

## Calendar No. 326

106TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
106-192

---

### TO PROVIDE FEDERAL HOUSING ASSISTANCE TO NATIVE HAWAIIANS

---

OCTOBER 14, 1999.—Ordered to be printed

---

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

### REPORT

[To accompany S. 225]

The Committee on Indian Affairs, to which was referred the bill (S. 225) 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. 225 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. 225 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 Congress that Native Hawaiians were a landless people and a “dying” people. the Secretary of the Interior, Franklin Lane, likened the re-

lationship 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 administered 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 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 exclusive 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 poor 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 mortgage lending and home 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 Hawaiians 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 land 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 a Native Hawaiian who is eligible to reside on the home lands, his or her heirs must move off the land.

The Hawaiian Homes Commission Act also authorizes general leases of land set aside under the Act. In 1921, when 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. 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.

#### LEGAL STATUS OF NATIVE HAWAIIANS

On July 28, 1999, the United States filed an *amicus curiae* brief in the Supreme Court of the United States in the case of *Rice v. Cayetano*, No. 98–818, in which the government expresses its official legal position relative to the legal status of Native Hawaiians. The brief of the Solicitor General states that—

The United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians. Pursuant to that responsibility, Congress has enacted many statutes for the benefit of Native Hawaiians. Congress has also delegated broad authority to administer a portion of the federal trust responsibility to the State of Hawaii . . .<sup>1</sup>

The United States' brief also asserts that—

Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility. Congress's determination that Native Hawaiians constitute a distinct indigenous group for whom it may enact special legislation is entirely rational. Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claim to its sovereignty or its sovereign lands.<sup>2</sup>

Congress does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation as to whom the United States has established a trust relationship.<sup>3</sup>

#### AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 225

The purpose of the amendment in the nature of a substitute to S. 225 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.

Appropriations for programs authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) to ad-

<sup>1</sup>Brief for the United States as *amicus curiae* supporting respondent in the Supreme Court of the United States, No. 98–818, *Harold F. Rice*, Petitioner, v. *Benjamin J. Cayetano*, Governor of Hawaii, page 1.

<sup>2</sup>Brief for the United States as *amicus curiae* supporting respondent in the Supreme Court of the United States, No. 98–818, *Harold F. Rice*, Petitioner, v. *Benjamin J. Cayetano*, Governor of Hawaii, page 9.

<sup>3</sup>Brief for the United States as *amicus curiae* supporting respondent in the Supreme Court of the United States, No. 98–818, *Harold F. Rice*, Petitioner v. *Benjamin J. Cayetano*, Governor of Hawaii, page 10.

dress the housing needs in Indian country are determined by formula. If enacted, S. 225 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 as the Act does with regard to housing assistance that is provided to Indian tribal governments or their designated tribal housing entities. 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 sponsors that in no instance, will funding for Indian program under NAHASDA be reduced as a function of the authority provided in S. 225.

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 predecessor bill to S. 225 in the 105th Congress (Senate Report No. 105-380). 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. 225 was introduced on January 19, 1999, by Senator Inouye, for himself and Senator Akaka and was referred to the Committee on Indian Affairs. S. 225 was favorably reported to the full Senate on June 30, 1999. Following the filing of an *amicus curiae* brief by the United States in the Supreme Court of the United States establishing the government's official legal position relative to the legal status of Native Hawaiians, S. 225 was brought back before the Committee on Indian Affairs for the consideration of two amendments which were adopted by the Committee. On August 2, 1999, the Committee on Indian Affairs favorably reported an amendment in the nature of a substitute to S. 225.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on August 2, 1999 adopted an amendment in the nature of a substitute to S. 225, by voice vote and ordered the bill, as amended, reported favorably to the full 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 the United States has a special responsibility for the welfare of the Native people of the United States, including Native Hawaiians. This finding is premised upon the history and course of dealings between the United States and the Native people of Hawaii, as recently affirmed by the United States in its *amicus curiae* brief filed in the Supreme Court of the United States on July 28, 1999, in the case of *Rice v. Cayetano*, No. 98–818, which establishes the official legal position of the United States relative to the legal status of Native Hawaiians and finds that the United States has a trust responsibility for Native Hawaiians.

Paragraph 3 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 4 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, Native Hawaiians have been foreclosed from participating in federal housing assistance programs available to all other eligible families in the United States.

Paragraph 5 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 6, 7, 8 and 9 of section 2.

Paragraph 6 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 6 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.

Paragraph 7 of section 2 sets forth the findings of the Congress that the needs of the population of Native Hawaiians who are eligi-

ble 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 8 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 9 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 10 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 11 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 12 of section 2 sets forth the finding of the Congress that under the treaty-making power of the United States, the Congress had the constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and the United States recognized the independence of the Hawaiian kingdom and extended full diplomatic recognition to that kingdom.

