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TO PROVIDE FEDERAL HOUSING ASSISTANCE TO NATIVE HAWAIIANS

OCTOBER 8 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 109]

The Committee on Indian Affairs, to which was referred the bill (S. 109) to provide Federal housing assistance to Native Hawaiians having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 109 is to implement the recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing by amending the Native American Housing Assistance and Self-Determination Act to address the housing needs of Native Hawaiians who are eligible to reside on lands set aside under the Hawaiian Homes Commission Act of 1920.

The primary objective of S. 109 is to enable Native Hawaiians who are eligible to reside on the Hawaiian Home Lands to have access to federal housing assistance that is currently provided to other eligible low-income American families based upon documented need.

BACKGROUND AND NEED

In 1920, with the enactment of Hawaiian Homes Commission Act, the United States set aside approximately 200,000 acres of public land that had been ceded to the United States in what was then the Territory of Hawaii to establish a permanent homeland for the native people of Hawaii, based upon findings of the Con-

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gress that Native Hawaiians were a landless people and a "dying" people. The Secretary of the Interior, Franklin Lane, likened the relationship between the United States and Native Hawaiians to the guardian-ward relationship that then existed between the United States and American Indians.

As a condition of its admission into the Union of States in 1959, the United States transferred title to the 200,000 acres of land to the State of Hawaii with the requirement that the lands be held "in public trust" for "the betterment of the conditions of Native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920". The Hawaii Admissions Act also required that the Hawaii State Constitution provide for the assumption by the new State of a trust responsibility for the lands. The lands are now adminstered by a State agency, the Department of Hawaiian Home Lands.

However, similar to the responsibility with which the Secretary of the Interior is charged in the administration of Indian lands, the United States retained and continues to retain the exclusive authority to enforce the trust and to institute legal action against the State of Hawaii for any breach of the trust, as well as the executive right to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act enacted by the legislature of the State of Hawaii affecting the rights of the beneficiaries under the Act.

Within the last several years, three recent studies have documented the housing conditions that confront Native Hawaiians who either reside on the Hawaiian home lands or who are eligible to reside on the home lands.

In 1992, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing issued its final report to the Congress, "Building the Future: A Blueprint for Change". The Commission's study compared housing data for Native Hawaiians with housing information for other citizens in the State of Hawaii. The Commission found that Native Hawaiians, like American Indians and Alaska Natives, lacked access to conventional financing because of the trust status of the Hawaiian home lands, and that Native Hawaiians had the worst housing conditions in the State of Hawaii and the highest percentage of homelessness, representing over 30 percent of the State's homeless population.

The Commission concluded that the unique circumstances of Native Hawaiians require the enactment of new legislation to alleviate and address the severe housing needs of Native Hawaiians, and recommended that the Congress extend to Native Hawaiians the same federal housing assistance programs that are provided to American Indians and Alaska Natives under the Low-Income Rental, Mutual Help, Loan Guarantee Program and Community Development Block Grant programs. Subsequently, the Community Development Block Grant program authority was amended to address the housing needs of Native Hawaiians.

In 1995, the U.S. Department of Housing and Urban Development (HUD) issued a report entitled, "Housing Problems and Needs of Native Hawaiians". The HUD report was particularly helpful because it compared the data on Native Hawaiian housing conditions with housing conditions nationally and with the housing conditions of American Indians and Alaska Natives.

The most alarming finding of the HUD report was that Native Hawaiians experience the highest percentage of housing problems in the nation—49 percent—higher than even that of American Indians and Alaska Natives residing on reservations (44 percent) and substantially higher than that of all U.S. households (27 percent). Additionally, the HUD study found that the percentage of overcrowding in the Native Hawaiian population is 36 percent as compared to 3 percent for all other households in the United States.

Applying the HUD guidelines, 70.8 percent of Native Hawaiians who either reside or who are eligible to reside on the Hawaiian home lands have incomes which fall below the median family income in the United States, and 50 percent of those Native Hawaiians have incomes below 30 percent of the median family income in the United States.

Also in 1995, the Hawaii State Department of Hawaiian Home Lands published a Beneficiary Needs Study as a result of research conducted by an independent research group. This study found that among the Native Hawaiian population, the needs of Native Hawaiians eligible to reside on the Hawaiian home lands are the most severe—with 95 percent of home lands applicants (16,000) in need of housing, and with one-half of those applicant households facing overcrowding and one-third paying more than 30 percent of their income for shelter.

Eligibility for an assignment of Hawaiian home lands for purposes of housing, agricultural development or pasture lands is a function of federal law—the Hawaiian Homes Commission Act of 1920—which has defined eligibility in terms of blood quantum. There are approximately 60,000 Native Hawaiians who would be eligible to reside on the home lands, but applying for an assignment of a parcel of home lands is voluntary. Because of the lack of resources to develop infrastructure (roads, access to water and sewer and electricity) on the home lands as required by State and county laws before housing can be constructed, hundreds of Native Hawaiians on the waiting list have died before receiving an assignment of home lands.

Once an eligible Native Hawaiian reaches the top of the waiting list, he or she must be able to qualify for a private home loan mortgage, because the limited Federal and State funds available to the Department of Hawaiian Home Lands have been used to develop infrastructure rather than the construction of housing. An assignment of home lands property is in the form of a 99-year lease. Unless the heirs of the eligible Native Hawaiian qualify in their own right for an assignment of home lands under the provisions of the Hawaiian Homes Commission Act, upon the death of the eligible Native Hawaiian, the heirs must move off the land.

Currently, Native Hawaiians who are eligible to reside on the home lands but who do not qualify for private mortgage loans do not have access to federal housing assistance programs that provide assistance to low-income families. This is due to the fact that for many years, the federal government took the legal position that because the government that represented the Native Hawaiian people had been overthrown in 1893 and thus there was no government-to-government relationship with the United States, extending federal housing program assistance to lands set aside exclusively

for Native Hawaiians would be discriminating on the basis of race or ethnicity.

The Hawaiian Homes Commission Act not only provides authority for the assignment of home lands property to Native Hawaiians. The Act also authorizes general leases to non-Hawaiians. At the time the Act was passed by the Congress, it was anticipated that revenues derived from general leases would be sufficient to develop the necessary infrastructure and housing on the home lands. However, general lease revenue has not proven sufficient to address infrastructure and housing needs.

In recent years, as a result of litigation involving third-party leases of Hawaiian home lands, the United States revisited its legal position and found that the authority contained in the Hawaiian Homes Commission Act for general leases to non-Hawaiians meant that the land was not set aside exclusively for Native Hawaiians. The non-exclusive nature of the land set aside was thus found not to violate Constitutional prohibitions on racial discrimination.

The change in the United States' legal position may be further informed by the ruling of the Ninth Circuit Court of Appeals in *Rice* v. *Cayetano,* No. 97–16095, 146 F.3d 1075 (9th Cir. 1998) in which the Appeals Court compared the special treatment of Native Hawaiians to the special treatment of Indians that the Supreme Court approved in *Morton* v. *Mancari,* 417 U.S. 535 (1974) and cited its reference to *Mancari* in *Alaska Chapter, Associated Gen. Contractors* v. *Pierce,* 694 F.2d 1162 (9th Cir. 1981), in which the Circuit Court expressed its finding that preferential treatment that is grounded in the government's unique obligation toward Indians is a political rather than a racial classification, even though racial criteria may be used in defining eligibility.

However, the result of the United States' earlier legal position was that Native Hawaiians who were eligible to reside on the Hawaiian Home Lands and would have otherwise been eligible by virtue of their low-income status to apply for Federal housing assistance were foreclosed from participating in Federal housing assistance programs that were available to all other eligible families in the United States.

AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 109

The purpose of the amendment in the nature of a substitute to S. 109 is to address these well-documented housing needs of Native Hawaiians by extending the same federal housing assistance available to American Indians and Alaska Natives to those Native Hawaiians most in need of housing—those who have consistently been denied access to federally-assisted housing programs—Native Hawaiians who reside or are eligible to reside on the Hawaiian Home Lands. The substitute amendment incorporates the recommendations of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development.[1]

[1] Following the U.S. Supreme Court's 1995 ruling in *Adarand Constructors, Inc.,* v. *Pena,* the U.S. Department of Justice was charged with the responsibility of conducting a legal review of all federal programs which may provide benefits to groups defined by race or ethnicity. Over the course of the last year, Committee staff has engaged in extensive discussions with Department of Justice officials with regard to S. 109 to assure that the bill's provisions meet the standards established in *Adarand*.

The earlier version of S. 109, as reported by the Committee on October 23, 1997, approached the amendment of the Native American Housing Assistance and Self-Determination Act (NAHASDA) by substituting the term "Native Hawaiian" for the term "Indian" each place the latter term appeared, and incorporating Titles I through IV of NAHASDA by reference. The amendment in the nature of a substitute to S. 109 removes any reference to the term "Indian" and instead of incorporating provisions of NAHASDA by reference, replicates those relevant provisions of NAHASDA, adapted for application to the Hawaiian home lands.

Appropriations for programs authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) to address the housing needs in Indian country are determined by formula. If enacted, S. 109 authorizes appropriations for programs to address the housing needs of Native Hawaiians which would be allocated to the Department of Hawaiian Home Lands through a block grant. An appropriation for federal housing assistance for Native Hawaiians would be separate from an appropriation for federal housing assistance to address the housing needs in Indian country under NAHASDA, and unless a separate allocation of funding for Native Hawaiian housing assistance is secured, there would be no funding for Native Hawaiian housing assistance under the NAHASDA authority. It is the intent of the sponsor that in no instance, will funding for Indian programs under NAHASDA be reduced as a function of the authority provided in S. 109.

At its June, 1998 mid-year meeting, the National Congress of American Indians adopted a resolution in support of passage of the amendment in the nature of a substitute to S. 109. The National American Indian Housing Council also approved a resolution in support of passage of the amendment in the nature of a substitute to S. 109 at the Council's June, 1998 meeting.

LEGISLATIVE HISTORY

S. 109 was introduced on January 21, 1997, by Senator Inouye, for himself and Senator Akaka, and was referred to the Committee on Indian Affairs. A hearing on S. 109 was held on April 3, 1997, in Honolulu, Hawaii. The Committee reported S. 109 to the full Senate on October 23, 1997, with the agreement that concerns raised by the Chairman's staff would be addressed prior to seeking action on the measure by the Senate. In an effort to accommodate those concerns, S. 109 was redrafted, and an amendment in the nature of a substitute to S. 109 was adopted and ordered reported to the full Senate on July 15, 1998.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on July 15, 1998, adopted an amendment in the nature of a substitute to S. 109 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1.—Section 1 sets forth the short title of the Act, indicating that the Act may be cited as the "Native American Housing Assistance and Self-Determination Amendments of 1998".

Section 2.—Section 2 sets forth the findings of the Congress.

Paragraph 1 of section 2 sets forth the finding of the Congress that the United States has undertaken a responsibility to promote the general welfare of the United States by employing Federal resources to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income, including Native Hawaiian families of lower income, and by developing effective partnerships with governmental and private entities to accomplish these objectives.

Paragraph 2 of section 2 sets forth the finding of the Congress that pursuant to the provisions of the Hawaiian Homes Commission Act, 1920, (42 Stat. 108 et seq.), the United States set aside 200,000 acres of land in the Federal territory that later became the State of Hawaii in 1959, in order to establish a homeland for the native people of Hawaii, also known as Native Hawaiians. The lands which were set aside under the Act were referred to in section 201(a)(5) of the Act as Hawaiian Home Lands.

Paragraph 3 of section 2 sets forth the finding of the Congress that despite the intent of the Congress in 1920 to address the housing needs of Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920, in the years which have followed, there have been agencies of the United States which have taken the legal position that subsequently-enacted Federal housing laws designed to address the housing needs of all eligible families in the United States could not be extended to address the needs for housing and infrastructure development on the Hawaiian Home Lands on the grounds that the lands were set aside exclusively for a group of people who could be identified by their race and/or ethnicity.

The legal theory was that the extension of Federal housing assistance programs to such lands would constitute discrimination on the basis of race in violation of the Fourteenth Amendment to the U.S. Constitution. The United States has subsequently revised its legal position based upon its finding that the lands set aside under the Hawaiian Homes Commission Act were not exclusively set aside for Native Hawaiians because the 1920 Act also set aside lands for general leasing to non-Hawaiians. In addition, the change in the United States' legal position may be further informed by the ruling of the Ninth Circuit Court of Appeals in *Rice* v. *Cayetano*, No. 97–16095, 146 F.3d 1075 (9th Cir. 1998) in which the Appeals Court compared the special treatment of Native Hawaiians to the special treatment of Indians that the Supreme Court approved in *Morton* v. *Mancari*, 417 U.S. 535 (1974) and cited its reference to *Mancari* in *Alaska Chapter, Associated Gen. Contractors* v. *Pierce*, 694 F.2d 1162 (9th Cir. 1981), in which the Circuit Court expressed its finding that preferential treatment that is grounded in the government's unique obligation toward Indians is a political rather than a racial classification, even though racial criteria may be used in defining eligibility.

However, the result of the United States' earlier legal position was that Native Hawaiians who were eligible to reside on the Hawaiian Home Lands and would have otherwise been eligible by virtue of their low-income status to apply for Federal housing assistance were foreclosed from participating in Federal housing assistance programs that were available to all other eligible families in the United States.

Paragraph 4 of section 2 sets forth the finding of the Congress that although Federal housing assistance programs have been administered on a racially-neutral basis in the State of Hawaii, Native Hawaiians continue to have the greatest unmet need for housing and the highest rates of overcrowding, not only in the State of Hawaii, but the greatest unmet need for housing and the highest rates of overcrowding in the United States. Three studies conducted in the last several years have documented the findings of the Congress set forth in paragraphs 5, 6, 7 and 8 of section 2.

Paragraph 5 of section 2 sets forth the finding of the Congress that among the population of native people in the United States, Native Hawaiians experience the highest percentage of housing problems in the United States—specifically, forty-nine percent of the Native Hawaiian population experience housing problems as compared to forty-four percent of the American Indian and Alaska Native population, and as compared to twenty-seven percent for all other households in the United States. Paragraph 5 of section 2 also sets forth the finding of the Congress that overcrowding in Native Hawaiian households is thirty-six percent as compared to three percent for all other households in the United States.

Pagraph 6 of section 2 sets forth the findings of the Congress that the needs of the population of Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are the most severe, as evidenced by the finding that the percentage of overcrowding in Native Hawaiian households on the Hawaiian Home Lands is thirty-six percent and that ninety-five percent of Native Hawaiians who are eligible to reside on the Hawaiian Home Lands, or approximately thirteen thousand Native Hawaiians, are in need of housing.

Paragraph 7 of section 2 sets forth the finding of the Congress that under the guidelines of the Department of Housing and Urban Development, 70.8 percent of Native Hawaiians who either reside on the Hawaiian Home Lands or who are eligible to do so have incomes that fall below the median family income, and fifty percent of Native Hawaiians who either reside on the Hawaiian Home Lands or who are eligible to do so have incomes below thirty percent of the median family income.

Paragraph 8 of section 2 sets forth the finding of the Congress that one-third of those Native Hawaiians who are eligible to reside on the Hawaiian Home Lands pay more than thirty percent of their income for shelter, and one-half of those Native Hawaiians who are eligible to reside on the Hawaiian Home Lands face overcrowding in their households.

Paragraph 9 of section 2 sets forth the finding of the Congress that the extraordinarily severe housing needs of Native Hawaiians demonstrate that Native Hawaiians who either reside on the Hawaiian Home Lands or who are eligible to reside on the Hawaiian

Home Lands have been denied equal access to Federal low-income housing assistance programs available to other eligible American families, and that a more effective means of addressing the housing needs of Native Hawaiians must be authorized.

Paragraph 10 of section 2 sets forth the finding of the Congress that in order to address the continuing prevalence of extraordinarily severe housing needs among Native Hawaiians who either reside on the Hawaiian Home Lands or who are eligible to reside on the Hawaiian Home Lands, it is necessary to extend the Federal low-income housing assistance available to American Indians and Alaska Natives under the Native American Housing Assistance and Self-Determination Act of 1996 to those Native Hawaiians, consistent with the recommendations of the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

Paragraph 11 of section 2 sets forth the finding of the Congress that under the treaty-making power of the United States, the Congress had the authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and pursuant to Article 1, section 8, clause 3 of the United States Constitution, the authority which is vested in the Congress to address matters affecting the indigenous peoples of the United States, includes the authority to address matters affecting Native Hawaiians.

Paragraph 12 of section 2 sets forth the finding of the Congress that through treaties, Federal statutes, and Federal court rulings, the United States has recognized and reaffirmed that the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and that the aboriginal, indigenous people of the United States have a continuing right to autonomy in their internal affairs and an ongoing right of self-determination and self-governance that has never been extinguished

Paragraph 13 of section 2 sets forth the finding of the Congress that the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States through the enactment of Federal laws which include Native Hawaiians in the Native American Programs Act of 1974, the American Indian Religious Freedom Act, the National Museum of the American Indian Act, the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, the Native American Languages Act of 1992, the American Indian, Alaska Native and Native Hawaiian Culture and Arts Development Act, the Job Training Partnership Act, and the Older Americans Act of 1965.

Paragraph 14 of section 2 sets forth the finding of the Congress that in the area of housing, the United States has recognized and reaffirmed its political relationship with the Native Hawaiian people through: (1) the enactment of the Hawaiian Homes Commission Act, 1920, which set aside approximately 200,000 acres of public lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate a landless and dying people; (2) the enactment of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1958 (73 Stat. 4) by ceding title to the public lands formerly held by the United States to the

State of Hawaii and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, and by transferring to the State of Hawaii what the United States deemed to be a trust responsibility for the administration of the Hawaiian Home Lands but retaining the exclusive authority to enforce the trust, and the exclusive right of the United States to consent to any actions affecting the land which comprise the corpus of the trust as well as the exclusive right to consent to any amendment to the Hawaiian Homes Commission Act, 1920, affecting the rights of beneficiaries under the Act, enacted by the legislature of the State of Hawaii; (3) the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes on Hawaiian Home Lands under the National Housing Act; (4) authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101–235; (5) the inclusion of Native Hawaiians in the definition under section 3672 of title 38, United States Code, applicable to subchapter V of chapter 37 of title 38, United States Code, relating to a housing loan program for Native American veterans; and (5) the enactment of the Hawaiian Home Lands Recovery Act which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Home Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory.

Section 3.—Section 3 amends the Native American Housing Assistance and Self-Determination Act of 1996 by adding a new Title VIII at the end of that Act, to provide authority for the provision of housing assistance to low-income Native Hawaiian families.

TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

Section 801.—Section 801 sets forth the definitions for purposes of Title VIII.

Section 801(1).—Paragraph 1 of section 801 sets forth the definition of the term "Department of Hawaiian Home Lands". The term "Department of Hawaiian Home Lands" or "Department", as used in Title VIII, means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920.

Section 801(2).—Paragraph 2 of section 801 sets forth the definition of the term "Director". The term "Director", as used in Title VIII, means the Director of the Department of Hawaiian Home Lands.

Section 801(3).—Paragraph 3 of section 801 sets forth the definition of the term "elderly family" and "near-elderly family". Subparagraph (A) of paragraph 3 provides that the term "elderly family" or "near-elderly family", as used in Title VIII, means a family whose head, or his or her spouse, or whose sole member is for an elderly family, an elderly person or for a near-elderly family, a near-elderly person. Subparagraph (B) of paragraph 3 provides that the term "elderly family" or "near-elderly family" includes two or more elderly persons or near-elderly persons, as the case may be, living together; and one or more persons elderly or near-elderly

persons living with one or more persons determined under the housing plan to be essential to their care or well-being.

Section 801(4).—Paragraph 4 of section 801 sets forth the definition of "Hawaiian Home Lands". The term "Hawaiian Home Lands", as used in Title VIII, means lands that have the status as Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act or lands acquired pursuant to the Hawaiian Homes Commission Act.

Section 801(5).—Paragraph 5 of section 801 sets forth the definition of the term "Housing Area". The term "housing area", as used in Title VIII, means an area of the Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this Act.

Section 801(6).—Paragraph 6 of section 801 sets forth the definition of the term "Housing Entity". The term "housing entity", as used in Title VIII, means the Department of Hawaiian Home Lands.

Section 801(7).—Paragraph 7 of section 801 sets forth the definition of the term "Housing Plan". The term "housing plan", as used in Title VIII, means a plan developed by the Department of Hawaiian Home Lands.

Section 801(8).—Paragraph 8 of section 801 sets forth the definition of the term "Median Income". The term "median income", as used in Title VIII, means, with respect to an area that is a Hawaiian housing area, the greater of the median income for the Hawaiian housing area, which is to be determined by the Secretary of Housing and Urban Development, or the median income for the State of Hawaii.

Section 801(9).—Paragraph 9 of section 801 sets forth the definition of the term "Native Hawaiian". The term "Native Hawaiian", as used in Title VIII, has the meaning given the term "Native Hawaiian" in section 201 of the Hawaiian Homes Commission Act, 1920.

Section 802.—Section 802 provides authority for the provision of block grants for affordable housing activities.

Section 802(a).—Section 802(a) provides that for each fiscal year, the Secretary of Housing and Urban Development shall, to the extent amounts are made available to carry out Title VIII, make a grant under Title VIII to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families residing on or near the Hawaiian Home Lands.

Section 802(b).—Section 802(b) provides that the Secretary of Housing and Urban Development may make a grant under Title VIII to the Department of Hawaiian Home Lands for a fiscal year but only if the Director has submitted a housing plan for the fiscal year to the Secretary and the Secretary has made a determination under section 804 that the housing plan complies with the requirements of section 803. The Secretary may waive the applicability of these requirements, in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with the requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

Section 802(c).—Section 802(c) provides that except as provided in section 802(e), the amounts provided under a grant under sec-

tion 802 may be used only for affordable housing activities under Title VIII that are consistent with a housing plan approved under section 804.

Section 802(d).—Section 802(d) provides that the Secretary of Housing and Urban Development shall by regulation authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts received under Title VIII for any reasonable administrative and planning expenses of the Department relating to carrying out Title VIII and activities assisted with those amounts. The administrative and planning expenses include costs for the salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under Title VIII, and expenses incurred in preparing a housing plan under section 803.

Section 802(e).—Section 802(e) provides that the Director shall make all reasonable efforts, consistent with the purposes of Title VIII, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing a housing plan that has been approved by the Secretary of Housing and Urban Development under section 803.

Section 802(f).—Section 802(f) provides that the Secretary of Housing and Urban Development shall be guided by the relevant program requirements of titles I, II and IV of the Native American Housing Assistance and Self-Determination Act in the implementation of housing assistance programs for Native Hawaiians under Title VIII. The Secretary may make exceptions to, or modifications of, program requirements for Native American housing assistance set forth in titles I, II and IV as necessary and appropriate to meet the unique situation and housing needs of Native Hawaiians.

Section 803.—Section 803 sets forth the requirements associated with housing plans.

Section 803(a).—Section 803(a) provides that the Secretary shall require the Director to submit a housing plan under section 803 for each fiscal year and provide for the review of each plan submitted under section 803.

Section 803(b).—Section 803(b) provides that each housing plan under section 803 shall be in a form prescribed by the Secretary and contain, with respect to the five-year period beginning with the fiscal year for which the plan is submitted: (1) a general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department; (2) a statement of the goals and objectives of the Department of Hawaiian Home Lands to enable the Department to serve the needs identified during the period; and (3) an overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

Section 803(c).—Section 803(c) provides that a housing plan under section 803 shall be in a form prescribed by the Secretary of Housing and Urban Development and contain information relating to the fiscal year for which the assistance under Title VIII is to be made available, including—

A statement of the goals and objectives to be accomplished during the period covered by the plan;

A statement of the housing needs of the low-income families served by the Department and the means by which those needs will be addressed during the period covered by the plan, including a description of the estimated housing needs and the need for assistance for the low-income families to be served by the Department, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs of those families and needs for various categories of housing assistance, and a description of the estimated housing needs for all families to be served by the Department;

An operating budget for the Department in a form prescribed by the Secretary that includes an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of Title VIII, including an explanation of the manner in which amounts made available will be used to leverage additional resources and the uses to which the resources will be committed, including eligible and required affordable housing activities and administrative expenses;

A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including—

A description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources, private market housing and the manner in which the characteristics influence the decision of the Department to use grant amounts to be provided under Title VIII for rental assistance, the production of new units, the acquisition of existing units, or the rehabilitation of units;

A description of the structure, coordination, and means of cooperation between the Department and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, the use of loan guarantees under section 184A of the Housing and Community Development Act of 1992, and other housing assistance provided by the United States, including loans, grants, and mortgage assistance,

A description of the manner in which the plan will address the needs identified;

A description of any existing or anticipated home ownership programs and rental programs to be carried out during the period covered by the plan and the requirements and assistance available under those programs;

A description of any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan, and the requirements and assistance available under those programs;

A description of all other existing or anticipated housing assistance provided by the Department during the period covered by the plan including transitional housing, homeless housing, college housing, and supportive services housing, and the requirements and assistance available under such programs;

A description of any housing to be demolished or disposed of, a timetable for that demolition or disposition, and any other information required by the Secretary with respect to that demolition or disposition;

A description of the manner in which the Department will coordinate with welfare agencies in the State of Hawaii to ensure that residents of affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

A description of the requirements established by the Department to promote the safety of residents of affordable housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the Department and local law enforcement officials; and

A description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities;

Evidence of compliance that shall include, as appropriate—

A certification that the Department will comply with title VI of the Civil Rights Act of 1964 or with title VIII of the Civil Rights Act of 1968 in carrying out Title VIII, to the extent that such title is applicable, and other applicable Federal statutes;

A certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this title, in compliance with such requirements as may be established by the Secretary;

A certificate that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under Title VIII;

A certificate that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or home buyer payments are determined, for housing assisted with grant amounts provided under Title VIII; and

A certificate that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under Title VIII.

Section 803(d).—Section 803(d) addresses the applicability of civil rights statutes.

Section 803(d)(1).—Section 803(d)(1) provides that to the extent that the requirements of title VI of the Civil Rights Act of 1964 or of title VIII of the Civil Rights Act of 1968 apply to assistance provided under title VIII of this Act, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under title VIII of this Act to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or to an eligible family on the basis that the family is a Native Hawaiian family.

Section 803(d)(2).—Section 803(d)(2) provides that program eligibility under title VIII of this Act may be restricted to Native Hawaiians. Subject to the proviso, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability.

Section 803(e).—Section 803(e) provides that as condition of receiving grant amounts under title VIII of this Act, the Department of Hawaiian Home Lands shall, to the extend practicable, work with or subcontract with private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grants.

Section 804.—Section 804 addresses the Secretary's review of the housing plans to be submitted under section 803.

Section 804(a)(1).—Section 804(a)(1) provides that the Secretary is to conduct a review of a housing plan submitted to him pursuant to section 803 to ensure that the plan complies with the requirements of section 803, and the Secretary shall have the discretion to review the plan only to the extent that the Secretary considers the review necessary.

Section 804(2).—Section 804(a)(2) provides that no later than sixty days after receiving a plan which is required to be submitted pursuant to section 803, the Secretary is to notify the Director of the Department of Hawaiian Home Lands as to whether the plan complies with the requirements of section 803, and if the Secretary does not notify the Director as required under section 804(a)(2) and section 804(b) upon the expiration of the sixty day period, the plan shall be considered to have been determined to comply with the requirements under section 803 and the Director shall be considered to have been notified of compliance.

Section 804(b).—Section 804(b) provides that if the Secretary determines that a plan submitted under section 803 does not comply with the requirements of section 803, the Secretary shall specify in the notice under section 804(a) the reasons for noncompliance and any modifications that are necessary for the plan to meet the requirements of section 803.

Section 804(c).—Section 804(c) provides that after the Director of the Department of Hawaiian Home Lands submits a housing plan under section 803, or any amendment or modification to the plan, to the Secretary, to the extent that the Secretary considers such an action to be necessary to make a determination under section 804(c), the Secretary shall review the plan, including any amendments or modifications thereto, to determine whether the contents of the plan set forth the information required by section 803 to be contained in the housing plan, whether the contents of the plan are

consistent with information and data available to the Secretary, and whether the contents of the plan are not prohibited by or inconsistent with any provision of this Act or any other applicable law. If the Secretary makes a determination under section 804(c) that any of the appropriate certifications under section 803(c)(2)(E) are not included in the plan, the plan shall be considered to be incomplete.

Section 804(d).—Section 804(d) provides that after a section 803 plan has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of section 803 for any succeeding fiscal year (with respect to information included for the five-year period under section 803(b) or for the one-year period under section 803(c)) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted. However, the Director must submit a complete plan under section 803 not later than four years after submitting an initial plan under section 803, and not less frequently than every four years.

Section 804(e).—Section 804(e) provides that section 804 and section 803 are to take effect on the date provided by the Secretary pursuant to section 807(a) to provide for timely submission and review of the housing plan as necessary for the provision of assistance under title VIII of this Act for fiscal year 2000.

Section 805.—Section 805 addresses the treatment of program income and labor standards.

