

intermediate, or drug product information contained in a master file, including a drug master file submitted under § 314.420 of this chapter, for the product, including for a biological product constituent part of a combination product.

(2) *Former approved applications deemed to be licenses for biological products pursuant to section 7002(e)(4) of the Biologics Price Competition and Innovation Act of 2009.* An application for a biological product that:

(i) Is a former approved application under section 505 of the Federal Food, Drug, and Cosmetic Act that, pursuant to section 7002(e)(4) of the Biologics Price Competition and Innovation Act of 2009, has been deemed to be a license for the biological product under section 351 of the Public Health Service Act; and

(ii) At the time it was so deemed, incorporated by reference drug substance, drug substance intermediate, and/or drug product information contained in a drug master file submitted under § 314.420 of this chapter, may continue to incorporate by reference the information contained in that drug master file. Amendments and supplements to such applications may also continue to incorporate by reference the information contained in that drug master file.

(3) *Non-biological product constituent parts of combination products regulated under biologics license applications under section 351 of the Public Health Service Act.* A biologics license application under section 351 of the Public Health Service Act may incorporate by reference drug substance, drug substance intermediate, and/or drug product information contained in a master file, including a drug master file submitted under § 314.420 of this chapter, for any non-biological product constituent part of a combination product.

(4) *Biologics license applications under section 351 of the Public Health Service Act permitted to incorporate by reference information contained in a master file that is not drug substance, drug substance intermediate, or drug product information.* Nothing in paragraph (g)(1) of this section limits or restricts a biologics license application under section 351 of the Public Health Service Act from incorporating by reference information contained in any master file, including a drug master file submitted under § 314.420 of this chapter, that is not drug substance, drug substance intermediate, or drug product information.

(5) *Investigational new drug applications.* Nothing in paragraph

(g)(1) of this section limits or restricts an investigational new drug application for a product that would be subject to licensure under section 351 of the Public Health Service Act from incorporating by reference any information, including drug substance, drug substance intermediate, and drug product information, contained in a master file, including a drug master file submitted under § 314.420 of this chapter.

Dated: January 30, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024-02741 Filed 2-9-24; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1006

[Docket No. FR-6273-F-02]

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: Final rule.

SUMMARY: This rule amends HUD's 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). The amendments clarify and improve consistency with NAHASDA's statutory requirements and HUD's Indian Housing Block Grant (IHBG) program regulations. This rule would also help to make affordable housing opportunities, in the form of NHHBG-assisted rental housing, more available to eligible Native Hawaiian families.

DATES: Effective March 13, 2024.

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 from 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

Statutory Authority for the Native Hawaiian Housing Block Grant program

Section 513 of the Hawaiian Homelands Homeownership Act of 2000 (HHH Act),¹ 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 of NAHASDA established the Native Hawaiian Housing Block Grant (NHHBG) program to provide block grant assistance for affordable housing for eligible Native Hawaiians, including rental assistance.²

The NHHBG program must primarily benefit low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. 25 U.S.C. 4222(a); 25 U.S.C. 4228(a)(2)(A). These families 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.

Interim Rule

On June 13, 2002, HUD published an interim rule ("interim rule") adding new regulations at 24 CFR part 1006 to implement the NHHBG program. 67 FR 40773. HUD modeled the NHHBG regulations after the Indian Housing Block Grant (IHBG) regulations implemented at 24 CFR part 1000 because NAHASDA authorizes and applies overlapping requirements to both programs.³

¹ The 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).

² Section 513 of the HHH Act adds sections 801 through 824 of NAHASDA's Title VIII, which authorize this NHHBG program. 25 U.S.C. 4221 *et seq.* Although NAHASDA may be referenced throughout this rule, NHHBG serves Native Hawaiians specifically.

³ 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

The interim rule established program requirements pertaining to homeownership and rental assistance authorized under section 810 of Title VIII of NAHASDA.⁴ The new 24 CFR part 1006 as implemented by the interim rule closely followed the statute with some differences for clarification.