Paragraph 13 of section 2 sets forth the finding of the Congress that the United States has recognized and reaffirmed that Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian islands, and that group has never relinquished its claims to its sovereignty of its sovereign lands; Congress did not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation

as to whom the United States has established a trust relationship; that Congress has also delegated broad authority to administer a portion of the federal trust responsibility to the State of Hawaii; 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 14 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 15 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 the United States' 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 Homes 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 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” means any individual who is a citizen of the United States and is a descendant of the aboriginal people who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. This shall be evidenced by (i) genealogical records; (ii) elders or long-term community residents; or (iii) birth records of the State of Hawaii. The definition of “Native Hawaiian” for purposes of this Act does not affect the definition of the term “native Hawaiian” as used in the Hawaiian Home Commission Act, nor does the definition of “Native Hawaiian” for purposes of this Act alter the definition of those native Hawaiians who are eligible to reside on the Hawaiian home lands.

*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, 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 that 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 re-

quirements, 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 section 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 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 characteristic 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 involve-

ment 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 organization 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 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 Title VIII;

- 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 home buyer payments are determined, for housing assisted with grant amounts provided under Title VII; and
- 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 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 extent 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(a)(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 sec-

tion 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 by 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 the 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 mechanics 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 a 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 806(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 with 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 its 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 by reason of section 806(a). Section 806(c) further provides that a certification under the 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 October 1, 1999.

*Section 808*

Section 808 provides that except as otherwise expressly provided in title VIII of this Act, title VIII of this Act shall take effect on October 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 VII 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 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 VIII 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 assistance. The Secretary is to establish limitations on the amount of assistance that may be provided under 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 activities conducted in accordance with the requirements 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 the title VIII of this Act, and establishes that the provision of housing-related services for affordable housing includes housing 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 business 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 of 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(a) 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, non-profit 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 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
- 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 819(a)(2), 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 1999, 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 that 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 the Act. The binding contractual agreements with owners or other authorized entities shall provide for the enforcement 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 the 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 subscribe 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 housing plan submitted by the Director under 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 822(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 the 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 not 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 years 2000, 2001, 2002, 2003 and 2004.

*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 184(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 Hawaiians.

*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 184(a)(6) provides that for purposes of section 184A, the term “Native Hawaiian” means any individual who is a citizen of the United States and is a descendant of the aboriginal people who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. This shall be evidenced by (i) genealogical records; (ii) elders or long-term community residents; or (iii) birth records of the State of Hawaii. The definition of “Native Hawaiian” for purposes of section 184A does not affect the definition of the term “native Hawaiian” as used in the Hawaiian Home Commission Act, nor does the definition of “Native Hawaiian” for purposes of section 184A alter the definition of those native Hawaiians who are eligible to reside on the Hawaiian home lands.

*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 1999 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, United 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 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 of disbursement, whichever is earlier, partial defenses to the amount payable on the guarantee.

*Section 184A(e)*

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 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 mortgagees 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 of 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 sub-

sequently 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 Acts, for—

- Fulfilling 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 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. 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 2000, 2001, 2002, 2003 and 2004 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 184A(j)(7) provides authorization for appropriations to the Guarantee Fund to carry out section 184A such sums as may be necessary for each of fiscal years 2000, 2001, 2002, 2003 and 2004.

*Section 184A(k)(1)*

Section 184A(k)(1) 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 partitioned 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 county 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 county, 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. 225, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 5, 1999.*

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. 225, the Native American House Assistance and Self-Determination Amendments of 1999, as revised and ordered reported on August 4, 1999.

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 the state and local impact is Susan Sieg.

Sincerely,

BARRY B. ANDERSON.  
(For Dan L. Crippen, Director).

Enclosure.

*S. 225.—Native American Housing Assistance and Self-Determination Amendments of 1999*

Summary: S. 225 would expand housing assistance for 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 appropriations for block grants for affordable housing activities and for loan guarantees for mortgages for owner- or renter-occupied housing.

CBO estimates that the authorizations in S. 225 would total \$222 million over fiscal years 2000 through 2004, assuming adjustments for inflation, or \$210 million without such adjustments. We estimate 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.

S. 225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by the state of Hawaii would be voluntary.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 225 is shown in Table 1. Assuming adjustments for inflation after 1999, CBO estimates that the bill would authorize appropriations of \$43 million in fiscal year 2000; authorizations

would increase to \$46 million in 2004. Without adjustments for inflation, the estimated funding needs would be about \$42 million per year. Estimated outlays from those appropriations would total \$3 million in 2000, increasing to \$68 million in 2004 with adjustments for inflation and to \$64 million without adjustments for inflation.