Section 805(a).—Section 805(a) provides that the Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under title VIII of this Act if that income was realized after the initial disbursement of grant amounts received by the Department and the Director agrees to use the program income for affordable housing activities in accordance with the provisions of title VIII of this Act. Section 805(a) further provides that the Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on whether the Department retains program income under this section or the amount of any such program income retained. Section 805(a) provides that the Secretary may be regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of section 805(a) would create an unreasonable administrative burden on the Department.

Section 805(b)(1).—Section 805(b)(1) provides that any contract or agreement for assistance, sale, or lease pursuant to title VIII of this Act shall contain a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation of the affordable housing project involved, and a provision that an amount not less than wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the Davis-Bacon Act shall be paid to all laborers and me-

chanics employed in the development of the affordable housing involved.

Section 805(b)(2).—Section 805(b)(2) provides that the requirements of section 805(b)(1) and the provisions relating to wages required under section 805(b)(1) in any contract or agreement for assistance, sale, or lease under title VIII of this Act, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

Section 806.—Section 806 addresses environmental review, decision making and action under the National Environmental Policy Act.

Section 806(a)(1)(A).—Section 806(a)(1)(A) provides that the Secretary may carry out the alternative environmental protection procedures described in section 806(a)(1)(B) in order to ensure that the policies of the National Environmental Policy Act of 1969 and other provisions of law that further the purposes of the Act, as specified in regulations issued by the Secretary, are most effectively implemented in connection with the expenditure of grant amounts provided under title VIII of this Act and to ensure to the public undiminished protection of the environment.

Section 806(a)(1)(B).—Section 806(a)(1)(B) provides that in lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the Department of Hawaiian Home Lands if the Director of the Department assumes all of the responsibilities for environmental review, decision-making, and action under the National Environmental Policy Act of 1969, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

Section 806(a)(2).—Section 806(a)(2) provides that the Secretary is to issue regulations to carry out section 806(a)(2) only after consultation with the Council on Environmental Quality. Section 806(a)(2) further provides that the regulations issued under this paragraph are to provide for the monitoring of the environmental reviews performed under section 806(a)(2), facilitate training for the performance of such reviews if the Secretary in his discretion determines that such training is necessary or desirable, and provide for the suspension or termination of the assumption of responsibilities under section 806(a)(2).

Section 806(a)(3).—Section 803(a)(3) provides that the duty of the Secretary under section 806(a)(2)(B) is not to be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts will respect to any specific release of funds.

Section 806(b).—Section 806(b) provides that the Secretary is to authorize the release of funds subject to the procedures under section 806 only if, not less than fifteen days before the Secretary's approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such a release accompanied by a certification that meets the requirements of section 806(c). Section 806(b)

further provides that the Secretary's approval of a certification is to be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the Secretary's regulations specify to the extent that those responsibilities relate to the release of funds for projects that are covered by the Secretary's certification.

Section 806(c).—Section 806(c) provides that a certification under the procedures authorized in section 806 are to be in a form acceptable to the Secretary, be executed by the Director of the Department of Hawaiian Home Lands, specify that the Department of Hawaiian Home Lands has fully carried out it responsibilities as set forth in section 806(a), and specify that the Director consents to assume the status of a responsible Federal official under the National environmental Policy Act of 1969 and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply be reason of section 806(a). Section 806(c) further provides that a certification under this procedures of section 806(c) shall specify that the Director is authorized and consents on behalf of the Department of Hawaiian Home Lands and that the Director accepts the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director of the Department of Hawaiian Home lands as such an official.

Section 807.—Section 807 provides that the Secretary shall issue final regulations necessary to carry out the provisions of title VIII of this Act no later than June 1, 1999.

Section 808.—Section 808 provides that except as otherwise expressly provided in title VII of this Act, title VIII of this Act shall take effect on June 1, 1999.

Section 809.—Section 809 addresses affordable housing activities.

Section 809(a)(1).—Section 809(a)(1) provides that the national objectives of title VIII of this Act are to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families; to ensure better access to private mortgage markets and to promote the self-sufficiency of low-income Native Hawaiian families; to coordinate activities to promote the self-sufficiency of low-income Native Hawaiian families; to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, state and local activities to further economic and community development; to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and to promote the development of private capital markets, and allow the markets to operate and grow, thereby benefitting Native Hawaiian communities.

Section 809(a)(2).—Section 809(a)(2) provides that assistance for eligible housing activities under title VII of this Act shall be limited to low-income Native Hawaiian families except that the Director may provide assistance for home ownership activities under section 810(b), model activities under section 810(f), or loan guarantee activities under section 184A of the Housing and Community Development Act of 1992 to Native Hawaiian families who are not low-income families, to the extent that the Secretary approves the activities under section 184A to address a need for housing for those families that cannot be reasonably met without such assist-

ance. The Secretary is to establish limitations on the amount of assistance that may be provided under the title VIII of this Act for activities for families that are not low-income families. However, section 809(a)(2) further provides that the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this title to a family that is not composed of Native Hawaiians if the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families and the need for housing for the family cannot be reasonably met without such assistance.

Section 809(a)(2) provides that a housing plan submitted under section 803 may authorize a preference, to the extent practicable, for housing or housing assistance provided through affordable housing activities assisted with grant amounts provided under title VIII of this Act to be provided to families that are eligible to reside on the Hawaiian Home Lands. In any instance in which a housing plan provides for such a preference, the Director is to ensure that housing activities which are assisted with grant amounts under title VIII of this Act are subject to that preference. Section 809(a)(2) further provides that as a condition of receiving grant amounts under title VIII of this Act, and to the extent practicable, the Department of Hawaiian Home Lands is to work with or subcontract with private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

Section 810(a).—Section 810(a) provides that affordable housing activities under section 810 are activities conducted in accordance with the requirement of section 811 to develop or to support affordable housing for rental or home ownership or provide housing services with respect to affordable housing, through the activities described in section 810(b).

Section 810(b)(1).—Section 810(b)(1) provides that the activities described in section 810(b) are the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, the development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities.

Section 810(b)(2).—Section 810(b)(2) describes the housing services which are authorized under title VII of this Act, and establishes that the provision of housing-related services for affordable housing includes counseling in connection with rental or home ownership assistance, the establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to section 810.

Section 810(b)(3).—Section 810(b)(3) describes the housing management services that are authorized under title VIII of this Act, and establishes that the provision of management services for affordable housing includes the preparation of work specifications,

loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

Section 810(b)(4).—Section 810(b)(4) establishes that the activities authorized under title VIII of this Act include the provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

Section 810(b)(5).—Section 810(b)(5) establishes that the activities authorized under title VIII of this Act include housing activities under model programs that are designed to carry out the purposes of title VIII and specifically approved by the Secretary as appropriate for the purposes of title VIII.

Section 811(a).—Section 811(a) provides that as a condition of receiving grant amounts under title VIII, the Director is to develop written policies governing rents and home buyer payments charged for dwelling units assisted under title VIII, including methods by which such rents and home buyer payments are determined. However, in the case of any low-income family residing in a dwelling unit assisted with grant amounts under title VIII, the monthly rent or home buyer payment, as applicable, for that dwelling unit may not exceed thirty percent of the monthly adjusted income of that family.

Section 811(b).—Section 811(b) provides that using amounts of any grants received under title VIII, the Director is to reserve and use for operating under section 810 such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing. Section 811(b) further provides that section 811(b) may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.

Section 811(c).—Section 811(c) provides that as a condition of receiving grant amounts under title VIII, the Director is to require adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under title VIII.

Section 811(d).—Section 811(d) provides that as a condition of receiving grant amounts under title VIII, the Director is to develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under title VIII.

Section 811(e).—Section 811(e) provides that as a condition to receiving grant amounts under title VIII, the Director is to develop policies governing the management and maintenance of housing assisted with grant amounts under title VIII.

Section 812(a).—Section 812(a) provides that subject to section 811 and an applicable housing plan approved under section 803, the Director is to have the discretion to use grant amounts for affordable housing activities through the use of equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, the leveraging of private investments, or any other form of assistance that the Secretary determines to be consistent with the purposes of title VIII, and the right to establish the terms of assistance provided with funds referred to in section 812(a).

Section 812(b).—Section 812(b) provides authority for the Director of the Department of Hawaiian Home Lands to invest grant amounts in investment securities and other obligations, as approved by the Secretary, for the purposes of carrying out affordable housing activities.

Section 813.—Section 813 addresses low-income requirements and income targeting.

Section 813(a).—Section 813 provides that housing is to qualify for affordable housing for purposes of title VIII of this Act if the conditions set forth in section 813(a)(1) and 813(a)(2) are met.

Section 813(a)(1).—Section 813(a)(1) provides that each dwelling unit in the housing will qualify for affordable housing if, in the case of rental housing, the housing is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy by the family of that unit, and in the case of housing for homeownership, the housing is made available for purchase only by a family that is a low-income family at the time of the purchase.

Section 813(a)(2).—Section 813(a)(2) provides that each dwelling unit in the housing will remain affordable housing, in accordance with binding commitments satisfactory to the Secretary for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of title VIII of this Act, except upon a foreclosure by a lender, or upon other transfer in lieu of foreclosure, if that foreclosure or transfer action recognizes any contractual or legal rights of a public agency, nonprofit sponsor, or other person or entity to take an action that would avoid termination of low-income affordability, in the case of foreclosure or transfer ownership in lieu of foreclosure, and is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

Section 813(b).—Section 813(b) provides that notwithstanding the provisions of section 813(a), housing assisted pursuant to section 809(a)(2)(B) is to be considered affordable housing for purposes of title VIII of this Act.

Section 814.—Section 814 sets forth the requirements for leases and criteria for tenant and homebuyer selection.

Section 814(a).—Section 814(a) provides that except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with grant amounts provided under title VIII of this Act, the Director, owner, or manager shall use—

Leases that do not contain unreasonable terms and conditions; leases that require the Director, owner or manager to maintain the housing in compliance with applicable housing codes and quality standards;

Leases that require the Director, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable state or local law;

Leases which specify that, with respect to any notice of eviction or termination, notwithstanding any state or local law, a

resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

Leases that require the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, state, or local law, or for other good cause; and

Leases that provide that the Director, owner, and manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that threatens the health or safety of, or right to peaceful enjoyment of the premises by other residents or employees of the Department, owner, or manager; threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or is criminal activity, including drug-related criminal activity, on or off the premises.

Section 814(b).—Section 814(b) provides that as a condition of receiving grant amounts under title VIII of this Act, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that are consistent with the purpose of providing housing for low-income families; are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and provide for the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 803; and the prompt notification in writing to any rejected applicant of the grounds for that rejection.

Section 815.—Section 815 provides that if the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities authorized by title VIII of this Act, and at any time during the useful life of the housing, the housing does not comply with the requirement under section 813(a)(2), the Secretary shall reduce future grant payments on behalf of the Department by an amount equal to the grant amounts used for that housing, under the authority of section 818(a)(1)(b), or require repayment to the Secretary of any amount equal to those grant amounts.

Section 816.—Section 816 provides that for each fiscal year, the Secretary shall allocate any amounts made available for assistance under this title for the fiscal year, in accordance with the formula established pursuant to section 817, to the Department of Hawaiian Home Lands if the Department complies with the requirements under title VIII of this Act for a grant under title VIII of this Act.

Section 817.—Section 817 addresses the establishment of an allocation formula for the allocation of amounts made available for block grants and the factors for the determination of need.

Section 817(a).—Section 817(a) provides that the Secretary shall, by regulation issued not later than the expiration of the six-month period beginning on the date of enactment of the Native American Housing Assistance and Self-Determination Amendments of 1998, in the manner provided under section 807, establish a formula to provide for the allocation of amounts available for a fiscal year for

block grants under title VIII of this Act in accordance with the requirements of section 817.

Section 817(b).—Section 817(b) provides that the formula established under the authority of section 817(a) is to be based on factors that reflect the needs for assistance for affordable housing activities, including the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary; the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and any other objectively measurable conditions that the Secretary and the Director may specify.

Section 817(c).—Section 817(c) provides that in establishing the formula under the authority of section 817(a), the Secretary is to consider the relative administrative capacities of the Department of Hawaiian Home Lands and other challenges faced by the Department, including geographic distribution within Hawaiian Home Lands, and technical capacity.

Section 817(d).—Section 817(d) provides that section 817 is to take effect on the date of enactment of the Native American Housing Assistance and Self-Determination Amendments of 1998.

Section 818.—Section 818 addresses the remedies available to the Secretary for failure to comply with the requirements of title VIII of this Act.

Section 818(a).—Section 818(a) provides that except as provided in section 818(b), if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has failed to comply substantially with any provision of title VIII of this Act, the Secretary shall terminate payments to the Department under title VIII of this Act; reduce payments to the Department under title VIII of this Act by an amount equal to the amount of such payments that were not expended in accordance with title VIII of this Act; or limit the availability of payments under title VIII of this Act to programs, projects, or activities not affected by the failure to comply. If the Secretary takes any of the actions authorized under section 818(a), the Secretary is to continue that action until the Secretary determines that the failure by the Department to comply with the provision has been remedied by the Department and the Department is in compliance with that provision.

Section 818(b).—Section 818(b) provides that the Secretary may provide technical assistance for the Department, either directly or indirectly, that is designed to increase the capability and capacity of the Director of the Department to administer assistance provided under title VIII of this Act in compliance with the requirements under title VIII of this Act, if the Secretary makes a finding under section 818(a) but determines that the failure of the Department to comply substantially with the provisions of title VIII of this Act is not a pattern or practice of activities constituting willful noncompliance and is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

Section 818(c).—Section 818(c) provides that in lieu of, or in addition to any action that the Secretary may take under section 818(a), if the Secretary has reason to believe that the Department of Hawaiian Home Lands has failed to comply substantially with

any provision of title VIII of this Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation than an appropriate civil action be instituted. Upon receiving the Secretary's referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under title VIII of this Act that was not expended in accordance with title VIII of this Act or for mandatory or injunctive relief.

Section 818(d)(1).—Section 818(d)(1) provides that if the Director receives notice under section 818(a) of the termination, reduction, or limitation of payments under this Act, the Director may, not later than sixty days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary, and upon the filing of any petition, the Director is to transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

Section 818(d)(2).—Section 818(d)(2) provides that the Secretary shall file in a court a record of the proceeding on which the Secretary based the action as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary is to be considered by the court unless the Department has registered objection before the Secretary.

Section 818(d)(3).—Section 818(d)(3) provides that the court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part. If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive. The court may order evidence, in addition to the evidence submitted for review under section 818(d)(3), to be taken by the Secretary, and to be made part of the record. By reason of additional evidence and evidence filed with the court, the Secretary may modify his findings of fact or make new findings, and shall file such modified or new findings and his recommendation, if any, for the modification or setting aside of the original action of the Secretary. With respect to a question of fact, the findings shall be considered to be conclusive if those findings are supported by substantial evidence on the record, and considered as a whole.

Section 818(d)(4).—Section 818(d)(4) provides that except for review by the U.S. Supreme Court, upon the filing of the record under section 818(d)(4) with the court, the jurisdiction of the court shall be exclusive and the judgment of the court shall be final. A judgment from the court under section 818(d)(4) shall be subject to review by the U.S. Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

Section 819.—Section 819 addresses the monitoring of compliance by the Director of the Department of Hawaiian Home Lands.

Section 819(a).—Section 819(a) provides that the Director, through binding contractual agreements with owners or other authorized entities shall ensure long-term compliance with the provisions of title VIII of this Act. The binding contractual agreements with owners or other authorized entities shall provide for the en-

forcement of the provisions of title VIII of this Act by the Department and the Secretary to the extent allowable by Federal and state law, and remedies for breach of the provisions of the binding contractual agreements.

Section 819(b).—Section 819(b) provides that not less frequently than annually, the Director shall review the activities conducted and housing assisted under title VIII of this Act, to assess compliance with requirements of title VIII of this Act. Each review is to include onsite inspection of housing to determine compliance with applicable requirements. The results of each review shall be included in a performance report of the Director submitted to the Secretary under section 820 and made available to the public.

Section 819(c).—Section 819(c) provides that the Secretary is to establish such performance measures as may be necessary to assess compliance with the requirements of title VIII of this Act.

Section 820.—Section 820 addresses the requirements for performance reports.

Section 820(a).—Section 820(a) provides that for each fiscal year, the Director is to review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 803, and submit a report to the Secretary, in a form acceptable to the Secretary, describing the conclusions of the review.

Section 820(b).—Section 820(b) provides that each performance report submitted for a fiscal year is to describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year, and assess the relationship of the use of grant amounts to the goals identified in the housing plan submitted under section 803 as a result of its experiences.

Section 820(c).—Section 820(c) provides that the Secretary is to establish a date for the submission of each performance report, review each performance report, and with respect to each performance report, make such recommendations as the Secretary considers appropriate to carry out the purposes of title VIII of this Act.

Section 820(d).—Section 820(d) provides that in preparing a performance report, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920, and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary, in such manner and at such time as the Director may determine. The report is to include a summary of any comments received by the Director from beneficiaries regarding the program to carry out the housing plan.

Section 821.—Section 821 provides authority for annual performance reviews and audits by the Secretary.

Section 821(a).—Section 821(a) provides that the Secretary shall not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the Director has carried out eligible activities under title VIII of this Act in a timely manner, has carried out and made certifications in accordance with the requirements and the primary objectives of title VIII of this Act and with other applicable laws; and has a continuing capacity to carry out the eligible activities in a timely manner; whether the Director has complied with the hous-

ing plan submitted by the Director under section 803, and whether the performance reports of the Department under section 821 are accurate. Each review conducted under section 821 shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

Section 821(b).—Section 821(b) provides that the Secretary is to give the Department of Hawaiian Home Lands not less than thirty days to review and comment on a report under section 821(b). After taking into consideration the comments of the Department, the Secretary is authorized to revise the report and to make the comments of the Department and the report, with any revisions, readily available to the public not later than thirty days after receipt of the Department's comments.

Section 821(c).—Section 821(c) provides that the Secretary may make appropriate adjustments in the amount of annual grants under title VIII of this Act in accordance with the findings of the Secretary pursuant to reviews and audits under section 821. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under section 821, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

Section 822.—Section 822 provides that to the extent the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under title VIII of this Act relate to amounts provided under title VIII, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General. The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

Section 823.—Section 823 provides that no later than ninety days after the conclusion of each fiscal year in which assistance under title VIII of this Act is made available, the Secretary shall submit a report to the Congress that contains a description of the progress made in accomplishing the objectives of title VIII of this Act, a summary of the use of funds available under title VIII of this Act during the preceding fiscal year, and a description of the aggregate outstanding loan guarantees under section 184A of the Housing and Community Development Act of 1992. The Secretary may require the Director to submit such reports and other information as may be necessary in order for the Secretary to prepare the report required under section 823(a).

Section 824.—Section 824 provides authority for the appropriation of funds for the Department of Housing and Urban Development for grants under title VIII of this Act of such sums as may be necessary for each of fiscal year 1999, 2000, 2001, 2002 and 2003.

Section 4.—Section 4 amends subtitle E of title I of the Housing and Community Development Act of 1992 by inserting after section 184, the following provisions—

Section 184A.—Section 184A provides for loan guarantees for Native Hawaiian Housing.

Section 184A(a)—Section 184A(a) establishes the definitions for purposes of the amendment to subtitle E of title I of the Housing and Community Development Act of 1992.

Section 184A(a)(1).—Section 184A(a)(1) provides that for purposes of section 184A, the term "Department of Hawaiian Home Lands" means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920.

Section 184A(a)(2).—Section 184A(a)(2) provides that for purposes of section 184A, the term "eligible entity" means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, or private nonprofit or for profit organizations experienced in the planning and development of affordable housing for Native Hawaiian.

Section 184A(a)(3).—Section 184A(a)(3) provides that for purposes of section 184A, the term "family" means one or more persons maintaining a household, as the Secretary shall by regulation provide.

Section 184A(a)(4).—Section 184A(a)(4) provides that for purposes of section 184A, the term "guarantee fund" means the Native Hawaiian Housing Loan Guarantee Fund established under section 184A(i).

Section 184A(a)(5).—Section 184A(a)(5) provides that for purposes of section 184A, the term "Hawaiian Home Lands" means lands that have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act, 1920, or lands that are acquired pursuant to that Act.

Section 184A(a)(6).—Section 184A(a)(6) provides that for purposes of section 184A, the term "Native Hawaiian" has the meaning given the term "Native Hawaiian" in section 201 of the Hawaiian Homes Commission Act, 1920, as amended.

Section 184A(a)(7).—Section 184A(a)(7) provides that for purposes of section 184A, the term "Office of Hawaiian Affairs" means the entity of that name established under the constitution of the State of Hawaii, as amended.

Section 184A(b).—Section 184A(b) provides that in order to provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets, the Secretary may guarantee an amount not to exceed one hundred percent of the unpaid principal and interest that is due on an eligible loan under section 184A(b).

Section 184A(c).—Section 184A(c) establishes the requirements for an eligible loan.

Section 184A(c)(1).—Section 184A(c)(1) provides that a loan is an eligible loan if that loan is made only to a borrower who is a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, or a private nonprofit organization experience in the planning and development of affordable housing for Native Hawaiians.

Section 184A(c)(2).—Section 184A(c)(2) provides that a loan is an eligible loan if the loan will be used to construct, acquire, or rehabilitate not more than four-family dwellings that are standard housing and are located on Hawaiian Home Lands for which a housing plan submitted under section 803 of the Native American Housing Assistance and Self-Determination Amendments of 1998 applies. The housing plan must be approved by the secretary and must provide for the use of loan guarantees under section 184A to provide affordable housing on Hawaiian Home Lands.

Section 184A(c)(3).—Section 184A(c)(3) provides that the loan may be secured by any collateral authorized under applicable Federal or state law.

Section 184A(c)(4)(A).—Section 184A(c)(4)(A) provides that the loan shall be made only by a lender approved by, and meeting qualifications established by the Secretary including any lender described in section 184A(c)(4)(B), except that a loan otherwise insured or guaranteed by an agency of the Federal government or made by the Department of Hawaiian Home Lands from amounts borrowed from the United States shall not be eligible for a guarantee under section 184A.

Section 184A(c)(4)(B).—Section 184A(c)(4)(B) provides that the following lenders shall be considered to be lenders that have been approved by the Secretary—

Any mortgagee approved by the Secretary for participation in the single family mortgage insurance program under title II of the National Housing Act.

Any lender that makes housing loans under chapter 37 of title 38, Untied States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code.

Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949.

Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal government.

Section 184A(c)(5).—Section 184A(c)(5) provides that the loan shall be made for a term not exceeding thirty years, and bear interest, exclusive of the guarantee fee under section 184A(d) and service charges, if any, at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but not to exceed the rate generally charged in the area, as determined by the Secretary, for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal government. The section further provides that the loan must involve a principal obligation not exceeding 97.75 percent of the appraised value of the property as of the date of the loan is accepted for guarantee, or 98.75 percent if the value of the property is $50,000 or less, or the amount approved by the Secretary under section 184A(c) and involve a payment on account of the property in cash or its equivalent or through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

Section 184A(d).—Section 184A(d) provides that before the Secretary approves any loan for guarantee under section 184A(d), the lender shall submit the application for the loan to the Secretary for

examination and if the Secretary approves the application, the Secretary shall issue a certificate under section 184A(d) as evidence of the loan guarantee approved. The Secretary may approve a loan for guarantee under section 184A(d) only if he determines that there is a reasonable prospect of repayment of the loan. A certificate of guarantee issued under section 184A(d) by the Secretary is to serve as conclusive evidence of the eligibility of the loan for guarantee under section 184A(d) and the amount of that guarantee, and shall be incontestable in the hands of the bearer. The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for the obligations made by the Secretary under section 184A(d). Section 184A(d) may not be construed to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation or to bar the Secretary from establishing by regulations that are on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

Section 184A(e) provides that the Secretary shall fix and collect a guarantee fee for the guarantee of a loan under section 184A(e) which may not exceed the amount equal to one percent of the principal obligation of the loan. The fee under section 184A(e) is to be paid by the lender at time of issuance of the guarantee and be adequate to cover expenses and probable losses. The Secretary is to deposit any fees collected under section 184A(e) in the Native Hawaiian Housing Loan Guarantee Fund established under section 184A(j).

Section 184A(f).—Section 184A(f) provides that the liability under a guarantee provided under section 184A shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

Section 184A(g).—Section 184A(g) provides that notwithstanding any other provision of law, any loan guaranteed under section 184A, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal government or of any state or the District of Columbia.

Section 184A(h).—Section 184A(h) provides that if the Secretary determines that any lender or holder of a guarantee certificate under section 184A(c) has failed to maintain adequate accounting records, or to adequately service loans guaranteed under section 184A, or to exercise proper credit or underwriting judgment, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Secretary may take such actions as are authorized in section 184A(h). Upon a determination by the Secretary that a holder of a guarantee certificate under section 184A(c) has failed to carry out an activity outlined in section 184A(h) or has engaged in practices described in section 184A(h), the Secretary is authorized to refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder, bar such lender or holder from acquiring additional loans guaranteed under section 184A, and require that such lender or holder assume not less than ten percent of any loss on further loans made or held by the lender or holder that are guaranteed

under section 184A. In addition, the Secretary may impose a civil monetary penalty on a lender or holder of a guarantee certificate under the section 184A(d) if the Secretary determines that the holder or lender has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under section 184A, or to exercise proper credit or underwriting judgment. A civil monetary penalty imposed under section 184A(h) is to be imposed in the manner and be in an amount provided under section 536 of the National Housing Act with respect to mortgages and lenders under that Act. However, notwithstanding the preceding provisions of section 184A(h), if a loan was made in good faith, the Secretary may not refuse to pay a lender or holder a valid guarantee on that loan, without regard to whether the lender or holder is barred under section 184A(h).

Section 184A(i).—Section 184A(i) provides that if a borrower on a loan guaranteed under section 184A defaults on the loan, the holder of the guarantee certificate is to provide written notice of the default to the Secretary. Upon providing the notice to the Secretary, the holder of the guarantee certificate shall be entitled to payment under the guarantee, subject to the provisions of section 184A, and may proceed to obtain payment in one of the following manners—

The holder may initiate foreclosure proceedings, after providing written notice of that action to the Secretary.

Upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed, as determined pursuant to section 184A(f), plus reasonable fees and expenses as approved by the Secretary.

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

Without seeking foreclosure, or in any case in which a foreclosure proceeding which has been initiated continues for a period in excess of one year, the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interest of the United States.

Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed, as determined under section 184A(f).

The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

Section 184A(i) further provides that before any payment under a guarantee is made, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

Section 184A(i) also authorizes the Secretary to take such action to collect payment from the borrower as the Secretary determines to be appropriate. If a borrower defaults on a loan guaranteed under section 184A that involves a security interest in restricted Hawaiian Home Land property, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to another eligible Hawaiian family or to the Department of Hawaiian Home Lands. Thereafter, if the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

Section 184A(j)(1).—Section 184A(j)(1) provides authorization for the establishment in the United States Treasury a fund to be known as the Hawaiian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under section 184A.

Section 184A(j)(2).—Section 184A(j)(2) provides that the Guarantee Fund is to be credited with: any amount, claims, notes, mortgages, contracts, and property acquired by the Secretary under section 184A and any collections and proceeds therefrom; any amounts appropriated pursuant to section 184A(j)(7); any guarantee fees collected under section 184A(d) and any interest or earnings on amounts invested under section 184A(j)(4).

Section 184A(j)(3).—Section 184A(j)(3) provides that the amounts in the Guarantee Fund shall be available, to the extent provided in appropriations Act, for—

Fulfillng any obligations of the Secretary with respect to loans guaranteed under section 184A, including the costs, as that term is defined in section 502 of the Federal Credit Reform Act of 1990, of such loans;

Paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under section 184A or held by the Secretary;

Acquiring such security property at foreclosure sales or otherwise;

Paying administrative expenses in connection with section 184A; and

Reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds or owns pursuant to section 184A.

Section 184A(j)(4).—Section 184A(j)(4) provides that any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required at the time of the determination to carry out section 184A may be invested in obligations of the United States.

Section 184A(j)(5).—Section 184A(j)(5) provides that the authority of the Secretary to enter into commitments to guarantee loans under section 184A shall be effective for any fiscal year to the extend, or in such amounts as, are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated. Section 184A(j)(5) further provides that the authority of the Secretary to enter into commitments to

guarantee loans under section 184A shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriations Acts to cover the costs, as that term is defined in section 502 of the Federal Credit Reform Act of 1990, of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to section 184A(j)(5) shall remain available until expended. Subject to these limitations, the Secretary may enter into commitments to guarantee loans under section 184A for each of fiscal years 1999, 2000, 2001, 2002, and 2003 with an aggregate outstanding principal amount not exceeding $100,000,000 for each fiscal year.

Section 184A(j)(6).—Section 184A(j)(6) provides that all liabilities and obligations of the assets credited to the Guarantee Fund under section 184A(j)(2) shall be liabilities and obligations of the Guarantee Fund.