Need To Amend NHHBG Regulations

HUD has not comprehensively reviewed or amended 24 CFR part 1006 since the interim rulemaking. Since then, Congress has amended statutory requirements, which HUD has implemented for the IHBG program through rulemaking, but not the NHHBG program.

Additionally, current NHHBG regulations do not adequately explain how NHHBG's sole funding recipient, the Department of Hawaiian Home Lands (DHHL), may use funds for rental assistance. Prior to fiscal year 2020, the DHHL used NHHBG funds primarily for homeownership housing assistance. In 2019, Hawaii changed administrative rules to allow the DHHL to expand residential lease offerings to include rental housing.⁵ HUD received feedback from the DHHL about the DHHL's rental housing projects currently in development. HUD then reviewed its regulations and determined that additional regulatory details would be necessary to support a fully successful rental housing program administered by the DHHL.

II. The Proposed Rule

On January 4, 2023, HUD published a proposed rule in the **Federal Register** (88 FR 328) to amend the NHHBG program regulations at 24 CFR part 1006 to provide necessary updates to NHHBG regulations and clarify how the DHHL may use NHHBG program funds for rental housing assistance, as authorized by Title VIII of NAHASDA.

HUD's broad goals in proposing these changes were to decrease DHHL's burden in implementing rental assistance, improve low-income Native Hawaiian families' access to rental assistance, and clarify HUD's program requirement monitoring and enforcement tools. More specifically, the amendments to 24 CFR part 1006

were designed to achieve three outcomes: ensure compliance with the NHHBG program's statutory requirements; promote consistency between NHHBG and IHBG program regulations where the programs' statutory requirements overlap; and clarify the NHHBG regulatory rental assistance framework.

The preamble to the proposed rule at 88 FR 328 includes a thorough explanation and justification of amendments and new sections.

III. This Final Rule

This final rule adopts the proposed rule, published at 88 FR 328 (Jan. 4, 2023), with the following revisions, based on public comments.

First, HUD is striking the proposed definition of "*Homeless Family*" at § 1006.10 to allow DHHL to retain flexibility with respect to its approach to homeless families; and changing the definition of "*project-based rental assistance*" to add that project-based rental assistance may consist of rental assistance provided through an agreement for use of a DHHL property to account for situations where DHHL owns the building but contracts with an agency to manage the property as a facility where units are rented out.

Second, HUD is revising § 1006.215(f) to allow NHHBG funds to be used for management services not just for units developed with NHHBG funds, but for all units occupied by NHHBG eligible families, to account for the fact that some units occupied by NHHBG eligible families are not developed with NHHBG funds.

This rule also makes non-substantive changes to the definition of "Person with a disability" for clarity.

The public comments section further explains these revisions to the proposed rule.

IV. Public Comments

The public comment period for the proposed rule closed on March 6, 2023. HUD received three distinct comments on the proposed rule. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's responses to these issues, questions, and suggestions. The following sections summarize the comments received on the proposed rule and HUD's responses.

General Support

Commenters supported the proposed rule. Some commenters stated that they generally support the proposed rule and a commenter specifically supported HUD's proposed additions and revisions

to 24 CFR part 1006 but suggested some changes to the proposed regulatory text.

One commenter stated that they support the effort, through this rulemaking, to reduce the burden on the recipient of NHHBG funds. This commenter stated that the proposed rule would increase availability of assisted rental housing through tenant-based rental assistance and offer Native Hawaiians more choice to reside in communities of their choosing. This commenter also noted that HUD's proposals allow qualifying families to enter into private tenancy agreements, and this would mean rental assistance would cover the initial deposit for eligible families.

HUD Response: HUD appreciates the participation and feedback of the public during the proposed rule's availability for comment.

§ 1006.10 Definitions

For the proposed definition of "Homeless family" in § 1006.10, one commenter noted that "safe, sanitary and affordable housing" is not defined, questioned the meaning of these terms, and recommended that HUD consider referencing the definition of "homeless" in other HUD regulations, such as 24 CFR 578.3.