TABLE 1.—ESTIMATED COST TO THE FEDERAL GOVERNMENT

	By fiscal year, in millions of dollars					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
With Adjustments for Inflation:						
Spending Under Current Law:						
Estimated Authorization Level <sup>1</sup> .....	626	703	716	0	0	0
Estimated Outlays .....	792	698	790	411	272	181
Proposed Changes:						
Estimated Authorization Level .....	0	43	44	44	45	46
Estimated Outlays .....	0	3	16	26	68	68
Spending Under S. 225:						
Estimated Authorization Level <sup>1</sup> .....	626	746	760	44	45	46
Estimated Outlays .....	792	701	807	437	340	249
Without Adjustments for inflation:						
Spending Under Current Law:						
Estimated Authorization Level <sup>1</sup> .....	626	691	691	0	0	0
Estimated Outlays .....	792	693	775	406	269	178
Proposed Changes:						
Estimated Authorization Level .....	0	42	42	42	42	42
Estimated Outlays .....	0	3	16	26	64	64
Spending Under S. 109:						
Estimated Authorization Level <sup>1</sup> .....	626	733	733	42	42	42
Estimated Outlays .....	792	696	791	431	333	242

<sup>1</sup>The 1999 level is the amount appropriated for that year for all programs authorized under NAHASDA, including Title I Indian Housing Block Grants, Title VI Indian Loan Guarantees, and Title VII Indian Loan Guarantees. The levels in subsequent years are estimated authorization amounts for those programs. Those amounts reflect estimated credit subsidies to support the maximum loan guarantee levels authorized by NAHASDA for 2000 and 2001, which are substantially higher than the amounts appropriated for 1999.

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

**Basis of Estimate:** The bill stipulates that the provisions would take effect on October 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. 225 would add title VIII—Housing Assistance for Native Hawaiians—to the Native American Housing Assistance and Self Determination Act of 1996 (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 and would authorize technical assistance in cases where administrative capacity is lacking. 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-suffi-

ciency counseling, housing management services, and crime prevention activities. The housing assistance would generally be limited to certain Native Hawaiian families who live on or near Hawaiian Home Lands and who have incomes not exceeding 80 percent of the area's median income, adjusted for family size. Although the bill defines Native Hawaiians in general as individuals who are citizens of the United States and descendants of the aboriginal people who occupied the islands prior to 1778, the block grants would be restricted to people with at least 50 percent Hawaiian ancestry—an estimated 69,000 persons at present.

S. 225 would authorize, for each of the fiscal years 2000 through 2004, the appropriations necessary to carry out the block grant program for Native Hawaiians, including funds for technical assistance. CBO estimates that the necessary funding, without adjustment for inflation, would be \$34 million a year. With adjustment for inflation, funding of \$35 million would be necessary for fiscal year 2000, increasing gradually to \$38 million in 2004 (see Table 2).

The estimate 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 year 1999 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 for block grants 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 need-based formula, which incorporates 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 the relationship between local housing development costs and the national average.

TABLE 2.—ESTIMATED AUTHORIZATIONS BY PROGRAM TYPE

	By fiscal year, in millions of dollars				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
With Adjustments for Inflation:					
Block Grants: <sup>1</sup>					
Estimated Authorization Level .....	35	36	36	37	38
Estimated Outlays .....	1	7	15	60	60
Loan Guarantees:					
Estimated Authorization Level .....	8	8	8	8	8
Estimated Outlays .....	2	9	11	8	8
Total:					
Estimated Authorization Level .....	43	44	44	45	46
Estimated Outlays .....	3	16	26	68	68
Without Adjustments for Inflation:					
Block Grants: <sup>1</sup>					
Estimated Authorization Level .....	34	34	34	34	34
Estimated Outlays .....	1	7	15	56	56
Loan Guarantees:					

TABLE 2.—ESTIMATED AUTHORIZATIONS BY PROGRAM TYPE—Continued

	By fiscal year, in millions of dollars				
	2000	2001	2002	2003	2004
Estimated Authorization Level .....	8	8	8	8	8
Estimated Outlays .....	2	9	11	8	8
Total:					
Estimated Authorization Level .....	42	42	42	42	42
Estimated Outlays .....	3	16	26	64	64

<sup>1</sup> Includes funds for technical assistance.

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 1999 Native Hawaiians would have received 8.6 percent of the need-based component if they had been eligible for NAHASDA funding. In 1999, that component was about \$358 million of the \$608 million appropriated for block grants under NAHASDA. In order not to diminish funding for AIANs and to provide Native Hawaiians 8.6 percent of the funds, it would have been necessary to increase the 1999 need-based component by \$33.6 million.