Section 184A(j)(7).—Section 184(j)(7) provides authorization for appropriations to the Guarantee Fund to carry out section 184A such sums as necessary be necessary for each of fiscal years 1999, 2000, 2001, 2002, and 2003.

Section 184A(k)(1).—Section 184A(k)(l) provides that the Secretary shall, by regulation, establish housing safety and quality standards to be applied for use under section 184A.

Section 184A(k)(2).—Section 184A(k)(2) provides that the standards are to provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under section 184A and require each dwelling unit in any housing to be decent, safe, sanitary, and modest in size and design; conform with applicable general construction standards for the region in which the housing is located; contain a plumbing system that uses a properly installed system of piping, includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower, and uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable country or state; contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate country, state or national code; be not less than the size provided under the applicable locally-adopted standards for size of dwelling units, except that the Secretary, upon request of the Department of Hawaiian Home Lands, may waive the size requirements under section 184A(k)(2); and conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act, unless the Secretary determines that the requirements are not applicable.

Section 184A(l).—Section 184A(l) provides that to the extent that the requirements of title VI of the Civil Rights Act of 1964 or of title VIII of the Civil Rights Act of 1968 apply to a guarantee provided under section 184A(l), nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 109, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1998.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 109, Native American Housing Assistance and Self-Determination Amendments of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for federal costs are Carla Pedone and Susanne Mehlman. The contact for state and local impact is Leo Lex.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S.109—Native American Housing Assistance and Self-Determination Amendments of 1998

Summary.—S.109 would expand housing assistance of Native Hawaiians by extending to them the same types of federal housing programs available to American Indians and Alaska Natives (AIANs). The bill would authorize block grants for affordable housing activities by amending the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). In addition, it would provide loan guarantees for mortgages for owner- or renter-occupied housing by amending section 184 of the Housing and Community Development Act of 1992.

S. 109 would authorize appropriations totaling an estimated $215 million over the fiscal years 1999 through 2003, assuming adjustments for inflation. Without adjustments for inflation the total amount authorized would be an estimated $205 million. CBO estimates that enactment of the bill would not affect direct spending and would have a negligible effect on receipts. Nevertheless, pay-as-you go procedures would apply.

This bill would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government.—The estimated budgetary impact of S. 109 is shown in Table 1. CBO estimates that the bill would authorize appropriations of $41 million in 1999; authorizations would increase to $45 million in 2003 assuming adjustments for inflation. Outlays from those appropriations would total $3 million in 1999, increasing to $39 million in 2003 with adjustments for inflation and to $37 million without adjustments for inflation.

TABLE 1. ESTIMATED COST TO THE FEDERAL GOVERNMENT

	By fiscal year, in millions of dollars					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
With Adjustments for Inflation						
Spending under current law:						
Estimated authorization level [1]	605	646	661	676	0	0
Estimated outlays	73	240	383	508	514	449
Proposed changes:						
Estimated authorization level	0	41	42	43	44	45
Estimated outlays	0	3	16	26	33	39
Spending under S. 109:						
Estimated authorization level [1]	605	687	703	719	44	45
Estimated outlays	73	243	399	534	547	488
Without Adjustments for Inflation						
Spending under current law:						
Estimated authorization level [1]	605	633	633	633	0	0
Estimated outlays	73	239	379	496	497	431
Proposed changes:						
Estimated authorization level	0	41	41	41	41	41
Estimated outlays	0	3	16	25	32	37
Spending under S. 109						
Estimated authorization level [1]	605	674	674	674	41	41
Estimated outlays	73	242	395	521	529	468

[1] The 1998 level is the amount appropriated for that year for NAHASDA and Indian Loan guarantees. The levels in subsequent years are estimated authorization amounts.

The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 600 (income security).

Basis of estimate.—The bill stipulates that the provisions would take effect on June 1, 1999. CBO assumes that the authorized amounts would be fully funded each fiscal year.

Block grants for affordable housing activities

Section 3 of S. 109 would add title VIII—Housing Assistance for Native Hawaiians—to NAHASDA. That title would make Native Hawaiians eligible for the types of block grants that are available under current law to American Indians and Alaska Natives. The block grants would be provided by the Department of Housing and Urban Development (HUD) to the Department of Hawaiian Home Lands, an agency of the government of the state of Hawaii. That agency would in turn distribute the grants by formula to the various areas of Hawaiian Home Lands eligible to receive funds. Activities eligible for funding would include the acquisition, development, and rehabilitation of affordable rental or owner-occupied housing, and the provision of housing services such as home ownership counseling, self-sufficiency counseling, housing management services, and crime prevention activities. The housing assistance would generally be limited to Native Hawaiian families who live on or near Hawaiian Home Lands and who have incomes not exceeding 80 percent of the area median income, adjusted for family size. Under the bill's definition, Native Hawaiians are people with at least 50 percent Hawaiian ancestry—an estimated 69,000 persons at present.

S. 109 would authorize, for each of the fiscal years 1999 through 2003, the appropriations necessary to carry out the block grant program for Native Hawaiians. CBO estimates that the authorization

for fiscal year 1999 would be $33 million, increasing gradually with inflation to $37 million in 2003 (see Table 2).

The estimated amounts are based on the assumption that appropriations for the Native Hawaiian block grants would be proportional to the amount that was appropriated for fiscal 1998 under NAHASDA. The proportion was estimated so as to reflect the need for assistance to Native Hawaiians relative to the need for all tribes, with need defined by current regulations. Under current policy, a share of annual appropriations is first allocated to operate and maintain existing federally assisted Indian housing. Native Hawaiians would not qualify for this funding component because there is no federally assisted housing on the Hawaiian Home Lands. The remaining funds are distributed among Indian tribes according to a needs-based formula, which is based on seven factors, including the number of persons in the tribe, the number of households with various types of housing problems, and the number of households in various income categories. The percentage of funds each tribe receives is adjusted further for local housing development costs relative to the national average.

TABLE 2. ESTIMATED AUTHORIZATIONS BY PROGRAM TYPE

	By fiscal year, in millions of dollars				
	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
With Adjustments for Inflation					
Block grants:					
Estimated authorization level	33	34	35	36	37
Estimated outlays	1	7	15	25	31
Loan guarantees:					
Estimated authorization level	8	8	8	8	8
Estimated outlays	2	9	11	8	8
Total:					
Estimated authorization level	41	42	43	44	45
Estimated outlays	3	16	26	33	39
Without Adjustments for Inflation					
Block grants:					
Estimated authorization level	33	33	33	33	33
Estimated outlays	1	6	14	24	29
Loan guarantees:					
Estimated authorization level	8	8	8	8	8
Estimated outlays	2	9	11	8	8
Total:					
Estimated authorization level	41	41	41	41	41
Estimated outlays	3	15	25	32	37

Based on data provided by HUD, the Department of Hawaiian Home Lands, and a recent study by the Urban Institute on housing problems of Native Hawaiians, CBO estimates that in 1998 Native Hawaiians would have received roughly 8.6 percent of the needs-based component if they had been eligible for NAHASDA funding. In 1998, that component amounted to $347 million of the $600 million appropriated under NAHASDA. In order not to diminish funding for AIANs, it would be necessary to increase the needs-based component by about 9.4 percent or $33 million.

Loan guarantees

Section 4 of S. 109 would establish a loan guarantee program for Native Hawaiian housing similar to the current Indian Housing Loan Guarantee program authorized under section 184 of the Housing and Community Development Act of 1992. HUD would be authorized to guarantee up to $100 million of loans each fiscal year over the 1999–2003 period. CBO assumes that the 1999 subsidy rate for such loan guarantees would be similar to that under the existing program—about 8.13 percent. CBO estimates that such a program would require an appropriation of about $8 million in fiscal year 1999 and total appropriations of about $40 million over the next five years (see Table 2).

Section 4 also would provide for civil penalties against lenders or holders of a guarantee certificate who have intentionally failed to meet certain requirements. Payments of such penalties would be recorded as miscellaneous receipts to the Treasury. CBO expects that any increase in penalty collections would be insignificant.

Pay-as-you-go considerations.—The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because the civil penalties that would be imposed by section 4 of the bill would constitute receipts, pay-as-you-go procedures would apply. However, CBO estimates that those receipts would be insignificant.

Intergovernmental and private-sector impact.—This bill would not impose any intergovernmental or private-sector mandates as defined in UMRA. The bill would provide funds to the state of Hawaii in the form of housing assistance grants, and any costs would be incurred as a condition of receiving those grants. The state would also be eligible to receive federal guarantees for low-income housing loans.

Estimate prepared by.—Federal costs: Carla Pedone and Susanne Mehlman. Impact on State, local, and tribal governments: Leo Lex. Impact on the private sector: Lesley Frymier.

Estimate approved by.—Paul N. Van de Water, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The position of the Administration on S. 109, as contained in a letter to the Committee on Indian Affairs from the U.S. Department of Justice, is set forth below:

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 16, 1998

The Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to your request for the legal views of the Department of Justice on the Inouye substitute amendment for S. 109, a bill to provide Federal housing assistance to Native Hawaiians. S. 109 would add a new title to the Native American Housing and Self-Determination Act of 1996, Pub. L. 104-330, 110 Stat. 4016 (1996) (hereafter "NAHASDA") and add Native Hawaiians to the Indian housing loan guarantee program under 12 U.S.C. § 1715z-13a. The Department of Justice defers to the Department of Housing and Urban Development, the Department of the Interior, and other interested agencies on the policy merits of the legislation. The Department of Justice has comments on three aspects of the bill: 1) compliance with the Equal Protection component of the Fifth Amendment; 2) providing regulatory flexibility for the Secretary of Housing; and 3) guaranteeing the civil rights of Native Hawaiians.

I. Equal Protection

The status of Native Hawaiians in the Federal system raises complex constitutional questions that require a detailed examination of the history and structure of Native Hawaiian communities, the relationships between their members, and the relationships between these communities and Federal and State government authorities. Federal courts have not yet resolved these questions. As a result, it is not clear what level of scrutiny would apply to S. 109 under the Equal Protection component of the Fifth Amendment. A court might conclude that the bill should be subject to rational basis scrutiny as legislation benefitting a politically defined indigenous group. If subject to review under this relatively lenient standard, the bill almost certainly would be found constitutional. However, it can also be argued that the bill would provide a benefit based on a racial classification and thus would be subject to strict scrutiny. To survive that review, the bill would have to be narrowly tailored to advance a compelling governmental interest.

This is "the most demanding test know to constitutional law." City of Boerne v. Flores, 117 S.Ct. 2157, 2171 (1997).

A. Rational Basis Scrutiny as a Political Classification

In Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court held that preferences for Federally-recognized Indian tribes are subject to less exacting scrutiny under the Equal Protection component of the Fifth Amendment of the Constitution than racial or ethnic preferences because of the historical government-to-government relationship between those tribes and the Federal government. Id. at 551-54. Given this history, the Court concluded that such preferences are political rather than racial in nature because they are "granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities." See id. at 553-54.

Previously, we have concluded that the sources of authority for the Federal government's power respecting Native Americans[1] extend to legislation that furthers a special, political relationship with any appropriately constituted indigenous group. However, whether Morton would extend to legislation for Native Hawaiians such as S. 109 is open to question. Native Hawaiians have not been accorded the same status or treatment as Federally recognized Indian tribes in the continental United States, see, e.g., 25 C.F.R. § 83.3 (administrative procedures for extending recognition to Indian tribes apply only to groups indigenous to the continental United States) and no Federal court has considered a program entirely analogous to this bill.

The closest case is an ongoing Equal Protection challenge to a referendum held by the State of Hawaii open only to Native Hawaiians on whether the indigenous Hawaiian people should form a nation. Rice v. Cayetano, 941 F. Supp. 1529 (D. Hawaii 1996), appeal docketed No. 96-16696 (9th Cir. Sep. 9, 1996) ("Rice I"). By analogy to the reasoning in Morton, the district court found that the special fiduciary relationship between the State of Hawaii and Native Hawaiians removed the referendum on Native Hawaiian sovereignty from heightened scrutiny, id. at 1532-43, but noted that benefits for Native Hawaiians would not in every

[1]The United States' plenary power with respect to Indian tribes is grounded in the Indian Commerce Clause of the Constitution, U.S. Const. Art I., § 8, cl. 3, and the Treaty Clause, U.S. Const. Art. II, § 2, cl. 2. See Morton, 417 U.S. at 553-54; Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 556 (1832).

instance be political rather than racial in nature, id. at 1543 n.16.[3]

Adopting the reasoning employed by the district court in Rice I, one could argue that Native Hawaiians are an appropriately constituted indigenous group that would qualify as an Indian tribe under the Constitution and that this bill furthers a special political relationship. On the other hand, a court might find that the Native Hawaiian people lack a sufficient governmental structure, that the United States lacks a sufficient trust relationship with the Native Hawaiian people, or that the Native Hawaiian people, for some other reason, are not sufficiently like members of Federally recognized Indian tribes and thus reject that argument.

If a court were to apply the Morton standard, it then would consider whether S. 109 was rationally related to the Government's unique obligation to Native Hawaiians. See Morton, 417 U.S. at 555; Rice I, 941 F. Supp. at 1544. The housing programs in the bill are not as directly related to furthering self-government or a political relationship as the referendum at issue in Rice I. However, alleviating the housing shortages identified in the bill arguably would improve the stability and cohesiveness of the Native Hawaiian community and thus might be found to be rationally related to furthering a political relationship with the Native Hawaiians. Those programs also might be considered rationally related to the limited trust responsibility to Native Hawaiians that was recognized in the

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[3]While the Ninth Circuit has not yet decided Rice I, the court recently decided a related case involving the same parties, in which the plaintiff challenged a Hawaii statute that restricts the vote for trustees of the Office of Hawaiian Affairs ("OHA") to Hawaiians and Native Hawaiians. Rice v. Cayetano, --- F.3d --- 1998 WL 324980 (9th Cir. Jun. 22, 1998) ("Rice II"). Because the court assumed for purposes of the case that the trust was lawful, id. at *3-4, n. 11, Rice II held that the OHA provision did not violate the Fourteenth or Fifteenth Amendments, id. at *6-7, but did not reach the central question of whether a trust benefitting Native Hawaiians could constitutionally be established. Moreover, the court reserved the question of whether the Morton standard applied to the OHA voting provision, holding that the provision would satisfy both rational basis and strict scrutiny analysis. Id. at *7. At the same time, the court suggested Morton's rationale applied to Native Hawaiians. See id. at *5 (while Morton distinguishable on grounds that Native Hawaiians "are not exactly like Indians," Morton did "indicate that we are not compelled to invalidate the voting restriction simply because it appears to be race-based without also considering the unique trust relationship that gave rise to it").

Hawaiian Homes Commission Act of 1920, 42 Stat. 108, and transferred to the State of Hawaii in the Admission Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4.

B. Strict Scrutiny

If S. 109 were deemed to make racial or ethnic, rather than political, classifications, the bill would be subject to strict scrutiny. In order to survive strict scrutiny, the government interest underlying a racial or ethnic classification must be "compelling" and the measure must be "narrowly tailored" to achieving that interest. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995).

Remedying the effects of past discrimination can constitute a compelling interest that may justify the use of a narrowly tailored racial classification. See id. at 237. The government may remedy both its own discrimination and the effects of private discrimination within its jurisdiction where the government becomes a passive participant in the discriminatory conduct. See City of Richmond v. J.A. Croson Co., 488 U.S. 469, 492 (1989) (plurality opinion); id. at 519 (Kennedy, J., concurring in part and concurring in the judgment). To establish a compelling interest, the government must have a strong evidentiary basis for its conclusion that remedial action is necessary. Croson, 488 at 500. The fact and legacy of general, historical, societal discrimination is an insufficient predicate for the use of race-based classifications. See id., 488 U.S. at 499, 505.

It is questionable whether a court relying on the findings in the current version of the bill would find that it furthered a compelling interest in remedying past discrimination. The descriptive statistics in § 2, which note the high percentage of the Native Hawaiian population that experience housing problems such as overcrowding and homelessness, are not sufficient to support an inference of governmental discrimination against Native Hawaiians. An argument might be made that the legislation is justified as a narrowly tailored remedy for the annexation of the Crown lands that belonged to the former Hawaiian kingdom. However, our review of this legislation did not include a review of the relevant historical background, so we do not know how strong such an argument would be factually and are not in a position to evaluate the likelihood of its success in court.

It also is possible that the bill could be justified on non-remedial grounds. While no majority opinion of the Supreme Court has recognized a non-remedial interest as compelling to date, the Court has not ruled out the possibility of such interests. See Wittmer v. Peters, 87 F.3d 916, 919 (7th Cir. 1996), cert. denied 117 S. Ct. 949 (1997). As drafted, the bill does not clearly identify such a non-remedial interest. Moreover, to survive strict scrutiny, such a purpose would need to be compelling.

In addition to serving a compelling interest, a classification subject to strict scrutiny must be narrowly tailored to achieving that interest. To evaluate compliance with this requirement, courts look for evidence that a legislature or other decisionmaker seriously considered race-neutral alternatives and that any consideration of race is no more intrusive or burdensome than necessary to achieve the compelling governmental interest.

To increase the likelihood that S. 109 would be found narrowly tailored in the event that it was examined under strict scrutiny, we recommend that Congress expressly consider whether race-neutral measures would be similarly effective in achieving the bill's purposes and ensure that these considerations are reflected in the findings or the legislative record for the bill. For example, to the extent that the bill is designed to address housing needs in Hawaii, assistance directed to those residents with the most severe needs, to those with the lowest incomes, or to those regions of the State with the most severe shortages might relieve housing shortages among Native Hawaiians without making Native Hawaiian ancestry a requirement of eligibility.

II. Regulatory Flexibility

S. 109 is designed to tailor NAHASDA programs to the needs of Native Hawaiians. Given NAHASDA's detailed provisions, it may be advisable to provide the Secretary of Housing and Urban Development greater flexibility to achieve that result. For this reason, proposed NAHASDA section 802(b) should be amended to provide:

> "(b) APPLICABILITY OF OTHER PROVISIONS.--
>
> (1) IN GENERAL.--Subject to the provisions of subsection (a) and paragraph (2), the Secretary shall be guided by the relevant program requirements of titles I, II, and IV in the implementation of housing assistance programs for Native Hawaiians under this title.
>
> (2) EXCEPTION.--The Secretary may make exceptions to, or modifications of, program requirements for Native American housing assistance set forth in titles I, II, and IV as necessary and appropriate to meet the unique situation and housing needs of Native Hawaiians.

III. Civil Rights Protections

While the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*, applies to American Indian tribes and Alaska Native villages in the exercise of self-government, it has not been applied to the Native Hawaiian community. Therefore, the bill

should include a provision to safeguard the civil rights of Native Hawaiians. We recommend the following language:

> "CIVIL RIGHTS.--Program eligibility may be restricted to Native Hawaiians. Subject to this proviso, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status or disability."

With these changes and additions, we believe that S. 109 would be consistent with other Federal legislation making Native American programs available to Native Hawaiians, including the Native American Veterans' Housing Loan Pilot Project. 38 U.S.C. § 3764(3) ("Native American" includes "native Hawaiian").

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this report.

Sincerely,

L. Anthony Sutin
Acting Assistant Attorney General

cc: The Honorable Daniel K. Inouye
Ranking Minority Member

REGULATORY AND PAPERWORK IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carry out the bill. The Committee finds that S. 109, as amended, will require the promulgation of regulations, but because the Secretary of the Department of Housing and Urban Development has already promulgated regulations through a negotiated rulemaking process for the Native American Housing Assistance and Self-Determination Act, the Regulatory and paperwork impact should be minimized.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by a bill are required to be set forth in the accompanying Committee report. Changes in existing law are outlined below, with material to be deleted in brackets, and material to be added in italic signified by quotation marks:

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) is amended by adding at the end the following:

"TITLE VIII—HOUSING ASSISTANCE FOR NATIVE HAWAIIANS

"SEC. 801. DEFINITIONS.

"In this title:

"(1) DEPARTMENT OF HAWAIIAN HOME LANDS; DEPARTMENT.—The term 'Department of Hawaiian Home Lands' or 'Department' means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

"(2) DIRECTOR.—The term 'Director' means the Director of the Department of Hawaiian Home Lands.

"(3) ELDERLY FAMILIES; NEAR-ELDERLY FAMILIES.—

"(A) IN GENERAL.—The term 'elderly family' or 'near-elderly family' means a family whose head (or his or her spouse), or whose member, is—

"(i) for an elderly family, an elderly person; or

"(ii) for a near-elderly family, a near-elderly person.

"(B) CERTAIN FAMILIES INCLUDED.—The term 'elderly family' or 'near-elderly family' includes—

"(i) 2 or more elderly persons or near-elderly persons, as the case may be, living together; and

"(ii) 1 or more persons described in clause (i) living with 1 or more persons determined under the housing plan to be essential to their care or well-being.

"(4) HAWAIIAN HOME LANDS.—The term 'Hawaiian Home Lands' means lands that—

"(A) have the status as Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

"(B) are acquired pursuant to that Act.

"(5) HOUSING AREA.—The term 'housing area' means an areas of Hawaiian Home Lands with respect to which the Department of Hawaiian Home Lands is authorized to provide assistance for affordable housing under this Act.

"(6) HOUSING ENTITY.—The term 'housing entity' means the Department of Hawaiian Home Lands.

"(7) HOUSING PLAN.—The term 'housing plan' means a plan developed by the Department of Hawaiian Home Lands.

"(8) MEDIAN INCOME.—The term 'median income' means, with respect to an area that is a Hawaiian housing area, the greater of—

"(A) the median income for the Hawaiian housing area, which shall be determined by the Secretary; or

"(B) the median income for the State of Hawaii.

"(9) NATIVE HAWAIIAN.—The term 'Native Hawaiian' has the meaning given the term 'Native Hawaiian' in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

"SEC. 802. BLOCK GRANTS FOR AFFORDABLE HOUSING ACTIVITIES.

"(a) GRANT AUTHORITY.—For each fiscal year, the Secretary shall (to the extent amounts are made available to carry out this title) make a grant under this title to the Department of Hawaiian Home Lands to carry out affordable housing activities for Native Hawaiian families on or near Hawaiian Home Lands.

"(b) PLAN REQUIREMENT.—

"(1) IN GENERAL.—The Secretary may make a grant under this title to the Department of Hawaiian Home Lands for a fiscal year only if—

"(A) the Director has submitted to the Secretary a housing plan for that fiscal year; and

"(B) the Secretary has determined under section 804 that the housing plan complies with the requirements of section 803.

"(2) WAIVER.—The Secretary may waive the applicability of the requirements under paragraph (1), in part, if the Secretary finds that the Department of Hawaiian Home Lands has not complied or cannot comply with those requirements due to circumstances beyond the control of the Department of Hawaiian Home Lands.

"(c) USE OF AFFORDABLE HOUSING ACTIVITIES UNDER PLAN.—Except as provided in subsection (e), amounts provided under a grant under this section may be used only for affordable housing activities under this title that are consistent with a housing plan approved under section 804.

"(d) ADMINISTRATIVE EXPENSES.—

"(1) IN GENERAL.—The Secretary shall, by regulation, authorize the Department of Hawaiian Home Lands to use a percentage of any grant amounts receive under this title for an reasonable administrative and planning expenses of the Department relating to carrying out this title and activities assisted with those amounts.

"(2) ADMINISTRATIVE AND PLANNING EXPENSES.—The administrative and planning expenses referred to in paragraph (1) include—

"(A) cost for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts provided under this title; and

"(B) expenses incurred in preparing a housing plan under section 803.

"(e) PUBLIC-PRIVATE PARTNERSHIPS.—The Director shall make all reasonable efforts, consistent with the purposes of this title, to maximize participation by the private sector, including nonprofit organizations and for-profit entitles, in implementing a housing plan that has been approved by the Secretary under section 803.

"(f) APPLICABILITY OF OTHERS PROVISIONS.—

"(1) IN GENERAL.—The Secretary shall be guided by the relevant program requirements of titles, I, II, and IV in the implementation of housing assistance programs for Native Hawaiians under this title.

"(2) EXCEPTION.—The Secretary may make exceptions to, or modifications of, program requirements for Native American housing assistance set forth in titles I, II, and IV as necessary and appropriate to meet the unique situation and housing needs of Native Hawaiians.

"SEC. 803. HOUSING PLAN.

"(a) PLAN SUBMISSION.—The Secretary shall—

"(1) require the Director to submit a housing plan under this section for each fiscal year; and

"(2) provide for the review of each plan submitted under paragraph (1).

"(b) 5-YEAR PLAN.—Each housing plan under this section shall—

"(1) be in a form prescribed by the Secretary; and

"(2) contain, with respect to the 5-year period beginning with the fiscal year for which the plan is submitted, the following information:

"(A) MISSION STATEMENT.—A general statement of the mission of the Department of Hawaiian Home Lands to serve the needs of the low-income families to be served by the Department.

"(B) GOAL AND OBJECTIVES.—A statement of the goals and objectives of the Department of Hawaiian Home Lands to enable the Department to serve the needs identified in subparagraph (A) during the period.

"(C) ACTIVITIES PLANS.—An overview of the activities planned during the period including an analysis of the manner in which the activities will enable the Department to meet its mission, goals, and objectives.

"(c) 1-YEAR PLAN.—A housing plan under this section shall—

"(1) be in a form prescribed by the Secretary; and

"(2) contain the following information relating to the fiscal year for which the assistance under this title is to be made available:

"(A) GOALS AND OBJECTIVES.—A statement of the goals and objectives to be accomplished during the period covered by the plan.

"(B) STATEMENT OF NEEDS.—A statement of the housing needs of the low-income families served by the Department and the means by which those needs will be addressed during the period covered by the plan, including—

"(i) a description of the estimated housing needs and the need for assistance for the low-income families to be served by the Department, including a description of the manner in which the geographical distribution of assistance is consistent with—

"(I) the geographical needs of those families; and

"(II) needs for various categories of housing assistance; and

"(ii) a description of the estimated housing needs for all families to be served by the Department.

"(C) FINANCIAL RESOURCES.—An operating budget for the Department of Hawaiian Home Lands, in a form prescribed by the Secretary, that includes—

"(i) an identification and a description of the financial resources reasonably available to the Department to carry out the purposes of this title, including an explanation of the manner in which amounts made available will be used to leverage additional resources; and

"(ii) the uses to which, the resources described in clause (i) will be committed, including—

"(I) eligible and required affordable housing activities; and

"(II) administrative expenses.

"(D) AFFORDABLE HOUSING RESOURCES.—A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including—

"(i) a description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources, private market housing; and

"(ii) the manner in which the characteristics referred to in clause (i) influence the decision of the Department of Hawaiian Home Lands to use grant amounts to be provided under this title for—

"(I) rental assistance;

"(II) the production of new units;

"(III) the acquisition of existing units; or

"(IV) the rehabilitation of units;

"(iii) a description of the structure, coordination, and means of cooperation between the Department of Hawaiian Home Lands and any other governmental entities in the development, submission, or implementation of housing plans, including a description of—

"(I) the involvement of private, public, and nonprofit organizations and institutions;

"(II) the use of loan guarantees under section 184A of the Housing and Community Development Act of 1992; and

"(III) other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

"(iv) a description of the manner in which the plan will address the needs identified pursuant to subparagraph (C);

"(v) a description of—

"(I) any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

"(II) the requirements and assistance available under the programs referred to in subclause (I);

"(vi) a description of—

"(I) any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during the period covered by the plan; and

"(II) the requirements and assistance available under the programs referred to in subclause (I);

"(vii) a description of—

"(I) all other existing or anticipated housing assistance provided by the Department of Hawaiian Home Lands during the period covered by the plan, including—

"(aa) transitional housing;

"(bb) homeless housing;

"(cc) college housing; and

"(dd) supportive services housing; and

"(II) the requirements and assistance available under such programs;

"(viii)(I) a description of any housing to be demolished or disposed of;

"(II) a timetable for that demolition or disposition; and

"(III) any other information required by the Secretary with respect to that demolition or disposition;

"(ix) a description of the manner in which the Department of Hawaiian Home Lands will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

"(x) a description of the requirements established by the Department of Hawaiian Home Lands to—

"(I) promote the safety of residents of the affordable housing;

"(II) facilitate the undertaking of crime prevention measures;

"(III) allow resident input and involvement, including the establishment of resident organizations; and

"(IV) allow for the coordination of crime prevention activities between the Department and local law enforcement officials; and

"(xi) a description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

"(E) CERTIFICATION OF COMPLIANCE.—Evidence of compliance that shall include, as appropriate—

"(i) a certification that the Department of Hawaiian Home Lands will comply with—

"(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq). or with title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) in carrying out this title, to the extent that such title is applicable; and

"(II) other applicable Federal statutes;

"(ii) a certification that the Department will require adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts provided under this title, in compliance with such requirements as may be established by the Secretary;

"(iii) a certification that policies are in effect and are available for review by the Secretary and the public governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this title;

"(iv) a certification that policies are in effect and are available for review by the Secretary and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with grant amounts provided under this title; and

"(v) a certification that policies are in effect and are available for review by the Secretary and the public governing the management and maintenance of housing assisted with grant amounts provided under this title.