For the proposed definition of "Project-based rental assistance" in § 1006.10, the commenter recommended clarifying the definition by adding "an agreement for the use of a DHHL property" as an alternative to a contract with the owner, such that the first sentence of the definition would read: "*Project-based rental assistance* means rental assistance provided through an agreement for use of a DHHL property or contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants." The commenter reasoned that where DHHL owns the building but contracts with an agency to manage the property as a facility where units are rented out, an agreement may be required.

HUD Response: HUD appreciates the comment requesting clarification of "safe, sanitary, and affordable housing" within the proposed definition of "Homeless family." The proposed definition was intended to codify existing policy and align the NHHBG regulations with the regulations for the IHBG program, not to introduce new requirements that may conflict with current practice. Because the proposed rule does not have any requirements related to the "Homeless family" definition, HUD has determined a definition for "Homeless family" is not necessary, will strike the proposed

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.

⁴ NAHASDA section 810(a), 25 U.S.C. 4229(a).

⁵ Dep't of Haw. Home Lands, Adoption of Chapter 10-7 Hawaii Administrative Rules (2019), https://dhlh.hawaii.gov/wp-content/uploads/2020/02/HAR-Ch-10-7_Eff-Aug-17-2019-1.pdf.

definition, and declines to adopt or reference the definition of “homeless” that appears at 24 CFR 578.3. This will allow DHHL to retain flexibility with respect to its approach to homeless families, without applying a definition that may prove limiting or incompatible with the unique nature of the NHHBG program. HUD appreciates the comment about the definition of “Project-based rental assistance” (PBRA) and acknowledges the suggested edit as it supports the different scenarios that could arise with project based rental assistance in the NHHBG program. HUD accepts the suggested edit to the definition of PBRA and has updated the regulatory text accordingly.

§ 1006.215 *Housing Management Services*

One commenter supported the proposed addition of costs of the operation and maintenance of units developed with NHHBG funds to § 1006.215 but recommended that the language “units developed with NHHBG funds” be replaced with “units occupied by NHHBG eligible families” because other funds received by DHHL (for example, from the state of Hawaii) may be used to construct units receiving NHHBG funds for operation and maintenance. The language at paragraph (f) would then read: “The costs of operation and maintenance of units occupied by NHHBG eligible families.”

HUD Response: HUD supports allowing DHHL the ability to expand making affordable housing available to as many families as possible. HUD agrees with the commenter’s suggested edit and has updated the regulatory text accordingly.

§ 1006.301 *Eligible Families*

For the income eligibility criteria proposed in § 1006.301(b)(3), one commenter expressed concern with using median income for eligibility criteria in the state of Hawaii because wealthy families’ income can distort the median income of the population. Due to these distortions, this commenter is concerned that permitting DHHL to use 10 percent of its planned Housing Plan for families whose income is 81 to 100 percent of the median income will inaccurately represent income within the state.

HUD Response: Median income is the standard used in HUD programs to determine eligibility for assistance. HUD annually calculates median family income using Fair Market Rents to determine very low-income, low-income, and extremely low-income limits for programs across HUD, including the Section 8 program.

Further, the proposed language aligns with the IHBG program, which publishes yearly income limits under NAHASDA based on median family income. Using median family income provides consistent interpretation of NAHASDA income limits within HUD and allows DHHL to use a small portion of funds to serve over-income families if it chooses to do so. It is not practicable or equitable for the NHHBG program to deviate from other HUD programs when determining income limits. As such, HUD will keep the proposed regulatory language.

§ 1006.307 *Non-Low-Income Families*

A commenter said that improved income situations should not disqualify families currently receiving assistance from receiving further assistance.

HUD Response: HUD appreciates the commenter’s response. The proposed language allows families whose income circumstances improve to continue to participate in the program in accordance with DHHL’s admission and occupancy policies. This is a long-standing policy that is being codified and is consistent with the IHBG program.