In addition to authorizing funds for need-based block grants for Native Hawaiians, the bill would also make them eligible for technical assistance in cases where administrative capacity is lacking. In 1999, \$6 million of the total appropriation of \$620 million was set aside for that purpose. Using assumptions similar to those made for estimating the authorization level for block grants, CBO estimates that \$0.6 million would have been necessary for technical assistance for Native Hawaiians in fiscal year 1999. (Another \$6 million was set aside in the 1999 appropriation of retitle VI loan guarantees, but S. 225 would not authorize that component of NAHASDA for Native Hawaiians.)

In estimating the stream of outlays from the estimated budget authority each year, CBO assumed that the regulations to carry out this program would be similar to those that have been implemented to carry out current law. Under a negotiated rule, AIANS that have shown that they have the technical capacity to carry out NAHASDA's provisions are allowed to draw down 100 percent of the grants from the need-based component when the funds are first obligated. Based on experience with those advance drawdowns to date, CBO further assumed that such drawdowns by the Department of Hawaiian Homelands would not start until fiscal year 2003. Disbursement rates prior to that time were assumed to be similar to those for traditional assisted construction programs. As a result, estimated outlays in fiscal years 2003 and 2004 are relatively high because they include the spending of all of the budget authority authorized for those years as well as outlays from authorizations in prior years.

#### LOAN GUARANTEES

Section 4 of S. 225 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 as amended by title VII of NAHASDA. HUD would be authorized to guarantee up

to \$100 million of loans each fiscal year over the 2000–2004 period. CBO assumes that the 2000 subsidy rate for such loan guarantees would be similar to that under the existing program—about 8.1 percent. CBO estimates that such a program would require an appropriation of about \$8 million in fiscal year 2000 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 the amount of receipts collected would be insignificant.

Intergovernmental and Private-Sector Impact: S. 225 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would provide funds to the state of Hawaii for housing assistance grants; any costs to the state would be incurred as a condition of receiving those grants.

Previous CBO Estimates: On July 22, 1999, CBO transmitted a cost estimate of S. 225 as ordered reported on June 30, 1999. The two cost estimates are identical. The revisions to S. 225 included in the version that was ordered reported on August 4, 1999, changed the general definition of the term “Native Hawaiian” and some of the findings in the bill. However, the intended target group of the housing assistance grants remained unchanged. Therefore, the estimated cost of the program is not affected.

Estimate Prepared by: Federal Costs: Carla Pedone and Susanne Mehlman. Impact on State, Local, and Tribal Governments: Susan Sieg.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### EXECUTIVE COMMUNICATIONS

The Committee has not received an Administration position on S. 225.

#### 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 carrying out the bill. The Committee finds that S. 225, 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 sole 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 area 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’ means any individual who is—

“(A) a citizen of the United States; and

“(B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—

“(i) genealogical records;

“(ii) verification by kupuna (elders) or kama’aina (long-term community residents); or

“(iii) birth records of the State of Hawaii.

**“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 who are eligible to reside on the 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 received under this title for any 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) costs 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 entities, in implementing a housing plan that has been approved by the Secretary under section 803.

“(f) **APPLICABILITY OF OTHER 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;

“(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 non-profit 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 Act popularly known as 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 Act popularly known as 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 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. 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 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

“(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 releases 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 to accept 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 October 1, 1999.*

**“SEC. 808. EFFECTIVE DATE.**

*“Except as otherwise expressly provided in this title, this title shall take effect on October 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.

“(i) 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. 810. 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 provisions 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 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, or 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 of 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 the authority of section 819(a)(2)); 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 1999, 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 1999.*

**“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 the 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 an appropriate civil action be instituted.

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

“(A) to recover the amount of the assistance furnished under this 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 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 2000, 2001, 2002, 2003, and 2004.”

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, and private nonprofit or private 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).

“(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 acquired pursuant to that Act.

“(6) *NATIVE HAWAIIAN.*—The term ‘Native Hawaiian’ means any individual who is—

“(A) a citizen of the United States; and

“(B) a descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by—

“(i) genealogical records;

“(ii) verification by kupuna (elders) or kama’aina (long-term community residents); or

“(iii) birth records of the State of Hawaii.

“(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 is—

“(A) 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 1999; 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 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 subparagraph (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) involve 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.—The Secretary may take action under subparagraph (B) 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 service 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.

“(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) PENALTIES.—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 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.

“(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 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. The Secretary shall then take such action to collect as the Secretary determines to be appropriate.

“(2) LIMITATIONS 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 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 al-

inate 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 property acquired by the Secretary under this section, 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 Fund shall be 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 this section; and

“(E) reasonable and necessary costs of rehabilitation and repair to properties that the Secretary holds 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 out 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 ON 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 2000, 2001, 2002, 2003, and 2004 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 2000, 2001, 2002, 2003, and 2004.

“(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 partitioned 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 Act popularly known as the ‘Civil Rights Act of 1968’ (42 U.S.C.A. 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.”*