"(d) APPLICABILITY OF CIVIL RIGHTS STATUTES.—

"(1) IN GENERAL.—To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) apply to assistance provided under this title, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of assistance under this title—

"(A) to the Department of Hawaiian Home Lands on the basis that the Department served Native Hawaiians; or

"(B) to an eligible family on the basis that the family is a Native Hawaiian family.

"(2) CIVIL RIGHTS.—Program eligibility under this title may be restricted to Native Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability.

"(e) USE OF NONPROFIT ORGANIZATIONS.—As a condition of receiving grant amounts under this title, the Department of Hawai-

ian Home Lands shall, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

"SEC. 804. REVIEW OF PLANS.

"(a) REVIEW AND NOTICE.—

"(1) REVIEW.—

"(A) IN GENERAL.—The Secretary shall conduct a review of a housing plan submitted to the Secretary under section 803 to ensure that the plan complies with the requirements of that section.

"(B) LIMITATION.—The Secretary shall have the discretion to review a plan referred to in subparagraph (A) only to the extent that the Secretary considers that the review is necessary.

"(2) NOTICE.—

"(A) IN GENERAL.—Not later than 60 days after receiving a plan under section 803, the Secretary shall notify the Director of the Department of Hawaiian Home Lands whether the plan complies with the requirements under that section.

"(B) EFFECT OF FAILURE OF SECRETARY TO TAKE ACTION.—For purposes of this title, if the Secretary does not notify the Director, as required under this subsection and subsection (b), upon the expiration of the 60-day period described in subparagraph (A)—

"(i) the plan shall be considered to have been determined to comply with the requirements under section 803; and

"(ii) the Director shall be considered to have been notified of compliance.

"(b) NOTICE OF REASONS FOR DETERMINATION OF NONCOMPLIANCE.—If the Secretary determines that a plan submitted under section 803 does not comply with the requirements of that section, the Secretary shall specify in the notice under subsection (a)—

"(1) the reasons for noncompliance; and

"(2) any modifications necessary for the plan to meet the requirements of section 803.

"(c) REVIEW.—

"(1) IN GENERAL.—After the Director of the Department of Hawaiian Home Lands submits a housing plan under section 803, or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make a determination under this subsection, the Secretary shall review the plan (including any amendments or modifications thereto) to determine whether the contents of the plan—

"(A) set forth the information required by section 803 to be contained in the housing plan;

"(B) are consistent with information and data available to the Secretary; and

"(C) are not prohibited by or inconsistent with any provision of this Act or any other applicable law.

"(2) INCOMPLETE PLANS.—If the Secretary determines under this subsection that any of the appropriate certifications required under section 803(c)(2)(E) are not included in a plan, the plan shall be considered to be incomplete.

"(d) UPDATES TO PLAN.—

"(1) IN GENERAL.—Subject to paragraph (2), after a plan under section 803 has been submitted for a fiscal year, the Director of the Department of Hawaiian Home Lands may comply with the provisions of that section for any succeeding fiscal year (with respect to information included for the 5-year period under section 803(b) or for the 1-year period under section 803(c)) by submitting only such information regarding such changes as may be necessary to update the plan previously submitted.

"(2) COMPLETE PLANS.—The Director shall submit a complete plan under section 803 not later than 4 years after submitting an initial plan under that section, and not less frequently than every 4 years thereafter.

"(e) EFFECTIVE DATE.—This section and section 803 shall take effect on the date provided by the Secretary pursuant to section 807(a) to provide for timely submission and review of the housing plan as necessary for the provision of assistance under this title for fiscal year 2000.

"SEC. 805. TREATMENT OF PROGRAM INCOME AND LABOR STANDARDS.

"(a) PROGRAM INCOME.—

"(1) AUTHORITY TO RETAIN.—The Department of Hawaiian Home Lands may retain any program income that is realized from any grant amounts received by the Department under this title if—

"(A) that income was realized after the initial disbursement of the grant amounts received by the Department; and

"(B) the Director agrees to use the program income for affordable housing activities in accordance with the provisions of this title.

"(2) PROHIBITION OF REDUCTION OF GRANT.—The Secretary may not reduce the grant amount for the Department of Hawaiian Home Lands based solely on—

"(A) whether the Department retains program income under paragraph (1); or

"(B) the amount of any such program income retained.

"(3) EXCLUSION OF AMOUNTS.—The Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with the requirements of this subsection would create an unreasonable administrative burden on the Department.

"(b) LABOR STANDARDS.—

"(1) IN GENERAL.—Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain—

"(A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all ar-

chitects, technical engineers, draftsmen, technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved; and

"(B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the 'Davis-Bacon Act' (46 Stat. 1494, chapter 411; 40 U.S.C. 276a et seq.) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

"(2) EXCEPTIONS.—Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

"SEC. 806. ENVIRONMENTAL REVIEW.

"(a) IN GENERAL.—

"(1) RELEASE OF FUNDS.—

"(A) IN GENERAL.—The Secretary may carry out the alternative environmental protection procedures described in subparagraph (B) in order to ensure—

"(i) that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of grant amounts provided under this title; and

"(ii) to the public undiminished protection of the environment.

"(B) ALTERNATIVE ENVIRONMENTAL PROTECTION PROCEDURE.—In lieu of applying environmental protection procedures otherwise applicable, the Secretary may by regulation provide for the release of funds for specific projects to the Department of Hawaiian Home Lands if the Director of the Department assumes all of the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were the Secretary to undertake those projects as Federal projects.

"(2) REGULATIONS.—

"(A) IN GENERAL.—The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality.

"(B) CONTENTS.—The regulations issued under this paragraph shall—

"(i) provide for the monitoring of the environmental reviews performed under this section;

"(ii) in the discretion of the Secretary, facilitate training for the performance of such reviews; and

"(iii) provide for the suspension or termination of the assumption of responsibilities under this section.

"(3) EFFECT ON ASSUMED RESPONSIBILITY.—The duty of the Secretary under paragraph (2)(B) shall not be construed to limit or reduce any responsibility assumed by the Department of Hawaiian Home Lands for grant amounts with respect to any specific release of funds.

"(b) PROCEDURE.—

"(1) IN GENERAL.—The Secretary shall authorize the release of funds subject to the procedures under this section only if, not less than 15 days before that approval and before any commitment of funds to such projects, the Director of the Department of Hawaiian Home Lands submits to the Secretary a request for such release accompanied by a certification that meets the requirements of subsection (c).

"(2) EFFECT OF APPROVAL.—The approval of the Secretary of a certification described in paragraph (1) shall be deemed to satisfy the responsibilities of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and such other provisions of law as the regulations of the Secretary specify to the extent that those responsibilities relate to the release of funds for projects that are covered by that certification.

"(c) CERTIFICATION.—A certification under the procedures under this section shall—

"(1) be in a form acceptable to the Secretary;

"(2) be executed by the Director of the Department of Hawaiian Home Lands;

"(3) specify that the Department of Hawaiian Home Lands has fully carried out its responsibilities as described under subsection (a); and

"(4) specify that the Director—

"(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and each provision of law specified in regulations issued by the Secretary to the extent that those laws apply by reason of subsection (a); and

"(B) is authorized and consents on behalf of the Department of Hawaiian Home Lands and the Director accepts the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the Director of the Department of Hawaiian Home Lands as such an official.

"SEC. 807. REGULATIONS.

"The Secretary shall issue final regulations necessary to carry out this title not later than June 1, 1999.

"SEC. 808. EFFECTIVE DATE.

"Except as otherwise expressly provided in this title, this title shall take effect on June 1, 1999.

"SEC. 809. AFFORDABLE HOUSING ACTIVITIES.

"(a) NATIONAL OBJECTIVES AND ELIGIBLE FAMILIES—

"(1) PRIMARY OBJECTIVE.—The national objectives of this title are—

"(A) to assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;

"(B) to ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;

"(C) to coordinate activities to provide housing for low-income Native Hawaiian families with Federal, State and local activities to further economic and community development;

"(D) to plan for and integrate infrastructure resources on the Hawaiian Home Lands with housing development; and

"(E) to—

"(i) promote the development of private capital markets; and

"(ii) allow the markets referred to in clause (i) to operate and grow, thereby benefiting Native Hawaiian communities.

"(2) ELIGIBLE FAMILIES.—

"(A) IN GENERAL.—Except as provided under subparagraph (B), assistance for eligible housing activities under this title shall be limited to low-income Native Hawaiian families.

"(B) EXCEPTION TO LOW-INCOME REQUIREMENT.—

"(i) IN GENERAL.—The Director may provide assistance for homeownership activities under—

"(I) section 810(b);

"(II) model activities under section 810(f); or

"(III) loan guarantee activities under section 184A of the Housing and Community Development Act of 1992 to Native Hawaiian families who are not low-income families, to the extent that the Secretary approves the activities under that section to address a need for housing for those families that cannot be reasonably met without that assistance.

"(ii) LIMITATIONS. The Secretary shall establish limitations on the amount of assistance that may be provided under this title for activities for families that are not low-income families.

"(C) OTHER FAMILIES.—Notwithstanding paragraph (1), the Director may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under this title to a family that is not composed of Native Hawaiians if—

"(i) the Department determines that the presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

"(ii) the need for housing for the family cannot be reasonably met without the assistance.

"(D) PREFERENCE.—

"(i) IN GENERAL.—A housing plan submitted under section 803 may authorize a preference, for housing or

housing assistance provided through affordable housing activities assisted with grant amounts provided under this title to be provided, to the extent practicable, to families that are eligible to reside on the Hawaiian Home Lands.

"(ii) APPLICATION.—In any case in which a housing plan provides for preference described in clause (i), the Director shall ensure that housing activities that are assisted with grant amounts under this title are subject to that preference.

"(E) USE OF NONPROFIT ORGANIZATIONS.—As a condition of receiving grant amounts under this title, the Department of Hawaiian Home Lands, shall to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with those grant amounts.

"SEC. 180. ELIGIBLE AFFORDABLE HOUSING ACTIVITIES.

"(a) IN GENERAL.—Affordable housing activities under this section are activities conducted in accordance with the requirements of section 811 to—

"(1) develop or to support affordable housing for rental or homeownership; or

"(2) provide housing services with respect to affordable housing, through the activities described in subsection (b).

"(b) ACTIVITIES.—The activities described in this subsection are the following:

"(1) DEVELOPMENT.—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include—

"(A) real property acquisition;

"(B) site improvement;

"(C) the development of utilities and utility services;

"(D) conversion;

"(E) demolition;

"(F) financing;

"(G) administration and planning; and

"(H) other related activities.

"(2) HOUSING SERVICES.—The provision of housing-related services for affordable housing, including—

"(A) housing counseling in connection with rental or homeownership assistance;

"(B) the establishment and support of resident organizations and resident management corporations;

"(C) energy auditing;

"(D) activities related to the provision of self-sufficiency and other services; and

"(E) other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to this section.

"(3) HOUSING MANAGEMENT SERVICES.—The provision of management services for affordable housing, including—

"(A) the preparation of work specifications;

"(B) loan processing;
"(C) inspections;
"(D) tenant selection;
"(E) management of tenant-based rental assistance; and
"(F) management of affordable housing projects.

"(4) CRIME PREVENTION AND SAFETY ACTIVITIES.—The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

"(5) MODEL ACTIVITIES.—Housing activities under model programs that are—

"(A) designed to carry out the purposes of this title; and
"(B) specifically approved by the Secretary as appropriate for the purpose referred to in subparagraph (A).

"SEC. 811. PROGRAM REQUIREMENTS.

"(a) RENTS.—

"(1) ESTABLISHMENT.—Subject to paragraph (2), as a condition to receiving grant amounts under this title, the Director shall develop written policies governing rents and homebuyer payments charged for dwelling units assisted under this title, including methods by which such rents and homebuyer payments are determined.

"(2) MAXIMUM RENT.—In the case of any low-income family residing in a dwelling unit assisted with grant amounts under this title, the monthly rent or homebuyer payment (as applicable) for that dwelling unit may not exceed 30 percent of the monthly adjusted income of that family.

"(b) MAINTENANCE AND EFFICIENT OPERATION.—

"(1) IN GENERAL.—The Director shall, using amounts of any grants received under this title, reserve and use for operating under section 810 such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing.

"(2) DISPOSAL OF CERTAIN HOUSING.—This subsection may not be construed to prevent the Director, or any entity funded by the Department, from demolishing or disposing of housing, pursuant to regulations established by the Secretary.

"(c) INSURANCE COVERAGE.—As a condition to receiving grant amounts under this title, the Director shall require adequate insurance coverage for housing units that are owned or operated or assisted with grant amounts provided under this title.

"(d) ELIGIBILITY FOR ADMISSION.—As a condition to receiving grant amounts under this title, the Director shall develop written policies governing the eligibility, admission, and occupancy of families for housing assisted with grant amounts provided under this title.

"(e) MANAGEMENT AND MAINTENANCE.—As a condition to receiving grant amounts under this title, the Director shall develop policies governing the management and maintenance of housing assisted with grant amounts under this title.

"SEC. 812. TYPES OF INVESTMENTS.

"(a) IN GENERAL.—Subject to section 811 and an applicable housing plan approved under section 803, the Director shall have—

"(1) the discretion to use grant amounts for affordable housing activities through the use of—

"(A) equity investments;

"(B) interest-bearing loans or advances;

"(C) noninterest-bearing loans or advances;

"(D) interest subsidies;

"(E) the leveraging of private investments; or

"(F) any other form of assistance that the Secretary determines to be consistent with the purposes of this title; and

"(2) the right to establish the terms of assistance provided with funds referred to in paragraph (1).

"(b) INVESTMENTS.—The Director of the Department of Hawaiian Home Lands may invest grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations, as approved by the Secretary.

"SEC. 813. LOW-INCOME REQUIREMENT AND INCOME TARGETING.

"(a) IN GENERAL.—Housing shall qualify for affordable housing for purposes of this title only if—

"(1) each dwelling unit in the housing—

"(A) in the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

"(B) in the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase; and

"(2) each dwelling unit in the housing will remain affordable, according to binding commitments satisfactory to the Secretary, for—

"(A) the remaining useful life of the property (as determined by the Secretary) without regard to the term of the mortgage or to transfer of ownership; or

"(B) such other period as the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this title, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if that action—

"(i) recognizes any contractual or legal rights of any public agency, nonprofit sponsor, or other person or entity to take an action that would—

"(I) avoid termination of low-income affordability, in the case of foreclosure; or

"(II) transfer ownership in lieu of foreclosure; and

"(ii) is not for the purpose of avoiding low-income affordability restrictions, as determined by the Secretary.

"(b) EXCEPTION.—Notwithstanding subsection (a), housing assisted pursuant to section 809(a)(2)(B) shall be considered affordable housing for purposes of this title.

"SEC. 814. LEASE REQUIREMENTS AND TENANT SELECTION.

"(a) LEASES.—Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with grant amounts provided under this title, the Director, owner, or manager shall use leases that—

"(1) do not contain unreasonable terms and conditions;

"(2) require the Director, owner, or manager to maintain the housing in compliance with applicable housing codes and quality standards;

"(3) require the Director, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

"(4) specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

"(5) require that the Director, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

"(6) provide that the Director, owner, and manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that—

"(A) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the Department, owner, or manager;

"(B) threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

"(C) is criminal activity (including drug-related criminal activity) on or off the premises.

"(b) TENANT OR HOMEBUYER SELECTION.—As a condition to receiving grant amounts under this title, the Director shall adopt and use written tenant and homebuyer selection policies and criteria that—

"(1) are consistent with the purpose of providing housing for low-income families;

"(2) are reasonably related to program eligibility and the ability of the applicant to perform the obligations of the lease; and

"(3) provide for—

"(A) the selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in an applicable housing plan approved under section 803; and

"(B) the prompt notification in writing to any rejected applicant of the grounds for that rejection.

"SEC. 815. REPAYMENT.

"If the Department of Hawaiian Home Lands uses grant amounts to provide affordable housing under activities under this title and, at any time during the useful life of the housing, the housing does not comply with the requirement under section 813(a)(2), the Secretary shall—

"(1) reduce future grant payments on behalf of the Department by an amount equal to the grant amounts used for that housing (under authority of section 818(a)(1)(B)); or

"(2) require repayment to the Secretary of any amount equal to those grant amounts.

"SEC. 816. ANNUAL ALLOCATION.

"For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this title for the fiscal year, in accordance with the formula established pursuant to section 817 to the Department of Hawaiian Home Lands if the Department complies with the requirements under this title for a grant under this title.

"SEC. 817. ALLOCATION FORMULA.

"(a) ESTABLISHMENT.—The Secretary shall, by regulation issued not later than the expiration of the 6-month period beginning on the date of enactment of the native American Housing Assistance and Self-Determination Amendments of 1998, in the manner provided under section 807, establish a formula to provide for the allocation of amounts available for a fiscal year for block grants under this title in accordance with the requirements of this section.

"(b) FACTORS FOR DETERMINATION OF NEED.—The formula under subsection (a) shall be based on factors that reflect the needs for assistance for affordable housing activities, including—

"(1) the number of low-income dwelling units owned or operated at the time pursuant to a contract between the Director and the Secretary;

"(2) the extent of poverty and economic distress and the number of Native Hawaiian families eligible to reside on the Hawaiian Home Lands; and

"(3) any other objectively measurable conditions that the Secretary and the Director may specify.

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

"(1) geographic distribution within Hawaiian Home Lands; and

"(2) technical capacity.

"(d) EFFECTIVE DATE.—This section shall take effect on the date of enactment of the Native American Housing Assistance and Self-Determination Amendments of 1998.

"SEC. 818. REMEDIES FOR NONCOMPLIANCE.

"(a) ACTIONS BY SECRETARY AFFECTING GRANT AMOUNTS.—

"(1) IN GENERAL.—Except as provided in subsection (b), if the Secretary finds after reasonable notice and opportunity for a hearing that the Department of Hawaiian Home Lands has

failed to comply substantially with any provision of this title, the Secretary shall—

"(A) terminate payments under this title to the Department;

"(B) reduce payments under this title to the Department by an amount equal to the amount of such payments that were not expended in accordance with this title; or

"(C) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

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

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

"(1) is not a pattern or practice of activities constituting willful noncompliance; and

"(2) is a result of the limited capability or capacity of the Department of Hawaiian Home Lands.

"(c) REFERRAL FOR CIVIL ACTION.—

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

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

"(A) to recover the amount of the assistance furnished under this title that was not expended in accordance with this title; or

"(B) for mandatory or injunctive relief.

"(d) REVIEW.—

"(1) IN GENERAL.—If the Director receives notice under subsection (a) of the termination, reduction, or limitation of payments under this Act, the Director—

"(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the Ninth Circuit, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary; and

"(B) upon the filing of any petition under subparagraph (A), shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

"(2) PROCEDURE.—

"(A) IN GENERAL.—The Secretary shall file in the court a record of the proceeding on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

"(B) OBJECTIONS.—No objection to the action of the Secretary shall be considered by the court unless the Department has registered the objection before the Secretary.

"(3) DISPOSITION.—

"(A) COURT PROCEEDINGS.—

"(i) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set the action aside in whole or in part.

"(ii) FINDINGS OF FACT.—If supported by substantial evidence on the record considered as a whole, the findings of fact by the Secretary shall be conclusive.

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

"(B) SECRETARY.—

"(i) IN GENERAL.—The Secretary, by reason of the additional evidence referred to in subparagraph (A) and filed with the court—

"(I) may—

"(aa) modify the findings of fact of the Secretary; or

"(bb) make new findings; and

"(II) shall file—

"(aa) such modified or new findings; and

"(bb) the recommendation of the Secretary, if any, for the modification or setting aside of the original action of the Secretary.

"(ii) FINDINGS.—The findings referred to in clause (i)(II)(bb) shall, with respect to a question of fact, be considered to be conclusive if those findings are—

"(I) supported by substantial evidence on the record; and

"(II) considered as a whole.

"(4) FINALITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), upon the filing of the record under this subsection with the court—

"(i) the jurisdiction of the court shall be exclusive; and

"(ii) the judgment of the court shall be final.

"(B) REVIEW BY SUPREME COURT.—A judgment under subparagraph (A) shall be subject to review by the Supreme Court of the United States upon writ of certiorari

or certification, as provided in section 1254 of title 28, United States Code.

"SEC. 819. MONITORING OF COMPLIANCE.

"(a) ENFORCEABLE AGREEMENTS.—

"(1) IN GENERAL.—The Director, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this title.

"(2) MEASURES.—The measures referred to in paragraph (1) shall provide for—

"(A) to the extent allowable by Federal and State law, the enforcement of the provisions of this title by the Department and the Secretary; and

"(B) remedies for breach of the provisions referred to in paragraph (1).

"(b) PERIODIC MONITORING.—

"(1) IN GENERAL.—Not less frequently than annually, the Director shall review the activities conducted and housing assisted under this title to assess compliance with the requirements of this title.

"(2) REVIEW.—Each review under paragraph (1) shall include onsite inspection of housing to determine compliance with applicable requirements.

"(3) RESULTS.—The results of each review under paragraph (1) shall be—

"(A) included in a performance report of the Director submitted to the Secretary under section 820; and

"(B) made available to the public.

"(c) PERFORMANCE MEASURES.—The Secretary shall establish such performance measures as may be necessary to assess compliance with the requirements of this title.

"SEC. 820. PERFORMANCE REPORTS.

"(a) REQUIREMENT.—For each fiscal year, the Director shall—

"(1) review the progress the Department has made during that fiscal year in carrying out the housing plan submitted by the Department under section 803; and

"(2) submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review.

"(b) CONTENT.—Each report submitted under this section for a fiscal year shall—

"(1) describe the use of grant amounts provided to the Department of Hawaiian Home Lands for that fiscal year;

"(2) assess the relationship of the use referred to in paragraph (1) to the goals identified in the housing plan;

"(3) indicate the programmatic accomplishments of the Department; and

"(4) describe the manner in which the Department would change its housing plan submitted under section 803 as a result of its experiences.

"(c) SUBMISSIONS.—The Secretary shall—

"(1) establish a date for submission of each report under this section;

"(2) review each such report; and

"(3) with respect to each such report, make recommendations as the Secretary considers appropriate to carry out the purposes of this title.

"(d) PUBLIC AVAILABILITY.—

"(1) COMMENTS BY BENEFICIARIES.—In preparing a report under this section, the Director shall make the report publicly available to the beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.) and give a sufficient amount of time to permit those beneficiaries to comment on that report before it is submitted to the Secretary (in such manner and at such time as the Director may determine).

"(2) SUMMARY OF COMMENTS.—The report shall include a summary of any comments received by the Director from beneficiaries under paragraph (1) regarding the program to carry out the housing plan.

"SEC. 821. REVIEW AND AUDIT BY SECRETARY.

"(a) ANNUAL REVIEW.—

"(1) IN GENERAL.—The Secretary shall, not less frequently than on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether—

"(A) the Director has—

"(i) carried out eligible activities under this title in a timely manner;

"(ii) carried out and made certifications in accordance with the requirements and the primary objectives of this title and with other applicable laws; and

"(iii) a continuing capacity to carry out the eligible activities in a timely manner;

"(B) The Director has complied with the housing plan submitted by the Director under section 803; and

"(C) the performance reports of the Department under section 821 are accurate.

"(2) ONSITE VISITS.—Each review conducted under this section shall, to the extent practicable, include onsite visits by employees of the Department of Housing and Urban Development.

"(b) REPORT BY SECRETARY.—The Secretary shall give the Department of Hawaiian Home Lands not less than 30 days to review and comment on a report under this subsection. After taking into consideration the comments of the Department, the Secretary may revise the report and shall make the comments of the Department and the report with any revisions, readily available to the public not later than 30 days after receipt of the comments of the Department.

"(c) EFFECT OF REVIEWS.—The Secretary may make appropriate adjustments in the amount of annual grants under this title in accordance with the findings of the Secretary pursuant to reviews and audits under this section. The Secretary may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits of the Secretary under this section, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the Department of Hawaiian Home Lands.

"SEC. 822. GENERAL ACCOUNTING OFFICE AUDITS.

"To the extent that the financial transactions of the Department of Hawaiian Home Lands involving grant amounts under this title relate to amounts provided under this title, those transactions may be audited by the Comptroller General of the United States under such regulations as may be prescribed by the Comptroller General. The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Department of Hawaiian Home Lands pertaining to such financial transactions and necessary to facilitate the audit.

"SEC. 823. REPORTS TO CONGRESS.

"(a) IN GENERAL.—Not later than 90 days after the conclusion of each fiscal year in which assistance under this title is made available, the Secretary shall submit to the Congress a report that contains—

"(1) a description of the progress made in accomplishing the objectives of this title;

"(2) a summary of the use of funds available under this title during the preceding fiscal year; and

"(3) a description of the aggregate outstanding loan guarantees under section 184A of the Housing and Community Development Act of 1992.

"(b) RELATED REPORTS.—The Secretary may require the Director to submit to the Secretary such reports and other information as may be necessary in order for the Secretary to prepare the report required under subsection (a).

"SEC. 824. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of Housing and Urban Development for grants under this title such sums as may be necessary for each of fiscal years 1999, 2000, 2001, 2002 and 2003.".

* * * * * * *

Subtitle E of title I of the Housing and Community Development Act of 1992 is amended by inserting after section 184 (12 U.S.C. 1715z–13a) the following:

"SEC. 184A. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING.

"(a) DEFINITIONS.—In this section:

"(1) DEPARTMENT OF HAWAIIAN HOME LANDS.—The term Department of Hawaiian Home Lands' means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

"(2) ELIGIBLE ENTITY.—The term 'eligible entity' means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, or private nonprofit or for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

"(3) FAMILY.—The term 'family' means 1 or more persons maintaining a household, as the Secretary shall by regulation provide.

"(4) GUARANTEE FUND.—The term 'Guarantee Fund' means the Native Hawaiian Housing Loan Guarantee Fund established under subsection (i) of this section.

"(5) HAWAIIAN HOME LANDS.—The term 'Hawaiian Home Lands' means lands that—

"(A) have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

"(B) are required pursuant to that Act.

"(6) NATIVE HAWAIIAN.—The term 'Native Hawaiian' has the meaning given the terms 'native Hawaiian' in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

"(7) OFFICE OF HAWAIIAN AFFAIRS.—The term 'Office of Hawaiian Affairs' means the entity of that name established under the constitution of the State of Hawaii.

"(b) AUTHORITY.—To provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets, the Secretary may guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan under subsection (b).

"(c) ELIGIBLE LOANS.—Under this section, a loan is an eligible loan if that loan meets the following requirements:

"(1) ELIGIBLE BORROWERS.—The loan is made only to a borrower who—

"(A) is a Native Hawaiian family;

"(B) the Department of Hawaiian Home Lands;

"(C) the Office of Hawaiian Affairs; or

"(D) a private nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

"(2) ELIGIBLE HOUSING.—

"(a) IN GENERAL.—The loan will be used to construct, acquire, or rehabilitate not more than 4-family dwellings that are standard housing and are located on Hawaiian Home Lands for which a housing plan described in subparagraph (B) applies.

"(B) HOUSING PLAN.—A housing plan described in this subparagraph is a housing plan that—

"(i) has been submitted and approved by the Secretary under section 803 of the Native American Housing Assistance and Self-Determination Amendments of 1998; and

"(ii) provides for the use of loan guarantees under this section to provide affordable homeownership housing on Hawaiian Home Lands.

"(3) SECURITY.—The loan may be secured by any collateral authorized under applicable Federal law or State law.

"(4) LENDERS.—

"(A) IN GENERAL.—The loan shall be made only by a lender approved by, and meeting qualifications established by, the Secretary, including any lender described in sub-

paragraph (B), except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the Department of Hawaiian Home Lands from amounts borrowed from the United States shall not be eligible for a guarantee under this section.

"(B) APPROVAL.—The following lenders shall be considered to be lenders that have been approved by the Secretary:

"(i) Any mortgagee approved by the Secretary for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C.A. 1707 et seq.).

"(ii) Any lender that makes housing loans under chapter 37 of title 38, United States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code.

"(iii) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C.A. 1441 et seq.).

"(iv) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government.

"(5) TERMS.—The loan shall—

"(A) be made for a term not exceeding 30 years;

"(B) bear interest (exclusive of the guarantee fee under subsection (d) and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by the Secretary to be reasonable, but not to exceed the rate generally charged in the area (as determined by the Secretary) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

"(C) involve a principal obligation not exceeding—

"(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is $50,000 or less); or

"(ii) the amount approved by the Secretary under this section; and

"(D) involves a payment on account of the property—

"(i) in cash or its equivalent; or

"(ii) through the value of any improvements to the property made through the skilled or unskilled labor of the borrower, as the Secretary shall provide.

"(d) CERTIFICATE OF GUARANTEE.—

"(1) APPROVAL PROCESS.—

"(A) IN GENERAL.—Before the Secretary approves any loan for guarantee under this section, the lender shall submit the application for the loan to the Secretary for examination.

"(B) APPROVAL.—If the Secretary approves the application submitted under subparagraph (A), the Secretary

shall issue a certificate under this subsection as evidence of the loan guarantee approved.