§ 1006.375 *Other Federal Requirements: Housing Counseling*

A commenter recommended changing HUD’s proposed § 1006.375(d) by removing “or provided in connection with,” so that the paragraph reads: “Housing counseling, as defined in § 5.100, that is funded with NHHBG funds must be carried out in accordance with 24 CFR 5.111.” The commenter reasoned that limiting the federal requirements to housing counseling funded with NHHBG funds gives DHHL greater flexibility for the significant funding from the State.

HUD Response: HUD appreciates the commenter’s suggestion, but HUD declines to accept it. The housing counseling requirements at 24 CFR part 5 are standard requirements applicable to all HUD programs unless inconsistent with the authorizing statute for that program. HUD’s position is to maintain consistency in providing housing counseling via HUD-certified housing counselors across HUD programs. The commenter’s suggested modification to 24 CFR 1006.375 conflicts with 24 CFR 5.111(a), which requires housing counseling from a HUD certified housing counselor when provided under, or in connection with, any program administered by HUD. Accordingly, any housing counseling provided in connection with NHHBG assistance must be provided by a HUD-certified housing counselor to comply with 24 CFR 5.111 and to maintain

consistency with other HUD programs where housing counseling is involved.

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

In HUD’s proposed § 1006.377(c), outlining relocation assistance requirements for displaced persons, a commenter asked HUD to remove the requirement that wherever possible, minority persons shall be given reasonable opportunities to relocate to dwellings “not located in an area of minority concentration, that are within their financial means” (leaving the requirement that relocation be to “comparable and suitable decent, safe, and sanitary replacement dwellings”). This commenter reasoned that the specified relocation requirements may be difficult to attain depending on the island and area where units may be found within a family’s means.

HUD Response: HUD has considered the comment but declines to make the proposed change. The language the commenter highlights is directly from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) regulation at 49 CFR 24.205(c)(2)(ii)(D) and is not subject to changes under this rulemaking. HUD recognizes it may not always be feasible to relocate displaced individuals to areas not of a minority concentration. However, given that 49 CFR 24.205(c)(2)(ii)(D) already provides flexibility for when it is not possible to relocate individuals to areas not of a minority concentration, HUD does not agree that additional flexibility or removal of the requirement when feasible is necessary.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563 and 14094

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. Executive Order 14094 entitled “Modernizing Regulatory Review” amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

HUD’s revisions to NHHBG program requirements and regulations would clarify that NHHBG funds can be used for certain affordable housing activities including project-based rental assistance, permit rental assistance to be provided off the Hawaiian Home Lands when Congress authorizes such use through appropriations acts, and add or change certain 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 rule was not subject to OMB review. This 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 rule will 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 final 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 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 (FONSI) 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 FONSI 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 <http://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 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 in 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 amends 24 CFR part 1006, as set forth below:

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

■ 1. The authority citation for part 1006 is revised 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, Pub. L. 117–328.

■ 2. In § 1006.10, add alphabetically definitions for “Annual income”, “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.

* * * * *

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, as further explained in 28 CFR 35.108, is defined as follows:

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

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

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

(iii) Is regarded as having such an impairment;

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

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

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

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more

body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

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

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

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

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

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

* * * * *

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

* * * * *

■ 3. In § 1006.101, revise the introductory text 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:

- a. Revise paragraph (e);
- b. Redesignate paragraph (f) as paragraph (g); and
- c. Add new paragraph (f).

The revision and addition read as follows:

§ 1006.215 Housing management services.

* * * * *

(e) Management of tenant-based rental assistance;

(f) The costs of operation and maintenance of units occupied by NHHBG eligible families; and

* * * * *

■ 8. Add § 1006.227 to read as follows:

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

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

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

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

§ 1006.230 [Amended]

■ 9. In § 1006.230, in paragraph (f), remove the citation “§§ 1006.370 and 1006.375” and add in its place the citation “§§ 1006.370, 1006.375, and 1006.377”.

■ 10. In § 1006.235, revise the section heading to read as follows:

§ 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 3(i) and (ii) of this section do not apply to other families who are non-low income that DHHL has determined to be essential under paragraph (c) of this section.

