement, is removed.

*Comment:* Under § 1007.30(b)(4)(i), which addresses enforcement, reconsideration of lease cancellations, and court stays prolong the process.

*HUD response:* The HUD response to the comment under § 1007.30(b)(4) addresses this issue.

#### Section 1007.35 Loan Terms

*Comment:* Because DHHL provides land at no cost to native Hawaiians, only the cost of the dwelling is assumed by the lessee; therefore, loan limits should mirror the FHA Section 247 program. Setting a high loan maximum will limit DHHL's ability to reaward existing homes, which have high values, to waiting low-income families.

*HUD response:* HUD agrees with the comment. As noted earlier in this preamble, HUD intends to administer both the Section 184A and Section 247 programs in a consistent manner, with respect to individual, Native Hawaiian borrowers holding homestead leases.

#### Section 1007.40 Environmental Requirements

*Comment:* A Finding of No Significant Impact (FONSI) should not be required to be published for each new construction loan made by individual lessees to construct a house on their homestead lot. The lessee should not be burdened with the cost to publish a FONSI.

*HUD response:* FONSI's result from environmental assessments under the National Environmental Policy Act (NEPA). Under the environmental reviews conducted by HUD under 24 CFR part 50, referenced in § 1007.40, activities under the Section 184A program may or may not require

preparation of environmental assessments and FONSI's under NEPA, depending upon whether or not the activities are categorically excluded from environmental assessment in accordance with 24 CFR 50.20. Categorically excluded activities require only review and compliance with the other applicable environmental laws and authorities, and do not involve a FONSI. If a FONSI or other findings are required, HUD will prepare them. As noted in § 1007.40, HUD will also require documents similar to the builder's certification required under 24 CFR 203.12(b)(2). The lessee is not responsible for preparing the FONSI, the other findings, or the builder's certification.

#### *Section 1007.50 Certificate of Guarantee*

*Comment:* After a lender has established credibility in packaging Section 184A loans, HUD should consider a direct guarantee process for local lenders.

*HUD response:* HUD will consider such an approach, although as discussed earlier, HUD intends to encourage the use of the Section 184A program by institutional borrowers to conduct larger-scale development.

#### *Section 1007.65 Transfer and Assumption*

*Comment:* DHHL should be notified of any assignment of loan to another servicer; assignment should be recorded in DHHL's recordation system.

*HUD response:* HUD agrees with the suggested change in this comment, which will assist DHHL in monitoring the status of outstanding loans in the Section 184A program and taking an active approach to prevent defaults. Because this change would affect the responsibilities of servicers and has not been subject to notice and comment, it would be included in a proposed rule HUD is planning to publish separately from today's rule.

#### *Section 1007.75 Payment under Guarantee*

*Comment:* Under § 1007.75(a)(1), which addresses notification, the lender should also provide written notice to DHHL if the borrower defaults.

*HUD response:* The HUD response to the comment under § 1007.65 addresses this issue.

*Comment:* Under § 1007.75(a)(2)(i), which addresses foreclosure, the holder of guarantee cannot foreclose on a DHHL lease.

*HUD response:* Although § 1007.75(a)(2)(i) basically tracks the statutory language of Section

184A(i)(1)(A)(ii)(I) (12 U.S.C. 1715z–13b(i)(1)(A)(ii)(I)), HUD agrees that this comment identifies the difficulties of proceeding in accordance with the statute where the borrower is an individual, Native Hawaiian leaseholder, and the security for the loan is the lessee's interest in a homestead lease. The foreclosure process in these cases would have to follow the procedure used for defaults under the Section 247 program. HUD notes that these difficulties would not be present in the case of any of the eligible institutional borrowers, where the security for the loan would not be an interest of any kind in Hawaiian Home Lands property or where the borrower holds a general lease. This is among the reasons that HUD is encouraging the use of the Section 184A program by the eligible institutional borrowers.

*Comment:* Under § 1007.75(a)(2)(ii), a loan could be assigned to HUD, HUD pays the claim, DHHL cancels the lease, reawards the lease and repays HUD the amount recovered through sale.

*HUD response:* Again, HUD notes that the situation contemplated by the comment almost certainly involves an individual, leaseholder borrower, with the lessee's interest as collateral, a situation that HUD intends to address in a manner consistent with the Section 247 program, to the extent such transactions take place under Section 184A.

### **III. Changes to the Interim Rule in This Final Rule**

The following changes to the June 13, 2002, interim rule are made by this final rule, consistent with the discussion of public comments in this preamble, and as further explained below:

1. A new paragraph (d) is added to § 1007.20 to provide that housing that meets the minimum property standards for Section 247 mortgage insurance is deemed to meet the required housing safety and quality standards.

2. The last sentence of § 1007.30(b)(4)(i), which uses 60 days to completion of eviction as a requirement for adequate enforcement, is removed.

3. HUD is removing the initial field office review in the appeal process under § 1007.30(b)(4)(ii) to streamline the procedure from a three-step to a two-step process. The initial request for a review is to be submitted directly to the Deputy Assistant Secretary, Office of Native American Programs.

### **IV. Findings and Certifications**

#### *Paperwork Reduction Act Statement*

The information collection requirements contained in this rule have

been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and have been assigned OMB control number 2577–0200. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the interim rule stage of this rulemaking, and continues to apply at this final rule stage. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

#### *Executive Order 12866, Regulatory Planning and Review*

OMB reviewed this rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

#### *Regulatory Flexibility Act*

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. This rule provides requirements for administering a program of assistance to provide affordable housing for a specific population, Native Hawaiians, through a single state agency, the Department of Hawaiian Home Lands.

*Unfunded Mandates Reform Act*

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

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or 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—Native Hawaiians, Low and moderate income housing, Native Hawaiians, Reporting and recordkeeping requirements.

*24 CFR Part 1007*

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

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for the Native Hawaiian Housing Block Grant program is 14.873, and for the Section 184A Loan Guarantees for Native Hawaiian Housing program is 14.874.

■ Accordingly, for the reasons stated in the preamble, the interim rule for parts 1006 and 1007 of chapter IX of title 24 of the Code of Federal Regulations, published on June 13, 2002, 67 FR 40774, is promulgated as final, with the following amendments, to read as follows:

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

■ 1. The authority citation for 24 CFR part 1007 continues to read as follows:

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

■ 2. In § 1007.20, add a new paragraph (d) to read as follows:

**§ 1007.20 Eligible housing.**

\* \* \* \* \*

(d) Housing that meets the minimum property standards for Section 247 mortgage insurance (12 U.S.C. 1715z-12) is deemed to meet the required housing safety and quality standards.

■ 3. In § 1007.30, revise paragraphs (b)(4)(i) and (b)(4)(ii) and add the

undesignated paragraph at the end of the section to the end of newly revised (b)(4)(ii) to read as follows:

**§ 1007.30 Security for loan.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. \* \* \*

Dated: September 9, 2003.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

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