"(2) STANDARD FOR APPROVAL.—The Secretary may approve a loan for guarantee under this section and issue a certificate under this subsection only if the Secretary determines that there is a reasonable prospect of repayment of the loan.

"(3) EFFECT.—

"(A) IN GENERAL.—A certificate of guarantee issued under this subsection by the Secretary shall be conclusive evidence of the eligibility of the loan for guarantee under this section and the amount of that guarantee.

"(B) EVIDENCE.—The evidence referred to in subparagraph (A) shall be incontestable in the hands of the bearer.

"(C) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for the obligations made by the Secretary under this section.

"(4) FRAUD AND MISREPRESENTATION.—This subsection may not be construed—

"(A) to preclude the Secretary from establishing defenses against the original lender based on fraud or material misrepresentation; or

"(B) to bar the Secretary from establishing by regulations that are on the date of issuance or disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

"(e) GUARANTEE FEE.—

"(1) IN GENERAL.—The Secretary shall fix and collect a guarantee fee for the guarantee of a loan under this section, which may not exceed the amount equal to 1 percent of the principal obligation of the loan.

"(2) PAYMENT.—The fee under this subsection shall—

"(A) be paid by the lender at time of issuance of the guarantee; and

"(B) be adequate, In the determination of the Secretary, to cover expenses and probable losses.

"(3) DEPOSIT.—The Secretary shall deposit any fees collected under this subsection in the Native Hawaiian Housing Loan Guarantee Fund established under subsection (j).

"(f) LIABILITY UNDER GUARANTEE.—The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

"(g) TRANSFER AND ASSUMPTION.—Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

"(h) DISQUALIFICATION OF LENDERS AND CIVIL MONEY PENALTIES.—

"(1) IN GENERAL.—

"(A) GROUNDS FOR ACTION.—If the Secretary determines that any lender or holder of a guarantee certificate under subsection (c)—

"(i) has failed—

"(I) to maintain adequate accounting records;

"(II) to serve adequately loans guaranteed under this section; or

"(III) to exercise proper credit or underwriting judgment; or

"(ii) has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Secretary may take action under subparagraph (B).

"(B) ACTIONS.—Upon a determination by the Secretary that a holder of a guarantee certificate under subsection (c) has failed to carry out an activity described in subparagraph (A)(i) or has engaged in practices described in subparagraph (A)(ii), the Secretary may—

"(i) refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

"(ii) bar such lender or holder from acquiring additional loans guaranteed under this section; and

"(iii) require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this section.

"(2) CIVIL MONEY PENALTIES FOR INTENTIONAL VIOLATIONS.—

"(A) IN GENERAL.—The Secretary may impose a civil monetary penalty on a lender or holder of a guarantee certificate under subsection (d) if the Secretary determines that the holder or lender has intentionally failed—

"(i) to maintain adequate accounting records;

"(ii) to adequately service loans guaranteed under this section; or

"(iii) to exercise proper credit or underwriting judgment.

"(B) PENALITIES.—A civil monetary penalty imposed under this paragraph shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f–1) with respect to mortgagees and lenders under that Act.

"(3) PAYMENT ON LOANS MADE IN GOOD FAITH.—Notwithstanding paragraphs (1) and (2), if a loan was made in good faith, the Secretary may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this subsection.

"(i) PAYMENT UNDER GUARANTEE.—

"(1) LENDER OPTIONS.—

"(A) IN GENERAL.—

"(i) NOTIFICATION.—If a borrower on a loan guaranteed under this section defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to the Secretary.

"(ii) PAYMENT.—Upon providing the notice required under clause (i), the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in 1 of the following manners:

"(I) FORECLOSURE.—

"(aa) IN GENERAL.—The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to the Secretary).

"(bb) PAYMENT.—Upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (f) plus reasonable fees and expenses as approved by the Secretary.

"(cc) SUBROGATION.—The rights of the Secretary shall be subrogated to the rights of the holder of the guarantee. the holder shall assign the obligation and security to the Secretary.

"(II) NO FORECLOSURE.—

"(aa) IN GENERAL.—Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interest of the United States.

"(bb) PAYMENT.—Upon assignment, the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (f)).

"(cc) SUBROGATION.—The right of the Secretary shall be subrogated to the rights of the holder of the guarantee. The holder shall assign the obligation and security to the Secretary.

"(B) REQUIREMENTS.—Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note of judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines to be appropriate.

"(2) LIMITATION ON LIQUIDATION.—

"(A) IN GENERAL.—If a borrower defaults on a loan guaranteed under this section that involves a security interest in restricted Hawaiian Home Land property, the mortgagee or the Secretary shall only pursue liquidation after offering to transfer the account to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

"(B) LIMITATION.—If, after action is taken under subparagraph (A), the mortgagee or the Secretary subsequently proceeds to liquidate the account, the mortgagee or the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property described in subparagraph (A) except to another eligible Hawaiian family or to the Department of Hawaiian Home Lands.

"(j) HAWAIIAN HOUSING LOAN GUARANTEE FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States the Hawaiian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

"(2) CREDITS.—the Guarantee Fund shall be credited with—

"(A) any amount, claims, notes, mortgages, contracts, and any collections and proceeds therefrom:

"(B) any amounts appropriated pursuant to paragraph (7);

"(C) any guarantee fees collected under subsection (d); and

"(D) any interest or earnings on amounts invested under paragraph (4).

"(3) USE.—Amounts in the Guarantee Funds shall be a available, to the extent provided in appropriations Acts, for—

"(A) fulfilling any obligations of the Secretary with respect to loans guaranteed under this section, including the costs (as that term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661A)) of such loans;

"(B) paying taxes, insurance, prior liens, expenses necessary to make fiscal adjustment in connection with the application and transmittal of collections, and other expenses and advances to protect the Secretary for loans which are guaranteed under this section or held by the Secretary;

"(C) acquiring such security property at foreclosure sales or otherwise;

"(D) paying administrative expenses in connection with those section; and

"(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary hold or owns pursuant to this section.

"(4) INVESTMENT.—Any amounts in the Guarantee Fund determined by the Secretary to be in excess of amounts currently required at the time of the determination to carry our this section may be invested in obligations of the United States.

"(5) LIMITATION ON COMMITMENTS TO GUARANTEE LOANS AND MORTGAGES.—

"(A) REQUIREMENT OF APPROPRIATIONS.—The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year to the extent, or in such amounts as, are or have been provided in appropriations Acts, without regard to the fiscal year for which such amounts were appropriated.

"(B) LIMITATIONS ON COSTS OF GUARANTEES.—The authority of the Secretary to enter into commitments to guarantee loans under this section shall be effective for any fiscal year only to the extent that amounts in the Guarantee Fund are or have been made available in appropriations Acts to cover the costs (as that term is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of such loan guarantees for such fiscal year. Any amounts appropriated pursuant to this subparagraph shall remain available until expended.

"(C) LIMITATION OF OUTSTANDING AGGREGATE PRINCIPAL AMOUNT.—Subject to the limitations in subparagraphs (A) and (B), the Secretary may enter into commitments to guarantee loans under this section for each of fiscal years 1999, 2000, 2001, 2002, and 2003 with an aggregate outstanding principal amount not exceeding $100,000,000 for each such fiscal year.

"(6) LIABILITIES.—All liabilities and obligations of the assets credited to the Guarantee Fund under paragraph (2)(A) shall be liabilities and obligations of the Guarantee Fund.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Guarantee Fund to carry out this section such sums as may be necessary for each of fiscal years 1999, 2000, 2001, 2002, and 2003.

"(k) REQUIREMENTS FOR STANDARD HOUSING.—

"(1) IN GENERAL.—The Secretary shall, by regulation, establish housing safety and quality standards to be applied for use under this section.

"(2) STANDARDS.—The standards referred to in paragraph (1) shall—

"(A) provide sufficient flexibility to permit the use of various designs and materials in housing acquired with loans guaranteed under this section; and

"(B) require each dwelling unit in any housing acquired in the manner described in subparagraph (A) to—

"(i) be decent, safe, sanitary, and modest in size and design;

"(ii) conform with applicable general construction standards for the region in which the housing is located;

"(iii) contain a plumbing system that—

"(I) uses a properly installed system of piping;

"(II) includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

"(III) uses water supply, plumbing, and sewage disposal systems that conform to any minimum

standards established by the applicable county or State;

"(iv) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

"(v) be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that the Secretary, upon request of the Department of Hawaiian Home Lands may waive the size requirements under this paragraph; and

"(vi) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act (12 U.S.C.A. 1735f–4), unless the Secretary determines that the requirements are not applicable.

"(l) APPLICABILITY OF CIVIL RIGHTS STATUTES.—To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) or of title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) apply to a guarantee provided under this subsection, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.".

APPENDIX A

HAWAIIAN HOMES COMMISSION ACT

HAWAIIAN HOMES COMMISSION ACT, 1920

(Act of July 9, 1921, c 42, 42 Stat 108)

Note

This Act is now part of the State Constitution and is subject to amendment or repeal as prescribed in Article XII of the Constitution.

Bracketed section headings have been inserted and are not official.

TITLE 1: DEFINITIONS

§1. That this Act may be cited as the "Hawaiian Homes Commission Act, 1920."

§2. That when used in this Act the term "Hawaiian Organic Act" means the Act entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended.

Attorney General Opinions

This Act construed as a state constitutional provision rather than an Act of Congress. Att. Gen. Op. 81-4.

Case Notes

The Hawaii Admission Act transferred complete responsibility of the Hawaiian Homes Commission Act program and the homelands to Hawaii and claims based on that Act do not "arise under" federal laws. 588 F.2d 1216.

TITLE 2: HAWAIIAN HOMES COMMISSION

§201. [Definitions.] (a) That when used in this title:

(1) The term "commission" means the Hawaiian Homes Commission;

(2) The term "public land" has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act;

(3) The term "fund" means the Hawaiian home loan fund;

(4) The term "State" means the State of Hawaii;

(5) The term "Hawaiian home lands" means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title;

(6) The term "tract" means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of such tract;

(7) The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778;

(8) The term "irrigated pastoral land" means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.

(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in subdivision (a) of this section,

shall, whenever used in this title, have the same meaning as given by such definition or description. [Am Jun. 8, 1954, c 321, §2, 68 Stat 263; am L 1963, c 207, §5(a)]

§202. Department officers, staff, commission, members, compensation.

"(a) There shall be a department of Hawaiian home lands which shall be headed by an executive board to be known as the Hawaiian homes commission. The members of the commission shall be nominated and appointed in accordance with section 26-34, Hawaii Revised Statutes. The commission shall be composed of [eight] nine members, as follows: three shall be residents of the city and county of Honolulu; [one] two shall be [a resident] residents of the county of Hawaii[;] one of whom shall be a resident of east Hawaii and the other a resident of west Hawaii; two shall be residents of the county of Maui one of whom shall be a resident from the island of Molokai; one shall be a resident of the county of Kauai; and the [eighth] ninth member shall be the chairman of the Hawaiian Homes Commission. All members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian islands previous to 1778. The members of the commission shall serve without pay, but shall receive actual expenses incurred by them in the discharge of their duties as such members. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission. The chairman of the commission shall serve in a full-time capacity. He shall, in such capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the commission as herein provided above."

(b) The provisions of section 76-16, Hawaii Revised Statutes, shall apply to the positions of first deputy and private secretary to the chairman of the commission. The department may hire temporary staff on a contractual basis not subject to chapters 76, 77, and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account, development, operating funds, or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six-year limitation shall not apply if the department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department. All other positions in the department shall be subject to chapters 76 and 77, Hawaii Revised Statutes.

All vacancies and new positions which are covered by chapters 76 and 77, Hawaii Revised Statutes, shall be filled in accordance with sections 76-23 and 76-31, Hawaii Revised Statutes, provided that the provisions of these sections shall be applicable first to qualified persons of Hawaiian extraction. [Am Jul. 26, 1935, c 420, §1, 49 Stat 504; May 31, 1944, c 216, §1, 58 Stat 260; Jul. 1, 1952, c 618, 66 Stat 515; am L 1963, c 207, §1; am imp L 1965, c 223, §§5, 8; am L 1977, c 174, §1; am L 1983, c 147, §2; am L 1984, c 199, §2; am L 1985, c 295, §1]

"**§203. [[Certain public lands designated "available lands."[[]** All public lands of the description and acreage, as follows, excluding (a) all lands within any forest reservation, (b) all cultivated sugar-cane lands, and (c) all public lands held under a certificate of occupation, homestead lease, right of purchase lease, or special homestead agreement, are hereby designated, and hereinafter referred to as "available lands":

§204. Control by department of "available lands," return to board of land and natural resources, when. Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

(1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in subdivision (d) of section 73 of the Hawaiian Organic Act, the board of land and natural resources shall withdraw such lands from the operation of the lease whenever the department gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in subdivision (d) of section 73 of the Hawaiian Organic Act;

(2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by the provisions of section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department.

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of such lands to the public, including native Hawaiians, on the same terms, conditions, restrictions and uses applicable to the disposition of public lands as provided in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition of a lease of Hawaiian home lands to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial or other business purposes, in accordance with the procedure set forth in section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b), Hawaii Revised Statutes.

(3) The department may, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, exchange the title to available lands for land, privately or publicly owned, of an equal value. All land so acquired by the department shall assume the status of available lands as though such land were originally designated as available lands under section 203 hereof, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged. The limitations imposed by section 73(1) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands "publicly owned" means land owned by a county or the State or the United States. [Am Mar. 27, 1928, c 142, §1, 45 Stat 246; Jul. 10, 1937, c 482, 50 Stat 503; Feb. 20, 1954, c 10, §1, 68 Stat 16; Jun. 18, 1954, c 319, §1, 68 Stat 262; am L 1963, c 207, §§2, 5(b); am L 1965, c 271, §1; am L 1976, c 24, §1; am Const Con 1978 and election Nov. 7, 1978]

Amendment Note

Const Con 1978 amended section generally.

Case Notes

In dealing with eligible native Hawaiians, department of Hawaiian home lands must adhere to high fidiciary duties normally owed by a trustee to its beneficiaries. 64 H. —, 640 P.2d 1161.

Cross References

As to last two sentences, compare §§171-5 and 171-50.

Attorney General Opinions

Hawaiian home lands needed for purposes of the Act are to be used and disposed of in accordance with the Act and are not subject to county zoning requirements. Att. Gen. Op. 72-21.

§205. **[Sale or lease, limitations on.]** Available lands shall be sold or leased only (1) in the manner and for the purposes set out in this title, or (2) as may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act; except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title.*

§206. **[Other officers not to control Hawaiian home lands; exception.]** The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title. [Am L 1963, c 207, §5(a) (b)]

General Note

The Act of July 10, 1937, c 484, 50 Stat 508, provides in part: "That the legislature of the Territory of Hawaii may create a public corporate authority to engage in slum clearance, or housing undertakings, or both, within such Territory.... The legislature... may, without regard to any federal acts restricting the disposition of public lands of the Territory, authorize the commissioner of public lands, the Hawaiian homes commissioner, and any other officers of the Territory having power to manage and dispose of its public lands, to grant, convey, or lease to such authority parts of the public domain, and may provide that any of the public domain or other property acquired by such authority may be mortgaged by it as security for its bonds...."

Attorney General Opinions

Governor's power to set aside public lands by executive order does not extend to Hawaiian home lands. Att. Gen. Op. 75-3.

§207. **Leases to Hawaiians, licenses.** (a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not less than one nor more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not less than one hundred nor more than five hundred acres of first-class pastoral lands; or (3) not less than two hundred and fifty nor more than one thousand acres of second-class pastoral lands; or (4) not less than forty nor more than one hundred acres of irrigated pastoral lands; (5) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as his home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquaculture lot, as the case may be, as provided in this section; provided further that the department may designate the location of the homesite on residence lots less than 10,000 square feet. [am L 1981, c 90, §1]

*The reference was to paragraph (3) of section 204 as originally enacted, which fixed a period of eight years after the first meeting of the commission [department]. The first meeting was held September 20, 1921. [Am L 1963, c 207, §2]

§207. **Leases to Hawaiians, licenses.** (a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee's home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or aquaculture lot, as the case may be, as provided in this section. The department is authorized to develop and construct multifamily units for housing native Hawaiians. The method of disposition, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.

(b) The title to lands so leased shall remain in the [State]. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.

(c)(1) The department is authorized to grant licenses as easements for railroads, telephone lines, electric power and light lines, gas mains, and the like. The department is also authorized to grant licenses for lots within a district in which lands are leased under the provisions of this section, for:

(A) Churches, hospitals, public schools, post offices, and other improvements for public purposes; and

(B) Theaters, garages, service stations, markets, stores, and other mercantile establishments (all of which shall be owned by native Hawaiians or by organizations formed and controlled by native Hawaiians).

(2) The department is also authorized to grant licenses to the United States for reservations, roads, and other rights-of-way, water storage and distribution facilities, and practice target ranges.

(3) Any license issued under this subsection shall be subject to such terms, conditions, and restrictions as the department shall determine and shall not restrict the areas required by the department in carrying on its duties, nor interfere in any way with the department's operation or maintenance activities. [Am Feb. 3, 1923, c 56, §1, 42 Stat 1222; May 16, 1934, c 290, §2, 48 Stat 779; Jul. 10, 1937, c 482, 50 Stat 504; May 31, 1944, c 216, §§3, 4, 58 Stat 264; Jun. 14, 1948, c 464, §§1, 2, 62 Stat 390; Jun. 18, 1954, c 321, §1, 68 Stat 263; Aug 23, 1958, Pub L 85-733, 72 Stat 822; am L 1963, c 207, §2; am L 1981, c 90, §1; am L 1983, c 125, §2; am L 1984, c 27, §1 and c 37, §2; am L 1985, c 69, §1 and c 159, §2]

Note

In addition to the provisions herein made for leases to native Hawaiians, the Act of June 20, 1938, c 530, §3, 52 Stat 781, after providing for the Kalapana extension to the Hawaii National Park, authorized the Secretary of the Interior to lease home sites herein to native Hawaiians under certain circumstances.

§208. **Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

(1) The original lessee shall be a native Hawaiian, not less than twenty-one years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quit claimed, or canceled in accordance with the provisions of succeeding sections.

(2) The lessee shall pay a rental of $1 a year for the tract and the lease shall be for a term of ninety-nine years.

(3) The lessee shall occupy and commence to use or cultivate the tract as his home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the lease is made.

(4) The lessee shall thereafter, for at least such part of each year as the department shall by regulation prescribe, so occupy and use or cultivate the tract on his own behalf.

(5) The lessee shall not in any manner transfer to, or mortgage, pledge, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, mortgage, pledge, or otherwise hold, his interest in the tract. Such interest shall not, except in pursuance of such a transfer, mortgage, or pledge to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet his interest in the tract or improvements thereon.

(6) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may in its discretion pay such taxes and have a lien therefor as provided by section 216 of this Act.

(7) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years from date of lease. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §2, 55 Stat 783; Aug. 21, 1958, Pub L 85-710, 72 Stat 706; am L 1963, c 207, §2; am L 1967, c 146, §§1, 2; am L 1973, c 66, §1; am L 1974, c 175, §1; am L 1978, c 229, §5; am L 1981, c 90, §2]

Amendment Note

L 1978 amended first sentence, paragraphs (1), (3), (5), (6) and (7), and deleted paragraph (8).
L 1981 amended paragraph (3) and made other minor technical changes.

Case Notes

Tax on the tract is the tax on the fee simple estate and not on lessee's leasehold interest. 60 H. 487, 591 P.2d 607.

§209. **Successors to lessees.** (1) Upon the death of the lessee, his interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of his interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee, husband and wife, children, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews, the lessee shall designate the person or persons to whom he directs his interest in the tract or tracts to vest upon his death. Such person or persons must be qualified to be a lessee of Hawaiian home lands; provided that Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands

under the provisions of section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended; provided further that such person or persons need not be twenty-one years of age. Such designation shall be in writing, shall be specified at the time of execution of such lease with a right in such lessee in similar manner to change such beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest such interests in the successor or successors so named.

In the absence of such a designation as approved by the department, the department shall select from the relatives of the lessee in order named above as limited by the foregoing paragraph one or more persons who are qualified to be lessees of Hawaiian home lands, except as hereinabove provided, as the successor or successors of the lessee's interest in the tract or tracts, and upon the death of the lessee, his interest shall vest in the person or persons so selected. The department may select such a successor or successors after the death of the lessee, and the rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of such lessee.

In the case of the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease such land to a native Hawaiian or Hawaiians as provided in this Act.

Upon the death of a lessee leaving no such relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall appraise the value of all such improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, from the deceased lessee or the previous lessee. Such payments shall be made out of the loan fund and shall be considered an advance therefrom reimbursable out of payments made by the successor or successors to the tract involved.

Such appraisal shall be made by three appraisers, one of which shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers hereinbefore mentioned. [am L 1981, c 90, §3]

(2) After the cancellation of a lease by the department in accordance with the provisions of sections 210 and 216 of this title, or the surrender of a lease by a lessee, the department is authorized to transfer the lease or to issue a new lease to any qualified Hawaiian regardless of whether or not he is related in any way by blood or marriage to the previous lessee.

(3) Should any successor or successors to a tract be a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. Such guardian shall be authorized to represent the successor or successors in all matters pertaining to the leasehold: provided, that said guardian shall, in so representing such successor or successors, comply with the provisions of this title and the stipulations and provisions contained in the lease, except that said guardian may not be a native Hawaiian as defined in section 201 of this title. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §3, 55 Stat 783; Jul. 9, 1952, c 614, §4, 66 Stat 514; am L 1963, c 207, §2]

Attorney General Opinions

A lessee surrendering a lease is entitled to payment for appraised value of pineapple crops growing on tract at date of surrender less deduction for indebtedness. Att. Gen. Op. 61-66.

On discretion of commission in the selection of a successor to a lessee who dies without designating his own successor. Att. Gen. Op. 61-75.

Distribution of "pineapple money" which includes "advances" for expenditures. Att. Gen. Op. 61-88.

Person claiming to be common-law wife under relationship established in Hawaii is not a qualified successor to lessee. Att. Gen. Op. 73-5.

"Children" construed. Att. Gen. Op. 73-18.

(3) Should any successor or successors to a tract be a minor or minors, the department may appoint a guardian therefor, subject to the approval of the court of proper jurisdiction. Such guardian shall be authorized to represent the successor or successors in all matters pertaining to the leasehold: provided, that said guardian shall, in so representing such successor or successors, comply with the provisions of this title and the stipulations and provisions contained in the lease, except that said guardian need not be a native Hawaiian as defined in section 201 of this title. [Am Jul. 10, 1937, c 482, 50 Stat 504; Nov. 26, 1941, c 544, §3, 55 Stat 783; Jul. 9, 1952, c 614, §4, 66 Stat 514; am L 1963, c 207, §2; am L 1981, c 90, §3; am L 1985, c 137, §1]

§212. Lands returned to control of board of land and natural resources. The department may return any Hawaiian home lands not leased as authorized by the provisions of section 207 of this Act to the control of the board of land and natural resources. Any Hawaiian home lands so returned shall, until the department gives notice as hereinafter in this section provided, resume and maintain the status of public lands in accordance with the provisions of the Hawaii Revised Statutes; provided that such lands may not be sold, leased, set aside, used, transferred or otherwise disposed of except under a general lease only. Any lease by the board of land and natural resources hereafter entered into shall contain a withdrawal clause, and the lands so leased shall be withdrawn by the board, for the purpose of this Act, upon the department giving at its option, not less than one nor more than five years' notice of such withdrawal; provided, that the minimum withdrawal-notice period shall be specifically stated in such lease. Each such lease, whether or not stipulated therein, shall be deemed subject to the right and duty of the board of land and natural resources to terminate the lease and return the lands to the department whenever the department gives notice to the board that the department is of the opinion that the lands are required.

Notwithstanding the provisions of section 171-95, Hawaii Revised Statutes, in the leasing of Hawaiian home lands by the board to a public utility or other governmental agency, where such use directly benefits the department of Hawaiian home lands or the homestead lessees, the rental may be nominal; in all other instances, the lease rental shall be no less than the value determined in accordance with section 171-17(b), Hawaii Revised Statutes.

Any general lease of Hawaiian home lands hereafter entered into by the board shall be void unless prior to the disposition of such lease by public auction, direct negotiation or otherwise, approval shall be obtained from the department of Hawaiian home lands. [Am L 1963, c 207, §§2, 5(b); am Const Con 1978 and election Nov. 7, 1978]

Attorney General Opinions

Governor does not have power to set aside by executive order any of the returned Hawaiian home lands. Att. Gen. Op. 75-3.

"§221. Water. (a) When used in this section:

(1) The term "water license" means any license issued by the board of land and natural resources granting to any person the right to the use of government-owned water; and

(2) The term "surplus water" means so much of any government-owned water covered by a water license or so much of any privately owned water as is in excess of the quantity required for the use of the licensee or owner, respectively.

(b) All water licenses issued after the passage of this Act shall be deemed subject to the condition, whether or not stipulated in the license, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any water which the department deems necessary adequately to supply the livestock, aquaculture operations, agriculture operations, or domestic needs of individuals upon any tract.

(c) In order adequately to supply livestock, the aquaculture operations, the agriculture operations, or the domestic needs of individuals upon any tract, the department is authorized (1) to use, free of all charge, government-owned water not covered by any water license or covered by a water license issued after the passage of this Act or covered by a water license issued previous to the passage of this Act but containing a reservation of such water for the benefit of the public, and (2) to contract with any person for the right to use or to acquire, under eminent domain proceedings similar, as near as may be, to the proceedings provided in respect to land by sections 101-10 to 101-34, Hawaii Revised Statutes, the right to use any privately owned surplus water or any government-owned surplus water covered by a water license issued previous to the passage of this Act, but not containing a reservation of such water for the benefit of the public. Any such requirement shall be held to be for a public use and purpose. The department may institute the eminent domain proceedings in its own name.

(d) The department is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, government-owned surplus water tributary to the Waimea river upon the island of Kauai, not covered by a water license or covered by a water license issued after July 9, 1921. Any water license issued after that date and covering any such government-owned water shall be deemed subject to the condition, whether or not stipulated therein, that the licensee shall, upon the demand of the department, grant to it the right to use, free of all charge, any of the surplus water tributary to the Waimea river upon the island of Kauai, which is covered by the license and which the department deems necessary for the additional purpose of adequately irrigating any tract.

Any funds which may be appropriated by Congress as a grant-in-aid for the construction of an irrigation and water utilization system on the island of Molokai designed to serve Hawaiian home lands, and which are not required to be reimbursed to the federal government, shall be deemed to be payment in advance by the department and lessees of the department of charges to be made to them for the construction of such system and shall be credited against such charges when made.

(e) All rights conferred on the department by this section to use, contract for, or acquire the use of water shall be deemed to include the right to use, contract for, or acquire the use of any ditch or pipeline constructed for the distribution and control of such water and necessary to such use by the department.

(f) Water systems in the exclusive control of the department shall remain under its exclusive control; provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees. If any provision or the application of that provision is inconsistent with provisions contained in this section, this section shall control.

Water systems include all real and personal property together with all improvements to such systems acquired or constructed by the department for the distribution and control of water for domestic or agricultural use."

§222. **Administration.** (a) The department shall adopt rules and regulations and policies in accordance with the provisions of chapter 91, Hawaii Revised Statutes. The department may make such expenditures as are necessary for the efficient execution of the functions vested in the department by this Act. All expenditures of the department, as herein provided out of the Hawaiian home-administration account, the Hawaiian home-development fund, or the Hawaiian home-operating fund, and all monies necessary for loans made by the department, in accordance with the provisions of this Act, from the Hawaiian home-loan fund, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the commission. The department shall make an annual report to the legislature of the State upon the first day of each regular session thereof and such special reports as the legislature may from time to time require. The chairman and members of the commission shall give bond as required by law. The sureties upon the bond and the conditions thereof shall be approved annually by the governor.

(b) When land originally leased by the department is, in turn, subleased by the department's lessee or sublessee, the department shall submit, within ten days of the convening of any regular session, a written report to the legislature which shall cover the sublease transactions occurring in the calendar year prior to the regular session and shall contain the names of the persons involved in the transaction, the size of the area under lease, the purpose of the lease, the land classification of the area under lease, the tax map key number, the lease rental, the reason for approval of the sublease by the department, and the estimated net economic result accruing to the department, lessee and sublessee. [Am Nov. 26, 1941, c 544, §7, 55 Stat 787; Jun. 14, 1948, c 464, §8, 62 Stat 394; am L 1963, c 207, §4; am L 1972, c 173, §1; am L 1977, c 174, §2]

APPENDIX B

Hawaiian Admission Act

THE ADMISSION ACT

PUBLIC LAW 86-3, 86TH CONGRESS

An Act to Provide for the Admission of the State of Hawaii into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 7(c) of this Act, the State of Hawaii is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii entitled "An Act to provide for a constitutional convention, the adoption of a State constitution, and the forwarding of the same to the Congress of the United States, and appropriating money therefor", approved May 20, 1949 (Act 334, Session Laws of Hawaii, 1949), and adopted by a vote of the people of Hawaii in the election held on November 7, 1950, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

SEC. 2. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.