(c) *Other families*. The DHHL may provide housing or NHHBG assistance to a family that is not low-income and is not a Native Hawaiian family without HUD approval if the DHHL documents that:

(1) The presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

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

(d) *Written policies*. The DHHL must develop, follow, and have available for review by HUD written policies governing the eligibility, admission, and occupancy of families for housing

assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part.

■ 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 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.

■ 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 percent of monthly adjusted income). DHHL may charge flat or income-adjusted rents, provided the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

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

(b) *Lease-purchase*. If DHHL assists low-income families to become homeowners of rental housing through a long-term lease (*i.e.*, 10 or more years) with an option to purchase the housing, DHHL must develop and follow written policies governing lease-purchase payments (*i.e.*, homebuyer payments) for rental housing units assisted with NHHBG funds, including methods by which payments are determined. The maximum monthly payment for a low-

income family may not exceed 30 percent of the family's monthly adjusted income.

(c) *Exception for certain homeownership payments.*

Homeownership payments for families who are not low-income, as permitted under § 1006.301(b), 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, in paragraph (a), remove the citation “§ 1006.235” and add in its place the citation “section 812(b) of the Act”.

§ 1006.350 [Amended]

■ 17. In § 1006.350, in 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 24 CFR part 35, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), apply to the use of assistance under this part:

(1) Subpart A (§§ 35.80 through 35.98) for disclosures of known lead-based paint hazards upon sale or lease of residential property;

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

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

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

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

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

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

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

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 subpart D 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 (42 U.S.C. 4601 *et seq.*) (URA) and the requirements of 49 CFR part 24, subpart B.

(b) *Minimize displacement.* Consistent with the other goals and objectives of the Act and this part, the DHHL shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, 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 and the requirements of 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. For a displaced person with a disability, a unit is not a comparable replacement dwelling under the URA unless it is free of any barriers

which would preclude reasonable ingress, egress, or use of the dwelling by such a displaced person in accordance with the definition of “Decent, safe, and sanitary dwelling” at 49 CFR 24.2. Furthermore, the unit must also meet the requirements of section 504 of the Rehabilitation Act (29 U.S.C. 794) as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(d) *Appeals to the DHHL.* A person who disagrees with the DHHL's determination concerning whether the person qualifies as a “displaced person,” or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the DHHL in accordance with URA requirements of 49 CFR 24.10.

(e) *Responsibility of DHHL.* (1) The DHHL shall certify that it will comply with the URA requirements of 49 CFR part 24, and the requirements of this section. The DHHL shall ensure such compliance notwithstanding any third party's contractual obligation to the DHHL to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the DHHL from any other source.

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

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

(f) *Definition of displaced person.* (1) For purposes of this section, the term “displaced person” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under the Act. The term “displaced person” includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of a housing plan that is later approved;

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

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after execution of the agreement between the DHHL and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- (A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or
(B) Thirty percent of gross household income.

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

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses;

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

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

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

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

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

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

(i) The person moved into the property after the submission of the housing plan to HUD, but before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced,

temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" or for any assistance provided under this section as a result of the project;

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

(iii) The DHHL determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination in accordance with 49 CFR 24.2.

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

(g) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced from a dwelling as a direct result of acquisition, rehabilitation, or demolition of the real property, the term Initiation of Negotiations (ION) date means the execution of the written agreement covering the acquisition, rehabilitation, or demolition (See 49 CFR 24.2).

■ 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, 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.

* * * * *

■ 21. In § 1006.420, add a heading to paragraph (c) to read as follows:

§ 1006.420 Review of DHHL's performance.

* * * * *

(c) Failure to maintain records. * * *

Adrienne Todman,

Deputy Secretary for U.S. Department of Housing and Urban Development.

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DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OLP 176]

Civil Monetary Penalties Inflation Adjustments for 2024

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after February 12, 2024 with respect to violations occurring after November 2, 2015.

DATES: This rule is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) ("BBA"), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the "Inflation Adjustment Act"), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule ("June 2016 interim rule") to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the SUPPLEMENTARY INFORMATION (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for