SEC. 3. The constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

SEC. 4. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: *Provided,* That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be

made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act.

SEC. 5. (a) Except as provided in subsection (c) of this section, the State of Hawaii and its political subdivisions, as the case may be, shall succeed to the title of the Territory of Hawaii and its subdivisions in those lands and other properties in which the Territory and its subdivisions now hold title.

(b) Except as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other public property within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union. The grant hereby made shall be in lieu of any and all grants provided for new States by provisions of law other than this Act, and such grants shall not extend to the State of Hawaii.

(c) Any lands and other properties that, on the date Hawaii is admitted into the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress, (2) Executive order, (3) proclamation of the President, or (4) proclamation of the Governor of Hawaii shall remain the property of the United States subject only to the limitations, if any, imposed under (1), (2), (3), or (4), as the case may be.

(d) Any public lands or other public property that is conveyed to the State of Hawaii by subsection (b) of this section but that, immediately prior to the admission of said State into the Union, is controlled by the United States pursuant to permit, license, or permission, written or verbal, from the Territory of Hawaii or any department thereof may, at any time during the five years following the admission of Hawaii into the Union, be set aside by Act of Congress or by Executive order of the President, made pursuant to law, for the use of the United States, and the lands or property so set aside shall, subject only to valid rights then existing, be the property of the United States.

(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.

(f) The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the mak-

ing of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university.

(g) As used in this Act, the term "lands and other properties" includes public lands and other public property, and the term "public lands and other public property" means, and is limited to, the lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898 (30 Stat. 750), or that have been acquired in exchange for lands or properties so ceded.

(h) All laws of the United States reserving to the United States the free use or enjoyment of property which vests in or is conveyed to the State of Hawaii or its political subdivisions pursuant to subsection (a), (b), or (e) of this section or reserving the right to alter, amend, or repeal laws relating thereto shall cease to be effective upon the admission of the State of Hawaii into the Union.

(i) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) and the Outer Continental Shelf Lands Act of 1953 (Public Law 212, Eighty-third Congress, first session, 67 Stat. 462) shall be applicable to the State of Hawaii, and the said State shall have the same rights as do existing States thereunder.

SEC. 6. As soon as possible after the enactment of this Act, it shall be the duty of the President of the United States to certify such fact to the Governor of the Territory of Hawaii. Thereupon the Governor of the Territory shall, within thirty days after receipt of the official notification of such approval, issue his proclamation for the elections, as hereinafter provided, for officers of all State elective offices provided for by the constitution of the proposed State of Hawaii, and for two Senators and one Representative in Congress. In the first election of Senators from said State the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. No identification or designation of either of the two senatorial offices, however, shall refer to or be taken to refer to the term of that office, nor shall any such identification or designation in any way impair the privilege of the Senate to determine the class to which each of the Senators elected shall be assigned.

SEC. 7. (a) The proclamation of the Governor of Hawaii required by section 6 shall provide for the holding of a primary election and a general election and at such elections the officers required to be elected as provided in section 6 shall be chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Hawaii for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Hawaii may prescribe. The Governor of Hawaii shall certify the results

APPENDIX C

HAWAIIAN STATE CONSTITUTION, AS AMENDED

Affairs" by Const Con 1978 and election Nov 7, 1978. The former Article XII now appears as Article XIII.

HAWAIIAN HOMES COMMISSION ACT

Section 1. Anything in this constitution to the contrary notwithstanding, the Hawaiian Homes Commission Act, 1920, enacted by the Congress, as the same has been or may be amended prior to the admission of the State, is hereby adopted as a law of the State, subject to amendment or repeal by the legislature; provided that if and to the extent that the United States shall so require, such law shall be subject to amendment or repeal only with the consent of the United States and in no other manner; provided further that if the United States shall have been provided or shall provide that particular provisions or types of provisions of such Act may be amended in the manner required for ordinary state legislation, such provisions or types of provisions may be so amended. The proceeds and income from Hawaiian home lands shall be used only in accordance with the terms and spirit of such Act. The legislature shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands; in furtherance of (1), (2), (3) and (4) herein, by appropriating the same in the manner provided by law.

Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses shall be transferred to the native Hawaiian rehabilitation fund, section 213 of the Hawaiian Homes Commission Act, 1920, for the purposes enumerated in that section. Thirty percent of the state receipts derived from the leasing of lands cultivated as sugarcane lands on the effective date of this section shall continue to be so transferred to the native Hawaiian rehabilitation fund whenever such lands are sold, developed, leased, utilized, transferred, set aside or otherwise disposed of for purposes other than the cultivation of sugarcane. There shall be no ceiling established for the aggregate amount transferred into the native Hawaiian rehabilitation fund. [Ren and am Const Con 1978 and election Nov 7, 1978]

Note

Reference to "effective date of this section" in last paragraph of section apparently refers to effective date of section as amended November 7, 1978.

Attorney General Opinions

This and next section may be deleted without consent of Congress. Att. Gen. Op. 68-18.

ACCEPTANCE OF COMPACT

Section 2. The State and its people do hereby accept, as a compact with the United States, or as conditions or trust provisions imposed by the United States, relating to the management and disposition of the Hawaiian home lands, the requirement that section 1 hereof be included in this constitution, in whole

or in part, it being intended that the Act or acts of the Congress pertaining thereto shall be definitive of the extent and nature of such compact, conditions or trust provisions, as the case may be. The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out. [Ren and am Const Con 1978 and election Nov 7, 1978]

Attorney General Opinions

This and preceding section may be deleted without consent of Congress. Att. Gen. Op. 68-18.

Case Notes

In setting aside Hawaiian home lands, federal government undertook trust obligation benefitting aboriginal people. State assumed fiduciary obligation upon being admitted as a state. Commission's considerations gave undue weight to interests of State, county, and citizens or taxpayers generally, thus breaching fiduciary duty. 64 H. 327, 640 P.2d 1161.

COMPACT ADOPTION; PROCEDURES AFTER ADOPTION

Section 3. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the constitution of this State, as provided in section 7, subsection (b), of the Admission Act, subject to amendment or repeal only with the consent of the United States, and in no other manner; provided that (1) sections 202, 213, 219, 220, 222, 224 and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212 and other provisions relating to the powers and duties of officers other than those charged with the administration of such Act, may be amended in the constitution, or in the manner required for state legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for state legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of such Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for state legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands," as defined by such Act, shall be used only in carrying out the provisions of such Act. [Add 73 Stat 4 and election June 27, 1959; ren and am Const Con 1978 and election Nov 7, 1978]

PUBLIC TRUST

Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public. [Add Const Con 1978 and election Nov 7, 1978]

OFFICE OF HAWAIIAN AFFAIRS; ESTABLISHMENT OF BOARD OF TRUSTEES

Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members. [Add Const Con 1978 and election Nov 7, 1978]

Cross References

Statutory provisions, see chapters 10 and 13D.

Attorney General Opinions

A voter must qualify as a Hawaiian in his or her own right, not on the basis of the racial descent of the adoptive parents. Att. Gen. Op. 80-6.

The requirement that trustees be Hawaiians is not violative of the equal protection clauses; also the restriction to Hawaiians of the right to vote for trustees is not impermissible. Att. Gen. Op. 80-8.

POWERS OF BOARD OF TRUSTEES

Section 6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. [Add Const Con 1978 and election Nov 7, 1978]

TRADITIONAL AND CUSTOMARY RIGHTS

Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]

Note

A proposal of the 1978 Constitutional Convention adding a section 7 defining the terms "Hawaiian" and "native Hawaiian" was not validly ratified. Kahalekai v. Doi, 60 H. 324 (1979). In view of the holding, the revisor has deleted the section and renumbered section 8 as section 7 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

APPENDIX D

Department of Hawaiian Home Lands

Beneficiary Needs Study, 1995

Research

Consulting

Financial Consulting

Training

Database Marketing

Socio-Economic Studies

Department of Hawaiian Home Lands
BENEFICIARY NEEDS STUDY, 1995

Prepared for:

Department of Hawaiian Home Lands
September, 1995

SMS affiliations:

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INTRODUCTION

The 1995 Beneficiary Needs Study was a major effort to collect data from beneficiaries of the Department of Hawaiian Home Lands (DHHL). It emerged first from the need for housing data expressed by the Land Management Division of the Department. Shortly after that need came to light, other divisions including the Homestead Services Division, the Land Development Division, and the Planning Office, expressed needs for information to support good planning.

In an effort to organize beneficiaries to speak in their own behalf, applicant and homesteader organizations recognized the necessity to understand the needs and interests of their members. Hui Kako`o and the State Council of Hawaiian Homestead Associations were assembled as an advisory council to the project. The study was authorized by the Hawaiian Homes Commission and was conducted between August 1994 and August of 1995.

OBJECTIVES

The main goals of the study were to describe the population of Hawaiians and DHHL beneficiaries; to describe their needs and expectations for Homestead Lease Awards and housing solutions; and to describe their reactions to policy and procedural changes that might lead to more effective fulfillment of those expectations. A secondary goal was to assemble the findings of this project in a manner that they might be easily applied to policy making at DHHL. Some specific objectives of this study were to:

- Identify beneficiaries' housing needs and quantify their preferences, qualifications, and readiness for award.
- Describe the dynamics of need and decisions to accept or defer an award.
- Measure beneficiaries' perceived image and expectations of DHHL, and identify communications-related issues for the Department.

NATIVE HAWAIIANS AND DHHL BENEFICIARIES

Pursuant to provisions of the Hawaiian Homes Commission Act, 1920 as amended (HHCA), the Department of Hawaiian Home Lands provides direct benefits to native Hawaiians in the form of 99-year homestead leases at an annual rental of $1. (Act 305, Session Laws of Hawaii 1990, amended the HHCA to authorize the department to extend leases for an aggregate term not to succeed 199 years.)

Homestead leases are for residential, agricultural, or pastoral purposes. The intent of the homesteading program is to provide for the economic self-sufficiency of native Hawaiians through the provision of land. The department's mission is to manage the Hawaiian Home Lands Trust effectively, and to develop and deliver land to native Hawaiians, the beneficiaries of the Trust. Data recording systems at DHHL insure that the department has an accurate understanding of the characteristics and changes in the land base. The people for whom the lands are held in trust, however, are harder to track and understand.

WHO THEY ARE, WHERE THEY ARE

There are approximately 300,000 people in the world today whose ethnic background can be in some way described as Hawaiian[1]. Of those, a little less than 200,000 live in the State of Hawaii and another 100,000 or so reside in continental United States. Less than a hundred Hawaiians are estimated to be living outside of the US[2].

About one-quarter of all Hawaiians, or approximately 69,000 people including children under 18, are thought to have 50 percent blood quantum. Adult native Hawaiians of age 18 and older make up 86 percent of that number, or 59,000 people. From 1986 onward, more than 50 percent of all children born in Hawaii were of mixed ethnic background. Like

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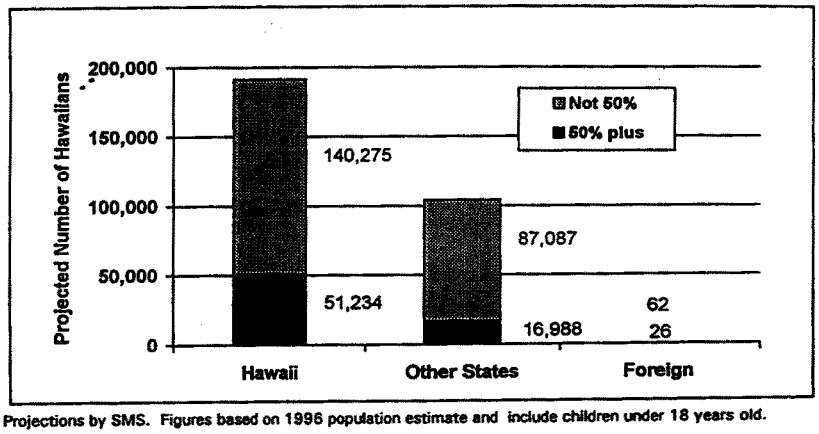
[1] Projection model developed by SMS. The description of the model can be found in the Method section in *Technical Report: Department of Hawaiian Home Lands Beneficiary Needs Study, 1995.*

[2] There is very little information on Hawaiians living overseas, and this projection is expected to be less precise than the projections of those living in the country.

other ethnic groups in the State, the number of pure Hawaiians and the number of Hawaiians with the 50 percent blood quantum will decrease steadily.

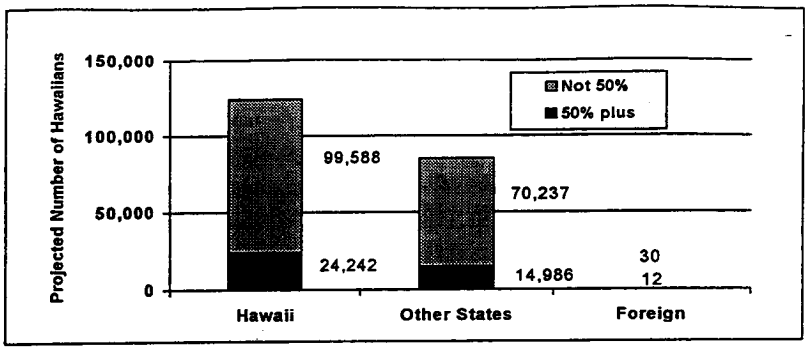
Figure One shows the geographic distribution of native Hawaiians of all ages by blood quantum, and Figure 2 shows the same data for Hawaiians 18 years or older in 1995. Those who are 50 percent or more Hawaiian, are potential DHHL beneficiaries. They include current lessees, applicants, and persons whose blood quantum qualifies them as applicants.

Figure 1: Estimated Living Hawaiians of all Ages, 1995



Projections by SMS. Figures based on 1996 population estimate and include children under 18 years old.

Figure 2: Potential Applicants as of 1995



Projections by SMS. Includes 209,095 ethnic Hawaiian adults.

This analysis suggests that there are just over 39,000 actual and potential beneficiaries of the HHCA. Of those, the Department of Hawaiian Home Lands currently serves about 20,000, or a little over 50 percent. About 6,000 of those are current lessees. The remaining 14,000 are applicants for Homestead Lease Awards.

DHHL BENEFICIARIES AND THE STATE POPULATION

Native Hawaiians differ from other ethnic groups in many ways, and much of what makes up the difference is qualitative in nature. In this section, some of the more readily measurable demographic characteristics DHHL beneficiaries are compared to the Hawaii's adult population. Table 1 shows who the beneficiaries are in terms of these statistics, and how they compare with adults in the state population. The following are the synopsis:

- DHHL beneficiaries, lessees in particular, are older than the state average.
- DHHL beneficiaries are more likely to be living with children.
- Proportionately more DHHL beneficiaries are married than the state average.

- DHHL beneficiaries, especially lessees, are more likely to be not working outside of home.
- DHHL applicants are more likely to be renting their homes than the state average.

None of these are surprising or new findings. It has long been known that Hawaiian people live in larger households, and that DHHL beneficiaries are somewhat older than the average adult in Hawai`i. The surveys set about providing data in greater detail for each type of beneficiary.

Table 1: DHHL Beneficiaries vs. State Population

	DHHL Beneficiaries[1]		
	applicants	lessees[2]	overall state of Hawaii[3]
Age			
18-24	2.9%	0.7%	14.7%
25-34	17.3%	6.5%	24.4%
35-44	29.0%	23.2%	21.3%
45-54	23.6%	23.1%	13.1%
55-64	16.7%	24.0%	11.8%
65+	10.4%	22.4%	14.5%
Median Age	45.3	53.4	40.1
Have children in the household	63.0%	59.7%	55.0%
Employment Status			
full time (35 hours+)	56.7%	50.8%	56.7%
part time (<35 hours)	10.3%	7.3%	14.0%
not employed	33.0%	41.9%	29.3%
Marital Status			
single	12.8%	7.2%	25.4%
married	69.1%	67.3%	57.3%
separated, widowed, divorced	18.1%	25.5%	17.4%
Type of Current Home			
single family home	70.0%	73.8%	69.8%
multifamily home[4]	10.0%	7.2%	18.1%
apartment	12.5%	8.2%	10.6%
other	7.5%	10.7%	1.6%
Tenancy			
own/pay mortgage	43.5%	N/A	53.1%
rent	45.4%	N/A	37.5%
occupy no payment	11.0%	N/A	9.4%

1. Mail survey data. Weighted by the type and location of awards.
2. Includes those who have been awarded a Homestead Lease Award but also waiting for another award.
3. Data source: Simmons/SMS Media & Market Study 1994.
4. Includes duplex, townhouse, or condominium apartments.

APPLICATIONS AND LEASES

As of February 21, 1995, the Department of Hawaiian Home Lands had roughly 21,000 individual applications and leases on the record books. The present study is based on 18,272 of those cases[3]. Of that number, 12,999 were applicants for a Homestead Lease Award, 4,148 were current lessees, and 1,125 were lessees who also had applications on file. This section describes first the lessees and then the applicants.

DHHL LESSEES

More than three-quarters of all leases were for residential property, and 53 percent were located on O`ahu. A disproportionate number of agricultural and pastoral leases were on the Big Island. The geographic distribution of leases is shown in Table 2.

Table 2: Type and Location of Leases, 1995

County	Type of Lease			
	Residential Only	Agricultural or Pastoral Only	Residential and Agricultural/Pastoral	Total Leases
O`ahu	70.4	42.2	10.3	62.0
Hawai`i	2.9	36.8	24.1	9.3
Kaua`i	8.9	7.0	6.9	8.5
Moloka`i	7.6	10.5	18.3	11.0
Maui	10.2	3.5	10.4	9.3
Total All Counties	4,288	855	130	5,273

Total leases of each type from the survey mailed to beneficiaries (n=6,132). Percentages from phone survey (n=400) figures are percentages of the total in each column. Data were weighted to total beneficiaries, February 1995.

Lest we think of lessees as having fully satisfied needs, we should recall that about 21 percent of them still have applications pending for additional land. Table 3 shows the

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3 Twenty-one thousand is the estimated number of applications, not individuals, in the department's database at the end 1994. The total number of applications is larger than the number of individuals represented, because one individual can apply for more than one award, and also because an individual who has already received a Homestead Lease Award can be on the application list for another award. The data changes daily, but there were 18,272 individuals in the DHHL database on February 21, 1995. As noted in the methods section, the surveys could only be based on cases for which there was sufficient information in the file to contact a beneficiary. We do not know if cases with addresses were different from those without addresses.

types of applications that are pending for current lessees. The figures from the survey have been expanded to represent all lessee with pending applications.

Table 3: Type of Applications Pending for Current Lessees

Current Lease Type	Type of Application Pending			
	Residential Only	Agricultural or Pastoral Only	Residential and Agricultural/Pastoral	Total Leases
Residential	0.0	15.0	85.0	795
Agricultural	25.0	8.8	66.2	284
Both	47.8	19.6	32.6	46
Total All Leases	8.3	13.6	78.1	1,125

Table shows data for beneficiaries who have already received at least one Homestead Lease Award, and are on the waiting list for another award. Data from the survey mailed to beneficiaries. Figures are percentages of the total in each row. Data were weighted to total beneficiaries.

More than three-quarters of the pending applications are for more than one award, and nearly ninety percent include at least one piece of residential property. The most common pending request, however, is for agricultural land among lessees currently on residential property.

USE OF LAND AND HOUSING SITUATION

The fact that leases have been awarded does not mean that all are being used. Table 4 shows the current land use pattern among the lessees.

Table 4: Land Use Among Current Lessees, 1995

Land Use	Type of Lease			
	Residential Only	Agricultural or Pastoral Only	Residential and Agricultural/Pastoral	Total Leases
Live on the land	70.6	13.8	1.7	55.3
Farm the land	—	8.2	23.0	3.8
Both	—	28.7	35.1	7.8
Neither	29.4	49.2	40.2	33.1
Total All Counties	4,288	855	130	5,273

Data from the survey mailed to beneficiaries. Figures are percentages of the total in each column. Data were weighted to total beneficiaries, and exclude 188 weighted cases for which there was insufficient data to classify lessees' land use.

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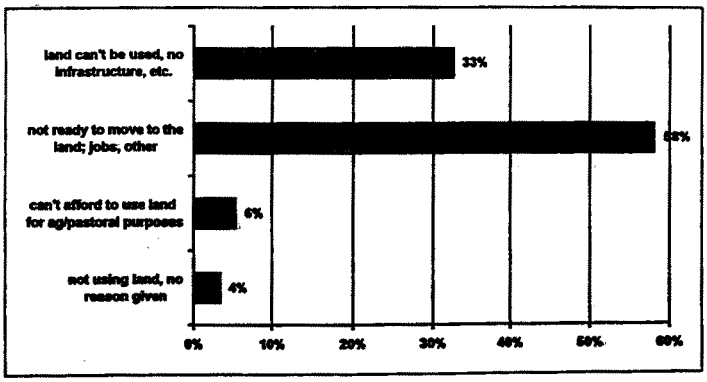
Data from the survey mailed to beneficiaries. Figures are percentages of the total in each column. Data were weighted to total beneficiaries, and exclude 188 weighted cases for which there was insufficient data to classify lessees' land use.

The land use patterns suggest a relatively large number of leases are not currently being used. About 76 percent of residential lots are occupied, and 53 percent of the agricultural and pastoral land is being used for raising crops or animals. Of all the land that is being used, fully 94 percent is used to provide housing for the lessees.

As Figure 3 below shows, lessees gave their own reasons for not using the land right now. Those who have Homestead Lease Awards of agricultural or pastoral land and were not farming or ranching were most likely to say that they were not ready to start farming yet. Several of them also said the land was not ready for use. The problems were mostly infrastructure or access.

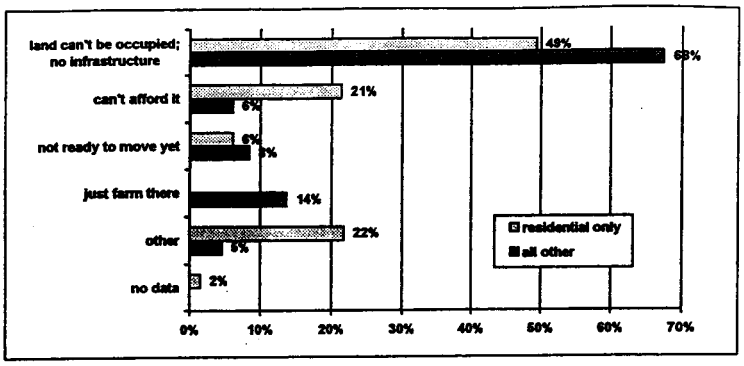
Figure 3: Use of Non-Residential Land



Note: Phone survey data. Weighted total = 1,251 non-residential leases (some have residential leases as well), who were not using the award land for farming or ranching.

Lessees who had residential or agricultural land suited for residence gave another set of reasons for not having built a house on the land. Those are shown in Figure 4. The answers were taken from about 19 percent of lessees who do not have a house on their land as yet.

Figure 4: Reasons for Not Having a House on Homestead Land



Note: Phone survey data, lessees only. Base: Lessees with residential lots only who have not been able to build a house on the land. Weight totals of 798 residential only leases and 565 cases with agricultural, pastoral, or multiple leases.

Many of the lessees have not been able to build homes because the lots do not have the appropriate access or infrastructure. Other reasons for not having built homes were similar to those offered by agricultural lessees. They were either unable to move to the land in their current circumstances, or they were unable to afford to build.

About 2,500 of the total leases were made during the 1980s when many Homestead Lease Awards were granted through an accelerated award program. The accelerated program granted Homestead Lease Awards or raw land to lessees regardless of their qualifications to finance housing or agriculture. The program was intended to maximize the number of awards. It resulted in granting land without infrastructure or improvements to applicants without the means to provide them. The present study was designed to shed some light on what happened to those lessees.

Table 5 shows the number of Homestead Leases that are currently being used by lessees who were awarded Homestead Lease Awards during the eighties and those who were awarded Homestead Leases at other times. The latter group includes persons who received awards in the nineties.

Table 5: Land Use by Date of Award

Land Use	Award Date		
	1980 through 1989	Before 1980 and after 1989	Total Leases
Land is in use for either residence or agriculture	34.7	87.2	66.9
Land is not in use	65.3	12.8	33.1
Total	2,040	3,233	5,273

Data from the lessee phone survey. Figures are percentages of the total in each column. Data were weighted to total lessees. Land use as of February 1995.

The accelerated award program produced a large number of leases that are not currently being used. In fact, recipients of accelerated awards are almost three times less likely to be using their land for either housing or agriculture.

The reasons for not using the land differ for lessees who received awards during the accelerated period and those who received them at other times. The accelerated award grantees were more likely to have received land on the Big Island, and had slightly lower incomes. Their reasons for not beginning agriculture were not statistically related to the infrastructure issue. They were more likely to have given financial reasons, and even more likely to say they weren't ready to start farming yet.

Accelerated award recipients with residential property were less likely to have cited infrastructure problems than those who received their awards at other times. They were a bit more likely to cite financial problems, and again more likely to say they were not ready to move. Almost 88 percent of these people said they did intend to build on the property -- a figure slightly higher than for the non-accelerated group. Among those who did not intend to build, accelerated grantees were more likely to say they did not know what they would do with the land, and non-accelerated grantees were more likely to say they would farm the land or just hold onto it.

CONDITION OF THE HOUSE AND IMPROVEMENTS

For many residential lessees who live on homestead land, a house had already been built when the land was awarded to them (74%). More than half of non-residential lessees (52%) built the houses themselves. However, non-residential lessees are less satisfied with the size of the home than their residential counterparts.

Table 6: House on the Homestead Land

Characteristic	Type of Lease					
	Residential only		Ag, Pastoral, or combination of any		Total Lessees	
	num.	pct.	num.	pct.	num.	pct.
Who built the house?						
DHHL; it was already there	1,383	43.2%	57	19.9%	1,440	41.2%
former owner	134	4.2%	15	5.1%	149	4.3%
me/my family/my builder	822	25.6%	150	52.2%	972	27.9%
someone else	717	22.4%	51	17.8%	768	22.0%
don't know	148	4.6%	15	5.1%	163	4.7%
Is the house big enough?						
need a larger home	895	27.9%	102	35.4%	997	28.6%
about the right size	2,198	68.6%	149	51.7%	2,347	67.2%
too big	12	0.4%	5	1.8%	17	0.5%
no response	99	3.1%	32	11.1%	131	3.8%
Have added rooms	604	20.1%	104	36.0%	708	20.3%
Have made other improvements	1,540	48.1%	184	64.0%	1,724	49.4%
Condition of the house						
good	1,386	43.2%	105	36.2%	1,491	42.7%
okay, about average	603	18.8%	67	23.5%	670	19.2%
needs fixing up	1,139	35.6%	87	30.2%	1,226	35.1%
no data	76	2.4%	29	10.1%	105	3.0%
Total Living on DHHL Land	3,204	100%	288	100%	3,492	100%

Note: Phone survey data, lessees with houses on the land only. Weighted by the type and location of the lease.

Over the years, many lessees made improvements or added rooms to their houses. More than one-third of them report that the house needs some fixing up. Even though there is no perfect relationship between the dates of the award and dates on which the houses

were built, it may be noted that a majority (58%) of these houses stand on DHHL lots that were granted before 1970.

APPLICANT POPULATION

As of February 21, 1995, the Department of Hawaiian Home Lands had 12,999 individual applicants in its Homestead Lease Awards waiting list that were contactable[4]. Our survey represents the condition, needs, and opinions of these 12,999 applicants.

TYPES OF APPLICATIONS

Table 7 shows the types of awards for which the applicants had applied. Note that the table shows numbers and percents of applicants, rather than applications. Throughout the analysis we have been focusing on people rather than applications.

Table 7: DHHL Applications for Awards, 1995

Island	Type of Application			
	Residential Only	Agricultural or Pastoral Only	Both Residential and Agricultural	Total Applicants
O'ahu	2,447	135	1,904	4,486
Hawai'i	1,140	744	2,317	4,201
Maui	843	299	1,365	2,507
Kaua'i	364	174	715	1,253
Moloka'i	143	147	263	553
Total All Islands	4,937	1,499	6,564	12,999

Data from the telephone survey of applicants (n= 1,613). Figures may not sum exactly due to weighting. Data were weighted to total applicants with complete identifying information. "Residential Only" applicants have only one application. "Agricultural or Pastoral Only" applicants may have more than one application, but have not applied on any residential list. Those in the "both" category have applied for more than one award, at least one of which is for residential property.

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4 The data changes daily, but there were 18,272 individuals in the DHHL database as of February 21, 1995. As noted in the methods section, the surveys could only be based on cases for which there was sufficient information in the file to contact a beneficiary. Because there was no information upon which to base a comparison, we do not know if cases with addresses were different from those without addresses. We have chosen to take the 18,272 cases with addresses as the basis for this analysis.

Just over half (51%) of all the applicants have applied on more than one type of award. The number increases somewhat when we consider applicants who have applied for more than one award of the same type on different islands[5]. By far the most frequent type of duplicate applications are those involving two different types of awards. The focus groups and conversations we have had with applicants suggests that the most frequent purpose behind multiple applications is to maximize the chances of receiving an award sooner. Many told us that they applied for a place they thought was most appropriate for their families, and also applied on lists that were shorter than others[6].

The pattern of applications is different from that shown for leases. Among applicants, there is a much higher demand for property on Maui, and a lower demand for land on Moloka`i. Applicants were also more likely to have applied for more than one award than were the lessees.

An important issue for the management of the applications list is the current geographic location of the applicants. Experience at DHHL has shown that applicants who do not live on the island where awards are available are less likely to qualify for an award than those on the home island. Table 8 shows the current locations of applicants.

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5 This information is self-reported. That is, although an individual cannot register for more than one Homestead Lease Award of the same type on different islands, survey respondents reported that there are such cases.

6 We have not attempted to analyze the order of applications because DHHL files do not list them in the order of importance to the applicant, and the surveys did not ask for motivations for each separate application.

Table 8: County Applied for by Applicant's County of Residence

Island of Application	County of Residence					
	O`ahu	Hawai`i	Maui	Kaua`i	Outside Hawai`i	Total
O`ahu	3,989	190	52	38	216	4,484
Maui	1,328	65	836	14	266	2,508
Hawai`i	1,509	2,259	67	37	329	4,201
Kaua`i	412	82	14	663	85	1,256
Moloka`i	186	21	277	0	67	550
Total All Islands	7,424	2,616	1,245	752	962	12,999

Data from the telephone survey of applicants (n= 1,613). Figures may not sum exactly due to weighting. Data were weighted to total applicants with complete identifying information. Table shows the first choice of applicants only.

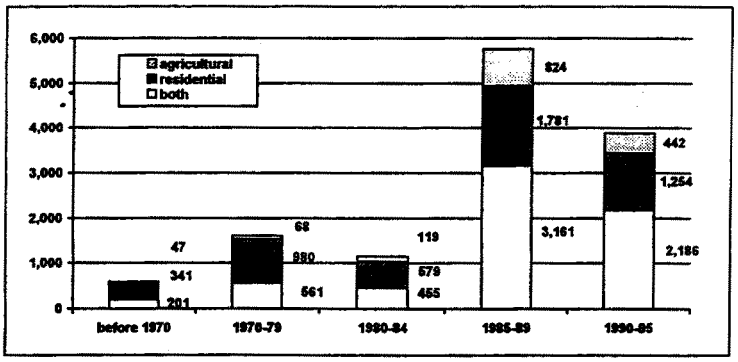
The majority of applicants (62%) have chosen property on the island where they now live. The data here show only the first choice for an award, but analysis show a very similar distribution pattern for subsequent choices. O`ahu residents tend to prefer the Neighbor Islands more, and only 54 percent of them have selected O`ahu as their first choice for an award. Applicants on other islands were much more likely (88%) to choose their home island. Applicants who currently reside out of state also tend to prefer islands other than O`ahu.

Because the O`ahu and out-of-state applicant numbers are so high, and because they both tend to prefer the Neighbor Islands, large percentages of applicants for Neighbor Island Homestead Lease Awards are off-island. This is especially true for Maui, where as many as 78 percent of all applicants are not residents of the County.

TIME ON THE LIST

Some applicants have been on the waiting lists for Homestead Lease Awards for very long periods of time[7]. This issue is of great concern to the staff at DHHL and the applicants alike. Figure 5 shows the number of applicants for each type of award by the date of their first application.

Figure 5: Initial Application Year and Type



Note: Base is 12,999 applicants on DHHL files, with complete identification information, as of February, 1995.

The great majority of applicants (83%) have been on the DHHL lists since 1980. About 12 percent have been waiting since the seventies, and about four percent have been waiting longer since before the seventies. Figure 5 also shows the major swell in applications that accompanied the accelerated awards program in the late eighties.

There appears to be a trend toward multiple applications in the last ten years. About 55 percent of applicants since the accelerated program applied for more than one property.

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7 While many applicants have in fact registered for an award, the rules have evolved over time and since 1972 stringent eligibility standards have been enforced, resulting in many applicants not being in compliance with the application procedures. Merely registering is not equal to being a qualified applicant. Many claims have been made against the department based on mistaken information or a misunderstanding of the actual application process.

That compares with about 30 percent of those who applied before 1985. Further analysis shows that there was also a trend toward more agricultural applications, and for the applicants who intend to live on the agricultural land but not farm it. That was accompanied by a greater willingness among newer applicants to accept land without infrastructure but not without a house already constructed. This may represent a desire among newer applicants for a rural setting separate from any desire to engage in farming or ranching.

Further analysis showed that there were no major differences between the financial qualifications of applicants who were on the list for longer or shorter periods of time. Newer applicants tended to be more likely to have income near the median for their counties, and some who have been on the list the longest had greater financial resources than the more recent applicants. Demographic characteristics were very similar across the waiting list, with the exception of age. Long-time list members were likely to be older.

Newer members of the list were also more likely to accept housing solutions that were non-traditional. This was especially true for their willingness to accept a multifamily unit, and their interest in having DHHL build them.

Somewhat to our surprise, there were very few differences in the way older and newer members of this list evaluated the performance of DHHL. One may expect to see older members to be more critical, but both newer and older members gave the department very similar ratings for overall performance, the friendliness of employees, and their ability to answer questions and solve problems. There was a slight difference on the issue of the Department's "ability to get land into the hands of Hawaiians". Very long-term members of the list were more likely to rate the Department as less effective.

DEFERRALS

When applicants are offered an award, they have the right to decline that specific award without losing their ranking on the lists. This process is known as deferral. Table 9 presents survey data on the issue.

Table 9: Selection Meetings and Awards Deferrals

	Applicants	
	Number	Percent
All Applicants	12,999	100.0
Attended at least one lot selection meeting	2,839	25.0
Deferred at least once to wait for a better time or selection	1,504	14.8
Deferred at least once for financial reasons	656	6.7
Deferred at least once for unknown reasons, or did not qualify.	679	3.5

Data from the mailed survey of beneficiaries (n= 6,134), here showing applicants who have not yet received an award. Figures shown in last column are the percentages of applicants who responded to each question, and do not sum to 100.0.

About 25 percent of applicants on the list who have never received an award have at some time attended a lot selection meeting[8]. Attendance would indicate that an award had been offered, albeit contingent upon qualifications associated with the specific award. All of those applicants either deferred or were disqualified for the award. Of that number, 46 percent attended more than one meeting, and five percent attended six or more such meetings.

Of those who attended a meeting, 59 percent deferred at least once because they preferred to wait for another selection. An additional 27 percent deferred at least once because they knew themselves to be financially unqualified at the time. The remaining 14 percent either deferred for other reasons, or were found to be financially unqualified for the award.

The data suggest that at least 25 percent of all applicants currently on the list have deferred an award at some time. The remainder have not been offered an award. This situation might be expected of the current first-come-first-served award system, which works as follows: Applicants who are highest on the list are offered an award. Those who are qualified and ready to move accept the awards. Those who are less financially qualified and/or less ready to move to homestead lands defer or are disqualified. They maintain their place on the lists.

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8 When applicants are invited to a lot selection meeting, those who fail to attend or respond by mail are automatically deferred.

Because their status remain high on the list, at each subsequent offering, those people are likely to be offered another award, but they may still be unready or unwilling to accept the award. In other words, current system is set up to create a list that have applicants who are disproportionately more likely to defer at the top of the lists. The result is a situation where a few have deferred one or more times, and many have not been offered an award even though they may be financially or otherwise ready to accept one.

HOUSING NEED

We begin this section on the need for housing among the applicant group with a reminder that the major expectation of those on the lists is that a homestead land award will solve housing problems. Nearly all current applicants intend to live on their land. Relatively few intend to farm or ranch, and only a very small percentage will engage in agriculture only.

CURRENT HOUSING SITUATION

Compared with the rest of the United States, Hawai`i has larger household sizes and a lower ratio of homeowners to renters. Household size has been decreasing in Hawaii and on the mainland, but as of 1990, Hawaii's average household size was second largest in the country[9].

In this section, beneficiaries' current living situations are reported and compared to the state's population as a whole. The data show that native Hawaiians live in larger households, and that they intend to use their Homestead Lease Awards to decrease household size. It also shows that shelter cost (as a percentage of family income) is lower for current lessees than for applicants and lower than for the general population.

HOUSEHOLD SIZE

Hawaiians are far more likely than other residents of Hawai`i to live in large households and in crowded quarters. Data from the 1992 Housing Consortium Study[10] show that the median size of ethnic Hawaiian households was 140 percent the average household size in the state (see Table 10.)

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9 Morgan Quitno Corporation, *State Rankings 1993*, Lawrence, Kansas: Morgan Quitno Corporation.

10 A survey of 2,600 Hawaii households for a consortium of public and private sector agencies interested in developing affordable housing for Hawaii. It has become a standard source for housing information in the nineties.

In 1992, applicants' households were slightly larger than the average for all ethnic Hawaiians. Applicant households are now slightly smaller than the 1992 median for all Hawaiians. The decrease in household size has continued since 1985, as shown in Table 11.

Table 10: Current Household Size: Comparison with the State Population

Household Size	DHHL Beneficiaries*		Ethnic Hawaiians in State of Hawai`i**		All Ethnicities State of Hawai`i**	
one	994	5.5%	3,469	8.3%	39,690	11.7%
two	3,485	19.5%	5,053	12.2%	108,517	32.1%
three	3,019	16.9%	6,197	14.9%	65,147	19.3%
four	3,624	20.2%	10,066	24.2%	64,660	19.1%
five	2,728	15.2%	6,621	15.9%	27,318	8.1%
six	1,654	9.2%	3,421	8.2%	12,216	3.6%
seven or more	2,408	13.4%	6,735	16.2%	20,447	6.0%
Total	17,912	100.0%	41,562	100.0%	337,995	100.0%
median		4.4		4.6		3.3

* Mail survey data. Weighted by the type and the location of the awards. Includes both applicants and lessees. Those who did not supply household size information are excluded from the total.
** Data source: 1992 Housing Policy Consortium Study. Ethnicity for Hawaiians was self-reported as "Hawaiian or part-Hawaiian."

Table 11: Applicants' Current Household Size

Household Size	1995[1]		1992[2]		1985[3]	
one to two	3,479	25.2%	1,235	14.2%	594	13.6%
three to four	5,156	37.3%	3,352	38.7%	1,550	35.4%
five to six	3,367	24.4%	2,159	24.9%	1,378	31.4%
seven or more	1,819	13.2%	1,925	22.2%	859	19.6%
Total	13,821	100.0%	8,671	100.0%	4,381	100.0%
median hh size		4.3		4.8		5.1

1. Mail survey data. Weighted by the type and the location of the awards sought. Those who did not supply household size information are excluded from the total. Those who are already leasing but waiting for another award are included in the total number of applicants here.
2. Data source: 1992 Housing Policy Consortium Study. Weighted by the place of residence.
3. Data source: 1985 Applicant Survey.

CROWDING RATIO

Another way to measure housing need is to look at the crowding ratios. The U.S. Census defines crowding in terms of the number of people per room in a household. A ratio of 1.01 to 1.50 persons per room is considered crowded, and higher ratios are defined as severely crowded[11]. The 1992 Housing Consortium Study data show that about one-quarter of all households in Hawaii are mildly or severely crowded (see Table 12). For ethnic Hawaiians, 38 percent of households are crowded. An even larger proportion -- one half -- of DHHL applicants are living in crowded households. Since applicant household sizes are similar to the State average, the higher crowding ratio among applicants may indicate that they are forced to live in smaller units than other Hawaiians. We might also expect that some applicants look to their awards as a means of escaping crowded homes.

Table 12: Crowding Ratio

Crowding Ratio	DHHL Applicants	Ethnic Hawaiians in State of Hawaii	All Ethnicities State of Hawaii
less than 1.00	50.7%	62.5%	77.0%
1.01 to 1.50	39.0%	25.3%	17.4%
more than 1.50	10.3%	12.2%	5.6%
Weighted Total	8,240	40,567	326,689

Data source: 1992 Housing Policy Consortium Study. Weighted by the place of residence.

SHELTER-TO-INCOME RATIO

A commonly used measure of housing need is the shelter-to-income ratio. Shelter costs that are higher than 30 percent of the household income are usually considered to be burdensome, and indicate that affordable housing is needed. According to this definition, less than one-quarter of lessees are overburdened with shelter cost. In contrast, almost

[11] Calculation involves the total number of rooms, not just limited to the number of bedrooms. Other rooms included in the calculation are living room, dining room, kitchen, family rooms, but not lanai, utility or storage rooms, or closets.

one-third of applicants pay more than 30 percent of their entire income for shelter, and 22 percent pay more than 40 percent for housing.

Table 13: Shelter-to-Income Ratio

Monthly Shelter Payment as Percentage of Income	1995[1]			1992[2]		
	All DHHL Beneficiaries[3]	Applicants	Lessees[4]	DHHL Applicants	Ethnic Hawaiians	State Overall
under 30%	70.9%	68.3%	78.2%	70.8%	62.0%	63.8%
30 to 40%	9.2%	9.8%	7.6%	9.1%	12.4%	15.8%
over 40%	19.9%	22.0%	14.1%	20.1%	25.6%	20.4%
Total	15,897	11,695	4,203	8,537	37,459	307,701

Note: Those who did not supply shelter payment and/or income information are excluded from the total.
1. Mail survey data. Income and shelter payment for the beneficiaries and their spouses only.
2. 1992 Housing Policy Consortium Study. Income and shelter payment for the household.
3. All beneficiaries.
4. Includes those who are already leasing but are also on the waiting list for another lease award.

The shelter-to-income ratio for applicants has gotten worse since 1992. In that year they were paying proportionately less than the state average for shelter (see Table 13). The data indicate that lessees, too, were paying more for shelter in 1995. The ratio is still lower than for others in Hawaii, but even homesteaders have experienced an increase in the proportion of their incomes that pays for shelter[12].

This analysis does show the extent to which the Home Lands program can and does reduce the shelter burden of beneficiaries. By providing the opportunity through which beneficiaries can obtain low-cost housing, DHHL is delivering one of the services most crucially needed by native Hawaiians. In other words, the Home Lands program *is* making things better for the people it is serving.

Finally, we note that any estimate of housing need derived from our surveys will underestimate the need for housing within the beneficiary population. The surveys could

12 High shelter costs can reflect investment in new or improved housing, and families often have high shelter cost ratios for a year or two after buying a home. The ratio can also be affected by decreases in household earnings.

Table 14 shows the unit type preferences on the applicant's second choice[13]. The responses suggest that many applicants consider multi-family units to be an acceptable solution to housing problems[14].

Table 14: Acceptable Unit Types

	Number	Percent
Preferred Type of Unit		
single family unit	11,730	92%
multifamily units	530	4%
any type okay	186	1%
no response	327	3%
Would Accept Multifamily unit		
yes	4,206	33%
depends	1,442	11%
no	7,103	55%
no response	111	1%
Total	12,773	100%

Phone survey data. Total intending to live on land only. Weighted by the type and the location of the awards sought.

When it comes down to getting themselves on the land, at least 33 percent of current applicants are willing to consider multifamily units. Another percent told us that it did not matter what type of housing unit was on the land, as long as they could realize their desire to receive an award.

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13 The first choice question is unqualified. We asked, "What type of unit do you want to have on your award land?" The second choice question is an often used housing survey technique to get more realistic responses. We ask of those who want a single family unit, "Would you be willing to accept a multifamily unit if it would get you on the land faster?"

14 Applicants among our advisors have suggested that many Hawaiians, especially those on the Neighbor Islands, may have interpreted the term "multifamily unit" to mean a housing unit that was suited for 'ohana (extended family) use. If this occurred, several of our interpretations would be suspect. We cannot state for certain it did not occur. We respectfully offer some evidence that its impact is minimal: (1) only 5 percent of survey respondents preferred multifamily units on the first choice; (2) the term "multifamily units" was presented to respondents as "townhouse, duplex, or multiplex";(3) Neighbor Islands people were much less likely to accept "multifamily" units in any of our questions; and (4) focus group participants on all islands had no difficulty with the term, understanding it to mean the standard definition of units that house more than one family.

only reach people who had homes at the time of the survey. The 1990 and 1992 Survey of Homelessness in Hawaii showed that native Hawaiians are disproportionately over represented among Hawaii's homeless people. We have no reason to suspect that DHHL beneficiaries have a lesser likelihood of being homeless.

HOUSING PREFERENCES AND QUALIFICATIONS FOR APPLICANTS

This section covers what have become the standard data for housing planning studies, the preferred types of housing units and qualification for financing a new home. The analysis has been adjusted to accommodate the special preferences and needs of DHHL applicants.

HOUSING PREFERENCES

The preferred characteristics of housing units as expressed by applicants suggests the types of units that must be built in order to fulfill their needs. This study looked into the types of units, number of bedrooms and number of bathrooms that applicants prefer.

PREFERRED UNIT TYPE

Given their first choice of housing types, an overwhelming majority (95%) of applicants want to live in a single family house. We have already seen that Hawaiians across the state are more likely to live in single family homes, and that their household sizes are larger than the average, making smaller housing units less useful. Even on the first choice, however, about five percent of the applicants have a preference for multifamily units, including townhouses, duplexes, multiplexes, and condominium apartments.

NUMBER OF BEDROOMS

A majority of applicants want three- or four-bedroom units. This is not unreasonable, considering the size of the intended household on the homestead land. However, as Table 15 shows, many applicants are willing to accept smaller units to get on the land faster.

Table 15: Preferred Number of Bedrooms

Preferred number of bedrooms	Number	Percent
one	86	0.7%
two	1,224	9.6%
three	6,104	47.8%
four	4,146	32.5%
five or more	1,186	9.3%
undecided	26	0.2%
Willing to accept fewer bedrooms		
yes	8,733	68.0%
no	4,040	32.0%
Total Applicants	12,773	100%

Note: Phone survey data, applicants only. Base = total intending to live on land.

NUMBER OF BATHROOMS

Most applicants want three-bath units. Again, many are willing to accept fewer bathrooms in order to get on the land faster.

Table 16: Preferred Number of Bathrooms

Preferred number of bathrooms	Number	Percent
one	1,262	9.9%
two	9,600	75.2%
three	1,645	12.9%
four or more	248	1.9%
undecided	18	0.1%
Willing to accept fewer bathrooms		
yes	7,122	55.8%
no	5,651	44.2%
Total Applicants	12,773	100%

Note: Phone survey data, applicants only. Base = total intending to live on land.

HOUSING STOCK PROJECTIONS

Finally, we note that some applicants do not intend to build a house on their award land, and that a substantial number of other applicants prefer to build the unit themselves. The latter group would still have the same concerns about obtaining an award, and about financing the improvements on the land. Other than that group, however, DHHL would be expected to build the units on award land.

A summary of the preferences of current DHHL applicants is shown in Table 17. It provides three estimates of the shape of the housing stock needed to provide housing for all of the 16,000 applicants on DHHL application lists. The estimates are based on data taken from the survey of applicants.

Table 17: Housing Preferences of DHHL Beneficiaries, 1995

Type of Unit and Number Bedrooms	Choices for Specific Applicant Groups					
	First Choice of Applicants (Reflects Unrestricted Preference for Unit Type)		Second Choice (Reflects willingness to accept unit to get an award faster)		Second Choice for those who expect DHHL to build the units	
	number	percent	number	percent	number	percent
Single Family	**11,840**	**92.7**	**8,124**	**63.6**	**2,391**	**55.4**
at least two	1,185	9.3	3,230	25.3	917	21.2
three bedrooms	5,786	45.3	3,908	30.6	1,209	28.0
four bedrooms	3,782	29.6	825	6.5	230	5.3
five or more	1,061	8.3	117	.9	18	.4
haven't decided	26	.2	44	.3	17	.4
Multifamily	**420**	**3.3**	**4,271**	**33.4**	**1,894**	**43.9**
at least two	62	.5	2,428	19.0	1,131	26.2
three bedrooms	99	.8	1,573	12.3	650	15.1
four bedrooms	165	1.3	238	1.9	101	2.3
five or more	94	.7	21	.2	6	.1
haven't decided	---	---	12	.1	6	.1
Doesn't Matter	**513**	**4.0**	**378**	**3.0**	**32**	**.8**
at least two	64	.5	82	.6	9	.2
three bedrooms	219	1.7	230	1.8	23	.5
four bedrooms	199	1.6	67	.5	---	---
five or more	32	.2	---	---	---	---

Note: "First Choice" is the answer to the question "What type of housing unit (number bedrooms) would you like to have?" "Second Choice" is the answer to the question, "If you could get into a unit faster, would you be willing to accept a multifamily unit (smaller number of bedrooms)?" The last column reports second choice for applicants who felt that DHHL should provide Homestead Lease Awards with the homes already built there. In the second and third sets, the classification system did not move cases where the respondent was not certain whether they would accept a multifamily unit. If those uncertain cases were moved, as many as 1,488 additional multifamily units, and 507 additional multifamily units to be build by DHHL, might be needed.

If DHHL were to provide or otherwise facilitate housing for all applicants according to their preference (but not their expectations), the new DHHL housing stock would look something like the profile suggested in column 1. If the Department were to provide the type of housing that is acceptable to applicants, the stock would look more like column two. Some of those units would have been built by the Department and others would have been built by the lessees. If DHHL were to provide only the housing units required by people who do not want to build their own units, the DHHL-built stock would look like column three.

FINANCIAL QUALIFICATIONS AND READINESS OF APPLICANTS

The process of moving DHHL applicants from the lists onto Homestead land involves more than matching new housing stock to applicant preferences. For most applicants, moving onto the land usually requires financing of some sort, as well as the ability to leave current homes, jobs, and schools for life in a new location. This section of the report deals with those issues.

INCOME

At a fundamental level, readiness to move onto Hawaiian homestead land is a function of income. Whether applicants want to reside on the land or farm it, they are likely to need money to get started. For most of them, the move will require financing, which is at some point determined by an income qualification. As we have already noted, ethnic Hawaiians have household incomes that are below the average for the State as a whole and beneficiaries have incomes that are lower than the norm for ethnic Hawaiians. Tables C and D in *Technical Report: Department of Hawaiian Home Lands Beneficiary Needs Study, 1995* summarizes income data for all of these groups. Table 18 below shows the data most relevant to the qualification of applicants for financing.

Table 18: Annual Household Income for Homestead Families, by Island

Annual Income	Island of First Choice for All Applicants, February 1994					
	O`ahu	Maui	Hawai`i	Kaua`i	Moloka`i	Total
less than $10,000	6.1	5.8	6.1	7.3	7.8	6.2
$10,000 to $19,999	14.1	9.3	13.2	13.9	13.6	12.8
$20,000 to $29,999	14.2	16.7	19.5	17.8	22.9	17.1
$30,000 to $39,999	16.5	20.8	23.6	18.8	22.0	20.1
$40,000 to $49,999	18.1	17.6	15.2	19.5	7.1	16.8
$50,000 to $75,000	24.0	19.1	16.6	14.8	17.4	19.4
$75,000 or more	7.0	10.7	5.8	8.0	9.1	7.5
All Applicant Households	4,484	2,508	4,201	1,256	550	12,999
Median Income	$39,426	$38,795	$34,776	$35,868	$32,895	$36,895
Island Median	$53,600	$49,300	$38,800	$48,800	$49,300	N/A

Data shown for applicant's first choice of island – some are signed up for more than one island. Income figures are for the "Homestead Family" – the total persons who will move to a home on the award land, and for income from all sources, reported for Calendar 1994. Data are shown only for applicants who have not yet received an award, n= 12,999. The "median income " is the median for the Homestead Families. The "Island Median" is for all households in each county report by HUD, for 1994.

Half of the homestead families on DHHL lists in February 1995 had annual incomes less than $36,900. Incomes of applicants for awards on the Big Island, Kaua`i, and Moloka`i were even lower. Incomes of homestead families were between ten (Big Island) and 30 percent (Molokai) lower than the median incomes reported by HUD.

As noted in Table 8, not all applicants for awards on a given island live on that island. Past experience shows that families who do not live on the island where new lands are opened defer more often than residents of the island. Off-island applicants are employed elsewhere and their networks of friends, schools, doctors, and other services are on their home island. They have a harder time preparing to move, whether or not they are financially qualified to do so.

The effect of income on applicants' ability to move is a complex issue. We begin to understand the issue from the information in Table 19. There we see that interest in units other than single family dwelling units is associated with lower household incomes.

Table 19: Annual Household Income By Preferred Unit Type, All Islands, 1994

Annual Income	Type of Unit Acceptable to Applicants			
	Single Family Home	Multifamily Home	Any Type Will be Sufficient	All Applicants
less than $10,000	4.8	9.2	0.0	6.2
$10,000 to $19,999	10.4	16.6	23.0	12.8
$20,000 to $29,999	17.8	16.4	8.9	17.1
$30,000 to $39,999	20.5	19.2	21.9	20.1
$40,000 to $49,999	17.1	17.1	6.3	16.8
$50,000 to $75,000	20.5	16.8	30.9	19.4
$75,000 or more	9.0	4.7	8.9	7.5
All Applicant Households	8,124	4,271	378	12,773
Median Income	$38,313	$34,061	$38,220	$36,895

Data shown for applicant's second choice of unit type. The initial choice shows unqualified preference. Second choice reflect what applicants are willing to accept in order to get on the land quickly. Income figures are for the "Homestead Family" -- the total persons who will move to a home on the award land, and for income from all sources, reported for calendar 1994. Data are shown only for applicants who have not yet received an award, n= 12,999. The "median income " is the median for the Homestead Families. Multifamily units include duplex, townhouse, and multiplex units.

The match between preferred unit types and household income is an imperfect one. In part that is due to the lack of one-to-one correspondence between the preferences and expectations of applicants and the realities of getting on the land. Equally important, income alone does not qualify one for financing. For that reason, the survey of applicants contained detailed information on income, household size, and other qualifications for financial transactions. Those items will be addressed in subsequent sections of this chapter.

HUD INCOME GUIDELINES

The most important reason why income does not suffice as a qualification for financing is household size. A family income of $50,000 per year might qualify a family for standard financing. But if the family has ten members there may not be much left over at the end of the year for financing a home. The U.S. Department of Housing and Urban Development (HUD) recognized this fact in establishing guidelines for family incomes, and has guidelines that establish income cutoffs that equate qualifications for different household sizes. HUD guidelines have become the standard for qualifying households for

many entitlement programs, especially those dealing with housing. Table 20 shows the HUD income estimates for the 12,999 applicants on DHHL lists in February of 1995.

Table 20: HUD Income Guideline Data for Homestead Families, by Island

Income Status	Island of First Choice for All Applicants, February 1995					
	O'ahu	Maui	Hawai'i	Kaua'i	Moloka'i	Total
Homestead family income						
below 30% of median	16.8%	12.5%	12.4%	22.4%	21.8%	15.3%
30 to 49% of median	17.3	19.3	16.1	16.0	26.5	17.5
50 to 79 % of median	18.8	19.9	24.5	17.9	17.3	20.7
80 to 119% of median	38.1	35.4	31.1	33.6	29.4	34.5
120 to 139% of median	6.4	7.4	9.7	6.8	3.9	7.6
140% of median or more	2.6	5.5	6.2	3.3	1.2	4.3
not classified	283	146	190	8	36	663
All Applicant Households	4,484	2,508	4,201	1,256	550	12,999
Percent below median	71.9	69.5	86.6	73.1	80.3	70.8

Data shown for applicant's first choice of island -- some are signed up for more than one island. Estimates were based on income for the "Homestead Family" -- the total persons who will move to a home on the award land, reported for Calendar 1994. Data are shown only for applicants who have not yet received an award, n= 12,999. The "Island Median" is for all households in each county report by HUD, for 1994. The item "below 30% of median" shows the percent of all applicant families with annual incomes that were below 30 percent of the median income guideline for each family size in each of Hawaii's four counties.

Table 21 shows the housing unit preferences of 1995 applicants by HUD income categories. The table shows clearly that families with lower incomes are less likely to expect single family units than are those with greater resources. Less than 50 percent of applicant families with incomes below 30 percent of the HUD county median anticipate moving into a single family unit. That percentage increases steadily to more than 70 percent of families with income above 120 percent of the county median.

Table 21: Annual Household Income By Preferred Unit Type, All Islands, 1994.

Annual Income	Type of Unit Acceptable to Applicants			
	Single Family Home	Multifamily Home	Any Type Will be Sufficient	All Applicants
Homestead family income				
below 30% of median	49.8	47.9	2.3	1,664
30 to 49% of median	63.1	33.4	3.5	2.164
50 to 79 % of median	64.3	33.1	2.7	2,557
80 to 119% of median	66.0	32.0	2.0	4,252
120 to 139% of median	70.4	25.7	3.9	939
140% of median or more	71.3	22.0	6.5	554
not classified	421	183	40	870
All Applicant Households	8,124	4,271	378	12,999

Percentages are row percentages. Data shown for applicant's second choice of unit type. Second choice reflects what applicants are willing to accept in order to get on the land quickly. Table includes all applicants who have not yet received an award, n= 12,999. Some did not report sufficient information to be classified in the HUD categories. Estimates were based on 1994 income for the "Homestead Family" -- total persons who will move to a home on award land. The item "below 30% of median" shows the percent of all applicant families with 1994 incomes that were below 30 percent of the median income for each family size in each of Hawaii's four counties. Multifamily units include duplex, townhouse, and multiplex units.

OTHER INDICATORS OF HOUSING READINESS

Annual income, family size, combined under HUD guidelines are the most frequently used qualification criteria for housing planning. But there is a difference between rough planning guidelines and the qualification procedure that is applied in actual finance applications. Financial institutions, government programs, and DHHL must consider a long list of factors in determining if applicants are qualified for specific housing options.

The 1995 survey of applicants made an attempt to go beyond the standard planning guidelines and collect more detailed information on applicant qualifications. The survey did not collect detailed information on household debt, but it did collect family savings, real estate ownership, employment data, and applicant assessment of affordable down payment and monthly payments for housing.

Because we are considering financing that is very similar to standard home ownership mortgages, there are two basic areas under which an applicant may have to qualify: an

initial or down payment, and monthly shelter costs. Table 22 shows those data for applicants by island.

Almost 30 percent of the 1995 applicants could afford less than $5,000 as a down payment on a loan. The figures were remarkably consistent across islands. Another 40 percent could afford between $5,000 and $15,000. Less than five percent could afford $40,000 or more. The data on real estate ownership and family savings are consistent with those findings. Just over 40 percent of the 1995 applicants own their own homes. Almost 40 percent are renting their homes, and 16 percent are sharing accommodations with others. O`ahu applicants were less likely to own their own homes (30%). Fifteen percent of the applicants had no savings at all, and 47 percent had less than $5,000 in the family savings account. About five percent had more than $40,000 in the bank.

The data for affordable monthly payments on a home showed a similar pattern. Just over a third of the applicants (34%) felt they would be able to pay less than $500 per month for a home on homestead land. Less than 12 percent would be ready to pay more than $1,000 a month. The data on current monthly housing payment are directly comparable with the affordable payment because the current payment may be shared with other individuals. The pattern of payments was similar, however, with 35 percent paying less than $500 per month and 28 percent paying more than $1,000.

Table 22 also shows that about 12 percent of 1995 applicants are living in households where no one is currently employed, and 19 percent live in households with three or more employed persons. More than 60 percent of all applicants live on the same island for which they are applying. That pattern is very different for O`ahu and the Neighbor islands. Very few of the O`ahu applications are from off island, but at least 40 percent of neighbor island applications come from O`ahu or out-of-state. On Maui, off-island applicants outnumber home island applications.

Table 22: Other Qualification Information for Homestead Families, by Island

Qualification	Island of First Choice for All Applicants, February 1994					
	O`ahu	Maui	Hawai`i	Kaua`i	Moloka`i	Total
Affordable Down Payment						
none	4.6	4.2	4.5	4.8	1.1	4.4
less than $5,000	23.4	22.6	24.2	22.6	21.6	23.3
$5,000 to $14,999	40.8	37.4	40.8	35.2	41.8	39.6
$15,000 to $24,999	24.6	22.6	19.7	22.9	27.3	22.6
$25,000 to $39,999	3.9	8.6	5.8	7.4	3.6	5.7
$40,000 or more	2.8	4.6	5.0	7.1	4.5	4.3
Real Estate Ownership						
own home plus other RE	6.8	13.2	11.8	7.4	13.7	10.0
own current unit	23.6	39.5	32.4	35.8	33.3	31.1
own other RE only	4.9	3.3	4.7	5.0	9.1	4.7
renter	47.3	30.8	33.8	35.6	32.0	38.1
sharing	17.4	13.1	17.3	16.3	11.9	16.2
Family Savings						
none	17.2	13.2	13.6	15.3	13.9	15.0
less than $5,000	47.3	42.8	49.1	45.3	46.2	46.8
$5,000 to $24,999	26.2	29.3	27.1	26.3	30.3	27.2
$25,000 to $39,999	6.8	7.8	6.4	4.1	5.5	6.5
$40,000 or more	2.6	6.9	3.8	9.0	4.2	4.5
Affordable Monthly Pay						
less than $200	5.5	6.7	7.9	9.0	11.9	7.1
$200 to $499	21.6	25.5	30.6	36.6	29.6	27.0
$500 to $799	26.8	30.6	32.6	30.2	30.4	29.9
$800 to $1,099	28.5	25.6	20.5	14.2	17.7	23.6
$1,100 to $1,399	8.6	5.0	3.0	4.7	4.0	5.6
$1,400 or more	9.0	6.6	5.4	5.3	6.5	6.9
Current monthly payment						
less than $300	17.1	15.6	20.4	23.4	31.5	18.9
$300 to $499	15.9	15.3	17.4	13.2	16.9	16.0
$500 to $699	16.2	19.1	17.9	15.4	20.4	17.3
$700 to $999	22.1	19.9	17.5	20.8	13.4	19.9
$1,000 to $1,499	19.1	15.5	15.3	19.2	11.7	17.0
$1,500 or more	9.6	14.6	11.6	7.9	6.1	10.8
Number Adults Employed						
none employed	10.2	11.3	11.6	19.4	15.2	11.9
one employed	26.7	28.2	30.7	34.0	25.2	28.9
two employed	39.0	42.2	42.9	34.0	34.3	40.2
three or more employed	24.1	18.3	14.8	12.6	25.2	19.0
Current Address						
this island	89.0	33.3	53.8	43.7	43.7	61.4
another island	6.2	56.1	38.4	44.2	44.2	31.1
not in Hawai`i	4.8	10.6	7.8	12.1	12.1	7.4
All Applicant Households	4,483	2,508	4,201	1,256	551	12,999

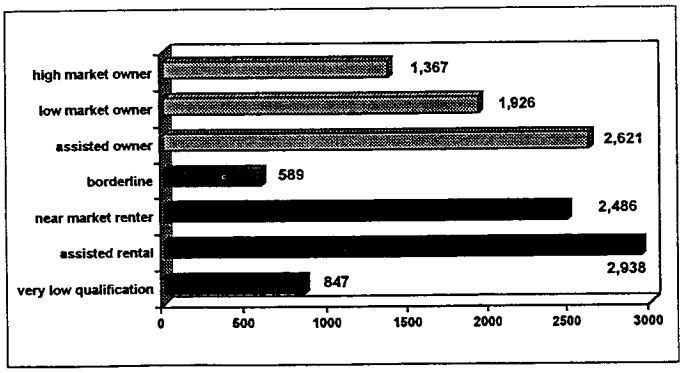
Data shown for applicant's first choice of island – some are signed up for more than one island. Estimates were based on income for the "Homestead Family" – the total persons who will move to a home on the award land, reported for Calendar 1994. Data are shown only for applicants who have not yet received an award, n= 12,999. The "Island Median" is for all households in each county report by HUD, for 1994. The item "below 30% of median" shows the percent of all applicant families with annual incomes that were below 30 percent of the median income guideline for each family size in each of Hawaii's four counties.

INDEX OF HOUSING READINESS

It is unlikely that any survey will produce exact financial qualifications for a group as diverse as DHHL applicants. The foregoing materials suggest an extremely complex set of variables on which any qualification scheme must be based. Even those data exclude detailed information on indebtedness, credit history, unusual family demands on resources due to illness or other situations, the stability of employment, access to resources other than family income, and ability to do their own construction. It was, however, possible to combine the data from the survey to arrive at an index of financial readiness to move to homestead land. The index was constructed by creating categories in which the characteristics of applicants were similar and related to financial strength. The categories were created by combining information on applicants' annual income, affordable down payment, affordable monthly shelter payment, real estate ownership, employment, current savings, and family size.

Figure 7 shows the distribution of DHHL applicants based on their financial ability to obtain housing financing. The distribution shows seven categories ranging from very low financial qualification to very high qualification.

Figure 7: Applicants' Financial Qualifications for Housing



Note: Phone survey data. Weighted total = 12,773. Categories were created by giving weights to all financial-related variables in the applicant phone survey data. Total excludes 226 applicants who do not intend to build home on agricultural or pastoral parcels.

The classification scheme is mutually exclusive and exhaustive, meaning that all surveyed applicants were included in one and only one category. The meaning of the classes, however, is not rigid with respect to specific housing solutions. The scale was created to demonstrate the range of financial needs that exists within the applicant population.

The following are brief descriptions of each segment:

Very Low Qualification: These applicants have very little capability to finance a home. Most of them can afford less than $200 for monthly shelter cost; more than half of them have family incomes below 30 percent of the median income guideline established by the U.S. Department of Housing and Urban Development (HUD). Few have any resources to apply toward a down payment. About seven percent of all DHHL applicants wishing to build a house on award land are in this category.

Assisted Rental: With financial assistance, these applicants will be able to stay in the rental market. Some of them own a home, but will not be able to net out a down payment for another home. A large majority of them can afford less than $500 every month for housing cost. There are about 3,000 applicants -- or 23 percent of intended builders -- who fit this category.

Near Market Rental: These people can rent a bit more comfortably, but would not likely be able to buy in today's market. About one-quarter of them are classified as "very low income" by HUD guidelines. About thirty percent of these applicants have access to special financing, such as VA financing. Those with higher incomes have no resources for a down payment, and those with some real estate have low incomes and can afford relatively low monthly housing payments. In total, 20 percent of all applicants intending to move are in this category.

Borderline: Applicants in this category are on the borderline between the rental and homeowner markets. These applicants could afford market level rental payments, but would need assistance in order to buy or build their homes. Programs like rent-to-own or financial education programs might ease many of these people into home ownership. About one-third of these applicants have family incomes above 120 percent of the HUD median figure, and many of them can afford up to $1,000 for monthly shelter cost. They are not, however, prepared to make reasonable down payments and few own real estate. About five percent of all applicants who want to build a home, or approximately 600 applicants, are classified in this category.

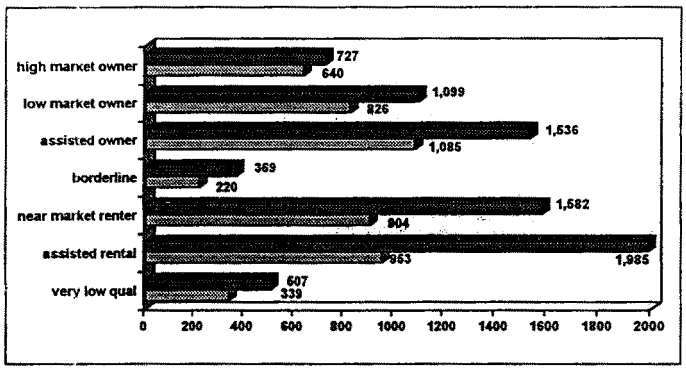
Assisted Owner: This group will also require assistance to become home owners on award land. What separates them from the borderline category is real estate ownership: many own their current home and/or other real estate property. They are likely to be able to have some resources for down payment. They may not be able to qualify for standard financing because they have either the down payment or the monthly but not both. There are about 2,600 applicants in this category. That represents 21 percent of all applicants wishing to build on homestead land.

Low Market Owner: These people may not be able to purchase top-of-the-market houses, but they are qualified to become home owners. Nearly one-quarter of these people have family incomes above 120 percent of HUD median guideline. There are nearly 2,000 applicants in this category, or 15 percent of all those who intend to build home on DHHL land.

High Market Owner: Applicants in this category will not have any serious problems financing a home. Twenty-percent of them have family incomes that exceed 140 percent of the median income guideline established by HUD. Half of them own their current home or some other property and almost a quarter of them own more than one piece of real estate. There are at least 1,400 applicants in this category.

Figure 8 shows the distribution of financial status of the applicants from the same island (top bar) and from off-island (bottom bar). In each of the categories there are more home island applicants than those from off-island. The home-island applicants, however, were much more likely to be qualified as renters than as home owners.

Figure 8: Financial Breakdown of Applicants Preferring Single Family Unit



Note: Phone survey data. Base = those preferring single-family homes (12,730 weighted cases).

The readiness index is a static construct from survey data. It suggests that a substantial number of applicants from the February 1995 lists at DHHL were probably not qualified to accept an award that year. That finding is consistent with relatively high rates of deferral

and with the number of cases where applicants have been disqualified for specific awards. It does not mean that 1995 applicants will remain in their 1995 categories for all time. They may become more qualified over time. At any given time, however, only some applicants will be prepared to accept an award and move onto the land.

This suggests a method for re-examining the housing stock required to fill the need of 1995 applicants (See Table 17). We might consider the 1995 applicants who were qualified for home ownership as those who were capable of accepting an award that year. Adding this new qualification to the required stock analysis, we would get the results shown in Table 23.

Table 23: Housing Preferences of DHHL Beneficiaries, 1995

Type of Unit and Number Bedrooms	Choices for Specific Applicant Groups					
	Second Choice (Reflects willingness to accept unit to get an award faster)		Second Choice for those who expect DHHL to build the units		Second Choice for those who want DHHL units and are qualified for home ownership	
	number	percent	number	percent	number	percent
Single Family	**8,124**	**63.6**	**3,837**	**58.2**	**1,689**	**60.4**
at least two	3,230	25.3	1,549	23.5	603	21.5
three bedrooms	3,908	30.6	1,882	28.6	894	32.0
four bedrooms	825	6.5	336	5.1	154	5.5
five or more	117	.9	53	.8	38	1.4
haven't decided	44	.3	17	.3	---	---
Multifamily	**4,271**	**33.4**	**2,605**	**39.5**	**1,023**	**36.6**
at least two	2,428	19.0	1,538	23.4	597	21.3
three bedrooms	1,573	12.3	888	13.5	296	10.6
four bedrooms	238	1.9	146	2.2	103	3.7
five or more	21	.2	21	.3	21	.7
haven't decided	12	.1	12	.2	5	.2
Doesn't Matter	**378**	**3.0**	**147**	**2.2**	**86**	**3.1**
at least two	82	.6	67	1.0	36	1.3
three bedrooms	230	1.8	73	1.1	43	1.5
four bedrooms	67	.5	7	.1	7	.2
five or more	---	---	---	---	---	

Note: "First Choice" is the answer to the question "What type of housing unit (number bedrooms) would you like to have?" "Second Choice" is the answer to the question, "If you could get into a unit faster, would you be willing to accept a multifamily unit (smaller number of bedrooms)?" The last column reports second choice for applicants who felt that DHHL should provide Homestead Lease Awards with the homes already built there. In the second and third sets, the classification system did not move cases where the respondent was not certain whether they would accept a multifamily unit.

The last column in Table 23 might be considered to be the acceptable new housing stock profile of units to be built by DHHL for applicants who were qualified for some form of financing in 1995. The total is almost 2,800 units.

We note that the profile in this last column is more similar to the first column than to the second. The implication is that people who are more qualified for financing are less willing to accept a multifamily unit. However, in the long-run, there is a need for a substantial number of multifamily units.

Applicants' financial status and their expectations have implications on the policy decisions that have to be made by the DHHL administration. They are described and explored in the following section.

APPENDIX E

Executive Summary

Housing Problems and Needs of Native Hawaiians

Study prepared for the

U.S. Department of Housing and Urban Development

by

The Urban Institute, Center for Public Finance and Housing

Housing Problems and Needs of Native Hawaiians

Prepared for:
U.S. Department of Housing and
Urban Development
Office of Policy Development and Research

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FOREWORD

Housing Problems and Needs of Native Hawaiians, undertaken at the request of Congress in conjunction with HUD's *Assessment of American Indian Housing Needs and Programs*, provides a wealth of new information on housing conditions among one of the United States' least studied indigenous populations. This analysis used special tabulations of 1990 Census data, extensive literature reviews, an advisory panel of housing experts, and interviews with local leaders and housing officials to learn more about the housing issues confronting Native Hawaiians.

Unlike American Indians and Alaska Natives, Native Hawaiians do not have a treaty relationship with the U.S. Government. The State of Hawaii administers about 203,000 acres of Home Lands set aside by an act of Congress in 1921. These lands, which serve persons with at least 50 percent Hawaiian ancestry, are home to only 6 percent of Native Hawaiians. Much of this land is located far from employment opportunities and includes some of the most difficult to develop tracts in the State. However, recent State commitments to open better and more accessible Home Land acreage for residential use suggest that important new resources may become available.

Today, approximately half of all Native Hawaiians are burdened with housing problems in what is one of the most expensive housing markets in the United States. Particularly striking is the high incidence of overcrowding both on and off the Home Lands: over one-third of all Native Hawaiian renters and one-fifth of all Native owners live in overcrowded conditions. Many live in extended families with multiple wage earners. Nonetheless, fully 28 percent face a housing cost burden in excess of 30 percent of their income.

The challenging housing problems confronting Native Hawaiians can only be addressed through flexible Federal and State policies that can respond to the special circumstances of this unique population. Continued commitment from both public and private sectors will be required, both to promote decent and affordable housing in the face of intense pressure on the finite land resources of the Hawaiian Islands and to ensure equitable housing options for the Islands' first inhabitants.

Michael A. Stegman
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EXECUTIVE SUMMARY

INTRODUCTION

This study of Native Hawaiian housing needs complements a companion Department of Housing and Urban Development (HUD) sponsored "Assessment of American Indian Housing Needs and Programs" conducted for HUD by the Urban Institute. The companion *Assessment*, initiated in 1993, was designed to evaluate the housing problems and needs of American Indians and Alaska Natives as well as the effectiveness of HUD's Indian housing programs.

The key objectives of this adjunct study are to assess the housing problems and needs of Native Hawaiians given the particular housing conditions and market circumstances that exist in Hawaii. The tasks include defining and analyzing the extent of housing needs of Native Hawaiians living in various environments using existing data sources. The analysis focusses on housing quality, overcrowding, and affordability, using data drawn principally from existing data sources, such as the 1990 Census.

The research on Native Hawaiian housing needs has drawn heavily upon published and unpublished tabulations from the U.S. Census, as the most comprehensive, reliable source of information on housing and population characteristics. To supplement Census data, information was gathered in Hawaii from knowledgeable professionals and housing organizations about local housing characteristics and concerns. This information also permits an examination of the housing conditions and needs of Native Hawaiians living in the continental United States as well as those living on Hawaiian Home Lands and in other urban and rural areas of the state.

BACKGROUND

The 1990 Census for the state of Hawaii reports a population slightly over 1.1 million persons, of which approximately 140,000 persons, or 13 percent, reported that they were of Native Hawaiian ancestry. Other surveys indicate that Census data may undercount people of Native Hawaiian ancestry and this population may be as large as 200,000. Native Hawaiians live throughout the state, in Honolulu as well as in rural communities in less populated islands.

Because the Native Hawaiian population has intermarried with non-Native Hawaiians, there has been a decline in the share of Native Hawaiians with high proportions of Hawaiian ancestry. Census data do not, however, distinguish different sub-groups of Hawaiians based on their ancestry, so it is not possible to determine from the data whether Hawaiians with different degrees of Native Hawaiian ancestry have different housing needs.

The 1990 Census enumerated approximately 356,000 occupied housing units in Hawaii, of which about 43,600, or 12 percent, were occupied by a Native Hawaiian householder or spouse. Approximately 75 percent of the state's population, and 67 percent of Native Hawaiians, lived on the island of Oahu, which includes the City of Honolulu. The remainder of the population is distributed among six other islands, from Hawaii (also called the "Big Island"), Hawaii's largest at 4,000 square miles, to Niihau, Hawaii's smallest inhabited island at 3.3 square miles. These islands are less urbanized than Oahu, with a combined population density of 47 persons per square mile, compared to a density of 2,458 for Oahu. The trend over the last two decades, according to Census figures, shows a slight increase in relative distribution of the population from Oahu to the neighbor islands.

Of particular importance in assessing housing needs for Native Hawaiians is housing provided on Hawaiian Home Lands for Native Hawaiians with indigenous ancestry. The State Department of Hawaiian Home Lands administers about 203,000 acres of trust land and provides low-cost land leases and other direct benefits such as infrastructure, direct housing loans, and loan guarantees to Native Hawaiians. Relatively few of the qualifying beneficiaries have received assistance to date.

Much of the lands originally set aside for Home Lands appear to be some of the most remote and difficult to develop sites in the state. As of 1990, there were approximately 3,200 housing units on the Home Lands. Sixty percent of these families lived on Home Lands located on Oahu, which represents only 3 percent of total Home Land acreage. The socio-economic characteristics of the Home Land population are somewhat different than those of Native Hawaiians living elsewhere in the state. According to the 1990 Census data, the Home Land

population's is slightly older, less educated, and poorer compared to Native Hawaiians living in other areas of Hawaii.

MAIN FINDINGS

Nearly half of Native Hawaiian households experience a problem of affordability, overcrowding and structural inadequacy.* Overall, 20,500 Native Hawaiian households experienced one or more housing problems in 1990. The incidence of housing problems was much greater for Native Hawaiian households (49 percent) than for non-Natives (38 percent). As expected, low income Native Hawaiians experience the highest incidence of housing problems (68 percent).

All households residing in Hawaii face extremely high housing costs. This problem affects Native Hawaiians in particular because of their lower earnings. In response to high housing costs, Native Hawaiians are more likely than non-Natives to live with subfamilies and with multiple wage earners.

- **The Native Hawaiian population is younger, has lower average education, higher unemployment, and lower incomes than the non-Hawaiian population.**

The median age in 1990 of the Native Hawaiian population is 25.8 years compared to the non-Native population's median age of 32.6 years. Native Hawaiians over 25 are somewhat less likely than others in Hawaii to have a high school education (77 percent compared to 81 percent) and much less likely to have received four years of college education (9 percent versus 24 percent). Unemployment rates are also much higher for the Native Hawaiian population: in 1990, the Native Hawaiian unemployment rate was twice as high as for non-Native Hawaiians throughout the state. Furthermore, per capita income for Native Hawaiians in 1989 was $10,700, compared to $16,000 for non-Natives.

Native Hawaiian households are more likely to be very low-income than non-Native Hawaiians. Just over 27 percent of all Native Hawaiian households have incomes less than 50 percent of the regional (county) median compared to 22 percent of non-Native Hawaiian households. For renter households the disparity is even greater: over 40 percent of all Native Hawaiian renter households have incomes less than 50 percent of the median compared to 34 percent of non-Native households.

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*The study used standard measures of housing problems that define an affordability problem as a household paying more than 30 percent of income for housing; overcrowding as more than one person per room; and structural inadequacy as lacking complete kitchen and plumbing facilities.

As a result, Native Hawaiians' participation rates (over 24 percent) for federal, state, and local housing programs are higher than their share of the total population. Homelessness is also more common among Native Hawaiians than expected based on their representation in the state. A recent study by SMS Research concluded that, on any given day, over 20 percent of all homeless persons in Hawaii are Native Hawaiians.

- **The unavailability of affordable housing leading to high rates of overcrowding is the major housing issue for Native Hawaiians living in the state with the country's highest housing costs.**

Although the share of Native Hawaiian households with affordability problems (28 percent) is virtually the same as the share for non-Native Hawaiians (29 percent), newly formed Native Hawaiian households and those who wish to relocate face high housing costs, especially in the Honolulu metropolitan area. Honolulu has a median single family home price of more than $360,000 in 1994, while median monthly rent for a two-bedroom apartment in 1993 was $1,100. Vacancy rates, which are frequently used as indicators of unmet housing demand, are historically lower in Hawaii than in any other state.

To reduce overall housing costs, Native Hawaiians sacrifice space for affordability. Indeed, the high incidence of subfamilies for Native Hawaiian households in an urban setting (17 percent for owner households compared to 5 percent for non-Native owner households residing in Honolulu) appears to help explain why Native Hawaiian households do not have greater affordability problems.

Affordability problems often lead directly to overcrowding. Over one-third (35 percent) of Native Hawaiian households who rent were overcrowded in 1990 compared to 16 percent for non-Native Hawaiian households. Homeowners also experience overcrowding: 21 percent of Native Hawaiian owners, compared to 11 percent of non-Natives, reported being overcrowded.

- **The condition of housing for Native Hawaiians living in rural areas is of lower quality than for non-Native Hawaiians.**

While only 3,700 Native Hawaiian households, compared to 20,000 non-Native Hawaiian households, reside in rural areas of the state, a high percentage of rural Native Hawaiians live in older, less structurally sound housing. Over 30 percent of all rural Native Hawaiians live in housing built before 1949. Six percent of rural Native Hawaiian households lack complete kitchen or plumbing facilities.

Access to sewage disposal is a related housing concern, with Native Hawaiians twice as likely to dispose of sewage by using a septic tank or other non-traditional means than are non-

Native Hawaiians. The use of non-traditional means to dispose of sewage is also evident in rural Hawaii, where only 21 percent of Native Hawaiian housing units are connected to a public sewage system compared to 30 percent of non-Native units.

- **The housing needs of Native Hawaiians living on Hawaiian Home Lands are different than those for Native Hawaiians living elsewhere throughout the state.**

Housing needs differ on the Home Lands from other areas for Native Hawaiians in part because the average cost of housing on the Home Lands tends to be less than in other areas of Hawaii. This difference is due to, in part, various forms of housing loans and subsidies available for home construction and repairs on Home Lands. Affordability problems are therefore lower for Homeland owner residents (9 percent) than for other Native households who own housing.

Overcrowding is experienced by 37 percent of the households living on the Home Lands where the presence of subfamilies (28 percent) is also higher than it is for Native Hawaiians living in other areas of the state. Also, only 1.5 percent of Home Land housing units had facility problems compared to 4 percent of rural Native Hawaiian homeowners.

- **Homeownership opportunities for Native Hawaiians have always been limited and have decreased due to rapid increases in housing costs.**

The state of Hawaii's low homeownership rate (54 percent compared to 64 percent for the nation as a whole) is largely attributed to low household incomes but also to housing supply considerations, including high land costs, government building regulations, and settlement patterns typical of an archipelago with a single major city.

Lower income Native Hawaiians are, of course, especially susceptible to diminishing homeownership opportunities when home prices increase. The mean value of a single family housing unit in Honolulu county increased, for example, from $159,000 in 1986 to more than $360,000 in 1991. The estimated probability of a Native Hawaiian household (not living on the Home Lands) with income less than 80 percent of regional median income owning a home in 1990 was only 29 percent.

Moreover, it appears that high rents and high house prices are inducing many Hawaiians to emigrate to the mainland to seek more affordable housing opportunities. The Native Hawaiian population on the United States mainland grew rapidly in the 1980s. Between 1980 and 1990, the Native Hawaiian population on the mainland grew by 33 percent to 72,000 persons, while the Native population in Hawaii grew at a more modest rate of 17 percent to reach 138,000, according to the 1990 Decennial Census.

A survey of housing needs in Hawaii, conducted in 1992, revealed that 76 percent of Native Hawaiian householders who planned to move out of the state were influenced by housing prices. The importance of housing prices in the decision to migrate is not surprising given the affordability problem for young householders. While Native Hawaiian households on the mainland tend to be younger than Native Hawaiians in Hawaii, they were just as likely (50 percent) to own their homes. Furthermore, mainland Native Hawaiians were much less likely to experience overcrowding (12 percent compared to 28 percent) and facility problems (1.1 percent compared to 2.2).

- **Housing for Native Hawaiians is likely to be in short supply in the foreseeable future due to expected population growth and current housing production trends.**

In July 1994, the U.S. Census Bureau estimated the population for the state of Hawaii at 1,178,564 or a 1.5 percent annual increase from the 1990 Census figure. Projecting this growth rate to the year 2000 produces an estimate of 431,000 households, for an increase of 16 percent over a ten-year period.

Because of its younger age structure, the number of Native Hawaiian households in Hawaii is likely to increase at a more rapid rate than that for the population at large. It is expected that the 43,000 households in 1990 with a Native Hawaiian householder or spouse will increase to 56,000 by the year 2000, an increase of 30 percent over a ten-year period.

The actual number of Native Hawaiian households formed in the 1990s and remaining in Hawaii will depend in large part on the availability of affordable housing for them. One possibility is that the continued shortage of affordable housing will translate into greater rates of overcrowding throughout the 1990s. Moreover, it is unlikely that the number of affordable new units will be enough to adequately meet the needs of low-income households, including those of Native Hawaiian ancestry.

POLICY SUMMARY

Given the extent of housing needs among Native Hawaiians, basic policy implications emulate those for Native Americans residing on the mainland.

- The unique housing needs of Native Hawaiians require unique solutions.
- The diversity of Native Hawaiian housing needs requires flexible responses so that limited available public funding assistance may be used with maximum efficiency.

- Public policy should support an environment in which public and private sector resources are used to address the housing needs of Native Hawaiians, as appropriate.

As with policy prescriptions for American Indian and Alaskan Native housing needs, it is vitally important that programs be administered flexibly, with program assistance tailored to the particular needs of the locality, and with necessary levels of training and technical assistance provided. Home Lands will not solve all housing needs of Native Hawaiians. Most Native Hawaiians are likely to have to look to the private housing market to meet their needs. It is important, therefore, not only that the Home Lands be used to provide housing as efficiently and equitably as possible, but that Native Hawaiians with serious housing needs be matched with appropriate public or private housing services. Indeed, there is need to link housing, infrastructure, and economic development options in the local planning effort to address the diverse housing needs of Native Hawaiians.

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